



Board of Directors Meeting
Thursday, July 20, 2017
7:00 P.M.

The Charles F. McGlashan Board Room
1125 Tamalpais Avenue, San Rafael, CA 94901

3675 Mt. Diablo Boulevard, #265
Lafayette, CA 94549

Agenda Page 1 of 3

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

1 (888) 632-3674
mceCleanEnergy.org

1. Board Announcements
2. Public Open Time
3. Report from Chief Executive Officer
4. Consent Calendar (Discussion/Action)
 - C.1 Approval of 5.18.17 Meeting Minutes
 - C.2 Approved Contracts Update
 - C.3 Proposed First Agreement with Czarnecki-Yester Consulting Group, LLC
 - C.4 New MCE Staff Position
 - C.5 Proposed First Amendment to the First Agreement with Cypher Group
 - C.6 Proposed Second Agreement with Open Energy Efficiency, LLC
 - C.7 Proposed New Advertising Agreement with Comcast
5. Receive Applicant Analysis and Consider 1. Resolution 2017-06 of the Board of Directors of MCE approving Contra Costa County (unincorporated); the Cities of Concord, Martinez, Oakley, Pinole, Pittsburg and San Ramon; and the Towns of Danville and Moraga as members of MCE; 2. Amendment 12 to the MCE JPA Agreement; and



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3. Resolution 2017-07 Delegating Energy Procurement Authorities for New Member Communities (Discussion/Action)
6. Resolution 2017-08 Approving Third Amendment to Credit Agreement with River City Bank in the Principal Amount of \$25,000,000; and, 2. Resolution 2017-09 Regarding Authority to Execute Third Amendment to Credit Agreement with River City Bank (Discussion/Action)
7. Resolution 2017-10 Delegating Authority for Destruction of Non-Judicial Public Records (Discussion/Action)
8. Update on MCE Naming Considerations (Discussion)
9. Customer Programs Update (Discussion)
10. FY 2016/17 Financial Statement Presentation (Discussion)
11. MCE Contra Costa Office (Discussion)



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12. Policy Update (Discussion)

13. Board Member & Staff Matters (Discussion)

14. Adjourn



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July 20, 2017

TO: MCE Board of Directors

FROM: Kalicia Pivrotto, Marketing Manager

RE: Proposed New Advertising Agreement with Comcast (Agenda Item #04 – C.7)

ATTACHMENT: Proposed New Advertising Agreement

Dear Board Members:

SUMMARY:

The attached proposed New Advertising Agreement would allow MCE to run television-quality video advertising on Comcast cable channels, both streaming and on-air, for a total amount not to exceed \$50,087.62. The commercials will air from Aug. 1, 2017 to Oct. 29, 2017 in Marin and Napa Counties and Benicia. A separate contract will be established with Comcast to air the commercial in Contra Costa County during the likely new enrollment period.

The goals of this contract are to help increase Deep Green customer enrollments and the brand recognition of MCE through video advertising created by Free Range production company. Messaging for the video will target eco-conscious and tech savvy 20-50 year old customers, showing them how renewable energy integrates with their values and lifestyle and how easy it is to enroll in 100% renewable energy service.

Fiscal Impact: Costs related to the referenced agreement are included in the FY 2017/18 Operating Fund Budget.

Recommendation: Approve the proposed New Advertising Agreement with Comcast.





PROPOSED NEW ADVERTISING AGREEMENT - JULY 31-OCT 29, 2017

MCE Aug-Oct 2017 revised

Est # 217320

San Francisco-Oak-San Jose Apr17 DMA Nielsen Live+7

Client:
 Buyer:
 Advertiser:
 Product: Lengths: 30
 Sched Dates: 07/31/17 - 10/29/17 Dayparts: BR ; DP

Network	Daypart	Program	Start Date	End Date	Unit Dur	Avg Units/Wk	Active Weeks	Rate	Total Units	Cost
4185, Marin CA U-verse; 4188, Napa CA U-verse; 4200, Vallejo CA U-verse; 1789, Marin Zone; 5268, Napa Zone; 5546, Vallejo Zone										
CSBA										
	Sa-Su 12n-3p	Giants Baseball			30	0	5	\$293.00	5	\$1,465.00
	M-Su 7p-10p	Giants Baseball			30	0	4	\$434.00	4	\$1,736.00
	M-Su 7p-10a	Warriors Basketball			30	0	2	\$438.00	2	\$876.00
ESP2										
	Su 11a-1p	Pac 12 College Football			30	0	4	\$264.00	4	\$1,056.00
ESPN										
	M 5p-8p	Monday Night Football Pre Season			30	0	4	\$150.00	4	\$600.00
	M 5p-8p	Monday Night Football			30	0	3	\$735.00	3	\$2,205.00
	Su 5p-8p	Sunday Night Baseball			30	1	9	\$60.00	9	\$540.00
	M-Su 7p-10p	World Series National Championship			30	0	2	\$221.00	4	\$884.00
TNT										
	M-Su 7p-10p	NBA on TNT			30	0	2	\$157.00	2	\$314.00
Totals									37	\$9,676.00

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Adjustments: Network Insertability and Network Carriage have been factored into calculations.
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 San Francisco-Oak-San Jose Apr17 DMA Nielsen Live+7
 Cable Zones: Comcast, San Francisco Interactive (SFIN)

San Francisco-Oak-San Jose Apr17 DMA Nielsen Live+7
 PDTV: unrated station

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Source Field Codes:
 TP – Time Period





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BRVO										
	M-Su 4p-12m	Bravo			30	4	13	\$44.20	52	\$2,298.40
CNN										
	M-Su 5a-4p M-Su 4p-12m	CNN News CNN News			30 30	8 5	13 13	\$15.73 \$27.63	104 65	\$1,635.92 \$1,795.95
FOOD										
	M-Su 5a-4p M-Su 4p-12m	Food Network Food Network			30 30	7 5	13 13	\$9.35 \$31.45	91 65	\$850.85 \$2,044.25
FXNC										
	M-Su 5a-4p	Fox News			30	8	13	\$4.68	104	\$486.72
HGTV										

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Network	Daypart	Program	Start Date	End Date	Unit Dur	Avg Units/Wk	Active Weeks	Rate	Total Units	Cost
	M-Su 5a-4p	HGTV			30	0	2	\$15.30	2	\$30.60
	M-Su 4p-12m	HGTV			30	4	13	\$40.38	52	\$2,099.76
MNBC										
	M-Su 5a-4p	MSNBC News			30	8	13	\$4.25	104	\$442.00
	M-Su 4p-12m	MSNBC News			30	8	13	\$18.28	104	\$1,901.12
TBSC										
	M-Su 5a-4p	TBS			30	7	13	\$7.65	91	\$696.15
TLC										
	M-Su 5a-4p	TLC			30	8	13	\$4.25	104	\$442.00
TNT										
	M-Su 5a-4p	TNT			30	8	13	\$10.63	104	\$1,105.52
	M-Su 4p-12m	TNT			30	4	13	\$70.98	52	\$3,690.96

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Network	Daypart	Program	Start Date	End Date	Unit Dur	Avg Units/Wk	Active Weeks	Rate	Total Units	Cost
TNT WE KNOW DRAMA										
TOON										
	M-Su 5a-4p	Cartoon Network			30	8	13	\$5.53	104	\$575.12
	M-Su 4p-12m	Cartoon Network/Adult Swim			30	5	13	\$12.75	65	\$828.75
USA										
	M-Su 5a-4p	USA			30	7	13	\$13.18	91	\$1,199.38
VH1										
	M-Su 5a-4p	VH1			30	0	2	\$1.70	2	\$3.40
	M-Su 4p-12m	VH1			30	6	13	\$7.23	78	\$563.94
Totals									1,434	\$22,690.79

4185, Marin CA U-verse; 4188, Napa CA U-verse; 4200, Vallejo CA U-verse; 1789, Marin Zone; 5268, Napa Zone; 5546, Vallejo Zone
CMDY

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Network	Daypart	Program	Start Date	End Date	Unit Dur	Avg Units/Wk	Active Weeks	Rate	Total Units	Cost
	W 10p-11p	"South Park" premiere	8/23/17	8/23/17	30	0	1	\$49.30	1	\$49.30
DISC										
	Tu 9p-10p	"Deadliest Catch" finale	8/29/17	8/29/17	30	0	1	\$58.22	1	\$58.22
FOOD										
	Th 9p-10p	"Beat Bobby Flay"			30	1	13	\$69.00	13	\$897.00
	F 9p-10p	"Diners Drive Ins and Dives"			30	1	13	\$69.00	13	\$897.00
	Su 9p-10p	"Food Network Star" finale	8/13/17	8/13/17	30	0	1	\$69.28	1	\$69.28
HGTV										
	Tu 9p-10p	"House Hunters" premiere	7/31/17	7/31/17	30	0	1	\$89.70	1	\$89.70
	W 9p-10p	"Property Brothers"			30	1	7	\$89.70	7	\$627.90
LIF										
	Th 8p-9p	"Project Runway" premiere	8/17/17	8/17/17	30	0	1	\$48.90	1	\$48.90
	Th 9p-10p	"Married at first sight" finale	8/10/17	8/10/17	30	0	1	\$48.90	1	\$48.90
	Tu 9p-10p	"Dance Moms" premiere	8/1/17	8/1/17	30	0	1	\$48.90	1	\$48.90

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Network	Daypart	Program	Start Date	End Date	Unit Dur	Avg Units/Wk	Active Weeks	Rate	Total Units	Cost
Lifetime										
OWN										
	Tu 9p-10p	"The Haves and the Have Nots" finale	9/8/17	9/8/17	30	0	1	\$8.08	1	\$8.08
TLC										
	W 9p-10p	"I am Jazz" finale	8/16/17	8/16/17	30	0	1	\$42.50	1	\$42.50
	Sa 10p-11p	"Hair Goddess" finale	8/12/17	8/12/17	30	0	1	\$42.50	1	\$42.50
	Tu 10p-11p	"Rattled" finale	9/12/17	9/12/17	30	0	1	\$42.50	1	\$42.50
USA										
	W 9p-10p	"Suits" finale	9/13/17	9/13/17	30	0	1	\$74.00	1	\$74.00
	Th 10p-11p	"Queen of the South" finale	8/31/17	8/31/17	30	0	1	\$74.00	1	\$74.00
VH1										
	M 9p-10p	"Basketball Wives" finale	8/14/17	8/14/17	30	0	1	\$16.15	1	\$16.15

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Network	Daypart	Program	Start Date	End Date	Unit Dur	Avg Units/Wk	Active Weeks	Rate	Total Units	Cost
										
Totals									47	\$3,134.83
8525, San Francisco Interactive (SFIN)										
PDTV										
										
	M-Su 6a-12m	"On Demand" in stream ads			30	33	13	\$34.00	429	\$14,586.00
Totals									429	\$14,586.00
Grand Totals									1,947	\$50,087.62

Broadcast Month Costs - Grand Total

Month	Gross Cost	Total Units
08/2017	\$14,357	601
09/2017	\$15,291	598
10/2017	\$20,440	748
Total	\$50,088	1947

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Advertiser Terms and Conditions

The following are the terms and conditions (the "Terms and Conditions") on which Comcast Spotlight, LP ("Comcast") or Comcast Affiliates (defined below) will distribute advertisements ("Ad(s)") via linear spot cable ("Spot Cable") which may include interactive overlays or functionality, video on demand ("VOD"), and/or websites that Comcast or Comcast Affiliates own, operate, host, or distribute ads on ("Covered Sites") pursuant to one or more insertion orders (each, an "IO") that the parties may negotiate from time-to-time. As used herein, the term "Contract" shall mean these Terms and Conditions, together with any IO, and "Comcast Affiliates" shall mean any entity that directly or indirectly controls, is controlled by, or is under common control with Comcast, excluding NBCUniversal Media, LLC.

1. INSERTION ORDER(S)

(a) Each IO shall specify the (i) name of the organization/company/person on whose behalf Ads are being purchased (the "Advertiser"), (ii) in the event the person or entity signing the IO is an advertising agency or other representative for the Advertiser (the "Ad Representative"), the relationship between the Advertiser and such Ad Representative; (iii) the types and quantity of inventory being purchased or delivered; (iv) rates; (v) campaign start date(s) and end date(s); and (vi) networks of distribution platforms on which the Ads will appear. (b) An IO will be deemed binding only upon (i) signature by both parties or (ii) in the case of an IO signed only by Advertiser, the display of the first Ad by Comcast (unless otherwise specified in the IO).

2. BILLING AND PAYMENTS

(a) Comcast will bill Advertiser monthly, using the standard broadcast month, subject to Section 4. (b) Invoices shall contain information with regard to the product type, quantity, length, rate, network and any additional identification, including codes provided by Advertiser and reasonably acceptable to Comcast. Additional charges other than for distribution of Ads may be itemized on a separate invoice. (c) Payment shall be made in advance of the distribution date, unless credit arrangements acceptable to Comcast have previously been made in writing, in which event payment shall be made no later than 30 days after Advertiser's receipt of invoice. (d) Upon Advertiser's request, affidavits for Spot Cable shall state dates and times taken from the official log maintained by Comcast. Such excerpts from the official log shall be the affidavits of performance and the definitive proof of performance. (e) Advertiser agrees to pay all amounts payable under this Contract. Amounts not timely paid as required by this Contract shall be considered delinquent and shall bear interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) until paid in full. In the event Advertiser fails to make such payments, Advertiser and/or Ad Representative, will be jointly and severally liable for all amounts owed and reasonable expenses (including legal fees and other costs) incurred by Comcast in collecting such amounts.

3. REJECTION AND TERMINATION

(a) Comcast reserves the right to reject, cancel, or suspend any Ad or IO at any time, for any reason whatsoever. Comcast reserves the right to immediately cancel this Contract at any time upon notice, whether oral or in writing, (i) upon default by Advertiser in the payment of invoices, (ii) for any other material breach of the terms hereof, (iii) if Comcast determines that Ad(s) or Ad Materials fail to meet Comcast, network, or carrier content guidelines, (iv) if Ad(s) or Ad Materials violate any domestic and international federal, state or local law, rule or regulation ("Laws") or (v) if Ad(s) or Ad Materials contain material that violates the rights of a third party. Upon cancellation, all charges for the distribution of Ads completed hereunder and not paid shall become immediately due and payable. (b) Advertiser may cancel the distribution of Spot Cable Ads of 60 seconds' or less duration upon 14 days' prior written notice to Comcast, effective no earlier than 14 days after the commencement of distribution of Ads under this Contract. Advertiser may cancel the distribution of Spot Cable Ads of more than 60 seconds' duration upon 28 days' prior written notice to Comcast, effective no earlier than 28 days after the first date of distribution under this Contract. Advertiser may cancel the distribution of Ads on VOD, iGuide, or an interactive platform upon 14 days' prior written notice to Comcast, effective no earlier than 14 days after the commencement of distribution under this Contract. Advertiser may cancel the distribution of Ads on Covered Sites if Comcast is in material breach of its obligations hereunder and fails to cure such breach within 10 days of Advertiser's written notice, except as otherwise stated in this Contract with regard to specific breaches. This paragraph notwithstanding, Advertiser may not cancel an IO that is accepted on a non-cancellable basis. (c) If Advertiser cancels this Contract or an IO, or if Comcast cancels this Contract or an IO for cause due to a breach by Advertiser, all discounts shall be void and rates on the then-current rate card will apply to any Ads distributed after the notice date of such termination through the effective date of cancellation. If Comcast cancels this Contract other than for cause due to a breach by Advertiser, Advertiser shall have the benefit of the same discounts that it would have earned had it been allowed to complete this Contract. (d) If Advertiser cancels any special promotion, contest, sponsorship, sweepstakes or other service provided to Advertiser by Comcast or Comcast Affiliates, at Comcast's sole discretion, any related discounts for Ads shall be void and rates on the current rate card shall apply to all Ads distributed after the notice date of such termination through the effective date of cancellation.

4. AD MATERIALS

(a) Unless otherwise noted on the IO, Advertiser shall provide all materials for Ads, including without limitation artwork, copy, active URLs, and scheduling instructions ("Ad Materials") to Comcast in compliance with generally accepted standards of good practice and in accordance with specifications required by Comcast. Comcast reserves the right to reject, edit, digitize, cut, edit, alter, reformat, reclassify, modify, and/or compress the Ad Materials and to transmit such Ad Materials in their edited, digitized modified, altered, or compressed form for distribution. Advertiser acknowledges that non-center-cut safe HD Ads may lose information displayed in the edges of a Ad. Advertiser shall pay all expenses incurred in connection with the delivery of Ad Materials to Comcast, and with the return to Advertiser, if such return is directed on the IO or is otherwise requested by Advertiser. If Advertiser fails to deliver Ad Materials to Comcast by the respective deadline set by the relevant Comcast market, Comcast will use reasonable efforts to distribute Ads despite late delivery, but shall not be liable for the failure to distribute Ads. Notwithstanding the foregoing, if Advertiser delivers Ad Materials late, Comcast may bill Advertiser for the media purchased pursuant to the IO. (b) Notwithstanding anything in this Contract to the contrary, Ad Materials provided by Advertiser are subject to Comcast approval and network/carrier restrictions and guidelines, including standards and practices and consumer protection statutes. Comcast retains a continuing right to reject or withdraw Ad Materials submitted by Advertiser, including but not limited to, the right to reject or withdraw for unsatisfactory technical quality, objectionable or unlawful content, incorrect price or other incorrect or inaccurate information, or in the case of interactive platform Ads, for unlawful collection or use of personally identifiable information ("PII" as defined below) as determined by Comcast in its sole discretion. If any Ad or Ad Materials are deemed unsatisfactory hereunder, Comcast shall notify Advertiser, and unless Advertiser furnishes satisfactory material in a sufficient amount of time in advance of distribution as determined by Comcast, Comcast may bill Advertiser for the time reserved on the IO. (c) **Regarding Covered Sites**, if a third party Ad Server is specifically identified in an IO, Advertiser may serve Ads through such third party ad serving system, it being agreed and acknowledged that the traffic and impressions reporting provided by Comcast shall control with respect to Comcast's obligations under this Agreement. Comcast may discontinue display of Ads if the total number of impressions for such specified display period is reached prior to the end of the scheduled display stop date. A campaign is considered fully delivered if at least 95% of the impressions were run. If there is a shortfall in delivery of impressions of more than 5% at the end of any specified period, Comcast will provide, as Advertiser's sole remedy, "make good" impressions through comparable placements, to be delivered no later than 60 days following the applicable scheduled display stop date. (d) Advertiser acknowledges that other content, tools or information provided by Comcast or third parties may appear on the screen over the Ad or Ad Materials, including, without limitation, (i) navigational content appearing during processes such as program selection, ordering and playback, (ii) Emergency Alert System information that the Systems are obligated by law to display, and (iii) any content, tools or information that a publisher or viewer could cause to be displayed on the television screen through interactive media or otherwise. Comcast and Comcast Affiliates may copy and store the Ad during the distribution thereof as Comcast deems appropriate to optimize the performance of Comcast content distribution on the Systems.

5. RATES AND CHARGES

(a) Comcast reserves the right to increase its rates at any time. (b) Advertiser may contract for distribution of Ads of various lengths subject to Comcast's rate card and only with prior Comcast approval. (c) Spot Cable Ads contracted for distribution on an interconnect basis will be billed after such Ads have been distributed to 90% of the subscribers within the applicable interconnect capable of receiving the applicable schedule in standard definition. Ads distributed on other platforms will be billed no later than the end of the month following the month in which such distribution occurs, regardless of whether or not the applicable campaign has completed. To the extent that incremental costs become due with respect to text message Ads sold at a flat or package rate (prepaid), such incremental charges will be billed during the month in which such costs are due. (d) Advertiser will pay all non-recoverable out-of-pocket costs expenses incurred in connection with any Ads, promotion, contest, sweepstakes or other service provided to Advertiser by Comcast or Comcast Affiliates. (e) Comcast may invoice Ads distributed on interactive platforms based on performance data ("Performance Data") provided by a third party, as specified in the IO. Comcast specifically disclaims and makes no representations or warranties of any kind, express or implied regarding the Performance Data.

6. FORCE MAJEURE

(a) If Comcast fails to distribute Cable Spot or VOD Ad(s) as specified on an IO, due to public emergency or necessity, force majeure, restrictions imposed by law, acts of God, labor disputes, mechanical or electronic breakdowns, or any reason other than Advertiser's failure to deliver Ad Materials by respective deadline ("Force Majeure Event"), Comcast shall, in its sole discretion, offer Advertiser (i) comparable commercial announcement time on a substitute basis, or (ii) a reduction in the time charges equal to the amount of money proportionally assignable to such Ads not distributed. (b) If Comcast fails to distribute Ads on Covered Sites as specified on an IO, due a Force Majeure Event, Comcast shall, in its sole discretion, offer Advertiser a pro rata reduction in the space, time and/or program charges hereunder in the amount of money assigned to the space, time and/or program charges at time of purchase.

7. INTERACTIVE PLATFORMS

In connection with customers and potential customers obtained by means of Ads on interactive platforms, Advertiser will (a) use the contact information provided by Comcast's customers solely for the purposes of providing such customers with communications they have specifically opted-in to receive, provided, that when a customer is given the option to opt-in, Advertiser shall (i) clearly inform the customer regarding the uses to which such contact information shall be made and (ii) make reasonably available to such customer the privacy policies to which such information shall be subject; (b) not disclose, sell or share any personally-identifiable customer information to any third party; (c) be solely responsible to respond to all customer inquiries promptly and efficiently; (d) comply at all times with Comcast and Advertiser's customer contact guidelines, if any; (e) ensure that any customer who requests a "do not call" "do not email" or equivalent listing is immediately removed from all call or email lists and follow-ups; (f) cease all contact with any customer immediately upon request from such customer or Comcast; (g) transmit all contact data securely and keep all contact data in a secure environment and otherwise be respectful and protective of customer privacy in all respects; (h) not contact customers utilizing an autodialer or similar technology or a prerecorded message, (i) make any required disclosures of costs that may be incurred by customers who receive text messages or calls to mobile phones, and (j) comply with all other applicable carrier, network and Comcast guidelines. In addition, communications made by Advertiser to Comcast's customers in accordance herewith (A) shall only promote the products and services of Advertiser that customer has expressly requested to be sent such communications and (B) shall not include any advertisement, sponsorship or promotion of or by any party other than Advertiser. Further, any communications between Advertiser and customers or potential customers are subject to the reasonable approval of Comcast. Nothing in the foregoing shall prevent Advertiser from creating lists of, or to market to customers who have independently contacted Advertiser regardless of whether they had previously used any of Comcast's interactive platforms. Advertiser also understand and agrees that Comcast shall have the right to use the number of impressions, interactions, and other information gathered under an IO on an aggregated an anonymous basis (i.e. that does not identify Advertiser.)

8. INDEMNIFICATION

(a) Advertiser shall indemnify, defend and hold Comcast and Comcast Affiliates harmless from and against any and all claims, suits, actions, damages, liabilities, judgments, losses, assessments, interest charges, penalties, costs and expenses (including, attorney's fees and disbursements) arising out of or relating to (i) the creation or production of Ads provided and/or authorized by Advertiser; (ii) the distribution of the Ads and the products and services they advertise, (iii) the Ad Materials provided by Advertiser, and (iv) any breach by Advertiser of this Contract or any of Advertiser's representations or warranties hereunder. Where Ad Representative contracts for Ads on behalf of Advertiser, Advertiser and Ad Representative shall be jointly and severally liable for all indemnification obligations in favor of Comcast. The foregoing representations, warranties and indemnities shall survive the completion, cancellation, or termination of this Contract. (b) Notwithstanding anything in this Contract to the contrary, the sole remedies available to Advertiser for a breach of this Contract, for any claims arising out of the negotiation or performance of this Contract or out of the distribution of the Ads provided by Advertiser shall be (i) substitute distribution of Ads or program material; or (ii) a refund of amounts paid by Advertiser for the unfulfilled portion of this Contract, in the sole discretion

of Comcast.

IN NO EVENT SHALL COMCAST OR COMCAST AFFILIATES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR OTHER DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, GOOD WILL, OR OTHER PECUNIARY LOSS) ARISING OUT OF THIS CONTRACT OR BE SUBJECT TO EQUITABLE REMEDIES OR INJUNCTIVE RELIEF.

9. WARRANTIES

(a) Advertiser represents and warrants that (i) Advertiser has the right to enter into this Contract or Ad Representative has the power and all authorizations necessary to conclude this Contract for and on behalf of the Advertiser; (ii) Advertiser has all necessary licenses and clearances to use the content contained in Ads and Ads do not violate any federal or state law, statute, or regulation; (iii) Ads are not defamatory, libelous, pornographic, obscene or otherwise unlawful; (iv) Advertiser has the sole right, title, and interest, or that Advertiser has written permission, to make use of the name, logos and trademarks of the entity under which Advertiser advertises and does business; (v) Advertiser has a reasonable basis for all claims made within the Ads, possesses appropriate documentation to substantiate such claims and shall fulfill all commitments made in its campaigns, and that all product information it provides is truthful, accurate, and complete, and is not misleading in any way; (vi) any (A) data provided by Advertiser, Ad Representative or their respective service providers has been collected in accordance with all Laws, and the use of such data by Comcast will not violate any Laws or the rights of any third parties. and (B) the collection or use of data arising from the advertisement is done in compliance with Advertiser's privacy policy, applicable Law and any applicable industry self-regulatory principles or rules that may be applicable to Advertiser; (vii) all Ads comply applicable network, carrier and Comcast guidelines; (viii) Advertiser shall not use Comcast's short code or keywords except as permitted by Comcast in connection with the applicable IO; (ix) all Ads are free of viruses, bombs, bots and other computer routines that may damage or expropriate any Comcast data or system; (x) neither Advertiser nor Ad Representative shall use or retain any data collected through the Covered Sites or interactive platforms or otherwise received from Comcast except as necessary for delivery (for clarification, the foregoing precludes, among other things, Advertiser from re-targeting or remarketing covered site users on other websites); (xi) Advertiser shall not use the Ads to place any Flash local shared objects or other types of client-side storage on the computer of a covered site user, except for HTTP cookies, and (xii) Advertiser shall comply with all Laws in connection with its receipt and use of Comcast information and exercise of its rights under this Contract. (b) Comcast and Comcast Affiliates hereby disclaim any and all warranties, including, without limitation, any warranties of merchantability, fitness for a particular purpose, or other warranties arising by usage of trade, course of dealings, or course of performance. Without limiting the foregoing, Comcast specifically disclaims any warranties relating to the effectiveness of any Ads distributed pursuant to this Contract and do not guarantee any financial benefits to Advertiser by virtue of distributing Advertiser's Ads, and all reports and data provided by Comcast hereunder or pursuant to any IO are provided 'as-is' without any warranties or representations of any kind. Comcast does not warrant or guarantee customer response rates or the ability to convert responses into sales. Comcast does not warrant or guarantee the profile or demographics of a respondent.

10. CONFIDENTIAL INFORMATION

Comcast and Advertiser each agree to take commercially reasonable steps to protect all "Confidential or Proprietary Information" provided by one party to the other or obtained in the performance of this Contract, and not to publish or disclose the other party's Confidential or Proprietary Information to any third party without the other's written permission. Advertiser will identify its Confidential or Proprietary Information in writing to Comcast within 14 days of disclosure. Comcast's Confidential or Proprietary Information shall include all information that Advertiser should reasonably understand because of legends or other markings, the circumstances of disclosure, or the information itself, to be proprietary and confidential to the disclosing party regardless of whether such information is marked "Confidential." Comcast and Advertiser both agree to use the Confidential and Proprietary Information solely for the purposes of performance under this Contract and shall confine the knowledge of such Confidential or Proprietary Information only to its employees, agencies and other representatives requiring such knowledge and use in the ordinary course and scope of their jobs. However, the receiving party may use or disclose information that is or becomes publicly available through no act of the receiving party, is already lawfully in its possession, is required to be disclosed by law, is independently developed by it, or is lawfully obtained from third parties. Advertiser shall not issue any press releases relating to this Contract. Comcast's rates, personally identifiable information ("PII") of Comcast's subscribers and all VOD enabled subscriber numbers or amounts, and all response rates and other patterns of customer behavior associated with interactive Ads constitute "Confidential or Proprietary Information" pursuant to this paragraph. To the extent Advertiser receives PII from or about Comcast's subscribers, respondents to interactive functionality in Ads, VOD users or the numbers of VOD enabled subscribers through the performance of its obligations under this Contract, Advertiser will use such information solely for purposes of responding to or fulfilling

the specific customer-initiated transaction (i.e., customer request for information) through which such information was obtained. As between Comcast and the Advertiser, all PII and VOD enabled subscriber numbers, any data (including that data contained in any reports provided by Comcast) and used pursuant to an IO, or gathered or collected during delivery of an Ad that identifies or allows identification of any subscriber, or any content, context, or users of the foregoing, and any information entered or provided by users of any Covered Sites or subscribers are and shall remain the exclusive property of Comcast (and be deemed its Confidential or Proprietary Information) and Advertiser shall not acquire any right, title or interest therein. Advertiser shall not retain, use, or disclose such PII, VOD enabled subscriber numbers, data or other Confidential or Proprietary Information for any other purpose unless it receives the customer's separate prior written or electronic consent to do so. Advertiser agrees to display its privacy policy in a readily accessible and conspicuous location and to take reasonable steps to enable customers to access Advertiser's privacy policy. Advertiser agrees to comply with all applicable privacy laws.

11. General; Disclaimers

(a) Comcast's obligations hereunder are subject to all Laws and applicable network and carrier guidelines, now enforced or hereafter enacted. (b) This Contract, including the rights under it, may not be resold, assigned or transferred by Advertiser without first obtaining the written consent of Comcast; nor may Comcast be required to distribute the Ads hereunder for the benefit of any advertiser other than the party named on the IO. Any resale, assignment or transfer prohibited hereunder shall be null and void. Failure of Comcast or Advertiser to enforce any of the provisions herein shall not be construed as a general relinquishment or waiver as to that or any other provision. (c) Comcast shall exercise normal precautions in handling property and mail, but assumes no liability for loss or damage to Ad Materials and other property furnished by Advertiser or Ad Representative hereunder. Comcast will not accept or process mail, correspondence, or telephone calls in connection with distribution of Ads hereunder, except as expressly provided under any fulfillment services contract or attachment signed by the parties. (d) All production materials provided by Comcast and used in program and Ads are and remain the exclusive property of Comcast unless specifically noted on the IO or in a contract for production services between Comcast and Advertiser. (e) Comcast shall only recognize agency commissions that conform to industry standards and practices, and shall have no obligation to pay such commissions. (f) Audience estimates provided are prorated market-level impressions, adjusted based on each network's ad-insertable households by Syscode. Syscode level Ad-Insertable Universe Estimates (AIUEs) for each network are based on quarterly Nielsen Universe Estimates, and adjusted by the percentage of total system subscribers capable of receiving advertisements. In cases where Nielsen does not provide Universe Estimates for the ad-delivery mechanism of a Multichannel Video Programming Distributor (MVPD), publicly disclosed subscriber counts will be used. In situations where High Definition and Standard Definition programming are simulcast, no further audience adjustments are made should simultaneous HD/SD ad-insertion be unavailable for a network on a given Syscode. The information provided will be periodically updated by Comcast. For more information please contact your Advertising Sales Executive. (g) Any ratings and impressions estimates provided by Comcast are based on data provided by a third party and are for informational purposes only. Comcast specifically disclaims and makes no representations and warranties of any kind, expressed or implied regarding ratings and impressions estimates. Comcast's spot and clearance information provided during a broadcast month is preliminary, and may vary from final affidavits. Advertiser will be billed and will be required to pay for Ads based on final affidavits. (h) This Contract contains the entire agreement between the parties relating to the subject matter hereof, and no change or modification of any of its provisions shall be effective unless made in writing and signed by both parties, except that no change(s) or modification(s) can be made in any IO or advertising schedule under any circumstances. Advertiser acknowledges and agrees that any entity that distributes an Ad sold by Comcast hereunder shall be a third party beneficiary of this Contract and entitled to enforce rights granted to Comcast hereunder directly against Advertiser. (i) This Contract shall be interpreted, governed and construed in accordance with the laws of the State of New York without regard to its principles governing conflicts of law. All disputes, controversies or claims that relate in any way to this Contract, except collection proceedings brought by Comcast or a collection agency designated by Comcast related to fees owed by Advertiser to Comcast, will be resolved by arbitration in Philadelphia, PA, in accordance with the Commercial Arbitration Rules of this American Arbitration Association. The award by the arbitrators shall be final, and may be enforced in any court having jurisdiction. Further, no action, regardless of form, arising out of or relating to the transactions under this Contract, may be brought by Advertiser more than 120 days after the occurrence giving rise to such action. (j) Nothing in this Contract shall constitute a partnership or joint venture between the parties or constitute either Advertiser or Comcast as agent of the other for any purpose whatever. (k) If any provision of this Agreement is amended, invalid, illegal or unenforceable in any jurisdiction, such provision the remainder of this Agreement shall remain in full force and effect. (l) Advertiser agrees that Comcast may identify it as an advertiser of Comcast in client lists and other marketing materials.

Accepted and Agreed

Advertiser: _____

Name: _____

Title: _____

Authorized Acceptance: _____

Date: _____

ADDENDUM
ADVERTISER'S ADDITIONAL TERMS AND CONDITIONS

Notwithstanding any other Terms and Conditions of the Contract between Comcast and Advertiser (MCE, a Joint Powers Authority organized in the State of California) for distribution of advertisements, the following shall apply:

1. 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.

2. DISCLOSURE OF PUBLIC RECORDS AND DOCUMENTS

If disclosure of this Contract or parts thereof is required by law, statute, rule, or regulation (including any subpoena or other similar form of process), or by professional standards, the party to which the request for disclosure is made shall (other than in connection with government audits, investigations, or supervisory examinations by regulatory authorities with jurisdiction and without breaching any legal or regulatory requirement) provide the other party with prior prompt written notice (to the extent permissible by law) thereof and, if practicable under the circumstances, allow the other party to seek a restraining order or other appropriate relief.

Acknowledgment of Contract Addendum by Comcast Authorized Representative:

Name: _____

Title: _____

Signature: _____ Date: _____

\$25,000,000

**THIRD AMENDMENT TO
CREDIT AGREEMENT**

Dated as of July 20, 2017

by and between

**MARIN CLEAN ENERGY,
as Borrower**

and

**RIVER CITY BANK,
as Lender**

(redacted)

This Third Amendment to Credit Agreement (this “Third Amendment”) is entered into as of **July 20, 2017**, by and between **MARIN CLEAN ENERGY**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (“Borrower”), and **RIVER CITY BANK**, a California corporation (“Lender”).

W I T N E S S E T H:

WHEREAS, Lender and Borrower have entered into a revolving credit facility as set forth in a Revolving Credit Agreement dated as of August 21, 2015, as amended as of March 17, 2016 and May 19, 2016 (collectively, the “Credit Agreement”) for issuance of Letters of Credit and Cash Advances thereunder. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Credit Agreement.

WHEREAS, pursuant to the Second Amendment to Credit Agreement dated May 19, 2016, the Non-Revolving Credit was changed to a Revolving Credit and the Revolving Credit Commitment was increased from \$15,000,000.00 to \$20,000,000.00, among other changes;

WHEREAS, Borrower has requested:

- (1) an additional increase in the maximum Revolving Credit Commitment from \$20,000,000.00 to \$25,000,000.00,
- (2) a reduction in the interest rate margin and floor from xxx% to xxx%,
- (3) an extension of the Termination Date from August 31, 2017 to August 31, 2019,
- (4) a reduction in the fees charged for the issuance of Letters of Credit,
- (5) expansion of the purpose of the Cash Advance funds to include working capital,
- (6) removal of the Event of Default resulting from a material adverse change,
- (7) a modification of certain Covenants, and
- (8) an agreement between Borrower and Lender for Lender to obtain an Umbrella Letter of Credit as defined in Section 12.

WHEREAS, in consideration for these changes Borrower has offered to

- (1) increase the minimum balance in the Debt Service Reserve Account from \$xxx to \$xxx, and
- (2) modify certain conditions regarding the conversion of Letter of Credit Notes and Cash Advance Notes to Term Loans;

WHEREAS, Lender agrees to such requests under the terms and conditions provided herein.

NOW, THEREFORE, in consideration of the mutual benefits to the parties hereto and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. Commitment

The maximum amount available for Advances under the Credit Agreement is hereby increased from \$20,000,000.00 to \$25,000,000.00, as provided in the definition of “Revolving Credit Commitment”.

II. Term Extension

(1) The term of the Credit Agreement is hereby extended through August 31, 2019.

(2) The definition of “Termination Date” is hereby restated to read as follows:
“Termination Date means August 31, 2019.”

III. Revolving Credit

Section 2.1 is hereby restated to read in full as follows:

“Section 2.1. Revolving Credit. Subject to the terms and conditions hereof, Lender agrees to make a revolving credit facility (the “Revolving Credit”) available to Borrower for the sole purposes of a) providing credit support for energy procurement contracts and b) to provide seasonal working capital as needed in an aggregate principal amount not to exceed, at any one time, the Revolving Credit Commitment at any time prior to the Revolving Credit Termination Date. The Revolving Credit will be disbursed in one or more advances (each, an “Advance” and, collectively, the “Advances”), provided that the conditions precedent to Advances specified in Section 8 are satisfied. Subject to the Revolving Credit Commitment and the other terms and conditions of this Agreement, Borrower may periodically request Advances; provided, however, that Lender will have no obligation to make Advances on or after the Termination Date, and Borrower may re-borrow under Advances as they are repaid.”

IV. Advances

Section 2.2 is hereby restated to read in full as follows:

Advances. Advances under this Agreement may be requested in writing by Borrower or any Authorized Representative appointed by Borrower. Borrower agrees that Lender may rely upon any written notice given by any person Lender in good faith believes is an Authorized Representative without the necessity of independent investigation. Provided no Default or Event of Default has occurred or is occurring and that there is sufficient availability under the Revolving Credit Commitment, Lender shall remit such amounts to Borrower within one (1) Business Day following such request. Any request delivered by Borrower on a day that is not a Business Day, shall be deemed received by Lender on the next succeeding Business Day.

V. Revolving Credit Note

(1) Section 2.3(b), entitled “Cash Advance Notes” is amended to read in full as follows:

“(b) Revolving Credit Notes. Borrower may request Advances under the Revolving Credit in writing substantially in the form of **Exhibit G** (each a

“Revolving Credit Advance”). Each Revolving Credit Advance shall be deposited into a deposit account of Borrower maintained with Lender. The Revolving Credit Note will (i) be due and payable in full on the Revolving Credit Termination Date, and (ii) bear interest, payable monthly as provided in Section 3. Subject to the terms and conditions of this Agreement, if approved by Lender in writing, and provided no Event of Default has occurred, Borrower will have the option to convert the indebtedness evidenced by the Revolving Credit Note into a Term Loan as provided in Section 5.

- (2) The form of Cash Advance Note provided as “Exhibit C Cash Advance Note” to the Credit Agreement is superseded by “Exhibit C Revolving Credit Note” attached hereto.
- (3) The form of a request for a Cash Advance Note provided as “Exhibit G Request for Cash Advance Under Non-Revolving Credit Agreement dated August 21, 2015” is superseded by “Exhibit G Request for Revolving Credit Advance” attached hereto.
- (4) The definition of “Revolving Credit Commitment” is hereby restated as follows: “Revolving Credit Commitment” means, at any time of determination, the amount equal to \$25,000,000.00 less (i) the aggregate face amount of each outstanding Letter of Credit and unpaid balance of each Letter of Credit Note, (ii) the aggregate outstanding principal amount of each Advance, and (iii) the aggregate principal amount of each Term Loan.

VI. Letter of Credit Fees

Section 4.7 (a) entitled “Issuance Fee”, is amended to read in full as follows:

“Upon issuance of any Letter of Credit, an amount equal to xxx% per annum of the face amount of any Union Letter of Credit or xxx% per annum for any RCB Letter of Credit (the “Issuance Fee”).

VII. Conversion of Advances to Term Loans

- (1) Section 5.2, entitled “Conversion of Letter of Credit Notes” is amended to add the following statement:

“The conversion of any Letter of Credit Note to a Term Loan must be approved by Lender in its sole discretion.”

- (2) Section 5.3, entitled “Conversion of Cash Advance Notes” is amended to change the title to “*Conversion of Revolving Credit Notes.*” Further Section 5.3 is amended to add the following statement:

“The conversion or modification of any Revolving Credit Advance to a Term Loan must be approved by Lender in its sole discretion.”

VIII. Debt Service Reserve Account

- (1) The minimum balance in the Debt Service Reserve Account is hereby increased from \$2,200,000.00 to \$2,500,000.00 (10% of the total Revolving Credit

Commitment amount) as evidenced by the Amended Assignment of Deposit Account Agreement.

- (2) The first sentence of Section 6.1 is hereby amended to read:
“As a condition to Lender’s obligation to make any Advances hereunder, Borrower will open and establish a restricted deposit account or certificate of deposit with Lender (the “Debt Service Reserve Account”) with a balance of not less than \$2,500,000.00 (10% of the total Revolving Credit Commitment amount) at any time.”
- (3) Subsection “(1)” within Section 6.2 is hereby amended to read:
“the balance of the Debt Service Reserve Account will not be less than \$2,500,000.00 (10% of the total Revolving Credit Commitment amount) after giving effect to such withdrawal,”

IX. Use of Proceeds

Section 7.4 of the Credit Agreement entitled “Use of Proceeds” is hereby restated to read in full as follows:

“Borrower will use the proceeds of the Advances solely (i) as permitted under this Credit Agreement and (ii) for purposes consistent with the purpose of Borrower as set forth in the Joint Powers Agreement, including for purposes consistent with the Community Choice Aggregation program pursuant to California Public Utilities Code Section 366.2.”

X. Applicable Rate

- (1) The definition of “Applicable Rate” is amended by decreasing xxx% to xxx% as follows:
“Applicable Rate” means a variable rate of interest equal to the One-Month LIBOR plus xxx percentage points per annum as adjusted for any maximum or minimum rate limitations as provided in the Loan Documents. The Applicable Rate is subject to increase as provided in Section 9.4.
- (2) The interest rate floor is reduced from xxx% to xxx%, provided at the end of the definition of “Applicable Rate” as follows:
“Under no circumstances will the Applicable Rate be less than xxx% unless prohibited by applicable law.”

XI. Covenants

- (1) Section 9.5, entitled “Fixed Charge Coverage Ratio”, is amended to change the frequency with which the Fixed Charge Coverage Ratio is measured from quarterly to annually, as follows:
“Borrower agrees to maintain a minimum Fixed Charge Coverage Ratio at all times greater than or equal to 1.25, measured **annually** as of Borrower’s fiscal year end. As used herein,

“Fixed Charge Coverage Ratio” is defined as EBIDAR divided by total required Debt Service plus rent expense.

“EBIDAR” is defined as Change in Net Position plus depreciation, amortization, interest expense, and rent expense.

“Change in Net Position” is defined as the difference between the Net Position as of the end of the measured period and the Net Position as of the end of the prior measured period.

“Net Position” is defined as total assets less total liabilities.

“Debt Service” is defined as interest expense for the calculated period plus current maturities of long term debt reported at the beginning of the calculated period (twelve months prior to the current period), plus current maturities of capital lease payments.”

- (2) Section 9.6, entitled “Total Liabilities to Tangible Adjusted Unrestricted Net Position”, is amended to change the frequency with which the Total Liabilities to Tangible Adjusted Unrestricted Net Position is measured from quarterly to annually, as follows:

“Borrower agrees to maintain a maximum Total Liabilities to Tangible Adjusted Unrestricted Net Position not at any time greater than 2.50:1.00, measured **annually**. As used herein,

“Total Liabilities to Tangible Adjusted Unrestricted Net Position” is defined as the total of current liabilities, non-current liabilities and Contingent Liabilities, then divided by Tangible Adjusted Unrestricted Net Position.

“Tangible Adjusted Unrestricted Net Position” is defined as total Adjusted Unrestricted Net Position less any intangible assets.

“Adjusted Unrestricted Net Position” is defined as total net assets (i.e. total assets less total liabilities) less temporarily and permanently restricted net assets as presented in Borrower’s financial statements, plus the Debt Service Reserve Account.

“Contingent Liabilities” is defined as a present obligation that arises from past events, but is not recognized because (i) it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation, or (ii) the amount of the obligation cannot be measured with sufficient reliability. Contingent Liabilities will include the outstanding Letters of Credit issued and will exclude power purchase contingencies and the available Revolving Credit Commitment.”

XII. Events of Default – Material Adverse Change

Subsection (f) within Section 10.1 that reads as provided below, is deleted without replacement:

“(f) a material adverse change occurs in Borrower’s financial condition, or Lender believes, in its reasonable discretion, the prospect of payment or performance of Borrower’s obligations under this Agreement is materially impaired;”.

XIII. Loan Fee

Borrower shall pay Lender, in immediately available funds, a Loan Fee in the amount of \$xxx.00 (xxx% of the total outstanding balances and commitment under the Revolving Credit) for each year of the Revolving Credit. A separate Loan Fee is due (i) concurrent with the execution of this Amendment, (ii) on the first anniversary date of this Amendment, and (iii) on each anniversary date of this Amendment thereafter.

XIV. Umbrella Letter of Credit

A new section, Section 12, is hereby added to the Credit Agreement as follows:

Section 12. Umbrella Letter of Credit. Borrower desires to seek an investment grade rating from an established rating agency. For purposes of the section, "Investment Grade Rating" is defined as minimum of Baa3 for Moody's Investment Services and BBB- from Standard & Poor's or Fitch. In connection with the Investment Grade Rating, Borrower has asked Lender to consider obtaining a letter of credit, in favor of Borrower, in the amount of the Revolving Credit Commitment exclusively to cover a scenario whereby Lender is insolvent and unable to fund an Advance under the Credit Agreement (the "Umbrella Letter of Credit" or "ULC"). The following Section 12.1 sets forth the requirements, terms, and conditions for the issuance of the Umbrella Letter of Credit as agreed by Lender and Borrower, which may be subject to change during the final documentation and issuance process.

Section 12.1 Umbrella Letter of Credit General Terms and Conditions

- A) Notification to Lender:* Borrower shall provide no less than 30 calendar days advance notice for the formal issuance of the Umbrella Letter of Credit and no Default or Event of Default has occurred or is continuing under the Credit Agreement;
- B) Applicant:* Lender;
- C) Beneficiary:* Borrower;
- D) ULC Issuing Bank:* MUFG Union Bank. N.A. ("Union Bank");
- E) ULC Face Amount:* The face amount of the Umbrella Letter of Credit will be \$25,000,000 with availability equal to the lesser of a) \$25,000,000 and b) the amount of the Revolving Credit Commitment less (i) any letter of credit issuance under the Credit Agreement by Union Bank as Issuing Bank (a "Union Bank Letter of Credit"), and (ii) less any outstanding Advances, Letters of Credit, and Letter of Credit Notes issued by Lender.
- F) Aggregate Bank Exposure:* The following requirements will be in full force and effect so long as the Credit Agreement and Umbrella Letter of Credit remain available to Borrower. At no time will Lender's exposure or obligation under both the Credit Agreement plus the Umbrella Letter of Credit, in total, exceed \$25,000,000 (the "RCB Commitment") and at no time is Borrower entitled to any amount of borrowed money,

whether through the Credit Agreement or through the Umbrella Letter of Credit in excess of \$25,000,000 (the “Aggregate Bank Exposure”).

F(i) Umbrella Letter of Credit and Union Bank Letters of Credit. The Umbrella Letter of Credit will not serve as a form of credit enhancement to Letters of Credit issued in accordance with Section 4 of the Credit Agreement, where Union Bank is the L/C Issuer. To this end, any request for the issuance of a Union Bank Letter of Credit, will be conditioned upon receipt of (i) a corresponding written authorization from Borrower to decrease the Umbrella Letter of Credit by an amount equal to the Union Bank Letter of Credit (substantially in the form of Exhibit H) and (ii) a standard form of signed letter of credit amendment as may be required by Union Bank. The availability under the Umbrella Letter of Credit will be reduced by the amount of all outstanding Letters of Credit issued by Union Bank (the “Union Bank Reductions”).

F(ii) Reductions to the Revolving Credit Commitment. Each of the following shall result in a reduction in the availability of the Revolving Credit Commitment:

- a) **Letter of Credit Issuances.** The issuance of any Letter of Credit, and unpaid balances under Letter of Credit Notes, including Union Bank Reductions, will constitute a reduction in the borrowing availability;
- b) **Advances.** Any Advance (including an LC Advance defined below) will constitute a reduction in the borrowing availability;
- c) **Draws under the Umbrella Letter of Credit:** In the event of a draw under the Umbrella Letter of Credit (an “LC Advance”), such draw amount shall result in an immediate Advance under the Revolving Credit Commitment and will constitute a reduction in the borrowing availability.

F(iii) Reductions to the Umbrella Letter of Credit. Each of the following shall result in a reduction in the availability of the Umbrella Letter of Credit.

- a) Union Bank Reductions;
- b) Outstanding Advances, Letters of Credit, and unpaid balances under any Letter of Credit Notes issued under the Credit Agreement;
- c) Outstanding Draws as provided in Section H.

F(iv) Mandatory Repayments. To the extent and at any time that Borrower exceeds the RCB Commitment or the Aggregate Bank Exposure, Borrower shall pay upon demand the amount of such over advance within five (5) calendar days of request by Lender.

G. Investment Grade Rating: The Umbrella Letter of Credit is not subject to issuance unless Borrower has duly qualified for an Investment Grade Rating by a rating agency satisfactory to

Lender, with the issuance of the Umbrella Letter of Credit as the final requirement of the rating agency.

H. Required Terms for Draw: Borrower, as Beneficiary under the Umbrella Letter of Credit and as Borrower under the Credit Agreement, expressly agrees that:

- a. At no time will Lender, as Applicant under the Umbrella Letter of Credit and as Lender under the Credit Agreement be subject to an obligation to fund or subject to credit exposure in excess of the RCB Commitment or the Aggregate Bank Exposure, which includes all outstanding Letters of Credit, whether issued by Union Bank or issued by Lender and any outstanding Advances.
- b. Any draw under the Umbrella Letter of Credit shall constitute an immediate Advance under the Credit Agreement.
- c. No draws are permitted under the Umbrella Letter of Credit if:
 - a. Borrower is in default under any term or condition of the Credit Agreement or any other agreement between Borrower and Lender;
 - b. The draw under the Umbrella Letter of Credit itself will put Borrower in default under the Credit Agreement;
 - c. Lender has satisfied its funding obligations under the Credit Agreement;
 - d. The amount so requested under the Umbrella Letter of Credit results in an Aggregate Bank Exposure in excess of \$25,000,000.
- d. Each draw request under the Umbrella Letter of Credit will state:
 - a. “ River City Bank has failed to meet a funding obligation dated [] in the amount of \$[XXX] under the Credit Agreement, b) Borrower represents and warrants that is in full compliance with all terms and conditions of the Credit Agreement, and c) the sum of (i) the outstanding principal balance of Advances under the Credit Agreement, plus (ii) the face amount of all outstanding Letters of Credit, and unpaid balances under any Letter of Credit Notes, plus (iii) the amount drawn hereunder, do not exceed \$25,000,000.00”

I. Expiration and Renewal. The Umbrella Letter of Credit shall constitute an “evergreen” letter of credit which will be available for approximately two consecutive years. There will be one automatic renewal at the end of 12 months and one final expiration date not to exceed the Termination Date of the Credit Agreement. The automatic renewal is subject to Lender’s ability to terminate the Umbrella Letter of Credit with notice to the ULC Issuing Bank no less than sixty (60) days prior to the end of the initial 12 month expiration date.

J. Umbrella Letter of Credit Fees. The annual issuance fee charged by the ULC Issuing Bank (currently 0.50% of the ULC Face Amount) will be paid 60% by Lender and 40% by Borrower. The fee will be immediately due and payable by MCE upon receipt of an invoice provided by Lender.

K. Obligations under the Credit Agreement. All obligations of Borrower, as Borrower under the Credit Agreement shall remain in full force and effect so long as the Umbrella Letter of Credit remains outstanding, including any Advances under the Umbrella Letter of Credit that remain unpaid by Borrower.

L. Safekeeping – Mandatory Repayment. Borrower as Beneficiary of the Umbrella Letter of Credit acknowledges and agrees to be liable for full repayment of any and all losses suffered by Lender or Applicant arising from (i) any draw or Advance which exceeds the Aggregate Bank Exposure and (ii) any unauthorized use of the Umbrella Letter of Credit, including fraudulent access, misrepresentations, cybercrime, and embezzlement resulting in unauthorized draws (“Unauthorized Advances”). Unauthorized Advances will result in an Event of Default under the Credit Agreement with all amounts immediately due and payable upon demand by Lender, or Lender as Applicant under the Umbrella Letter of Credit.

XV. Conditions Precedent to Effectiveness

The effectiveness of this Third Amendment is expressly conditioned upon the satisfaction of all of the following conditions:

(1) Documents.

Borrower shall have executed and Lender shall have received all of the following documents:

- (a) This Third Amendment with Exhibit C – Revolving Credit Note;
- (b) The Second Amendment to Assignment of Deposit Account of even date herewith; and
- (c) Invoice.

(2) Organizational Documents.

Lender shall have received, in form and substance satisfactory to Lender, copies of the organization documents of Borrower and copies of resolutions and such other documents evidencing the authorization of Borrower to enter into this Third Amendment and the authority of Borrower’s officers to execute this Third Amendment and any other documents related hereto, as Lender may reasonably request.

(3) Debt Service Reserve Account Deposit.

Borrower shall have deposited into the Debt Service Reserve Account in immediately available funds the sum sufficient to increase the balance therein to \$2,500,000.00.

(4) Loan and Processing Fees.

Lender shall have received in immediately available funds (a) the sum of \$xxx in payment of the Loan Fee (xxx% of the total outstanding balances and commitment under the Revolving Credit) and (b) the sum of \$xxx in payment of a documentation fee.

(5) Costs and Expenses.

Lender shall have received payment in immediately available funds all costs and expenses (including without limitation all attorney's fees) incurred by Lender in connection with the negotiation, documentation and closing of the transaction contemplated hereby. (Legal fee estimate as of 7/14/2017: \$3,000.00 – subject to change)

(6) Representations and Warranties.

All representations and warranties of Borrower contained herein shall be true and correct in all material respects, and no Default or Event of Default shall have occurred and be continuing.

XVI. Representations and Warranties

By signing this Third Amendment, Borrower hereby represents and warrants that (a) all representations and warranties in the Credit Agreement are true and correct in all material respects as of the date hereof, (b) Borrower is duly authorized to enter into this Third Amendment and (c) no Default or Event of Default has occurred or is continuing under the Credit Agreement or any other Loan Document.

XVII. Continuing Validity

Except as expressly changed in this Third Amendment, the terms of the original Credit Agreement remain unchanged and in full force and effect. Consent by Lender to this Third Amendment does not waive Lender's right to strict performance of the Credit Agreement as changed, nor obligate Lender to make any future change in terms. Nothing in this Third Amendment will constitute a satisfaction of the obligation(s) of Borrower under the Credit Agreement. It is the intention of Lender to retain as liable parties all makers and endorsers of the original Credit Agreement, including accommodation parties, unless a party is expressly released by Lender in writing. No maker or endorser, including accommodation makers, will be released by virtue of this Third Amendment. If any person who signed the original Credit Agreement does not sign this Third Amendment below, then all persons signing below acknowledge that this Third Amendment is given conditionally, based on the representation to Lender that the non-signing party consents to the changes and provisions of this Third Amendment or otherwise will not be released by it. This waiver applies not only to any initial extension, modification or release, but also to all such subsequent actions.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Third Amendment as of the first date written above.

MARIN CLEAN ENERGY

By: _____
Dawn Weisz
Chief Executive Officer

RIVER CITY BANK

By: _____

Name: _____

Its: _____

EXHIBIT C

REVOLVING CREDIT NOTE

\$25,000,000

July 20, 2017

FOR VALUE RECEIVED, **MARIN CLEAN ENERGY**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (“*Borrower*”), promises to pay to the order of **RIVER CITY BANK** (“*Lender*”), the lesser of the principal sum of TWENTY FIVE MILLION AND 00/100 DOLLARS (\$25,000,000.00), or the aggregate unpaid principal amount of all Advances made to Borrower by Lender, together with interest on the unpaid balance of such Advances, pursuant to the terms and conditions of that certain Non-Revolving Credit Agreement dated August 21, 2015, amended March 17, 2016, and subsequently amended into a Revolving Credit Agreement by amendment dated May 19, 2016 and of even date herewith, and as may be further amended modified or restated from time to time (collectively, the “*Revolving Credit Agreement*”). All payments of principal and interest on this Promissory Note (also referred to as a “*Revolving Credit Note*”) shall be made in the amounts and at the times specified in the Revolving Credit Agreement.

Availability. At all times, the maximum amount available for advances under the Revolving Credit Note shall equal the Revolving Credit Commitment minus the sum of a) all outstanding Advances, b) all L/C Borrowings, c) the balance of all outstanding and undrawn Letters of Credit and unpaid balance of each Letter of Credit Note, and d) the outstanding balance of all Term Loans (collectively, the “*Outstanding Indebtedness*”). In no event will the Outstanding Indebtedness exceed the Revolving Credit Commitment.

Payment Terms. Under the terms of the Revolving Credit Agreement, Borrower may request Advances under the Revolving Credit. Borrower agrees to pay monthly payments of interest only on the unpaid principal balance of this Note as of each Payment Date beginning on the latter of the first Payment Date after the date of an Advance, with all subsequent payments due on each Payment Date thereafter as provided in Section 3 of the Revolving Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration, or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration, or otherwise), whether before or after judgement, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on the Revolving Credit Termination Date. Under Section 5.3 of the Revolving Credit Agreement and subject to the conditions set forth herein, at any time before the Revolving Credit Termination Date, Borrower may request that any amounts due and payable hereunder be converted to a Term Loan evidenced by a Term Note. If such request is approved by Lender, in its sole discretion, Borrower shall sign a Term Note in an amount equal to the Advances converted to a Term Loan. This Promissory Note may be declared to be, or be and become, due prior to its expressed maturity, voluntary prepayments may be made hereon before its expressed maturity without premium, all in the events, on the terms and with the effects provided in the Revolving Credit Agreement.

Application of Payments. Unless otherwise agreed in writing or required by applicable law, payments will be applied first to any unpaid collection costs; then to any late charges; then to any accrued unpaid interest; and then to principal. Borrower will pay Lender at Lender's address provided in the Revolving Credit Agreement or at such other place as Lender may designate in writing.

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 10.1 of the Revolving Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. Lender is entitled to all of the rights provided in the Revolving Credit Agreement. This Promissory Note is issued by Borrower under the terms and provisions of the Revolving Credit Agreement. This Promissory Note and the holder hereof are entitled to all of the benefits provided for thereby or referred to therein, to which reference is hereby made for a statement thereof. In the event of a conflict or inconsistency between the terms of this Note and the Revolving Credit Agreement, the terms and provisions of the Revolving Credit Agreement shall control.

This Promissory Note may not be modified, amended, waived, extended, changed, discharged, or terminated, orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge, or termination is sought.

All capitalized terms used herein without definition have the same meanings herein as such terms are defined in the Revolving Credit Agreement.

This Promissory Note will be construed in accordance with, and governed by, the internal laws of the State of California. Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by the holder hereof in collecting this Promissory Note or enforcing any rights under the Revolving Credit Agreement. Borrower hereby waives presentment for payment and demand.

To the extent permitted by applicable law, Lender reserves a right of setoff in all of Borrower's accounts with Lender (whether checking, savings or some other account). This includes all accounts Borrower holds jointly with another person and all accounts Borrower may open in the future. However, this does not include any accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

If any part of this Promissory Note cannot be enforced, this fact will not affect the rest of the Promissory Note. Lender may delay or forego enforcing any of its rights or remedies under this Promissory Note without losing them. Borrower and any other person who signs, guarantees or endorses this Promissory Note, to the extent allowed by law, waive any applicable statute of

limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Promissory Note, and unless otherwise expressly stated in writing, no party who signs this Promissory Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the loan evidenced by this Promissory Note or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the loan without the consent of or notice to anyone other than the party with whom the modification is made.

Prior to signing this Promissory Note, Borrower read and understood all the provisions of this Promissory Note, including the variable interest rate provisions in the Revolving Credit Agreement. Borrower agrees to the terms of this Promissory Note. Borrower acknowledges receipt of a complete copy of this Promissory Note.

MARIN CLEAN ENERGY

By: _____

Dawn Weisz
Chief Executive Officer

**EXHIBIT G
REQUEST FOR REVOLVING CREDIT ADVANCE**

Marin Clean Energy (“Borrower”) hereby requests that River City Bank (“Lender”) fund a Revolving Credit Advance under that certain Non-Revolving Credit Agreement dated August 21, 2015, amended March 17, 2016, and subsequently amended into a Revolving Credit Agreement by amendment dated May 19, 2016, further amended July 20, 2017, and as may be further amended modified or restated from time to time (collectively, the “*Revolving Credit Agreement*”).

Date of Request:	
Purpose:	
Amount:	
Date of Proposed Advance:	
Interest and Term:	___ Interest only with full repayment due on the Termination Date; or ___ Term Note with Advance payable over 60 months
Account Number for Disbursement:	

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the Proposed Advance:

- (A) The representations and warranties of Borrower set forth in the Revolving Credit Agreement and in the Loan Documents are and will be true and correct in all material respects, on and as of the date of the Proposed Advance, and
- (B) At the time and immediately after giving effect to the Proposed Advance, no Default or Event of Default has occurred or is continuing.

Borrower has caused this Request for Revolving Credit Advance to be executed and delivered by its duly authorized officer as of the date first written above.

X _____

By: _____

Its: _____

EXHIBIT H

REQUEST AND AUTHORIZATION TO REDUCE AMOUNT OF LETTER OF CREDIT
(TO BE WRITTEN ON MCE LETTER HEAD, ORIGINALLY SIGNED AND DELIVERED VIA
OVERNIGHT DELIVERY WITH SIGNATURE RECEIPT REQUIRED)

[MCE LETTER HEAD]

DATE:

VIA OVERNIGHT MAIL

TO: MUFG UNION BANK, N.A. (f/k/a Union Bank, N.A.)
1980 Saturn Street, V02-906
Monterey Park, CA 91755
Attention: Standby Letter of Credit Section

Re: Request and Authorization to Reduce Irrevocable Standby Letter of Credit No. [_____] issued by MUFG Union Bank in the original face amount of \$25,000,000 (the "Letter of Credit")

To whom it may concern,

Marin Clean Energy, as Beneficiary under the above referenced Letter of Credit hereby **requests and authorizes** MUFG Union Bank, as Issuing Bank under the Letter of Credit to **immediately reduce** the face amount of the Letter of Credit by \$[_____] to a new face amount of \$[_____].

If you have any questions, please contact [_____] at [phone:_____].

Sincerely,

[Authorized signer for MCE]