



Kathrin Sears, Chair  
County of Marin

Tom Butt, Vice Chair  
City of Richmond

Bob McCaskill  
City of Belvedere

Alan Schwartzman  
City of Benicia

Sloan C. Bailey  
Town of Corte Madera

Greg Lyman  
City of El Cerrito

Barbara Coler  
Town of Fairfax

Don Tatzin  
City of Lafayette

Kevin Haroff  
City of Larkspur

Sashi McEntee  
City of Mill Valley

Brad Wagenknecht  
County and Cities of Napa

Denise Athas  
City of Novato

P. Rupert Russell  
Town of Ross

Ford Greene  
Town of San Anselmo

Arturo Cruz  
City of San Pablo

Andrew McCullough  
City of San Rafael

Ray Withy  
City of Sausalito

Emmett O'Donnell  
Town of Tiburon

Kevin Wilk  
City of Walnut Creek

1125 Tamalpais Avenue  
San Rafael, CA 94901

1 (888) 632-3674

## Executive Committee Meeting

Friday, March 3, 2017

12:00 P.M.

**The Barbara George Conference Room  
1125 Tamalpais Avenue, San Rafael, CA 94901**

### Agenda Page 1 of 2

1. Board Announcements (Discussion)
2. Public Open Time (Discussion)
3. Report from CEO (Discussion)
4. Consent Calendar (Discussion/Action)
  - C.1 Approval of 2.3.17 Meeting Minutes
  - C.2 Monthly Budget Update
  - C.3 Revised MCE Staff Position
  - C.4 6<sup>th</sup> Agreement with Jay Marshall
  - C.5 9<sup>th</sup> Agreement with Maher Accountancy
  - C.6 5<sup>th</sup> Agreement with Braun, Blaising, McLaughlin & Smith
  - C.7 3<sup>rd</sup> Agreement with Davis Wright Tremaine, LLP
  - C.8 7<sup>th</sup> Agreement with Niemela Pappas & Associates
  - C.9 8<sup>th</sup> Agreement with Richards, Watson & Gershon
  - C.10 5<sup>th</sup> Agreement with Troutman Sanders, LLP
  - C.11 6<sup>th</sup> Agreement with Community Energy Services Corporation (CESC)
  - C.12 1<sup>st</sup> Agreement with The Energy Alliance Association (TEAA)
  - C.13 2<sup>nd</sup> Agreement with Kreativz, Inc.
5. Proposed Employee Benefit Allocation Adjustment (Discussion/Action)
6. Update on California Community Choice Association & CCA Activities in Other Communities (Discussion)



Agenda material can be inspected at 1125 Tamalpais Avenue, San Rafael, CA 94901 on the Mission Avenue side of the building. The meeting facilities are in accessible locations. If you are a person with a disability and require this document in an alternate format (example: Braille, Large Print, Audiotape, CD-ROM), you may request it by using the contact information below. If you require accommodation (example: ASL Interpreter, reader, note taker) to participate in any MCE program, service or activity, you may request an accommodation by calling (415) 464-6032 (voice) or 711 for the California Relay Service or by e-mail at [djackson@mceCleanEnergy.org](mailto:djackson@mceCleanEnergy.org) not less than four work days in advance of the event.



Kathrin Sears, Chair  
County of Marin

Tom Butt, Vice Chair  
City of Richmond

Bob McCaskill  
City of Belvedere

Alan Schwartzman  
City of Benicia

Sloan C. Bailey  
Town of Corte Madera

Greg Lyman  
City of El Cerrito

Barbara Coler  
Town of Fairfax

Don Tatzin  
City of Lafayette

Kevin Haroff  
City of Larkspur

Sashi McEntee  
City of Mill Valley

Brad Wagenknecht  
County and Cities of Napa

Denise Athas  
City of Novato

P. Rupert Russell  
Town of Ross

Ford Greene  
Town of San Anselmo

Arturo Cruz  
City of San Pablo

Andrew McCullough  
City of San Rafael

Ray Withy  
City of Sausalito

Emmett O'Donnell  
Town of Tiburon

Kevin Wilk  
City of Walnut Creek

1125 Tamalpais Avenue  
San Rafael, CA 94901

1 (888) 632-3674

**Executive Committee Meeting**  
**Friday, March 3, 2017**  
**12:00 P.M.**

**The Barbara George Conference Room**  
**1125 Tamalpais Avenue, San Rafael, CA 94901**

**Agenda Page 2 of 2**

7. Review Draft 3.16.17 Board Agenda (Discussion)
8. Committee Member & Staff Matters (Discussion)
9. Adjourn



Agenda material can be inspected at 1125 Tamalpais Avenue, San Rafael, CA 94901 on the Mission Avenue side of the building. The meeting facilities are in accessible locations. If you are a person with a disability and require this document in an alternate format (example: Braille, Large Print, Audiotape, CD-ROM), you may request it by using the contact information below. If you require accommodation (example: ASL Interpreter, reader, note taker) to participate in any MCE program, service or activity, you may request an accommodation by calling (415) 464-6032 (voice) or 711 for the California Relay Service or by e-mail at [djackson@mceCleanEnergy.org](mailto:djackson@mceCleanEnergy.org) not less than four work days in advance of the event.

**DRAFT**  
**MCE**  
**EXECUTIVE COMMITTEE MEETING**  
**Friday, February 3, 2017**  
**12:00 P.M.**

**The Barbara George Conference Room**  
**1125 Tamalpais Avenue, San Rafael, CA 94901**

**Roll Call**

**Present:**

Denise Athas, City of Novato  
Sloan Bailey, Town of Corte Madera  
Ford Greene, Town of San Anselmo  
Kevin Haroff, City of Larkspur  
Bob McCaskill, City of Belvedere

**Absent:**

Tom Butt, Chair, City of Richmond  
Kate Sears, County of Marin

**Staff:**

Katie Gaier, Human Resources Manager  
Elizabeth Kelly, General Counsel  
David McNeil, Finance and Project Manager  
Dawn Weisz, CEO

**Action Taken:**

**Agenda Item #4 – Consent Calendar (Discussion/Action)**

- C.1    Approval of 1.13.16 Meeting Minutes**
- C.2    Monthly Budget Update**
- C.3    New MCE Staff Position**

ACTION: It was M/S/C (Bailey/Greene) to <b>approve Consent Calendar Items C.1 through C.3</b> . Motion carried by unanimous 5-0 vote. (Absent: Butt and Sears).
---

**Agenda Item #5 – Proposed Budget Amendment for FY 2016/17 (Discussion/Action)**

ACTION: It was M/S/C (McCaskill/Athas) to <b>recommend the Proposed Budget Amendment for FY 2016/17 to the Board of Directors</b> . Motion carried by unanimous 5-0 vote. (Absent: Butt and Sears).
---

**Agenda Item #6 – Proposed Budgets for FY 2017/18 (Discussion/Action)**

ACTION: It was M/S/C (Bailey/Greene) to **direct staff to present Proposed Budgets for FY 2017/18 to the Board at its February 2017 meeting.** Motion carried by unanimous 5-0 vote. (Absent: Butt and Sears).

**Agenda Item #7 – Proposed Rates for FY 2017/18 (Discussion/Action)**

ACTION: It was M/S/C (Athas/McCaskill) to **direct staff to present Proposed Rates for FY 2017/18 to the Board at its February meeting.** Motion carried by unanimous 4-0 vote. (Absent: Bailey, Butt and Sears).

**Agenda Item #8 – Delegation of Authorities and Contracting (Discussion/Action)**

ACTION: It was M/S/C (Greene/McCaskill) to **recommend Proposed Resolution 2017-02 – A Resolution of the Board of Directors of MCE Delegating Contracting Authorities to the MCE Board for approval at its February meeting.** Motion carried by unanimous 4-0 vote. (Absent: Bailey, Butt and Sears).

**Agenda Item #9 – Review Draft 2.16.17 Board Agenda (Discussion)**

No action required on this item.

The meeting was adjourned to the next Executive Committee Meeting on March 3, 2017.

---

Tom Butt, Executive Committee Chair

ATTEST:

---

Dawn Weisz, Chief Executive Officer



MAHER ACCOUNTANCY 1101 FIFTH AVENUE • SUITE 200 • SAN RAFAEL, CA 94901

## ACCOUNTANTS' COMPILATION REPORT

Financial Plumblne

Board of Directors  
Marin Clean Energy

Management is responsible for the accompanying special purpose statement of Marin Clean Energy (a California Joint Powers Authority) which comprise the budgetary comparison schedule for the period ended January 31, 2017, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

The special purpose statement is prepared in accordance with the budgetary basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. This report is intended for the information of the Board of Directors of MCE.

Management has elected to omit substantially all of the disclosures required by accounting principles generally accepted in the United States of America. If the omitted disclosures were included in the special purpose budgetary comparison statement, they might influence the user's conclusions about the Authority's results of operations. Accordingly, this special purpose budgetary comparison statement is not designed for those who are not informed about such matters.

The supplementary information contained on page 4 is presented for purposes of additional analysis. The supplementary information has been compiled from information that is the representation of management. We have not audited or reviewed the supplementary information and, accordingly, do not express an opinion or provide any assurance on such supplementary information.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

*Maher Accountancy*

San Rafael, CA  
February 20, 2017



**MARIN CLEAN ENERGY  
OPERATING FUND  
BUDGETARY COMPARISON SCHEDULE  
April 1, 2016 through January 31, 2017**

	Actual - from April 1 through January 31		YTD Budget (Amended)	YTD Budget Variance (Under) Over	YTD Actual/Budget %	Annual Budget (Amended)	Budget Remaining
	2015/16	2016/17	2016/17	2016/17	2016/17	2016/17	2016/17
<b>ENERGY REVENUE</b>							
Revenue - Electricity (net of allowance)	\$ 127,682,526	\$ 150,418,230	\$ 151,638,000	\$ (1,219,770)	99.20%	\$ 181,351,000	\$ 30,932,770
Other revenue	455,221	127,335		127,335		-	(127,335)
<b>TOTAL ENERGY REVENUE</b>	<b>128,137,747</b>	<b>150,545,565</b>	<b>151,638,000</b>	<b>(1,092,435)</b>	<b>99.28%</b>	<b>181,351,000</b>	<b>30,805,435</b>
<b>ENERGY EXPENSES</b>							
Cost of energy	102,665,975	125,726,435	129,353,000	(3,626,565)	97.20%	159,033,000	33,306,565
Service fees- PG&E	712,297	910,718	1,014,600	(103,882)	89.76%	1,255,000	344,282
<b>TOTAL ENERGY EXPENSES</b>	<b>103,378,272</b>	<b>126,637,153</b>	<b>130,367,600</b>	<b>(3,730,447)</b>	<b>97.14%</b>	<b>160,288,000</b>	<b>33,650,847</b>
<b>NET ENERGY EXPENSES</b>	<b>24,759,475</b>	<b>23,908,412</b>	<b>21,270,400</b>	<b>2,638,012</b>		<b>21,063,000</b>	
<b>OPERATING EXPENSES</b>							
Personnel	2,512,889	3,726,775	3,806,359	(79,584)	97.91%	5,251,000	1,524,225
Data manager	2,387,155	2,721,986	3,045,800	(323,814)	89.37%	3,674,000	952,014
Technical and scheduling services	517,251	478,915	634,060	(155,145)	75.53%	762,000	283,085
Legal counsel	380,494	503,407	680,833	(177,426)	73.94%	817,000	313,593
Communications services and related expenses	553,150	913,153	827,500	85,653	110.35%	986,000	72,847
Other services	266,988	326,718	390,833	(64,115)	83.60%	469,000	142,282
General and administration	210,825	336,690	373,333	(36,643)	90.18%	443,000	106,310
Occupancy	180,565	323,089	346,667	(23,578)	93.20%	403,000	79,911
Integrated demand-side pilot programs	3,850	7,090	41,667	(34,577)	17.02%	50,000	42,910
Marin County green business program	-	10,000	10,000	-	0.00%	10,000	-
Low income solar programs	4,000	17,800	29,167	(11,367)	0.00%	35,000	17,200
<b>TOTAL OPERATING EXPENSES</b>	<b>7,017,167</b>	<b>9,365,623</b>	<b>10,186,219</b>	<b>(820,596)</b>	<b>91.94%</b>	<b>12,900,000</b>	<b>3,534,377</b>
<b>OPERATING INCOME (LOSS)</b>	<b>17,742,308</b>	<b>14,542,789</b>	<b>11,084,181</b>	<b>3,458,608</b>	<b>131.20%</b>	<b>8,163,000</b>	
<b>NONOPERATING REVENUES</b>							
Grant Income			75,000	(75,000)	0.00%	75,000	75,000
Interest income	7,231	76,859	41,667	35,192	184.46%	50,000	(26,859)
<b>TOTAL NONOPERATING REVENUES</b>	<b>7,231</b>	<b>76,859</b>	<b>116,667</b>	<b>(39,808)</b>		<b>125,000</b>	<b>48,141</b>
<b>NONOPERATING EXPENSES</b>							
Interest expense and financing costs	123,680	32,515	310,833	(278,318)	0.00%	345,500	312,985
Depreciation (supplemental)	63,555	76,240	83,333	(7,093)	91.49%	100,000	23,760
<b>TOTAL NONOPERATING EXPENSES</b>	<b>187,235</b>	<b>108,755</b>	<b>394,167</b>	<b>(285,412)</b>		<b>445,500</b>	<b>336,745</b>
<b>TOTAL NONOPERATING INCOME (EXPENSES)</b>	<b>(180,004)</b>	<b>(31,896)</b>	<b>(277,500)</b>	<b>245,604</b>	<b>11.49%</b>	<b>(320,500)</b>	
<b>CHANGE IN NET POSITION</b>	<b>17,562,304</b>	<b>14,510,893</b>	<b>10,806,681</b>	<b>3,704,212</b>	<b>134.28%</b>	<b>7,842,500</b>	
<b>CAPITAL EXPENDITURES, INTERFUND TRANSFERS &amp; OTHER</b>							
Capital outlay	(160,607)	(110,139)	(310,833)	200,694	35.43%	(383,000)	(272,861)
Depreciation (supplemental)	63,555	76,240	83,333	(7,093)	91.49%	100,000	23,760
Repayment of loan principal	(2,024,038)	-	-	-	-	-	-
Transfer to Renewable Energy Reserve	(1,000,000)	-	-	-	-	-	-
Transfer to Local Renewable Development Fund	(151,383)	(173,263)	(173,263)	-	100.00%	(173,263)	-
<b>TOTAL CAPITAL EXPENDITURES, INTERFUND TRANSFERS &amp; OTHER</b>	<b>(3,272,473)</b>	<b>(207,162)</b>	<b>(400,763)</b>	<b>193,601</b>	<b>51.69%</b>	<b>(456,263)</b>	<b>(249,101)</b>
Net increase (decrease) in available fund balance	<b>\$ 14,289,831</b>	<b>\$ 14,303,731</b>	<b>\$ 10,405,918</b>	<b>\$ 3,897,813</b>		<b>\$ 7,386,237</b>	

**MARIN CLEAN ENERGY  
ENERGY EFFICIENCY PROGRAM FUND  
BUDGETARY COMPARISON SCHEDULE  
April 1, 2016 through January 31, 2017**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
<b>REVENUE AND OTHER SOURCES:</b>				
Public purpose energy efficiency program	\$ 1,220,267	\$ 1,051,423	\$ 168,844	86.16%
<b>EXPENDITURES AND OTHER USES:</b>				
Public purpose energy efficiency program	<u>1,220,267</u>	<u>1,051,423</u>	<u>168,844</u>	<u>86.16%</u>
Net increase (decrease) in fund balance	<u>\$ -</u>	<u>\$ -</u>		

**LOCAL RENEWABLE ENERGY DEVELOPMENT FUND  
BUDGETARY COMPARISON SCHEDULE  
April 1, 2016 through January 31, 2017**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
<b>REVENUE AND OTHER SOURCES:</b>				
Transfer from Operating Fund	\$ 173,263	\$ 173,263	\$ -	100.00%
<b>EXPENDITURES AND OTHER USES:</b>				
Capital Outlay and related	<u>173,263</u>	<u>246,867</u>	<u>(73,604)</u>	<u>142.48%</u>
Net increase (decrease) in fund balance	<u>\$ -</u>	<u>(73,604)</u>		
Fund balance at beginning of period		<u>73,604</u>		
Fund balance at end of period		<u>\$ -</u>		

**RENEWABLE ENERGY RESERVE FUND  
BUDGETARY COMPARISON SCHEDULE  
April 1, 2016 through January 31, 2017**

	<u>Amended Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
<b>REVENUE AND OTHER SOURCES:</b>				
Other proceeds	\$ 761,350	\$ -	\$ 761,350	0.00%
Transfer from Operating Fund	<u>-</u>	<u>-</u>	<u>-</u>	N/A
Total revenue and other sources	\$ 761,350	\$ -	\$ 761,350	
<b>EXPENDITURES AND OTHER USES:</b>	<u>939,850</u>	<u>273,825</u>	<u>666,025</u>	<u>29.13%</u>
Net increase (decrease) in fund balance	<u>\$ (178,500)</u>	<u>(273,825)</u>		
Fund balance at beginning of period		<u>1,000,000</u>		
Fund balance at end of period		<u>\$ 726,175</u>		

**MARIN CLEAN ENERGY**  
**BUDGETARY SUPPLEMENTAL SCHEDULE**  
**April 1, 2016 through January 31, 2017**

	<u><b>Actual</b></u>
<b>Other services</b>	
Audit	\$ 36,000
Accounting	120,000
IT Consulting	58,500
Human resources & payroll fees	10,529
Miscellaneous professional fees	101,689
	<u>          </u>
<b>Other services</b>	<u><u>\$ 326,718</u></u>
 <b>General and administration</b>	
Data and telephone service	\$ 25,569
Meeting room rentals	575
Office equipment lease	4,835
Dues and subscriptions	154,809
Conferences and professional education	28,938
Travel	30,183
Business meals	7,491
Miscellaneous administration	30,017
Office supplies and postage	54,273
	<u>          </u>
<b>General and administration</b>	<u><u>\$ 336,690</u></u>





March 3, 2017

TO: MCE Executive Committee

FROM: Katie Gaier, Human Resources Manager

RE: Revised MCE Staff Position (Agenda Item #04 - C.3)

ATTACHMENT: Job Description – Legal Counsel/Senior Legal Counsel

Dear Executive Committee Members:

**SUMMARY:**

Due to the increasing number of contracts as well as other transactional work for the Legal and Regulatory Team, it has become necessary to create two levels of Legal Counsel. The proposed change requires a revision of the current Legal Counsel job description. This action creates an entry-level position of Legal Counsel and revises the current Legal Counsel to Senior Legal Counsel. Assigning an entry-level Legal Counsel to more basic legal work will result in the Senior Legal Counsel's ability to focus on higher level work, including supervision. This change should result in a reduction in the need for outside counsel. There is no proposed salary change for the Senior Legal Counsel as it will remain at the same level as the current Legal Counsel at \$119,925 - \$178,390. The proposed salary for the revised Legal Counsel is \$87,210 - \$121,376. This salary range is consistent with Regulatory Counsel I, which has the same minimum requirements and breadth of responsibilities.

**Fiscal Impact:** There is no budget impact beyond what is included in the proposed FY 2017/18 staffing budget for the Legal and Regulatory Team.

**Recommendation:** Move the proposed revised Legal Counsel/Senior Legal Counsel job description and the new salary range for Legal Counsel to the MCE Board for approval on the consent calendar at its March meeting.



## **Legal Counsel Senior Legal Counsel Job Description**

### **Summary**

The MCE Legal Counsel positions work under direction from the General Counsel and/or the Senior Legal Counsel and have responsibility for a wide range of MCE transactional matters, with particular emphasis on contracts and areas of municipal and state law. The Legal Counsel positions review, evaluate, and finalize MCE contracts and related policies to ensure compliance with municipal and state law, and perform other duties as assigned.

### **Class Characteristics**

The MCE Senior Legal Counsel works under the general direction of the General Counsel; the Legal Counsel works under the direction of the Senior Legal Counsel and/or the General Counsel. Depending upon the level, incumbents are assigned to support the General Counsel in the basic and advanced transactional areas of the law, including but not limited to review, evaluation, and finalization of contracts and related policies. The emphasis of the position is on legal transactions between MCE and its contractors who provide a wide range of services in support of the agency's operations and compliance with municipal and state laws.

### **Essential Duties and Responsibilities (Illustrative Only)**

Depending upon the level, incumbents may perform some or all of the following:

- Review, evaluate, and finalize various contracts;
- Develop contracts, terms and conditions, and non-disclosure agreements for ongoing energy management technology pilots and programs;
- Respond to Public Records Act requests, including review of documents related to Public Records Act requests;
- Develop policies, terms and conditions, and other materials supporting MCE functions;
- Address questions related to laws and regulations impacting MCE, including the Brown Act;
- Litigate matters or manage litigation matters for MCE;
- Assist in refining MCE's contract management processes;
- Determine criticality of contracts that may need referral to outside counsel;
- Coordinate with outside counsel to finalize referred contracts;
- Supervise and/or provide lead work direction to other staff;
- As assigned, assists with the implementation of MCE's Strategic Plan.

### **Supervisory Responsibilities**

The Senior Legal Counsel has supervisory responsibilities for Legal Counsel, Law Clerks, and other Interns.

The Legal Counsel may provide lead work direction to Law Clerks and other Interns.

### **Breakdown of Time Spent on Various Work Areas**

- |                          |     |
|--------------------------|-----|
| • Contract Review        | 65% |
| • Related Legal Analysis | 25% |
| • Other Analytical Tasks | 10% |

### **Minimum Qualifications**

#### **Education/Experience**

Legal Counsel:

A law degree from an ABA approved law school and membership in the California Bar. Experience in contract law, municipal law, and energy is preferred.

Senior Legal Counsel:

A law degree from an ABA approved law school, membership in the California Bar, and at least three (3) years of transactional law experience is required. Experience in municipal law and energy is preferred.

#### **Knowledge of:**

- MCE and its mission and purpose.
- California laws governing the operation of electric utilities, in particular Community Choice Aggregation (CCA) programs, including data privacy requirements.
- Terminology typically used in the electric utility industry.
- Contract language in general, and specific to the utility industry.
- State and municipal law governing public agencies.
- Principles and practices of supervision and/or lead work direction in a public agency.
- Microsoft Office Suite including Excel, Word, PowerPoint, and Adobe Acrobat.

#### **Ability to:**

- Communicate effectively in written and oral form.
- Analyze data and produce effective written reports and arguments.
- Manage multiple priorities.
- Quickly adapt to changing priorities in a fast-paced, dynamic environment.
- Take responsibility and work independently, as well as coordinate team efforts.
- Be thorough and detail-oriented.
- Work accurately and swiftly under pressure.
- Demonstrate patience, tact, and courtesy.
- Establish and maintain effective working relationships with persons encountered during the performance of duties.

### **Language and Reasoning Skills**

- Exercise exceptional analytical skills, sound judgment, creative problem solving, and commercial awareness.
- Analyze and interpret large amounts of information quickly and accurately, and make sound policy recommendations.
- Develop high-quality writing, research, and communication work products.
- Deliver clear and persuasive oral communication.
- Interact effectively with administrative bodies and MCE's General Counsel, Chief Executive Officer, and Board of Directors.
- Manage projects and time efficiently.

### **Physical Demands**

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. While performing the duties of this job, the employee is frequently required to use hands to finger, handle, or feel and reach with hands and arms. The employee must occasionally lift and/or move up to 20 pounds.

### **Work Environment**

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. The noise level in the work environment is usually moderate.

### **ADA Compliance**

MCE will make reasonable accommodation of the known physical or mental limitations of a qualified applicant with a disability upon request.



March 3, 2017

TO: MCE Executive Committee

FROM: Justine Parmelee, Operations Associate

RE: Sixth Agreement with Jay Marshall (Agenda Item #04 – C.4)

ATTACHMENT: Draft Sixth Agreement with Jay Marshall

Dear Executive Committee Members:

---

**SUMMARY:**

Jay Marshall has been providing Information Technology (IT) support to MCE since July 2010, including computer, telephone and internet support services. The attached Sixth Agreement would allow for Jay Marshall to continue providing core business IT services and support to MCE staff between April 1, 2017 and March 31, 2018. Staff recommends approval of this Sixth Agreement with Jay Marshall in the amount of \$108,000 for continuation of IT services.

**Fiscal Impacts:** Costs related to the referenced agreement are included in the FY 2017/18 Operating Fund Budget that Staff is recommending to the Board at its March 16, 2017 meeting.

**Recommendation:** Approve the Sixth Agreement with Jay Marshall.

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**SIXTH AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND JAY MARSHALL**

**THIS SIXTH AGREEMENT** ("Agreement") is made and entered into this day **March 3, 2017** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and JAY MARSHALL, hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services: general information technology (IT) support as requested by MCE staff;

**WHEREAS**, Contractor warrants that it is qualified and competent to render the aforesaid services;

**NOW, THEREFORE**, for and in consideration of the agreement made, and the payments to be made by MCE, the parties agree to the following:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof.

**2. FURNISHED SERVICES:**

MCE agrees to make available all pertinent data and records for review, subject to MCE Policy 001 - Confidentiality.

**3. FEES AND PAYMENT SCHEDULE; INVOICING:**

The fees and payment schedule for furnishing services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement. Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE on a monthly basis for any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 60 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement.

**4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$108,000**.

**5. TIME OF AGREEMENT:**

This Agreement shall commence on **April 1, 2017**, and shall terminate on **March 31, 2018**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

**6. INSURANCE AND SAFETY:**

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 16 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

**6.1 GENERAL LIABILITY**

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

**6.2 AUTO LIABILITY**

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

**6.3 WORKERS' COMPENSATION**

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

**6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☐ )**

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, the contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that contractor has segregated amounts in a special insurance reserve fund or contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

**7. NONDISCRIMINATORY EMPLOYMENT:**

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.

**8. SUBCONTRACTING:**

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the parties shall create any legal or contractual relationship between MCE and any subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. Contractor's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

**9. ASSIGNMENT:**

The rights, responsibilities and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

**10. RETENTION OF RECORDS AND AUDIT PROVISION:**

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during

regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

#### **11. WORK PRODUCT:**

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to Contractor for such work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for MCE.

#### **12. TERMINATION:**

- A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five business days' written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Agreement for any reason by giving 30 calendar days' written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 19 Invoices; Notices.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).
- E. MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

#### **13. AMENDMENT:**

This Agreement may be amended or modified only by written agreement of all parties.

#### **14. ASSIGNMENT OF PERSONNEL:**

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

#### **15. JURISDICTION AND VENUE:**

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

#### **16. INDEMNIFICATION:**

Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement.

#### **17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:**

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

#### **18. COMPLIANCE WITH APPLICABLE LAWS:**

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.



**19. INVOICES; NOTICES**

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address:	invoices@mcecleanenergy.org
----------------	-----------------------------

All other notices shall be given to MCE at the following location:

Contract Manager:	Catalina Murphy
-------------------	-----------------

MCE Address:	1125 Tamalpais Avenue
--------------	-----------------------

San Rafael, CA 94901
----------------------

Email Address:	contracts@mcecleanenergy.org
----------------	------------------------------

Telephone No.:	(415) 464-6014
----------------	----------------

Notices shall be given to Contractor at the following address:

Contractor:	Jay Marshall
-------------	--------------

Address:	16 Portola Avenue
----------	-------------------

San Rafael, CA 94903
----------------------

Email Address:	jay@primemovetech.com
----------------	-----------------------

Telephone No.:	(415) 987-7153
----------------	----------------

**20. ACKNOWLEDGEMENT OF EXHIBITS**

In the event of a conflict between the Terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement will govern.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services	
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment	
<u>EXHIBIT C.</u>	<input checked="" type="checkbox"/>	Insurance Reduction/Waiver	

**21. SEVERABILITY**

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

**22. COMPLETE AGREEMENT**

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

**23. COUNTERPARTS**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**24. PERFORMANCE AND PAYMENT BOND** (REQUIRED IF CHECKED ☐)

Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender, supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first above written.

**APPROVED BY**

**Marin Clean Energy:**

**CONTRACTOR:**

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

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

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

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

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

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

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

**MODIFICATIONS TO STANDARD SHORT FORM**

☒ **Standard Short Form Content Has Been Modified**

**List sections affected:** Section 3

**Approved by MCE Counsel:** \_\_\_\_\_

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

**EXHIBIT A**  
**SCOPE OF SERVICES (required)**

As requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement, the Contractor will provide the following general information technology (IT) support services for maintaining and addressing issues related to the operations of:

- Computer systems, including desktops, networking, internet connectivity
- Interior wiring for new users and user relocation
- File server and Switch/WIFI/Firewall
- Telephone systems, including handsets, voicemail, Allworx telephony software, connections to Internet and SIP provider for telephony
- Microsoft operating system and a single file/print server and Service Pack Installation and updates as required
- Google Applications and Egnite file services support (Email and Cloud Back-up)
- Software, including Office, Acrobat Professional, Dreamweaver, anti-virus and anti-malware, and others
- Other hardware components

Contractor shall provide IT transitional assistance if MCE elects to contract IT services through a different contractor. If requested, Contractor shall provide and assist in transferring his full knowledge of MCE computer, telephone, and internet systems, settings, and passwords.

Contractor will choose an appropriate Subcontractor when on vacation leave.

Contractor shall work on-site at MCE's office no less than 18 hours per week, typically on Tuesdays, Thursdays, and Fridays. Contractor shall provide additional support to MCE staff as needed, remote or on-site, on other weekdays.

**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

For services provided under this agreement, MCE shall pay the Contractor a monthly fee of \$9,000. Contractor shall bill MCE monthly for all services rendered. Additional hours beyond 18 in a given week must be approved in advance and invoiced separately. Additional hours shall be at a rate of \$125/hour, billed in .25-hour increments. Invoices will not be accepted if received more than 60 days from the month that work was performed.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$108,000** for the term of the Agreement.

**EXHIBIT C**  
**INSURANCE REDUCTION/WAIVER (if applicable)**

CONTRACTOR: JAY MARSHALL

CONTRACT TITLE: Sixth Agreement By and Between Marin Clean Energy and Jay Marshall

This statement shall accompany all requests for a reduction/waiver of insurance requirements. Please check the box if a waiver is requested or fill in the reduced coverage(s) where indicated below:

	<b>Check Where Applicable</b>	<b>Requested Limit Amount</b>	<b>MCE Use Only</b>
General Liability Insurance	<input checked="" type="checkbox"/>	\$	
Automobile Liability Insurance	<input type="checkbox"/>	\$	
Workers' Compensation Insurance* *Sole Proprietors must provide representation of their exempt status below	<input checked="" type="checkbox"/>		
Professional Liability Deductible	<input checked="" type="checkbox"/>	\$	

Please set forth the reasons for the requested reductions or waiver.

General Liability Insurance is waived because the nature of services being provided by this Contractor does not place MCE into any significant liability risk.
Workers' Compensation Insurance is waived as Contractor does not have any employees as verified by Contractor's signature below.
Professional Liability Deductible is not applicable to this Agreement.

**WORKERS' COMPENSATION STATEMENT OF EXEMPTION**

By signing below, I notify MCE that I am a

☒ sole proprietor☐ partnership☐ nonprofit organization☐ closely held corporation

and do not have any employees whose employment requires me to carry workers' compensation insurance. Therefore, I do not carry worker's compensation insurance coverage.

Contractor Signature \_\_\_\_\_

Printed Name of Contractor \_\_\_\_\_

Jay Marshall

Date \_\_\_\_\_

Contract Manager Signature: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

Approved by: \_\_\_\_\_

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



March 3, 2017

TO: MCE Executive Committee

FROM: David McNeil, Finance and Project Manager

RE: Ninth Agreement with Maher Accountancy (Agenda Item #04 – C.5)

ATTACHMENT: Draft Ninth Agreement with Maher Accountancy

Dear Executive Committee Members:

---

**SUMMARY:**

On March 4, 2010 Maher Accountancy began providing MCE with general accounting services. Maher Accountancy continues to provide general accounting services, budget tracking, invoice processing, as well as employee payroll and employee benefit and accruals accounting services for MCE. The attached Ninth Agreement would allow for Maher Accountancy to continue providing these essential services between April 1, 2017 and March 31, 2018. The contract amount will not exceed \$165,000.

**Fiscal Impacts:** Costs related to the referenced agreement are included in the FY 2017/18 Operating Fund Budget that Staff is recommending to the Board at its March 16, 2017 meeting.

**Recommendation:** Approve the Ninth Agreement with Maher Accountancy.

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**NINTH AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND MAHER ACCOUNTANCY**

**THIS NINTH AGREEMENT** ("Agreement") is made and entered into this day **March 3, 2017** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and MAHER ACCOUNTANCY, hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services: accounting and payroll processing as requested by MCE staff;

**WHEREAS**, Contractor warrants that it is qualified and competent to render the aforesaid services;

**NOW, THEREFORE**, for and in consideration of the agreement made, and the payments to be made by MCE, the parties agree to the following:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof.

**2. FURNISHED SERVICES:**

MCE agrees to make available all pertinent data and records for review, subject to MCE Policy 001 - Confidentiality.

**3. FEES AND PAYMENT SCHEDULE; INVOICING:**

The fees and payment schedule for furnishing services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement. Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE on a monthly basis for any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement.

**4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$165,000**.

**5. TIME OF AGREEMENT:**

This Agreement shall commence on **April 1, 2017**, and shall terminate on **March 31, 2018**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

**6. INSURANCE AND SAFETY:**

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 16 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

**6.1 GENERAL LIABILITY**

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

**6.2 AUTO LIABILITY**

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

**6.3 WORKERS' COMPENSATION**

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

**6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☒ )**

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, the contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that contractor has segregated amounts in a special insurance reserve fund or contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

**7. NONDISCRIMINATORY EMPLOYMENT:**

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.

**8. SUBCONTRACTING:**

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the parties shall create any legal or contractual relationship between MCE and any subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. Contractor's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

**9. ASSIGNMENT:**

The rights, responsibilities and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

**10. RETENTION OF RECORDS AND AUDIT PROVISION:**

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during



regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

#### **11. WORK PRODUCT:**

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to Contractor for such work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for MCE.

#### **12. TERMINATION:**

- A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five business days' written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Agreement for any reason by giving 30 calendar days' written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 19 Invoices; Notices.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).
- E. MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

#### **13. AMENDMENT:**

This Agreement may be amended or modified only by written agreement of all parties.

#### **14. ASSIGNMENT OF PERSONNEL:**

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

#### **15. JURISDICTION AND VENUE:**

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

#### **16. INDEMNIFICATION:**

Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement.

#### **17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:**

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

#### **18. COMPLIANCE WITH APPLICABLE LAWS:**

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.

**19. INVOICES; NOTICES**

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address:	invoices@mcecleanenergy.org
----------------	-----------------------------

All other notices shall be given to MCE at the following location:

Contract Manager:	Catalina Murphy
-------------------	-----------------

MCE Address:	1125 Tamalpais Avenue
--------------	-----------------------

San Rafael, CA 94901
----------------------

Email Address:	contracts@mcecleanenergy.org
----------------	------------------------------

Telephone No.:	(415) 464-6014
----------------	----------------

Notices shall be given to Contractor at the following address:

Contractor:	John Maher
-------------	------------

Address:	1101 Fifth Avenue, Suite 200
----------	------------------------------

San Rafael, CA 94901
----------------------

Email Address:	jmaher@maher CPA.com
----------------	----------------------

Telephone No.:	(415) 459-1249 ext. 1
----------------	-----------------------

**20. ACKNOWLEDGEMENT OF EXHIBITS**

In the event of a conflict between the Terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement will govern.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services	
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment	

**21. SEVERABILITY**

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

**22. COMPLETE AGREEMENT**

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

**23. COUNTERPARTS**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**24. PERFORMANCE AND PAYMENT BOND** (REQUIRED IF CHECKED ☐)

Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender, supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first above written.

**APPROVED BY****Marin Clean Energy:****CONTRACTOR:**

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

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

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

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

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

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

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

**MODIFICATIONS TO STANDARD SHORT FORM**

☐ **Standard Short Form Content Has Been Modified**

**List sections affected:** \_\_\_\_\_

\_\_\_\_\_

**Approved by MCE Counsel:** \_\_\_\_\_

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

**EXHIBIT A**  
**SCOPE OF SERVICES (required)**

Contractor will provide the following services as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

**Accounting and Transactional Support**

1. Maintain the general ledger by:
  - a. Posting:
    - i. accounts receivable and accounts payable;
    - ii. accrued revenue and expenses;
    - iii. cash receipts and cash disbursements;
    - iv. payroll.
  - b. Prepare or maintain the following monthly analysis regarding general ledger account balances:
    - i. Reconcile cash activity and balances with statements from Authority's financial institution (i.e. bank statements);
    - ii. Reconcile customer data manager reports of customer activity and accounts receivable;
    - iii. Estimate customer revenue earned but not billed as of the end of the reporting period;
    - iv. Estimate electricity costs incurred but not yet billed as of the end of the reporting period;
    - v. Schedule of depreciation of capital assets;
    - vi. Aged schedule of accounts payable;
    - vii. Aged schedule of accounts receivable;
    - viii. Schedules of details regarding all remaining balance sheet accounts.
2. Manage accounts payable by:
  - a. Contractor utilizes a cloud-based accounts payable document management system (bill.com) to provide for documentation for management review, proper segregation of duties, and access to source data.
  - b. Contractor ensures that required authorization is documented and that account coding is correct.
    - i. MCE staff authorize approval of invoices and the release of payment by an independent payment service in order to provide an additional safeguard.
3. Maintain segregated account structure to enable regulatory accounting for Energy Efficiency program, maintenance of incentive payments, and budget reporting.
4. Manage compliance with fiscal provisions of vendor contracts: Before submitting vendor invoices for management approval, Contractor verifies that a vendor invoice agrees with contract provisions regarding time periods, rates, and financial limits.
5. Process payroll and maintain compensated absence accounting records.

**Budgeting**

6. Assist in development of entity budgets in collaboration with management and technical consultants.
7. Assist with budget compliance. Contractor monitors budget available and will make timely suggestions for any necessary budget amendments.
8. Provide assistance with the development and maintenance of departmental budget management processes as needed.

**Financial Reporting**

9. Prepare timely and accurate monthly financial reporting including:
  - a. Operating, Energy Efficiency, Local Renewable Energy Development and Renewable Energy Reserve Fund Budgetary Comparison Schedules (4);
  - b. MCE Monthly Compiled Financial Statements;
  - c. MCE Monthly Financial Statements in Excel;
  - d. Monthly YTD expenditure detail for each Department as needed;
  - e. Provide accounting data to populate a MCE desktop version of Quickbooks.
10. File annual information returns such as form 1099/1096's.
11. File various compliance reports for state and local agencies, such as user taxes, energy surcharges, and state controller reports.

**Annual Audit**

12. Prepare annual financial statements and coordinate with independent auditor.

**Financial Controls**

13. Assist with creating and maintaining a system of financial controls including recommendations for segregation of duties and other control measures as needed.

**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

For services provided under this Agreement, MCE shall pay Contractor in accordance with the amount(s) and the payment schedule as specified below:

- Fees for general accounting services and payroll processing will be performed for \$148,464. Payment will be made in monthly installments of \$12,372, on or about the 15<sup>th</sup> of each month.
- Assistance with the annual audit will be performed for \$16,496 and will be payable at the conclusion of the audit.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$165,000** for the term of the agreement.



March 3, 2017

TO: MCE Executive Committee

FROM: Elizabeth Kelly, General Counsel

RE: Fifth Agreement with Braun, Blaising, McLaughlin & Smith  
(Agenda Item #04 – C.6)

ATTACHMENT: Draft Fifth Agreement with Braun, Blaising, McLaughlin & Smith

Dear Executive Committee Members:

---

**SUMMARY:**

Braun, Blaising, McLaughlin & Smith (BBMS) has provided legal and regulatory assistance to MCE through four Agreements for services. Specifically, BBMS has provided assistance on the Long Term Procurement Plan (LTPP) proceedings, Energy Resource Recovery Account (ERRA) proceedings and other regulatory proceedings as requested. BBMS has also provided assistance on legal questions related to CCA and municipal utility issues and other legal questions as requested. There is an ongoing need for the services provided by BBMS. Staff recommends approval of a Fourth Agreement with Braun, Blaising, McLaughlin & Smith in the amount of \$120,000 for continuation of legal and regulatory services.

**Fiscal Impacts:** Costs related to the referenced agreement are included in the FY 2017/18 Operating Fund Budget that Staff is recommending to the Board at its March 16, 2017 meeting.

**Recommendation:** Approve the Fifth Agreement with Braun, Blaising, McLaughlin & Smith.

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**FIFTH AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND BRAUN, BLAISING, MCLAUGHLIN & SMITH**

**THIS FIFTH AGREEMENT** ("Agreement") is made and entered into this day **March 3, 2017** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and BRAUN, BLAISING, MCLAUGHLIN & SMITH, hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services: regulatory and legal services as needed and requested by MCE;

**WHEREAS**, Contractor warrants that it is qualified and competent to render the aforesaid services;

**NOW, THEREFORE**, for and in consideration of the agreement made, and the payments to be made by MCE, the parties agree to the following:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof.

**2. FURNISHED SERVICES:**

MCE agrees to make available all pertinent data and records for review, subject to MCE Policy 001 - Confidentiality.

**3. FEES AND PAYMENT SCHEDULE; INVOICING:**

The fees and payment schedule for furnishing services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement. Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE on a monthly basis for any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement.

**4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$120,000**.

**5. TIME OF AGREEMENT:**

This Agreement shall commence on **April 1, 2017**, and shall terminate on **March 31, 2018**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

**6. INSURANCE AND SAFETY:**

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 16 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.



**6.1 GENERAL LIABILITY**

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

**6.2 AUTO LIABILITY**

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

**6.3 WORKERS' COMPENSATION**

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

**6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☒ )**

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, the contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that contractor has segregated amounts in a special insurance reserve fund or contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

**7. NONDISCRIMINATORY EMPLOYMENT:**

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.

**8. SUBCONTRACTING:**

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the parties shall create any legal or contractual relationship between MCE and any subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. Contractor's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

**9. ASSIGNMENT:**

The rights, responsibilities and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

**10. RETENTION OF RECORDS AND AUDIT PROVISION:**

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during

regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

#### **11. WORK PRODUCT:**

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to Contractor for such work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for MCE.

#### **12. TERMINATION:**

- A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five business days' written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Agreement for any reason by giving 30 calendar days' written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 19 Invoices; Notices.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).
- E. MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

#### **13. AMENDMENT:**

This Agreement may be amended or modified only by written agreement of all parties.

#### **14. ASSIGNMENT OF PERSONNEL:**

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

#### **15. JURISDICTION AND VENUE:**

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

#### **16. INDEMNIFICATION:**

Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement.

#### **17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:**

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

#### **18. COMPLIANCE WITH APPLICABLE LAWS:**

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.

**19. INVOICES; NOTICES**

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address:	invoices@mcecleanenergy.org
----------------	-----------------------------

All other notices shall be given to MCE at the following location:

Contract Manager:	Catalina Murphy
-------------------	-----------------

MCE Address:	1125 Tamalpais Avenue
--------------	-----------------------

San Rafael, CA 94901
----------------------

Email Address:	contracts@mcecleanenergy.org
----------------	------------------------------

Telephone No.:	(415) 464-6014
----------------	----------------

Notices shall be given to Contractor at the following address:

Contractor:	Scott Blaising
-------------	----------------

Address:	915 L Street, Suite 1480
----------	--------------------------

Sacramento, CA 95814
----------------------

Email Address:	blaising@braunlegal.com
----------------	-------------------------

Telephone No.:	(916) 712-3961
----------------	----------------

**20. ACKNOWLEDGEMENT OF EXHIBITS**

In the event of a conflict between the Terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement will govern.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services	
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment	

**21. SEVERABILITY**

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

**22. COMPLETE AGREEMENT**

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

**23. COUNTERPARTS**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**24. PERFORMANCE AND PAYMENT BOND** (REQUIRED IF CHECKED ☐)

Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender, supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first above written.

**APPROVED BY**

**Marin Clean Energy:**

**CONTRACTOR:**

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

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

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

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

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

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

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

**MODIFICATIONS TO STANDARD SHORT FORM**

☐ **Standard Short Form Content Has Been Modified**

**List sections affected:** \_\_\_\_\_

\_\_\_\_\_

**Approved by MCE Counsel:** \_\_\_\_\_

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

**EXHIBIT A**  
**SCOPE OF SERVICES (required)**

Contractor will provide task-specific legal and regulatory services and assistance as requested and directed by the General Counsel, up to the maximum time/fees allowed under this Agreement.

**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

For services provided under this Agreement, MCE shall pay Contractor in accordance with the amount(s) and the payment schedule as specified below:

Senior Partners	\$395
Junior Partners	\$330
Senior Associates	\$295
Junior Associates	\$250
Of Counsel	\$305-\$345
Contract Associate (As Authorized)	\$290
Law Clerk and Associates Not Admitted to Bar	\$165

Contractor shall bill in .10 hour increments on a monthly basis for all services rendered. In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$120,000** for the term of the Agreement.



March 3, 2017

TO: MCE Executive Committee

FROM: Elizabeth Kelly, General Counsel

RE: Third Agreement with Davis Wright Tremaine, LLP (Agenda Item #04 – C.7)

ATTACHMENT: Draft Third Agreement with Davis Wright Tremaine, LLP

Dear Executive Committee Members:

---

**SUMMARY:**

On June 11, 2015, MCE entered into the First Agreement with Davis Wright Tremaine, LLP to provide a range of legal and advisory services pertaining to legal and regulatory matters at the direction of MCE. MCE entered into the Second Agreement with Davis Wright Tremaine, LLP on March 17, 2017 to continue legal services through March 31, 2017.

MCE staff has prepared the Third Agreement with Davis Wright Tremaine, LLP to continue the above services with an effective date of April 1, 2017 through March 31, 2018 with a maximum cost not to exceed \$120,000.

**Fiscal Impacts:** Costs related to the referenced agreement are included in the FY 2017/18 Operating Fund Budget that Staff is recommending to the Board at its March 16, 2017 meeting.

**Recommendation:** Approve the Third Agreement with Davis Wright Tremaine, LLP.

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**THIRD AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND DAVIS WRIGHT TREMAINE, LLP**

**THIS THIRD AGREEMENT** ("Agreement") is made and entered into this day **March 3, 2017** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and DAVIS WRIGHT TREMAINE, LLP, hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services: services pertaining to contractual, regulatory, and legal matters as requested and directed by MCE;

**WHEREAS**, Contractor warrants that it is qualified and competent to render the aforesaid services;

**NOW, THEREFORE**, for and in consideration of the agreement made, and the payments to be made by MCE, the parties agree to the following:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof.

**2. FURNISHED SERVICES:**

MCE agrees to make available all pertinent data and records for review, subject to MCE Policy 001 - Confidentiality.

**3. FEES AND PAYMENT SCHEDULE; INVOICING:**

The fees and payment schedule for furnishing services under this Agreement shall be based on mutually agreed-upon fixed fees as described in Exhibit B, and by this reference incorporated herein. Increases to an agreed-upon fixed fee will only occur upon written approval of MCE.

Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE on a monthly basis for any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement.

**4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$120,000**.

**5. TIME OF AGREEMENT:**

This Agreement shall commence on **April 1, 2017**, and shall terminate on **March 31, 2018**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

**6. INSURANCE AND SAFETY:**

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 17 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Contractor of any negligence claim.



Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

### **6.1 GENERAL LIABILITY**

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

### **6.2 AUTO LIABILITY**

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

### **6.3 WORKERS' COMPENSATION**

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

### **6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☒ )**

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, the contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that contractor has segregated amounts in a special insurance reserve fund or contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

### **7. NONDISCRIMINATORY EMPLOYMENT:**

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.

### **8. CONFLICTS:**

Contractor, by executing this Agreement, certifies that, at the time Contractor executes this Agreement and for the duration of this Agreement, Contractor does not have and will not perform services for any other clients which would create a conflict as between the interests of MCE hereunder and the interests of such other client, except as described in the attached Conflicts Waiver Letter included as **Exhibit C** or subject to written waiver by MCE. Contractor, by executing this Agreement, makes no such certification regarding potential and actual conflicts regarding MCE's constituent members in connection with this Agreement.

### **9. SUBCONTRACTING:**

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the parties shall create any legal or contractual relationship between MCE and any subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. Contractor's

obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

#### **10. ASSIGNMENT:**

The rights, responsibilities and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

#### **11. RETENTION OF RECORDS AND AUDIT PROVISION:**

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

#### **12. WORK PRODUCT:**

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to Contractor for such work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for MCE.

#### **13. TERMINATION:**

- A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five business days' written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Agreement for any reason by giving 30 calendar days' written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 20 Invoices; Notices.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).
- E. MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

#### **14. AMENDMENT:**

This Agreement may be amended or modified only by written agreement of all parties.

#### **15. ASSIGNMENT OF PERSONNEL:**

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

#### **16. JURISDICTION AND VENUE:**

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

#### **17. INDEMNIFICATION:**

Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement.

#### **18. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:**

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this

Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

#### 19. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.

#### 20. INVOICES; NOTICES

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address:	invoices@mcecleanenergy.org
----------------	-----------------------------

All other notices shall be given to MCE at the following location:

Contract Manager:	Catalina Murphy
-------------------	-----------------

MCE Address:	1125 Tamalpais Avenue
--------------	-----------------------

	San Rafael, CA 94901
--	----------------------

Email Address:	contracts@mcecleanenergy.org
----------------	------------------------------

Telephone No.:	(415) 464-6014
----------------	----------------

Notices shall be given to Contractor at the following address:

Contractor:	Vidhya Prabhakaran
-------------	--------------------

Address:	505 Montgomery Street, Suite 800
----------	----------------------------------

	San Francisco, CA 94111
--	-------------------------

Email Address:	vidhyaprabhakaran@dwt.com
----------------	---------------------------

Telephone No.:	(415) 276-6568
----------------	----------------

#### 21. ACKNOWLEDGEMENT OF EXHIBITS

In the event of a conflict between the Terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement will govern.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services	
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment	
<u>EXHIBIT C.</u>	<input checked="" type="checkbox"/>	Conflicts Waiver Letter	

#### 22. SEVERABILITY

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

**23. COMPLETE AGREEMENT**

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

**24. COUNTERPARTS**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**24. PERFORMANCE AND PAYMENT BOND** (REQUIRED IF CHECKED ☐)

Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender, supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

**APPROVED BY****Marin Clean Energy:****CONTRACTOR:**

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

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

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

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

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

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

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

**MODIFICATIONS TO STANDARD SHORT FORM**

☒ **Standard Short Form Content Has Been Modified**

**List sections affected:** Section 8 -Conflicts and Section 3

Approved by MCE Counsel: \_\_\_\_\_

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

**EXHIBIT A**  
**SCOPE OF SERVICES (required)**

Contractor will provide services pertaining to contractual, regulatory, and legal matters, as requested and directed by the General Counsel, up to the maximum time/fees allowed under this Agreement.

**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

For services provided under this agreement, MCE shall pay the Contractor at mutually agreed-upon fixed fees per matter or assignment. Increases to an agreed-upon fixed fee will only occur upon written approval of MCE.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$120,000** for the term of the Agreement.

Suite 800  
505 Montgomery Street  
San Francisco, CA 94111-6533

**Vidhya Prabhakaran**  
(415) 276-6568 tel  
(415) 489-9068 fax

vid@dwt.com

June 10, 2015

Sarah Estes-Smith  
Contract Manager  
1125 Tamalpais Avenue  
San Rafael, California 94901

Re: Conflicts Waiver Letter Between Marin Clean Energy  
and Davis Wright Tremaine LLP

Dear Sarah:

As you know, Davis Wright Tremaine is a large, full-service law firm and represents many clients with possible interests in Marin Clean Energy ("MCE"). It is possible that, from time to time during the time we represent the MCE, one of these clients might ask us to give them legal advice or represent it in a transaction, proceeding or dispute with, involving, or against the MCE as to legal matters that are not substantially related to the energy regulatory and contractual matters for on which we have been engaged to advise MCE. The categories of clients or the potential subject matter of such potential conflicts which are most likely to arise are:

Communications and Media Clients. We serve as outside counsel for many news media organizations and represent or have represented various Southern California, Bay Area and national newspapers and magazines, newspaper publisher associations, and various local and national broadcast media in connection with, among other matters, news gathering and reporting activities, their right to access to public records and/or meetings, and newsrack ordinance matters. Any of these media or newspaper organizations may seek our assistance in obtaining access to MCE's records and/or meetings and in publishing or broadcasting stories about the MCE at any time, which could lead to disputes between MCE and the media involved, including litigation. These entities may similarly appear as amicus curiae in media and access matters directly adverse to the position of MCE.

Energy Clients. We also have a very active energy law and transactional practice within California and throughout the United States. In particular, we have represented and continue to represent parties who develop, purchase, own and operate power plants; marketers who engage in wholesale and retail energy and natural gas transactions; large consumers and resellers of energy and natural gas, including direct access customers; municipal and other governmental utilities; and transit districts (collectively "Energy Clients"). We also represent parties making

Sarah Estes-Smith  
June 10, 2015  
Page 2

debt or equity investments ("Financing Clients") in energy infrastructure projects (a "Financing Transaction").

In many instances, one or more of our Energy Clients appear in multi-party regulatory proceedings before state or federal energy/environmental authorities in which MCE may also be a participant ("Regulatory Proceedings"). It is possible that the interests that we are advancing in one or more of these Regulatory Proceedings is sufficiently different from the interest that the MCE may be advancing such that our representation of such Energy Client would be considered "adverse" to MCE. In addition, one or more of our Energy Clients or Financing Clients may be engaged in a commercial transaction ("Commercial Transaction") with MCE or in a Financing Transaction in which MCE is a participant.

MCE accordingly waives any possible conflict between Davis Wright Tremaine's current representations of Energy Clients in such Regulatory Proceedings and Commercial Transactions, and of Financing Clients in Financing Transactions; *provided* that such representation in such proceedings or transactions is not directly related to the specific energy regulatory and contractual matters, which is the subject of the representation by Davis Wright Tremaine encompassed by this Agreement.

Davis Wright Tremaine will not disclose MCE-specific information received from MCE in the course of business to use in the provision of service to another client. Davis Wright Tremaine will create staff separation in representation if it is determined that any potential conflict may arise in the services provided to MCE with respect to other clients. It must be understood that Davis Wright Tremaine cannot undertake to represent MCE without assurance that MCE will not seek, on the basis of this engagement or any future engagement, to disqualify us from representing other clients, including those identified above, in any other matter, now or in the future, that is not substantially related to this engagement or any future engagement for MCE, including or with respect to the areas of potential disputes identified above, in any legal advice that might be adverse to the interests of MCE, any transactions, any alternative dispute resolution, administrative litigation, regulatory proceedings, and related appeals, or judicial proceeding, as long as a new engagement is not substantially related to work we are then doing or have done for MCE.



Sarah Estes-Smith  
June 10, 2015  
Page 3

Accordingly, by countersigning this letter, MCE waives all present and future conflicts of interest concerning matters outside the scope of representation that is the subject of this engagement or any future engagement, including conflicts in transactional, regulatory, and litigation and other dispute resolution matters, and specifically including Davis Wright Tremaine's present and future representation of the clients identified above on all current or future matters unrelated to the engagement or any future engagement for MCE. MCE further agrees not to seek to disqualify DWT in, or assert a conflict with respect to, any such engagement, including in any potential alternative dispute resolution, administrative litigation, regulatory or other related judicial proceeding involving any such engagement that is not substantially related to this engagement or any future engagement for MCE.

Very Truly Yours,

Davis Wright Tremaine LLP



Vidhya Prabhakaran  
Attorney

---

Approved on behalf of Marin Clean Energy



March 3, 2017

TO: MCE Executive Committee

FROM: Elizabeth Kelly, General Counsel

RE: Seventh Agreement with Niemela Pappas & Associates (Agenda Item #04 – C.8)

ATTACHMENT: Draft Seventh Agreement with Niemela Pappas & Associates

Dear Executive Committee Members:

---

**SUMMARY:**

Niemela Pappas & Associates has provided contract lobbyist services on behalf of MCE. Staff recommends creating a new agreement with Niemela Pappas & Associates in the amount of \$94,500 for continuation of these services.

**Fiscal Impacts:** Costs related to the referenced agreement are included in the FY 2017/18 Operating Fund Budget that Staff is recommending to the Board at its March 16, 2017 meeting.

**Recommendation:** Approve the Seventh Agreement with Niemela Pappas & Associates.

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**SEVENTH AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND NIEMELA PAPPAS & ASSOCIATES**

**THIS SEVENTH AGREEMENT** ("Agreement") is made and entered into this day **March 3, 2017** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and NIEMELA PAPPAS & ASSOCIATES, hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services: Contractor will act as a contract lobbyist on behalf of MCE as needed and requested by MCE staff;

**WHEREAS**, Contractor warrants that it is qualified and competent to render the aforesaid services;

**NOW, THEREFORE**, for and in consideration of the agreement made, and the payments to be made by MCE, the parties agree to the following:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof.

**2. FURNISHED SERVICES:**

MCE agrees to make available all pertinent data and records for review, subject to MCE Policy 001 - Confidentiality.

**3. FEES AND PAYMENT SCHEDULE; INVOICING:**

The fees and payment schedule for furnishing services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement. Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE on a monthly basis for any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement.

**4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$94,500**.

**5. TIME OF AGREEMENT:**

This Agreement shall commence on **April 1, 2017**, and shall terminate on **March 31, 2018**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

**6. INSURANCE AND SAFETY:**

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 16 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

**6.1 GENERAL LIABILITY**

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

**6.2 AUTO LIABILITY**

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

**6.3 WORKERS' COMPENSATION**

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

**6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☒ )**

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, the contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that contractor has segregated amounts in a special insurance reserve fund or contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

**7. NONDISCRIMINATORY EMPLOYMENT:**

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.

**8. SUBCONTRACTING:**

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the parties shall create any legal or contractual relationship between MCE and any subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. Contractor's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

**9. ASSIGNMENT:**

The rights, responsibilities and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

**10. RETENTION OF RECORDS AND AUDIT PROVISION:**

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during

regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

#### **11. WORK PRODUCT:**

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to Contractor for such work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for MCE.

#### **12. TERMINATION:**

- A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five business days' written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Agreement for any reason by giving 30 calendar days' written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 19 Invoices; Notices.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).
- E. MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

#### **13. AMENDMENT:**

This Agreement may be amended or modified only by written agreement of all parties.

#### **14. ASSIGNMENT OF PERSONNEL:**

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

#### **15. JURISDICTION AND VENUE:**

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

#### **16. INDEMNIFICATION:**

Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement.

#### **17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:**

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

#### **18. COMPLIANCE WITH APPLICABLE LAWS:**

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.

**19. INVOICES; NOTICES**

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address:	invoices@mcecleanenergy.org
----------------	-----------------------------

All other notices shall be given to MCE at the following location:

Contract Manager:	Catalina Murphy
-------------------	-----------------

MCE Address:	1125 Tamalpais Avenue
--------------	-----------------------

San Rafael, CA 94901
----------------------

Email Address:	contracts@mcecleanenergy.org
----------------	------------------------------

Telephone No.:	(415) 464-6014
----------------	----------------

Notices shall be given to Contractor at the following address:

Contractor:	Emily Pappas
-------------	--------------

Address:	1414 K Street, Suite 270
----------	--------------------------

Sacramento, CA 95814
----------------------

Email Address:	pappas@npalobby.com
----------------	---------------------

Telephone No.:	(916) 661-5365
----------------	----------------

**20. ACKNOWLEDGEMENT OF EXHIBITS**

In the event of a conflict between the Terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement will govern.

	<input checked="" type="checkbox"/>	<u><b>Check applicable Exhibits</b></u>	<u><b>CONTRACTOR'S INITIALS</b></u>
<u><b>EXHIBIT A.</b></u>	<input checked="" type="checkbox"/>	<b>Scope of Services</b>	
<u><b>EXHIBIT B.</b></u>	<input checked="" type="checkbox"/>	<b>Fees and Payment</b>	

**21. SEVERABILITY**

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

**22. COMPLETE AGREEMENT**

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

**23. COUNTERPARTS**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**24. PERFORMANCE AND PAYMENT BOND** (REQUIRED IF CHECKED ☐)

Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender, supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first above written.

**APPROVED BY****Marin Clean Energy:****CONTRACTOR:**

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

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

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

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

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

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

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

**MODIFICATIONS TO STANDARD SHORT FORM**

☐ **Standard Short Form Content Has Been Modified**

**List sections affected:** \_\_\_\_\_

**Approved by MCE Counsel:** \_\_\_\_\_

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

**EXHIBIT A**  
**SCOPE OF SERVICES (required)**

Contractor will act as contract lobbyist on behalf of MCE. Work will be provided primarily by Emily Pappas. Activities will include:

- Maintain constant communication with MCE staff.
- Monitor on a daily basis all bills that are introduced and amended.
- Provide immediate notification of bills and related legislative activities that impact MCE. This includes any lobbying efforts directed for and against MCE, and the context surrounding them.
- Maintain a regularly updated bill tracking record.
- Monitor state regulatory agencies, such as the CPUC and CEC.
- Continuously educate members of the Legislature, key legislative staff, members of the Governor's Administration, and other key Capitol decision makers about MCE. This will include legislators that represent areas of MCE expansion.
- Continuously cultivate MCE's relationships with its own legislative delegation.
- Set up meetings for MCE and legislators, key committee staff, members of the Governor's Administration, and relevant interest groups as needed.
- Actively lobby bills that either support or negatively impact MCE when directed to do so. These activities include:
  - Working with MCE staff on drafting letters of support or opposition, and delivering those letters to the correct players.
  - Providing strategic advice on how to effectively achieve MCE's desired outcome.
  - Testifying in committees.
  - Lobbying legislators.
  - Lobbying the Governor's office.
  - Lobbying appropriate regulatory agencies to support MCE's positions.
  - Soliciting support from MCE's allies.
- On bills sponsored by MCE, or requiring amendments, activities will include, in addition to those listed above:
  - Assistance in drafting language and inserting it into applicable bills, such as the Budget Act.
  - Garnering support from effective Capitol-based entities that share MCE's position.
- Assist MCE in efforts to build an effective statewide coalition with MCE supporters in order to push MCE legislative goals to the finish line.
- Identify opportunities that will enhance MCE's clout both in the Capitol and in regulatory agencies, such as supporting gubernatorial appointees requiring confirmation by the State Senate.
- Prepare necessary documents for filing with the Secretary of State and provide these documents to MCE for approval and signature.



**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

Contractor shall bill MCE monthly for all professional services rendered under this Agreement. A monthly retainer of \$7,875 will be paid by MCE to Contractor for each month of service beginning April 1, 2017 until the end of the Agreement.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$94,500** for the term of the Agreement.



March 3, 2017

TO: MCE Executive Committee

FROM: Elizabeth Kelly, General Counsel

RE: Eighth Agreement with Richards, Watson & Gershon (Agenda Item #04 – C.9)

ATTACHMENT: Draft Eighth Agreement with Richards, Watson & Gershon

Dear Executive Committee Members:

---

**SUMMARY:**

Richards, Watson & Gershon provides various municipal and general legal services to MCE. These services have included providing advice on a wide range of municipal and joint powers authority issues, employment issues, recommendations regarding the Brown Act, the Public Records Act, the California Environmental Quality Act, and conflict of interest laws. Staff recommends creating a new contract in the amount of \$40,000 with Richards, Watson & Gershon for continuation of these services.

**Fiscal Impacts:** Costs related to the contract are included in the FY 2017/18 Budget that Staff is recommending to the Board at its March 16, 2017 meeting.

**Recommendation:** Approve the Eighth Agreement with Richards, Watson & Gershon.

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**EIGHTH AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND RICHARDS, WATSON & GERSHON**

**THIS EIGHTH AGREEMENT** ("Agreement") is made and entered into this day **March 3, 2017** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and RICHARDS, WATSON & GERSHON, hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services: legal assistance, including regarding joint powers authority issues and procedures, as requested by MCE staff;

**WHEREAS**, Contractor warrants that it is qualified and competent to render the aforesaid services;

**NOW, THEREFORE**, for and in consideration of the agreement made, and the payments to be made by MCE, the parties agree to the following:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof.

**2. FURNISHED SERVICES:**

MCE agrees to make available all pertinent data and records for review, subject to MCE Policy 001 - Confidentiality.

**3. FEES AND PAYMENT SCHEDULE; INVOICING:**

The fees and payment schedule for furnishing services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement. Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE on a monthly basis for any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement.

**4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$40,000**.

**5. TIME OF AGREEMENT:**

This Agreement shall commence on **April 1, 2017**, and shall terminate on **March 31, 2018**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

**6. INSURANCE AND SAFETY:**

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 16 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

**6.1 GENERAL LIABILITY**

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

**6.2 AUTO LIABILITY**

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

**6.3 WORKERS' COMPENSATION**

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

**6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☒ )**

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, the contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that contractor has segregated amounts in a special insurance reserve fund or contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon.

**7. NONDISCRIMINATORY EMPLOYMENT:**

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.

**8. SUBCONTRACTING:**

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the parties shall create any legal or contractual relationship between MCE and any subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. Contractor's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

**9. ASSIGNMENT:**

The rights, responsibilities and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

**10. RETENTION OF RECORDS AND AUDIT PROVISION:**

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or

refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

**11. WORK PRODUCT:**

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to Contractor for such work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for MCE.

**12. TERMINATION:**

- A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five business days' written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Agreement for any reason by giving 30 calendar days' written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 19 Invoices; Notices.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).
- E. MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

**13. AMENDMENT:**

This Agreement may be amended or modified only by written agreement of all parties.

**14. ASSIGNMENT OF PERSONNEL:**

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

**15. JURISDICTION AND VENUE:**

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

**16. INDEMNIFICATION:**

Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement.

**17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:**

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

**18. COMPLIANCE WITH APPLICABLE LAWS:**

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.

**19. INVOICES; NOTICES**

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address:	invoices@mcecleanenergy.org
----------------	-----------------------------

All other notices shall be given to MCE at the following location:

Contract Manager:	Catalina Murphy
-------------------	-----------------

MCE Address:	1125 Tamalpais Avenue
--------------	-----------------------

San Rafael, CA 94901
----------------------

Email Address:	contracts@mcecleanenergy.org
----------------	------------------------------

Telephone No.:	(415) 464-6014
----------------	----------------

Notices shall be given to Contractor at the following address:

Contractor:	Greg Stepanicich
-------------	------------------

Address:	44 Montgomery Street, Suite 3800
----------	----------------------------------

San Francisco, CA 94104-4811
------------------------------

Email Address:	gstepanicich@rwglaw.com
----------------	-------------------------

Telephone No.:	(415) 421-8484
----------------	----------------

**20. ACKNOWLEDGEMENT OF EXHIBITS**

In the event of a conflict between the Terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement will govern.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services	
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment	

**21. SEVERABILITY**

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

**22. COMPLETE AGREEMENT**

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

**23. COUNTERPARTS**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**24. PERFORMANCE AND PAYMENT BOND** (REQUIRED IF CHECKED ☐)

Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender, supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first above written.

**APPROVED BY****Marin Clean Energy:**

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

CEO

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

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

Chairperson

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

**CONTRACTOR:**

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

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

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

**MODIFICATIONS TO STANDARD SHORT FORM**☒ **Standard Short Form Content Has Been Modified****List sections affected:** Section 6**Approved by MCE Counsel:** \_\_\_\_\_**Date:** \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF SERVICES (required)**

Contractor will provide the following legal services as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

- Attendance at meetings of the Board of Directors and its subcommittees when requested;
- Advice concerning MCE's Joint Powers Agreement;
- Transactions with various contractors, and legal opinions related thereto;
- The Brown Act, Public Records Act, California Environmental Quality Act and conflict of interest laws; and
- Other legal tasks as specified by the CEO or General Counsel.



**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

Contractor shall bill monthly for all services rendered under this agreement, according to the following hourly rates:

Shareholders/Senior Attorneys	\$300-\$325
Associates	\$250

The above rates do not apply to any litigation services requested by MCE as such services would be billed at the rates mutually agreed upon by the parties.

Reimbursement of costs shall include copying charges (at the rate of 10 cents per page), messenger and delivery services, express mail and other similar out-of-pocket expenses at the firm's cost.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$40,000** for the term of the agreement.



March 3, 2017

TO: MCE Executive Committee

FROM: Elizabeth Kelly, General Counsel

RE: Fifth Agreement with Troutman Sanders, LLP (Agenda Item #04 – C.10)

ATTACHMENT: Draft Fifth Agreement with Troutman Sanders, LLP

Dear Executive Committee Members:

---

**SUMMARY:**

Troutman Sanders, LLP provides legal services pertaining to new and existing power purchase agreements, including transaction support in drafting, negotiations, finalization and implementation. Troutman Sanders is also working closely with MCE staff on updates to standard form energy supply agreements and future power purchase agreements. Staff recommends creating a new contract in the amount of \$180,000 with Troutman Sanders, LLP for energy transaction and related services.

**Fiscal Impacts:** Costs related to the referenced agreement are included in the FY 2017/18 Operating Fund Budget that Staff is recommending to the Board at its March 16, 2017 meeting.

**Recommendation:** Approve the Fifth Agreement with Troutman Sanders, LLP.

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**FIFTH AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND TROUTMAN SANDERS, LLP**

**THIS FIFTH AGREEMENT** ("Agreement") is made and entered into this day **March 3, 2017** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and TROUTMAN SANDERS, LLP, hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services: legal services to MCE related to new and existing power purchase agreements as requested by the CEO or the Director of Power Resources;

**WHEREAS**, Contractor warrants that it is qualified and competent to render the aforesaid services;

**NOW, THEREFORE**, for and in consideration of the agreement made, and the payments to be made by MCE, the parties agree to the following:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof.

**2. FURNISHED SERVICES:**

MCE agrees to make available all pertinent data and records for review, subject to MCE Policy 001 - Confidentiality.

**3. FEES AND PAYMENT SCHEDULE; INVOICING:**

The fees and payment schedule for furnishing services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement. Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE on a monthly basis for any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement.

**4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$180,000**.

**5. TERM OF AGREEMENT:**

This Agreement shall commence on **April 1, 2017**, and shall terminate on **March 31, 2018**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

**6. INSURANCE AND SAFETY:**

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 16 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the Agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

**6.1 GENERAL LIABILITY (REQUIRED IF CHECKED ☐)**

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

**6.2 AUTO LIABILITY (REQUIRED IF CHECKED ☐)**

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

**6.3 WORKERS' COMPENSATION (REQUIRED IF CHECKED ☐)**

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

**6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☒)**

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, the Contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that Contractor has segregated amounts in a special insurance reserve fund or Contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

**7. NONDISCRIMINATORY EMPLOYMENT:**

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.

**8. SUBCONTRACTING:**

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the parties shall create any legal or contractual relationship between MCE and any subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. Contractor's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

**9. ASSIGNMENT:**

The rights, responsibilities and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

**10. RETENTION OF RECORDS AND AUDIT PROVISION:**

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during

regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

#### **11. WORK PRODUCT:**

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to Contractor for such work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for MCE.

#### **12. TERMINATION:**

- A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five (5) business days' written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Agreement for any reason by giving thirty (30) calendar days' written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 19 Invoices; Notices.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).
- E. MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

#### **13. AMENDMENT:**

This Agreement may be amended or modified only by written agreement of all parties.

#### **14. ASSIGNMENT OF PERSONNEL:**

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

#### **15. JURISDICTION AND VENUE:**

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

#### **16. INDEMNIFICATION:**

Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. This indemnity is expressly subject to the terms and limits of Contractor's professional liability insurance.

#### **17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:**

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

#### **18. COMPLIANCE WITH APPLICABLE LAWS:**

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.

**19. INVOICES; NOTICES:**

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address:	invoices@mcecleanenergy.org
----------------	-----------------------------

All other notices shall be given to MCE at the following location:

Contract Manager:	Catalina Murphy
-------------------	-----------------

MCE Address:	1125 Tamalpais Avenue
--------------	-----------------------

San Rafael, CA 94901
----------------------

Email Address:	contracts@mcecleanenergy.org
----------------	------------------------------

Telephone No.:	(415) 464-6014
----------------	----------------

Notices shall be given to Contractor at the following address:

Contractor:	Stephen Hall
-------------	--------------

Address:	100 SW Main Street, Suite 1000
----------	--------------------------------

Portland, OR 97204
--------------------

Email Address:	stephen.hall@troutmansanders.com
----------------	----------------------------------

Telephone No.:	(503) 290-2336
----------------	----------------

**20. ACKNOWLEDGEMENT OF EXHIBITS:**

In the event of a conflict between the terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement will govern.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services	
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment	

**21. SEVERABILITY:**

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

**22. COMPLETE AGREEMENT:**

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

**23. COUNTERPARTS:**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**24. PERFORMANCE AND PAYMENT BOND:** (REQUIRED IF CHECKED ☐)

Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender, supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first above written.

**APPROVED BY****Marin Clean Energy:****CONTRACTOR:**

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

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

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

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

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

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

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

**MODIFICATIONS TO STANDARD SHORT FORM**

☒ **Standard Short Form Content Has Been Modified**

**List sections affected:** Section 5, 6, 12, 16, 20

**Approved by MCE Counsel:** \_\_\_\_\_

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

**EXHIBIT A**  
**SCOPE OF SERVICES (required)**

Contractor will provide legal services to MCE as requested and directed by the CEO or the Director of Power Resources related to: new and existing power purchase agreements; new and existing scheduling coordination and portfolio management agreements; and new and existing project development agreements, up to the maximum time/fees allowed under this Agreement. Services may also include transaction support in drafting, negotiations, finalization, and appropriate implementation of power supply transactions.



**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

For services provided under this Agreement, MCE shall pay the Contractor in accordance with the following payment fees/schedule:

Stephen Hall	\$675 per hour
Brian Harms	\$575 per hour
John Leonti	\$675 per hour

Contractor shall bill monthly. All rates are subject to a ten (10) percent discount; provided, however, that the rates for services provided in 2017 after the total amount of services provided to MCE in 2017 exceeds \$150,000 will be subject to an additional discount of five (5) percent. Contractor services will be task-specific with MCE providing direction on tasks to be undertaken by letter, voice communication, or email.

In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$180,000** for the term of the Agreement.



March 3, 2017

TO: MCE Executive Committee

FROM: Beckie Menten, Director of Customer Programs

RE: Sixth Agreement with Community Energy Services Corporation (CESC) (Agenda Item #04 – C.11)

ATTACHMENT: Draft Sixth Agreement with Community Energy Services Corporation

Dear Executive Committee Members:

---

**SUMMARY:**

The proposed Sixth Agreement with Community Energy Services Corporation (CESC) would provide continuation of services to MCE for implementation of the small commercial energy efficiency program.

Background

Energy efficiency has always been an integral component of the MCE vision. In July of 2012, MCE submitted an application for funding under the 2013-2014 Energy Efficiency Funding Cycle (A. 12-11-007). The application was based on the initial Energy Efficiency Plan, and included the following proposed sub-programs:

1. Multifamily
2. Single family utility demand reduction pilot program
3. Small commercial
4. Four financing pilot programs: On Bill Repayment for single family<sup>1</sup>, multifamily, small commercial and a standard offer pilot.

This application was approved on November 9, 2012, allocating over \$4 million to MCE for the implementation of energy efficiency programs. In November of 2014, the California Public Utilities Commission (CPUC) voted to extend the funding at annual levels through 2025, or until the CPUC moves otherwise. In May 2016, the CPUC granted MCE's Petition for Modification<sup>2</sup> of its annual Energy Efficiency Programs and

---

<sup>1</sup> The on-bill repayment pilot for single-family customers was subsequently closed in fall of 2015 after the financial institution withdrew. Funds have since been re-directed to the multifamily energy efficiency program.

<sup>2</sup> California Public Utilities Commission Decision 16-05-004

Budgets in order to account for MCE's inclusion of new communities. The additional funds allocated to MCE were \$366,090, bringing MCE's total annual funding allocated by the CPUC to \$1,586,347.

The small commercial program is one of four program elements approved by the CPUC, and is funded at a total of \$658,710. The program is designed to serve hard to reach small commercial properties by making energy efficiency opportunities easy to capture.

MCE has been contracting with CESC for support of its small commercial energy efficiency program since November of 2012. On December 15, 2015, your Board approved CESC's contract for continued small commercial energy efficiency services through 2016, with an addendum added to continue services through February 28, 2017.

Under the proposed Sixth Agreement, CESC would continue to be the lead program implementer for the MCE small commercial energy efficiency program in Marin, Richmond, El Cerrito, and San Pablo. In 2017, MCE plans to expand its small commercial energy efficiency offerings to its entire service territory. Staff proposes that CESC cover new communities including Walnut Creek and Lafayette, and is working to prepare a contract with another implementer to cover the remaining portions of MCE's service area. These contractors have been based on the pre-defined service geographic boundaries within which these implementers operate.

CESC would provide energy evaluations at no cost to small businesses, prepare and deliver energy evaluation reports, identify qualified contractors from a pool of pre-determined professionals who have agreed to specific terms, and oversee the installation of the efficiency measures for quality control.

This Agreement includes a performance incentive, a fee structure introduced in the Fourth Agreement. The performance incentive is available to CESC when projects are successfully completed. Under this fee structure, CESC is incentivized to meet or exceed energy savings goals while maintaining cost-effectiveness targets of the CPUC.

MCE staff requests approval of the draft Sixth Agreement with CESC, which requests a contract maximum of \$156,360 and a contract end date of December 31, 2017. Staff selected CESC for their demonstrated performance to date.

**Fiscal Impacts:** The requested contract amount of \$156,360 would be funded completely from the energy efficiency program funds allocated by the CPUC.

**Recommendation:** Approve the Sixth Agreement with Community Energy Services Corporation.

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**SIXTH AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND COMMUNITY ENERGY SERVICES CORPORATION (CESC)**

**THIS SIXTH AGREEMENT** ("Agreement") is made and entered into this day **March 3, 2017** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and COMMUNITY ENERGY SERVICES CORPORATION (CESC), hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services: technical services to support MCE's Small Commercial Energy Efficiency Program;

**WHEREAS**, Contractor warrants that it is qualified and competent to render the aforesaid services;

**NOW, THEREFORE**, for and in consideration of the agreement made, and the payments to be made by MCE, the parties agree to the following:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof.

**2. FURNISHED SERVICES:**

MCE agrees to make available all pertinent data and records for review, subject to MCE Policy 001 - Confidentiality.

**3. FEES AND PAYMENT SCHEDULE; INVOICING:**

The fees and payment schedule for furnishing services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement. Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE at [invoices@mcecleanenergy.org](mailto:invoices@mcecleanenergy.org) on a monthly basis for any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement.

**4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$156,360**.

**5. TIME OF AGREEMENT:**

This Agreement shall commence on **March 4, 2017**, and shall terminate on **December 31, 2017**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

**6. INSURANCE AND SAFETY:**

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 17 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

### **6.1 GENERAL LIABILITY**

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

### **6.2 AUTO LIABILITY**

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

### **6.3 WORKERS' COMPENSATION**

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

### **6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☐ )**

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, the contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that contractor has segregated amounts in a special insurance reserve fund or contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

### **7. NONDISCRIMINATORY EMPLOYMENT:**

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.

### **8. SUBCONTRACTING:**

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the parties shall create any legal or contractual relationship between MCE and any subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. Contractor's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

### **9. ASSIGNMENT:**

The rights, responsibilities and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

**10. RETENTION OF RECORDS AND AUDIT PROVISION:**

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged.

**11. WORK PRODUCT:**

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to Contractor for such work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for MCE.

**12. TERMINATION:**

- A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five business days' written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Agreement for any reason by giving 30 calendar days' written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 20 Notices.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).

**13. AMENDMENT:**

This Agreement may be amended or modified only by written agreement of all parties.

**14. ASSIGNMENT OF PERSONNEL:**

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

**15. JURISDICTION AND VENUE:**

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

**16. INDEMNIFICATION:**

Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement.

**17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:**

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

**18. COMPLIANCE WITH APPLICABLE LAWS:**

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.

**19. NOTICES**

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email pursuant to paragraph 3. All other notices shall be given to MCE at the following location:

Contract Manager:	Catalina Murphy
MCE Address:	1125 Tamalpais Avenue
	San Rafael, CA 94901
Email Address:	contracts@mcecleanenergy.org
Telephone No.:	(415) 464-6014

Notices shall be given to Contractor at the following address:

Contractor:	Martin Bond
Address:	1013 Pardee Street
	Berkeley, CA 94710
Email Address:	martin@ebenergy.org
Telephone No.:	(510) 981-7757

**20. ACKNOWLEDGEMENT OF EXHIBITS**

In the event of a conflict between the Terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement will govern.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services	
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment	

**21. SEVERABILITY**

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

**22. COMPLETE AGREEMENT**

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

**23. COUNTERPARTS**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**24. PERFORMANCE AND PAYMENT BOND (REQUIRED IF CHECKED ☐)**

Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender,

supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first above written.

**APPROVED BY**

**Marin Clean Energy:**

**CONTRACTOR:**

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

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

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

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

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

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

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

**MCE COUNSEL REVIEW AND APPROVAL** *(Only required if any of the noted reason(s) applies)*  
**REASON(S) REVIEW:**

☐ **Standard Short Form Content Has Been Modified** *(List sections affected: \_\_\_\_\_)*

☐ **Optional Review by MCE Counsel at Marin Clean Energy's Request**

**MCE Counsel:** \_\_\_\_\_

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



**EXHIBIT A**  
**SCOPE OF SERVICES (required)**

Contractor will provide the following technical services to support MCE's Commercial Energy Efficiency Program, as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

For Program Year 2017, DNV GL, an international energy efficiency implementer with offices in Oakland, California, and Community Energy Services Corporation (CESC) have agreed to merge their previously independent Direct Install programs to provide a single integrated offering for small and medium business customers (SMB) in Alameda and Contra Costa Counties. In Marin County, CESC and DNV GL are not merging, CESC will perform all duties under this contract.

MCE and PG&E will jointly implement and market this singular small business direct install program in the five cities where both PG&E and MCE have customers, which are El Cerrito, Lafayette, Richmond, San Pablo and Walnut Creek (Five Cities), to provide comprehensive lighting, refrigeration, and HVAC measures. For the purposes of marketing and branding, the merged program will be called the East Bay Energy Watch (EBEW) and the objective of the program will be to reduce energy consumption for targeted customers with comprehensive energy efficiency solutions. DNV GL will be the prime contractor with PG&E and CESC will be the prime contractor with MCE.

**CESC's responsibilities in its service area for MCE communities within the Commercial Energy Efficiency Program:**

**1. Administrative**

- Maintain data management, tracking, and accounting protocols to comply with MCE and CPUC program reporting requirements.
- Update forms as needed, such as integrating customer-facing reports with financing options.
- Identify and implement process improvements.
- Assist with replying to data requests, CPUC financial audits, and regulatory filings

**2. Marketing and Outreach**

- Develop, modify, and distribute marketing materials (flyers, applications, website, customer report).
- Create case studies.
- Design outreach campaigns.

**3. Implementation**

- Provide project management assistance from project inception to completion, including but not limited to scheduling site visits, conducting assessments, creating savings and rebate estimates and finals, responding to customer inquiries, coordinating contractors and equipment installation, and conducting final Measurement & Verification (M&V).
- Recruit, educate, and train contractors and suppliers.
- Identify and implement any changes to program installation labor and material pricing.
- Provide technical assistance services, including setting and documenting customer eligibility criteria, audit criteria, incentive levels, and overall project documentation.
- Program planning, development, and design – as needed.
- IT development for project management tasks.

**4. Quality Assurance/Quality Control**

- Conduct QA/QC to ensure tracking and reporting documents are in sync and accurate.
- Periodically review to verify that contractor requirements and M&V protocols (% pre and post inspection) are sufficient to ensure reasonable savings claims.

**5. Coordinate with PG&E on programs to avoid duplication/competition**

- Hold meetings with complimentary and non-competitive EE & DR Programs operating in MCE territory.
- Be available to provide services in new communities as appropriate.

**DNV GLs Role in the Shared Cities**

DNV GL will:

- Assist in planning outreach and marketing campaigns.
- Be the first point of contact for all leads from PG&E. DNV GL will assign the leads via the Sales Manager at CESC who will distribute and assign the opportunity for energy assessments.

- Be responsible for assigning contractors to projects. Contractors will be assigned on a rotating basis or based upon project or contractor attributes.
- Provide project management assistance from project inception to completion, for projects sourced by contractors directly.
- Conduct a % of post-inspection of program projects sufficient to ensure reasonable savings claims.
- Manage the EBEW Database. Prepare a report monthly with all projects in the Five Cities, and their status of the project.

**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

For services provided under this Agreement, MCE shall pay Contractor in accordance with the amount(s) and the payment schedule as specified below:

Community Energy Services Corporation		2017 Rates
Hourly Rates (unless otherwise noted)		
Admin		
	Division Director	\$ 85.00
	Program Manager	\$ 75.00
Marketing	Manager	\$ 55.00
	Coordinator	\$ 30.00
Direct Implementation		
	Program Manager	\$ 75.00
	Sr. Project Manager	\$ 70.00
	Project Manager	\$ 65.00
	Business Development Managers	\$ 65.00
	Program Assistant	\$ 55.00
	Project Coordinator	\$ 30.00
Mileage	Per Mile at current IRS rate	
Materials	At cost	

Budget	
Administrative Costs	\$13,500
Marketing and Outreach	\$14,000
Program Performance Incentive <sup>1</sup> (Target of 798,042 gross kWh at \$0.05/kWh and 2,104 gross therms at \$0.30/therm)	\$40,533.30
Technical Assistance Direct Implementation (Small Commercial)	\$88,326.70
Contract Total (NTE)	\$156,360

<sup>1</sup>The program performance incentive may be invoiced by CESC on a kWh/project and therm/project completed basis. This incentive is to be invoiced monthly, and the invoice must include sufficient background documentation to calculate the incentive amount based on kWh and/or therm savings in completed projects. MCE reserves the right to reduce payment if more than 60% of kWh savings result from free LED measures, or 80% of therm savings result from free therms measures. The performance incentive shall be evaluated on an annual, not monthly basis.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$156,360** for the term of the agreement.



March 3, 2017

TO: MCE Executive Committee

FROM: Beckie Menten, Director of Customer Programs

RE: First Agreement with The Energy Alliance Association (TEAA)  
(Agenda Item #04 – C.12)

ATTACHMENT: Draft First Agreement with The Energy Alliance Association

Dear Executive Committee Members:

---

**SUMMARY:**

The proposed First Agreement with The Energy Alliance Association (TEAA) would enable MCE to offer small commercial energy efficiency services in its entire service area. TEAA would provide implementation services in Napa and Solano Counties, which are two counties not currently served by the existing implementer that serves Marin and Contra Costa Counties (Community Energy Services Corporation).

Background

Energy efficiency has always been an integral component of the MCE vision. In July 2012, MCE submitted an application for funding under the 2013-2014 Energy Efficiency Funding Cycle (A. 12-11-007). The application was based on the initial Energy Efficiency Plan and included the following proposed sub-programs:

1. Multifamily
2. Single family utility demand reduction pilot program
3. Small commercial
4. Four financing pilot programs: On Bill Repayment for single family<sup>1</sup>, multifamily, small commercial and a standard offer pilot.

This application was approved on November 9, 2012, allocating over \$4 million to MCE for the implementation of energy efficiency programs. In November 2014, the California Public Utilities Commission (CPUC) voted to extend the funding at annual levels through 2025, or until the CPUC moves otherwise. In May 2016, the CPUC granted MCE's Petition for Modification<sup>2</sup> of its annual Energy Efficiency Programs and Budgets in order

---

<sup>1</sup> The on-bill repayment pilot for single-family customers was subsequently closed in fall of 2015 after the financial institution withdrew. Funds have since been re-directed to the multifamily energy efficiency program.

<sup>2</sup> California Public Utilities Commission Decision 16-05-004

to account for MCE's inclusion of new communities. The additional funds allocated to MCE were \$366,090, bringing MCE's total annual funding allocated by the CPUC to \$1,586,347.

The small commercial program is one of four program elements approved by the CPUC, and is funded at a total of \$658,710. The program is designed to serve hard to reach small commercial properties by making energy efficiency opportunities easy to capture.

Under the proposed First Agreement with TEAA, MCE plans to expand its small commercial energy efficiency offerings to its entire service territory. Staff proposes that TEAA cover new communities including Napa County and the city of Benicia.

MCE has been contracting with Community Energy Services Corporation (CESC) for support of its small commercial energy efficiency program since November 2012. CESC would continue to be the lead program implementer for the MCE small commercial energy efficiency program in Marin, Richmond, El Cerrito, and San Pablo. Staff is working to expand CESC's contract to cover Walnut Creek and Lafayette.

CESC and TEAA both operate within pre-defined geographic boundaries.

TEAA would provide energy evaluations at no cost to small businesses, prepare and deliver energy evaluation reports, identify qualified contractors from a pool of pre-determined professionals who have agreed to specific terms, and oversee the installation of the efficiency measures for quality control.

This Agreement is based exclusively on a performance incentive, a fee structure employed in CESC's contract. The performance incentive is available to TEAA when projects are successfully completed. Under this fee structure, TEAA is incentivized to meet or exceed energy savings goals while maintaining cost-effectiveness targets of the CPUC.

MCE staff requests approval of the draft First Agreement with TEAA, which requests a contract maximum of \$35,653 and a contract end date of December 31, 2017.

**Fiscal Impacts:** The requested contract amount of \$35,653 would be funded completely from the energy efficiency program funds allocated by the CPUC.

**Recommendation:** Approve the First Agreement with The Energy Alliance Association.

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**FIRST AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND THE ENERGY ALLIANCE ASSOCIATION (TEAA)**

**THIS FIRST AGREEMENT** ("Agreement") is made and entered into this day **March 3, 2017** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and THE ENERGY ALLIANCE ASSOCIATION (TEAA), hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services: technical services to support MCE's Small Commercial Energy Efficiency Program in Napa County and the City of Benicia;

**WHEREAS**, Contractor warrants that it is qualified and competent to render the aforesaid services;

**NOW, THEREFORE**, for and in consideration of the agreement made, and the payments to be made by MCE, the parties agree to the following:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof.

**2. FURNISHED SERVICES:**

MCE agrees to make available all pertinent data and records for review, subject to MCE Policy 001 - Confidentiality.

**3. FEES AND PAYMENT SCHEDULE; INVOICING:**

The fees and payment schedule for furnishing services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement. Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE at [invoices@mcecleanenergy.org](mailto:invoices@mcecleanenergy.org) on a monthly basis for any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement.

**4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$35,653**.

**5. TIME OF AGREEMENT:**

This Agreement shall commence on **March 3, 2017**, and shall terminate on **December 31, 2017**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

**6. INSURANCE AND SAFETY:**

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 16 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

**6.1 GENERAL LIABILITY**

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

**6.2 AUTO LIABILITY**

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

**6.3 WORKERS' COMPENSATION**

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

**6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☐ )**

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, the contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that contractor has segregated amounts in a special insurance reserve fund or contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

**7. NONDISCRIMINATORY EMPLOYMENT:**

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.

**8. SUBCONTRACTING:**

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the parties shall create any legal or contractual relationship between MCE and any subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. Contractor's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

**9. ASSIGNMENT:**

The rights, responsibilities and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

**10. RETENTION OF RECORDS AND AUDIT PROVISION:**

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such

records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged.

#### **11. WORK PRODUCT:**

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to Contractor for such work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for MCE.

#### **12. TERMINATION:**

- A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five business days' written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Agreement for any reason by giving 30 calendar days' written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 20 Notices.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).

#### **13. AMENDMENT:**

This Agreement may be amended or modified only by written agreement of all parties.

#### **14. ASSIGNMENT OF PERSONNEL:**

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

#### **15. JURISDICTION AND VENUE:**

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

#### **16. INDEMNIFICATION:**

Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement.

#### **17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:**

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

#### **18. COMPLIANCE WITH APPLICABLE LAWS:**

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.



**19. NOTICES**

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email, pursuant to paragraph 3. All other notices shall be given to MCE at the following location:

Contract Manager:	Catalina Murphy
MCE Address:	1125 Tamalpais Avenue
	San Rafael, CA 94901
Email Address:	contracts@mcecleanenergy.org
Telephone No.:	(415) 464-6014

Notices shall be given to Contractor at the following address:

Contractor:	Kenneth R. Moore
Address:	1400 N. Dutton Ave, Ste 17
	Santa Rosa, CA 95401
Email Address:	kmoore@teaa.net
Telephone No.:	(707) 542-3171

**20. ACKNOWLEDGEMENT OF EXHIBITS**

In the event of a conflict between the Terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement will govern.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services	
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment	

**21. SEVERABILITY**

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

**22. COMPLETE AGREEMENT**

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

**23. COUNTERPARTS**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**24. PERFORMANCE AND PAYMENT BOND (REQUIRED IF CHECKED ☐)**

Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender,

supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first above written.

**APPROVED BY**

**Marin Clean Energy:**

**CONTRACTOR:**

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

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

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

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

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

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

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

**MCE COUNSEL REVIEW AND APPROVAL** *(Only required if any of the noted reason(s) applies)*  
**REASON(S) REVIEW:**

- ☐ **Standard Short Form Content Has Been Modified** *(List sections affected: \_\_\_\_\_)*
- ☐ **Optional Review by MCE Counsel at Marin Clean Energy's Request**

**MCE Counsel:** \_\_\_\_\_

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

**EXHIBIT A**  
**SCOPE OF SERVICES (required)**

Contractor will provide the following technical services to support MCE's Small Commercial Energy Efficiency Program in Napa County and the City of Benicia, as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

<b>1. Administrative</b>
Maintain data management, tracking and accounting protocols to comply with MCE and CPUC program reporting requirements
Update forms as needed, such as integrating customer-facing reports with financing options
Identify and implement process improvements
Assistance replying to data requests, CPUC financial audits and regulatory filings
<b>2. Marketing and Outreach</b>
Develop, modify, and distribute marketing materials (flyers, applications, website, customer report)
Create case studies
Design outreach campaigns
<b>3. Implementation</b>
Identify and target projects that will provide the most cost-effective savings by maintaining customer rebates within MCE's budgeted rate averaging \$0.185/kWh; total rebate cap not to exceed \$52,347 for the term of this Agreement.
Provide project management assistance from project inception to completion, including but not limited to scheduling site visits, conducting assessments, creating savings and rebate estimates and finals, responding to customer inquiries, coordinating contractors and equipment installation, and conducting final Measurement & Verification (M&V)
Recruit, educate, and train contractors and suppliers
Identify and implement any changes to program installation labor and material pricing
Provide technical assistance services, including setting and documenting customer eligibility criteria, audit criteria, incentive levels, and overall project documentation
Program planning, development and design – as needed
IT development for project management tasks
Savings split between PG&E and MCE will be 70% savings for PG&E and 30% savings for MCE
<b>4. Quality Assurance/Quality Control</b>
Conduct QA/QC to ensure tracking and reporting documents are in sync and accurate
Periodically review contractor requirements and M&V protocols (% pre and post inspection) are sufficient to ensure reasonable savings claims
<b>5. Coordinate with PG&amp;E on programs to avoid duplication/competition</b>
Hold meetings with complimentary and non-competitive Energy Efficiency & Demand Response Programs operating in MCE territories in Napa County and the City of Benicia

**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

For direct implementation services provided under this Agreement, MCE shall pay the Contractor, for performance of savings only, in accordance with the following payment fees/schedule:

<b>Budget</b>	
Program Performance Incentive <sup>1</sup> (Target of 282,958 gross kWh)	\$0.126/kWh
Technical Assistance Direct Implementation (Small Commercial)	\$35,653
Contract Total (NTE)	\$35,653
<sup>1</sup> The program performance incentive may be invoiced by TEAA on a kWh/project completed basis. This incentive is to be invoiced monthly, and the invoice must include sufficient background documentation to calculate the incentive amount based on kWh savings in completed projects. MCE reserves the right to reduce payment if more than 60% of kWh savings result from free LED measures. The performance incentive shall be evaluated on an annual, not monthly basis.	

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$35,653** for the term of the agreement.



March 3, 2017

TO: MCE Executive Committee

FROM: Kalicia Pivrotto, Marketing Manager

RE: Second Agreement with Kreativz, Inc. (Agenda Item #04 – C.13)

ATTACHMENT: Draft Second Agreement with Kreativz, Inc.

Dear Executive Committee Members:

---

**SUMMARY:**

Kreativz, Inc. has maintained and developed MCE's websites since April 7, 2016. If renewed, Kreativz would continue to ensure that the MCE website and infrastructure are performing optimally for site traffic loads, provide monthly monitoring of the backup system, and perform an annual backup recovery drill.

There is an ongoing need for the services provided by Kreativz. Staff recommends approval of the Second Agreement with Kreativz in the amount of \$32,500 for services provided from April 1, 2017 through March 31, 2018.

**Fiscal Impacts:** Costs related to the referenced agreement are included in the FY 2017/18 Communications Budget that Staff is recommending to the Board at its March 16, 2017 meeting.

**Recommendation:** Approve the Second Agreement with Kreativz, Inc.

**DRAFT**

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**SECOND AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND KREATIVZ, INC.**

**THIS SECOND AGREEMENT** ("Agreement") is made and entered into this day **March 3, 2017** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and KREATIVZ, INC., hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services: MCE website services;

**WHEREAS**, Contractor warrants that it is qualified and competent to render the aforesaid services;

**NOW, THEREFORE**, for and in consideration of the agreement made, and the payments to be made by MCE, the parties agree to the following:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof.

**2. FURNISHED SERVICES:**

MCE agrees to make available all pertinent data and records for review, subject to MCE Policy 001 - Confidentiality.

**3. FEES AND PAYMENT SCHEDULE; INVOICING:**

The fees and payment schedule for furnishing services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement. Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE on a monthly basis for any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement.

**4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$32,500**.

**5. TIME OF AGREEMENT:**

This Agreement shall commence on **April 1, 2017**, and shall terminate on **March 31, 2018**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

**6. INSURANCE AND SAFETY:**

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 16 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Contractor's gross negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

**DRAFT****6.1 GENERAL LIABILITY**

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

**6.2 AUTO LIABILITY**

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

**6.3 WORKERS' COMPENSATION**

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

**6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☐ )**

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, the contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that contractor has segregated amounts in a special insurance reserve fund or contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

**7. NONDISCRIMINATORY EMPLOYMENT:**

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.

**8. SUBCONTRACTING:**

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall be fully responsible for the work product of subcontractors and shall fully indemnify MCE for work assigned to subcontractors. Nothing contained in this Agreement or otherwise stated between the parties shall create any legal or contractual relationship between MCE and any subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

**9. ASSIGNMENT:**

The rights, responsibilities and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

**10. RETENTION OF RECORDS AND AUDIT PROVISION:**

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice

**DRAFT**

from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

**11. WORK PRODUCT:**

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to Contractor for such work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for MCE.

**12. TERMINATION:**

- A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five business days' written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Agreement for any reason by giving 30 calendar days' written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 19 Invoices; Notices.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).
- E. MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

**13. AMENDMENT:**

This Agreement may be amended or modified only by written agreement of all parties.

**14. ASSIGNMENT OF PERSONNEL:**

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

**15. JURISDICTION AND VENUE:**

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

**16. INDEMNIFICATION:**

Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's or any subcontractor's gross negligence, recklessness or willful misconduct in the performance of this Agreement.

MCE agrees to indemnify, save and hold harmless Consultant, its employees, officers, and agents, from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising from MCE's gross negligence, recklessness or willful misconduct in the performance of this Agreement.

**17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:**

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

**18. COMPLIANCE WITH APPLICABLE LAWS:**

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.



**DRAFT****19. INVOICES; NOTICES**

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address:	invoices@mcecleanenergy.org
----------------	-----------------------------

All other notices shall be given to MCE at the following location:

Contract Manager:	Catalina Murphy
-------------------	-----------------

MCE Address:	1125 Tamalpais Avenue
--------------	-----------------------

	San Rafael, CA 94901
--	----------------------

Email Address:	contracts@mcecleanenergy.org
----------------	------------------------------

Telephone No.:	(415) 464-6014
----------------	----------------

Notices shall be given to Contractor at the following address:

Contractor:	Kristin Lee Swenson
-------------	---------------------

Address:	14 Commercial Blvd., Suite 119
----------	--------------------------------

	Novato, CA 94949
--	------------------

Email Address:	k@kreativz.com
----------------	----------------

Telephone No.:	(415) 682-6842 (o) / (415) 600-7711 (m)
----------------	---

**20. ACKNOWLEDGEMENT OF EXHIBITS**

In the event of a conflict between the Terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement will govern.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services	
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment	

**21. SEVERABILITY**

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

**22. COMPLETE AGREEMENT**

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

**23. COUNTERPARTS**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**DRAFT****24. PERFORMANCE AND PAYMENT BOND** (REQUIRED IF CHECKED ☐)

Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender, supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first above written.

**APPROVED BY****Marin Clean Energy:****CONTRACTOR:**

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

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

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

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

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

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

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

**MODIFICATIONS TO STANDARD SHORT FORM**

☒ **Standard Short Form Content Has Been Modified**

**List sections affected:** Section 6, 8, 16

**Approved by MCE Counsel:** \_\_\_\_\_

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

**EXHIBIT A**  
**SCOPE OF SERVICES (required)**

Contractor will provide MCE website services as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement. The following list includes identified work needs in order of priority along with estimates of the maximum hours needed to complete each task. MCE staff may direct Contractor to prioritize and complete other work, not included below, as needed. Work under this contract shall not exceed 325 hours. The Contractor may utilize subcontractors as needed to efficiently address all levels of service that may be required to adequately maintain and further develop MCE websites. Contractor's use of a subcontractor shall not alter the scope listed below and shall not increase the maximum cost of this Agreement.

Task	Estimated Maximum Number of Hours
<p><b>Annual Budget for Project-Based Web Development &amp; Design Updates</b>  Contractor will provide web development and on-page/element design update services as needed for emerging needs or campaign-based customer engagement and interactive site enhancements such as 1) a map-based lookup feature for Support Green and Local Lookup database; 2) a thermometer or other infographic style tool to help customers visualize their impact; and 3) mobile site audit and corresponding improvements. These services may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• On-page web design or re-design</li> <li>• UI/UX element design or re-design</li> <li>• Site bug fixes, troubleshooting</li> <li>• Web development services</li> <li>• Application Program Interface (API) or other third-party integrations</li> <li>• Database development or updates</li> <li>• Marketing technology development or integration services</li> </ul>	180 hours
<p><b>Monthly Website Security Updates for 2 Sites</b>  Contractor will provide monthly maintenance services that include monitoring host Wordpress updates and maintenance with regard to standard security measures alongside other custom code or third-party plugins:</p> <ul style="list-style-type: none"> <li>• Timely monitoring of WP Engine to ensure appropriate Wordpress security updates/patches are applied for the website's core and third-party modules.</li> <li>• Application of any additional corresponding Wordpress updates/patches to keep the site updated.</li> <li>• Subsequent testing and Question/Answer after any update/patch is applied to the website.</li> </ul>	Up to 6 hours, monthly (not to exceed 60 hours annually)
<p><b>Monthly Performance Maintenance for 2 Sites</b>  Contractor will provide monthly maintenance services which include ensuring the site and infrastructure are performing optimally for site traffic loads:</p> <ul style="list-style-type: none"> <li>• Monitoring of website traffic and load on each of the infrastructure components and ensuring each cloud infrastructure component is performing optimally.</li> </ul>	2 hours monthly (24 hours annually)

<p><b>Monthly Backup System Monitoring and Annual Backup Recovery Drills for 2 Sites</b></p> <p>Contractor's monthly maintenance services include monthly monitoring of the backup system and performing an annual backup recovery drill:</p> <ul style="list-style-type: none"> <li>• Backup system monitoring monthly.</li> <li>• Backup recovery drill shall be completed once annually; the drill includes restoring the website from existing backup simulating recovery from a data disaster.</li> </ul>	<p>1 hour monthly plus an additional 25 hours annually (not to exceed 37 hours annually)</p>
<p><b>Monthly Server &amp; Cloud Infrastructure Monitoring for 2 Sites</b></p> <p>Contractor's monthly maintenance services include monitoring the site host performance.</p>	<p>2 hours monthly (24 hours annually)</p>

**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

For services provided under this Agreement, MCE shall pay Contractor at a rate of \$100 per hour. Contractor shall bill MCE monthly.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$32,500** for the term of the agreement.



March 3, 2017

TO: MCE Executive Committee

FROM: Katie Gaier, Human Resources Manager

RE: Proposed Employee Benefit Allocation Adjustment (Agenda Item #05)

Dear Executive Committee Members:

**SUMMARY:**

On April 7, 2011, when MCE became the employer of record for MCE staff, the Board of Directors approved an \$800 per month benefit allocation for health, dental, and vision insurance for those employees participating in the Kaiser health plan. Since that time, there has been no increase in the allocation, but the cost of insurance, especially health insurance, has increased. Over the past three years, Kaiser rates in Northern California have increased by 8.8%. During this same time, the demographics of MCE have changed such that there are more employees paying out-of-pocket for health, dental, and vision benefits. These changes include more employees with spouses and families as well as more older employees. As a small business (fewer than 100 employees), MCE's Kaiser rates are based on age.

Based on the benefit year that began in June 2016 and the change in demographics, MCE currently has 15 employees out of 32 enrolled in health insurance who are paying out-of-pocket each month, ranging from \$60 to \$800, with most paying around \$200. Six of the 15 impacted employees waive dental and/or vision to reduce their total out-of-pocket cost. The current out-of-pocket payment for all 15 employees totals approximately \$4,000 per month.

Due to uncertainty about the Affordable Care Act, MCE's insurance broker anticipates that the MCE plans will increase by 8-10% in June 2017, but actual rates are not yet available. Any increase will impact these employees and perhaps others who are now close to the \$800 cap.

MCE management recommends an increase to the monthly benefit allocation of \$200 per month, bringing the allocation from \$800 to \$1000. This change would reduce or

eliminate out-of-pocket costs for currently impacted employees, as well as others who might otherwise be impacted by the June 2017 rate adjustment. It is anticipated that the increase would result in no more than \$48,000 in additional personnel costs per year.

There is no recommendation to increase the \$500 provided to employees who waive MCE's health insurance and are on an equivalent group plan.

**Fiscal Impact:** There are sufficient funds available in the proposed 2017/18 personnel budget to cover the cost of the increase.

**Recommendation:** Move the proposed employee benefit allocation adjustment to the MCE Board for approval on the consent calendar at its March meeting.

CC: David McNeil, Finance Manager  
Sarah Estes-Smith, Director of Internal Operations



## California CCA Quarterly Update | January 2017

California Community Choice Association (CalCCA) represents the interest of California's community choice electricity providers in the legislature and at the relevant regulatory agencies. Each Community Choice Aggregator (CCA) chooses the sources of electricity while the utility continues to provide electric delivery services. CCA was enabled by Assembly Bill 117 in 2002, to allow local municipalities to take control of their energy supply.

CalCCA currently has seven operational members serving as its Board of Directors including: MCE, Sonoma Clean Power (SCP), Lancaster Choice Energy (LCE), CleanPowerSF, Peninsula Clean Energy (PCE), Silicon Valley Clean Energy (SVCE), and Apple Valley Choice Energy; and four affiliate members: The Cities of Davis and Corona, the counties of Los Angeles and Placer, and Central Coast Power representing the counties of Santa Barbara, San Luis Obispo, and Ventura.

### MCE

Launched in 2010, MCE serves more than 255,000 customers in Marin County, Napa County, and the cities of Benicia, El Cerrito, Lafayette, Richmond, San Pablo and Walnut Creek. MCE offers Light Green 50% renewable energy and Deep Green 100% renewable energy products.

#### 2,800+ California Jobs Supported

In 2016, MCE's new renewable projects have created more than 1.2 million union labor hours. MCE's sustainable workforce policy outlines support for local businesses, union members, training and apprenticeship programs, and support for green and sustainable businesses. MCE has committed over **\$1.6 billion to build 813 MW of new California renewables.**

#### 20 MW of New Local Renewable Projects

MCE has 4.27 MW of new solar online in its local service area, with another 12 MW under construction. MCE's 10.5MW solar project in Richmond is located on a brown field site and has a 50% local hire requirement. A local 3.6 MW waste-to-energy project is also under construction.

#### MCE Wins 2016 Green Power Leadership Award

The Center for Resource Solutions presented MCE with a Green Power Leadership Award at the annual Renewable Energy Markets conference, recognizing MCE's leadership in the development of green power markets by championing renewable energy in California.

### SONOMA CLEAN POWER (SCP)

Sonoma Clean Power (SCP), launched in 2014, serves approximately 450,000 customers in Sonoma County. SCP offers CleanStart 36% renewable energy and EverGreen 100% local, renewable energy.

#### CPUC Certifies SCP's Plan to Serve Mendocino County

In December 2016, the CPUC certified SCP's Second Revised and Updated Implementation Plan. Under this revised plan, SCP will deliver service to **Mendocino County** starting in June 2017.

#### Drive EverGreen Program Pairs Electric Vehicles and 100% Renewable Energy

SCP has concluded its successful Drive EverGreen electric vehicle purchase/lease pilot. The pilot allowed customers to: 1) get an electric car by receiving SCP EV Incentive Certificates; 2) choose between discounted EV chargers or a "Juice Plug" through a program partner; 3) choose to drive on 100% renewable energy by opting up to 100% local renewable energy through SCP. During the Drive EverGreen program, SCP received almost 600 applications and distributed \$480,000 in EV Incentive Certificates, 26% of which were issued to **low-income customers.**

### LANCASTER CHOICE ENERGY (LCE)

LCE began service in 2015 to 55,000 customers in the city of Lancaster, located in east Los Angeles County. LCE offers ClearChoice 35% renewable energy and SmartChoice 100% renewable energy to its customers, with approximately half of customers eligible for low-income energy programs. Lancaster is aiming to be the nation's first zero net energy city.

#### LCE and sPower's First 10MW Local Renewable Energy Project is Operational

In December 2016, Lancaster and sPower, an independent energy producer, announced that a new utility-scale solar project is operational. This resource is the city's first project and will serve up 10MW of renewable energy through a 20-year power purchase agreement with LCE. The project is expected to power over 1,800 local homes.

#### LCE Completes its First Year of Net Energy Metering (NEM)

In October 2016, LCE celebrated its first full year of service to customers and conducted its first annual 'true-up' for over 3,500 NEM customers. LCE's overproducing solar panel customers received just over \$59,000 back, which is **234% more** than they would have received had they remained under the Southern California Edison (SCE) NEM tariff.

#### LCE Pursues Three Local Solar Site Developments

LCE is currently working to develop three sites for 3MW solar energy projects. This 9MW of local power will contribute to LCE's power portfolio.



## CLEANPOWERSF

Launched in 2016, CleanPowerSF serves approximately 75,000 customers in San Francisco. CleanPowerSF offers Green 35% renewable energy and SuperGreen 100% Green-e certified renewable energy.

### GoSolarSF

In Spring 2017, CleanPowerSF customers will be eligible for new financial incentive levels to assist with the cost of installing solar panels on residential and commercial rooftops across San Francisco.

### Service and Enrollment

CleanPowerSF has an opt out rate of approximately 2.4% with enrollment in SuperGreen, its 100% renewable product, at approximately 2.5%. Education and outreach to the public about CleanPowerSF continues at community group meetings, street fairs, and events. In Spring 2017, CleanPowerSF will enroll eligible NEM accounts.

## PENINSULA CLEAN ENERGY (PCE)

Launched in October 2016, PCE serves customers in San Mateo County, including all 20 cities and unincorporated areas. PCE currently serves 78,000 accounts, and will serve up to 300,000 accounts when enrollment is completed in April 2017. PCE offers ECOplus 50% renewable energy and ECO100 100% renewable energy products.

### Robust Response to Request for Renewable Energy

PCE launched and concluded its 2016 Request for Offers ("RFO") for renewable resources. With this RFO, PCE is expanding its purchase of clean, renewable energy for the residents and businesses of San Mateo County. PCE received a prolific response from a wide variety of projects, creating opportunities to procure cost-effective renewable energy for customers.

## SILICON VALLEY CLEAN ENERGY (SVCE)

Launching in April 2017, SVCE will serve customers in Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill, Mountain View, Saratoga, Sunnyvale and the unincorporated parts of Santa Clara County.

### Launch Set for April 2017

SVCE is preparing to launch service in April 2017 and customers will receive their first notifications in late January.

### Hedging Supply Prices

In December, SVCE sought to lock supply prices with six different suppliers to meet 100% of its energy needs in 2017 and 2018, 80% in 2019, 65% in 2020 and 50% in 2021. Most of these efforts were successful, securing a cost-competitive energy supply for SVCE customers.

## CCA STATEWIDE

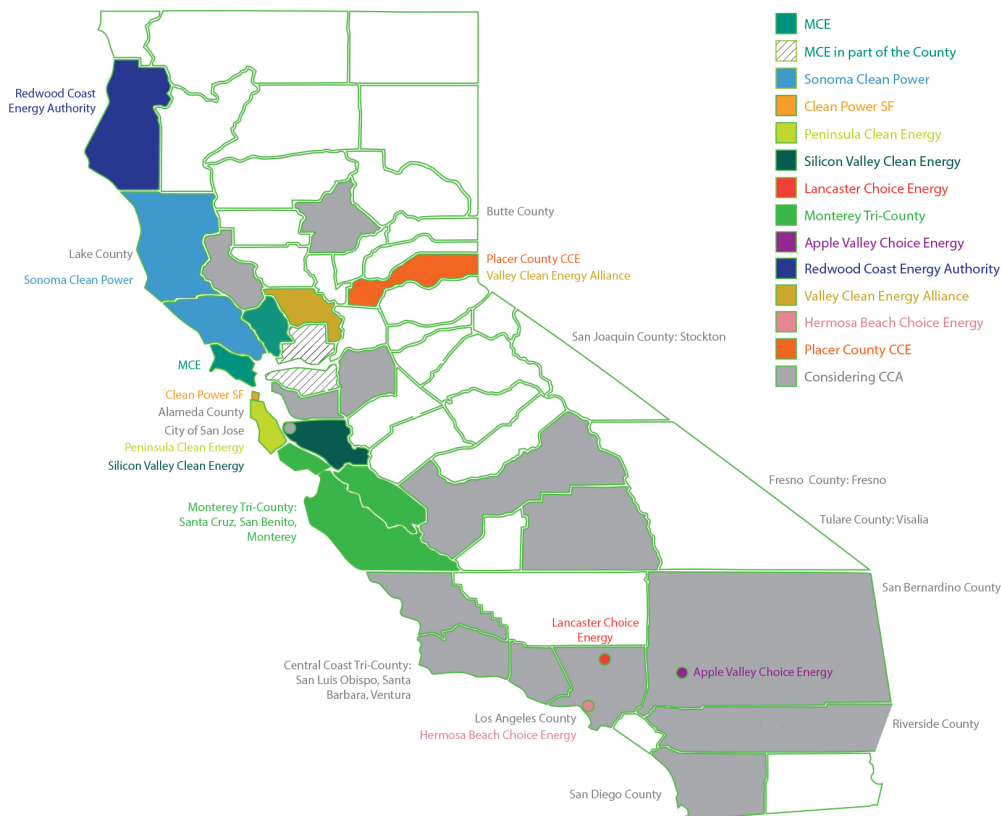
CCAs are forming in over 80 jurisdictions across California. This map highlights service area of fully operational CCAs as well as jurisdictions considering joining a CCA or creating their own.

» In December 2016, the San Jacinto City Council approved their CCA implementation Plan and submitted it to the CPUC. The City of San Jacinto will be serving retail electric service customers as San Jacinto Power.

» The City of Davis and Yolo County will begin serving customers in Fall 2017 or early 2018 as Valley Clean Energy Alliance.

» Hermosa Beach Choice Energy will begin serving customers in the City of Hermosa Beach in late 2017.

» Redwood Coast Energy Authority will begin serving the county of Humboldt; the cities of Arcata, Blue Lake, Eureka, Fortuna, Rio Dell, and Trinidad in May 2017.



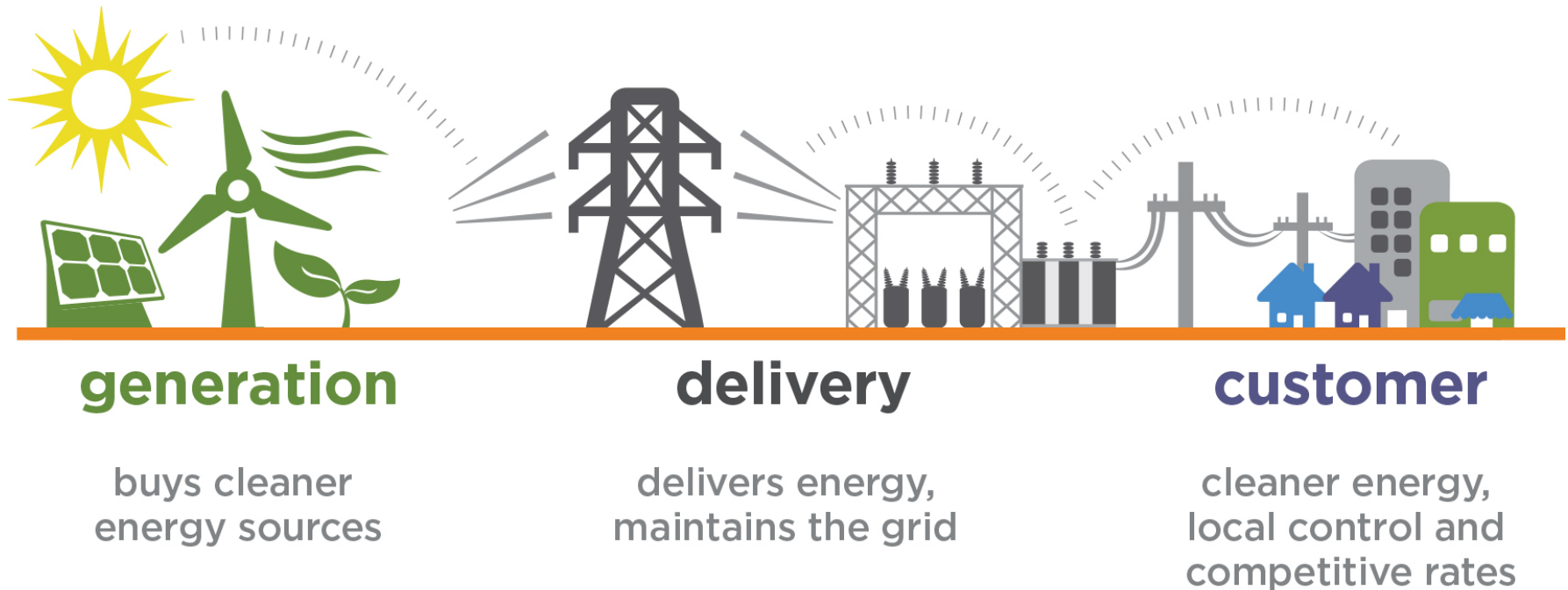


## CCAs Created by the Legislature

- 2000 Energy Crisis prompted interest in greater transparency and local control
- AB 117 (2002, Migden): enabled energy choice through local government-based entities
- SB 790 (2011, Leno): established a CCA ‘bill of rights’ and allowed CCAs to administer efficiency programs



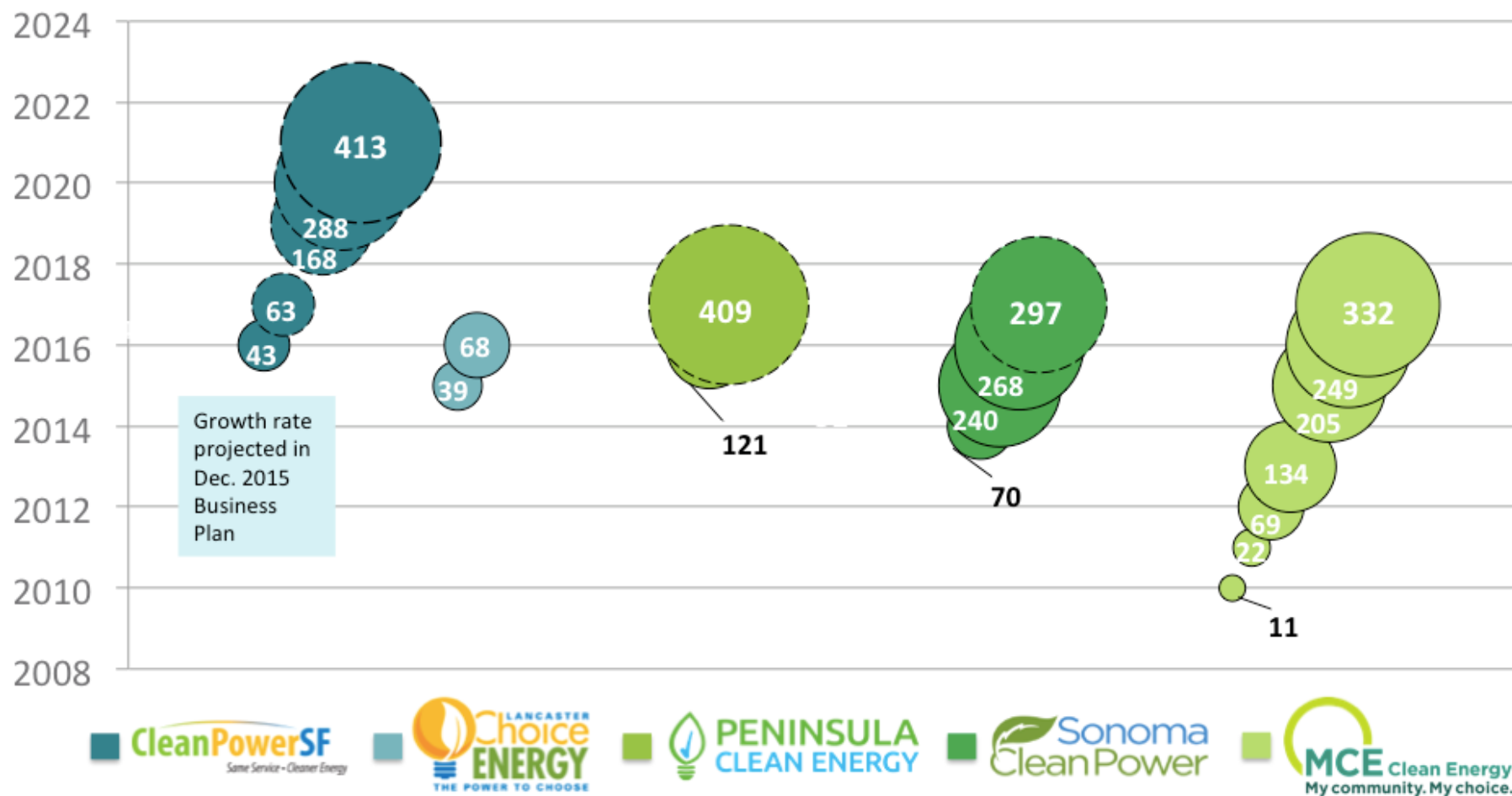
# How Community Choice Works

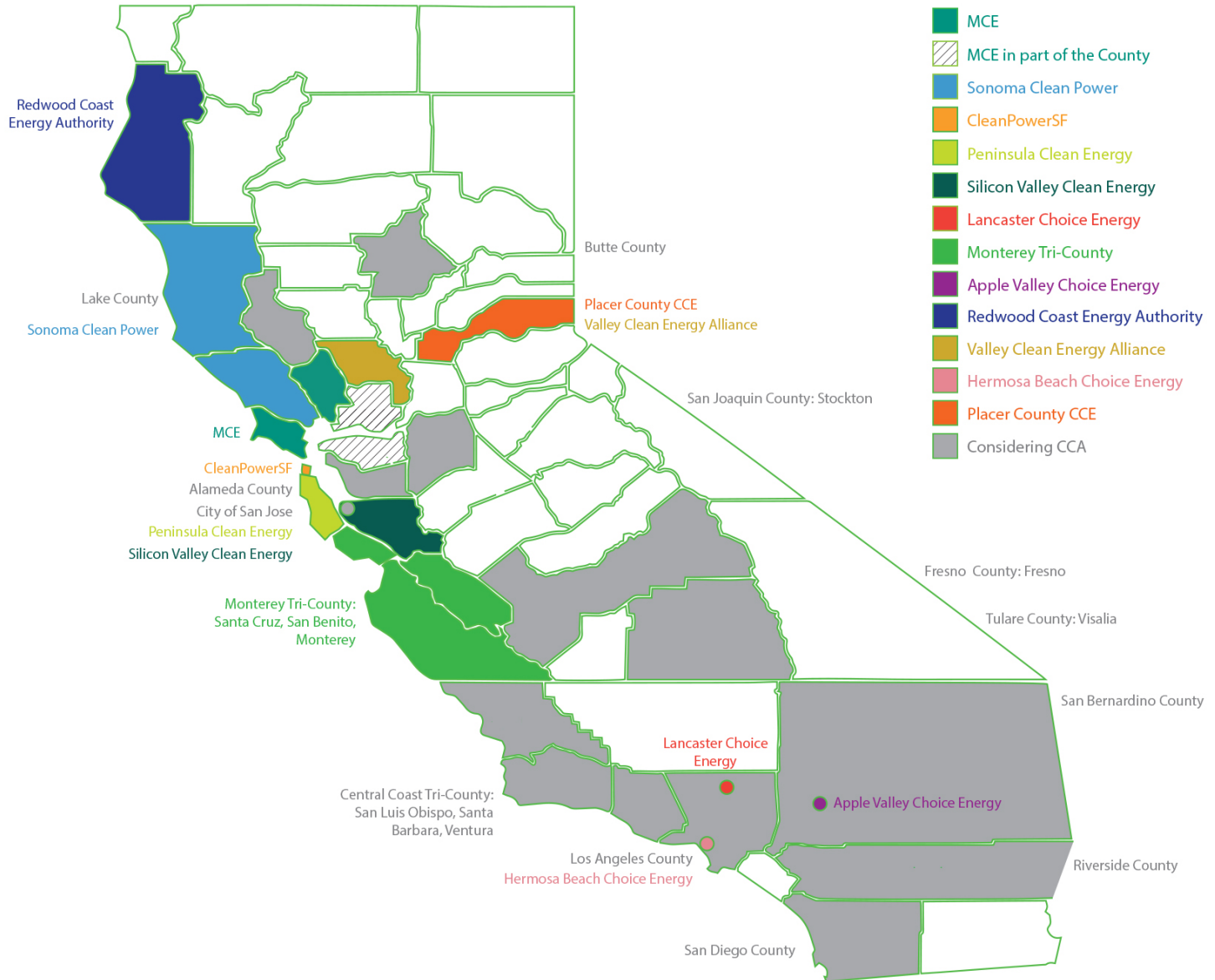


# Operating Programs

CalCCA Members	Customer Accounts	Peak Load	Minimum RPS (2017)	Uses Unbundled RECs?	Annual Load 2016 GWh	Annual Load Projected 2017 GWh
MCE	255,000	520 MW	55%	0 - 3%	2,102	2,743
Sonoma Clean Power	235,000	512 MW	43%	None	2,330	2,550
Lancaster Choice Energy	52,000	132 MW	35%	8%	590	595
CleanPowerSF	73,000	93 MW	35%	None	220	520
Peninsula Clean Energy	300,000	660 MW	50%	None	n/a	3,800
CalCCA Member Totals	915,000	1,917 MW	48% (avg)	1% (avg)	5,242	10,208

## CCA Program Growth and Development (Average Annual MW Served)





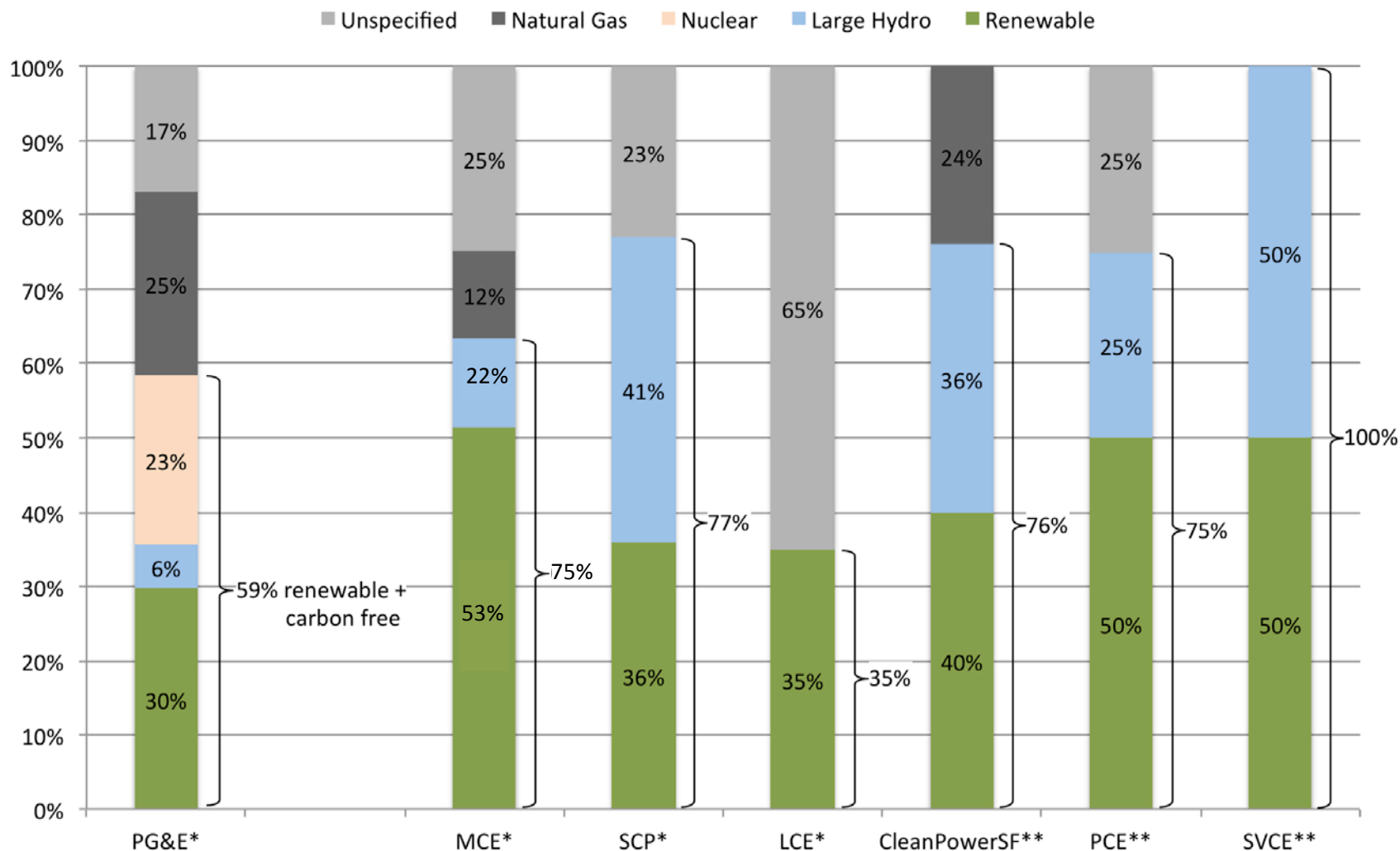
## Programs Launching in 2017

<b>CalCCA Members</b>	<b>Customer Accounts</b>	<b>Annual Load (GWh)</b>	<b>Minimum RPS</b>	<b>Uses Unbundled RECs?</b>
Apple Valley Choice Energy	29,000	235*	35%	8%
Silicon Valley Clean Energy	243,000	2,600*	50%	None
Redwood Coast Energy Auth.	60,000	730*	37%	None
<b>Totals</b>	<b>332,000</b>	<b>3,565</b>	<b>46% (avg)</b>	<b>&lt;1% (avg)</b>

\*Represents a partial year due to enrollment process



## Snapshot of CCA Portfolios in 2016 (or forecast for 2017 for new programs)



# Building California Renewables

- Over \$1 billion in construction to date
- Majority of spending on projects with project labor agreements
- Constructing renewables quickly
- Takes 3-4 years of operations to create a diverse long-term portfolio



## CCA Construction of New California Renewables as of January 2017

	Project Size (MW)	Resource	Resource Provider/Project Name	Location	Service Start Date	Contract Length (Years)
<b>MCE</b>	1	Solar	San Rafael Airport	San Rafael, Marin Co.	2012	20
	1.6	Biogas	G2 Energy / Hay Road Landfill	Vacaville, Solano Co.	2013	18
	4.8	Biogas	Genpower / Lincoln Landfill	Lincoln, Placer Co.	2013	20
	1.9	Biogas	G2 Energy / Ostrom Road Landfill	Wheatland, Yuba Co.	2013	18
	1	Solar	Dominion / Buck Institute of Research on Aging	Novato, Marin Co.	2016	25
	0.3	Solar	Rawson, Blum & Leon / Cost Plus Plaza	Larkspur, Marin Co.	2016	20
	1	Solar	North Shore Solar Partners / Freethy Industrial Pk. #1	Richmond, Contra Costa Co.	2016	20
	1	Solar	North Shore Solar Partners / Freethy Industrial Pk. #2	Richmond, Contra Costa Co.	2016	20
	0.5	Solar	REP Energy / Cooley Quarry	Novato, Marin Co.	2017	20
	1	Solar	REP Energy / Cooley Quarry	Novato, Marin Co.	2017	20
	3.6	Biogas	Waste Management / Redwood Landfill	Novato, Marin Co.	2017	20
	10.5	Solar	MCE / Solar One	Richmond, Contra Costa Co.	2017	25
	20	Solar	Dominion / RE Kansas Solar	Stratford, Kings Co.	2015	3
	23	Solar	Dominion / Cottonwood Solar	Stratford, Kings Co.	2015	25
	99	Wind	EDP Renewables / Rising Tree III	Mojave, Kern Co.	2015	3.5
	30	Solar	Recurrent Energy / Mustang Solar Power Project	Lemoore, Kings Co.	2018	15
	100	Solar	Recurrent Energy / Tranquillity 8	Tranquillity, Fresno Co.	2018	15
	105	Solar	sPower / Antelope Expansion 2	Lancaster, Los Angeles Co.	2018	20
	42	Wind	Terra-Gen / Voyager Wind III	Mojave, Kern County	2018	12
	125	Wind	Terra-Gen / Los Banos Wind	Los Banos, Merced Co.	2018	12
	40	Solar	First Solar / Little Bear Solar	Mendota, Fresno Co.	2020	20
	80	Solar	EDF Renewables / Desert Harvest	Desert Center, Riverside County	2020	20
<b>SCP</b>	1	Solar	Cloverdale Soventix	Cloverdale, Sonoma Co.	2017	20
	1	Solar	VacaSolar Millenium	Petaluma, Sonoma Co.	2017	20
	1	Solar	Petaluma Solar Millenium	Petaluma, Sonoma Co.	2017	20
	12.5	Solar	Pristine Sun LLC	Multiple sites, Sonoma County	2017	20
	70	Solar	Recurrant	Lemoore, Kings County	2016	20
	46	Wind	Golden Hills / NextEra	Livermore, Alameda County	2018	20
<b>LCE</b>	10	Solar	sPower / Western Antelope Dry Ranch	Lancaster, Los Angeles County	2016	20

# Customer Serving Rates

- All low-income ratepayers continue to receive discounts
- Preferred net metering rates
- Rates set to minimize impact of IOU fees and guard against rate shock
- Local boards made up of elected officials who are ratepayers

# Customer Serving Programs

- Responsive to local needs
  - Low-income retrofits
  - Electric vehicle focus (incl. CARE customers)
  - Fuel switching
- Rapid development (3-12 months to deploy)
- Low cost to implement programs



## CCA Customer Program Elements (as of January 2017)

	CleanPowerSF	Lancaster Choice Energy	Peninsula Clean Energy	MCE	Sonoma Clean Power
Balanced Payment Plan	<i>In development</i>	✓			<i>In development</i>
Battery Storage Rate				✓	
Customer Load Shifting				✓	✓
Demand Response			<i>In development</i>	<i>In development</i>	✓
Electric Vehicle (EV) Rate	✓	✓	✓	✓	✓
EV Bus Program	✓	✓			
EV Incentives				✓	✓
EV Load Shifting				✓	✓
Energy Efficiency (EE)		<i>In development</i>		✓	✓
Low-Income & Multifamily EE				✓	
Feed-In Tariff	<i>In development</i>		<i>In development</i>	✓	✓
Fuel Switching Gas to Electric				✓	✓
Low Income Solar Incentives	✓			✓	
Net Energy Metering	✓	✓	✓	✓	✓
On Bill Repayment	<i>In development</i>			✓	<i>In development</i>

# Regulatory and Legislative Issues

- CCAs must procure all energy and resource adequacy for customers
- CCA paradigm means there is a need for more vigilance to protect against IOU shifting cost recovery from generation to delivery



# Thank you.







Kathrin Sears, Chair  
County of Marin

Tom Butt, Vice Chair  
City of Richmond

Bob McCaskill  
City of Belvedere

Alan Schwartzman  
City of Benicia

Sloan C. Bailey  
Town of Corte Madera

Greg Lyman  
City of El Cerrito

Barbara Coler  
Town of Fairfax

Don Tatzin  
City of Lafayette

Kevin Haroff  
City of Larkspur

Sashi McEntee  
City of Mill Valley

Brad Wagenknecht  
County and Cities of Napa

Denise Athas  
City of Novato

P. Rupert Russell  
Town of Ross

Ford Greene  
Town of San Anselmo

Arturo Cruz  
City of San Pablo

Andrew McCullough  
City of San Rafael

Ray Withy  
City of Sausalito

Emmett O'Donnell  
Town of Tiburon

Kevin Wilk  
City of Walnut Creek

1125 Tamalpais Avenue  
San Rafael, CA 94901

1 (888) 632-3674

**DRAFT**

**Board of Directors Meeting**  
**Thursday, March 16, 2017**  
**7:00 P.M.**

**The Charles F. McGlashan Board Room**  
**1125 Tamalpais Avenue, San Rafael, CA 94901**

**Agenda Page 1 of 1**

1. Board Announcements (Discussion)
2. Public Open Time (Discussion)
3. Report from Chief Executive Officer (Discussion)
4. Consent Calendar (Discussion/Action)
  - C.1 2.16.17 Meeting Minutes
  - C.2 Approved Contracts Update
5. MCE FY 2017/18 Rates (Discussion/Action)
6. MCE FY 2017/18 Budget (Discussion/Action)
7. Power Purchase Agreement with sPower for MCE Solar One (Discussion/Action)
8. Green and Healthy Homes Initiative Presentation (Discussion)
9. Board Member & Staff Matters (Discussion)
10. Adjourn



Agenda material can be inspected at 1125 Tamalpais Avenue, San Rafael, CA 94901 on the Mission Avenue side of the building. The meeting facilities are in accessible locations. If you are a person with a disability and require this document in an alternate format (example: Braille, Large Print, Audiotape, CD-ROM), you may request it by using the contact information below. If you require accommodation (example: ASL Interpreter, reader, note taker) to participate in any MCE program, service or activity, you may request an accommodation by calling (415) 464-6032 (voice) or 711 for the California Relay Service or by e-mail at [djackson@mceCleanEnergy.org](mailto:djackson@mceCleanEnergy.org) not less than four work days in advance of the event.