Executive Committee Meeting  
Friday, March 2, 2018  
12:00 P.M.  
MCE Barbara George Conference Room  
1125 Tamalpais Avenue  
San Rafael, CA 94901  

Remote location:  
One Concord Center, 2300 Clayton Road, Room 650, Concord, CA 94520  

1. Board Announcements (Discussion)  
2. Public Open Time (Discussion)  
3. Report from Chief Executive Officer (Discussion)  
4. Consent Calendar (Discussion/Action)  
   C.1 Approval of 2.2.18 Meeting Minutes  
   C.2 Monthly Budget Update  
   C.3 Sixth Agreement with Braun Blaising Smith & Wynne, P.C.  
   C.4 Fourth Agreement with Davis Wright Tremaine LLP  
   C.5 Seventh Agreement with Jay Marshall  
   C.6 Tenth Agreement with Maher Accountancy  
   C.7 Eight Agreement with Niemela Pappas & Associates  
   C.8 Sixth Agreement with Troutman Sanders, LLP  
   C.9 Second Agreement with Keyes & Fox, LLP  
   C.10 Fifth Agreement with North Bay Office Furniture LLC  
5. Proposed Time of Use Rates (Discussion/Action)  
6. MCE Compensation Study Adjustments (Discussion/Action)  
7. MCE New Staff Positions (Discussion/Action)  
8. Updating Procurement Authorities (Discussion/Action)
a. Adopting Resolution No. 2018-03 Rescinding Resolution No. 2017-02 and Delegating Energy Procurement Authority
b. Adopting Resolution No. 2018-04 Designating the Chief Executive Officer as Purchasing Agent Pursuant to Government Code 25500 and Delegating Purchasing Agent Authority

9. MCE Joint Powers Agreement and Local Planning Obligations (Discussion)
10. Review Draft 3.15.18 Board Agenda (Discussion)
11. Committee Member & Staff Matters (Discussion)
12. Adjourn
Quorum was established and the regular Executive Committee meeting was called to order at 12:06 P.M. by Acting Committee Chair, Sloan Bailey.

**Agenda Item #03 – Report from the Chief Executive Officer (Discussion)**

CEO, Dawn Weisz shared with the Committee information regarding the following:
Remote location participants joining from the San Rafael office.

Success of CalCCA-sponsored Supplier Diversity Symposium, January 26th, City of Richmond.

Concord Office Update:
  - The lease agreement with One Concord Center, located at 2300 Clayton Road, for MCE’s new Concord office was finalized and fully executed in December as directed by the Executive Committee in its Meeting on November 3.
  - The Agreement includes:
    - Term of five years, 8 months
    - Over 9,000 rentable square feet of space, to be used for MCE’s Concord Office
    - Maximum monthly base rent of $31,239
    - Seven months of rent abatement
    - Free temporary space in the building until completion of the office build-out
  - Construction drawings were prepared and permits obtained from the City of Concord and the fire department in record time.
  - Property management is reviewing contractor bids presently and should have a construction schedule for MCE within the next couple weeks.
  - MCE anticipates construction will happen in February-March, with MCE moving in by the end of April.

Joint Petition for Modification of Code of Conduct was filed by IOUs and MCE will file its comments within 28 days.

The Draft Resolution regarding CCA launch timing and resource adequacy is on the agenda for CPUC action next week.

Successful Legislative Days with CalCCA in Sacramento last week.

MCE Open Season launched, bids are due March 1.

New members will be invited to join Ad Hoc Contracts Committee at the February 15th Board meeting.

There are some concerns with recent IBEW 1245 publications that are disparaging of MCE and CCAs in general, and are based on false information. These actions conflict with MCE/IBEW discussions about partnership and engagement. MCE is hoping IBEW 1245 will correct the published misinformation so that collaboration with IBEW can continue.

**Agenda Item #04 – Consent Calendar (Discussion/Action)**

C.1 Approval of 12.1.17 Meeting Minutes
C.2 Monthly Budget Update
C.3 Third Amendment to the Second Agreement with Malen Concepts
C.4 Second Amendment to the Fifth Agreement with the Association for Energy Affordability
C.5 Second Amendment to the First Agreement with Keyes & Fox, LLP
C.6 First Amendment to the Fifth Agreement with Troutman Sanders, LLP
C.7 First Agreement with DNV GL

Acting Chair Bailey asked for public comment and there was none.
ACTION: It was M/S/C (Birsan/Glover) to approve Consent Calendar. Motion carried by unanimous roll call vote. (Abstain: Director Coler on C.1) (Absent: Directors Blackwell, Butt, Haroff, McCaskill and Sears).

**Agenda Item #05 – Proposed Budgets for Fiscal Year 2018/19 (Discussion/Action)**

David McNeil, Manager of Finance introduced this item and addressed questions from the Committee.

Acting Chair Bailey asked for public comment and there was none.

ACTION: It was M/S/C (Trotter/Birsan) to direct Staff to present proposed FY 2018/19 Operating Fund, Energy Efficiency Program Fund, Local Renewable Energy Development Fund, and Renewable Energy Reserve Fund Budgets to the Board for approval at its February 2018 meeting. Motion carried by unanimous roll call vote. (Absent: Directors Blackwell, Butt, Haroff, McCaskill and Sears).

**Agenda Item #06 – Procurement Manual and Contracting Processes (Discussion/Action)**

General Counsel, Elizabeth Kelly presented this item and addressed questions from the Committee. It was the decision of the Committee to not approve the item in its entirety but to present the item to the Board for discussion at its February 2018 meeting.

Acting Chair Bailey asked for public comment and there was none.

ACTION: It was M/S/C (Bailey/Trotter) to direct Staff to present Agenda Item #06 to the Board for discussion at its February 2018 meeting. Motion carried by unanimous roll call vote. (Absent: Directors Blackwell, Butt, Haroff, McCaskill and Sears).

**Agenda Item #07 – New Community Enrollment Communications Update (Discussion)**

Jamie Tuckey, Director of Public Affairs presented this item and addressed questions from the Committee.

Acting Chair Bailey asked for public comment and there was none.

ACTION: No action required.

**Agenda Item #08 – MCE Investment Update (Discussion)**

David McNeil, Manager of Finance presented this item and addressed questions from the Committee.

Acting Chair Bailey asked for public comment and there was none.
ACTION: No action required.

**Agenda Item #09 – MCE Joint Powers Agreement and Local Planning Obligations (Discussion/Action)**

ACTION: It was M/S/C (Trotter/Birsan) to direct Staff to present Agenda Item #09 to the Board for discussion at its February 2018 meeting. Motion carried by unanimous roll call vote. (Absent: Directors Blackwell, Butt, Haroff, McCaskill and Sears).

**Agenda Item #10 – Review Draft 2.15.18 Board Agenda (Discussion)**

ACTION: No action required.

The meeting was adjourned at 1:40 P.M. to the next scheduled Executive Committee Meeting on March 2, 2018.

_______________________________________
Sloan Bailey, Acting Executive Committee Chair

ATTEST:

_______________________________________
Dawn Weisz, Chief Executive Officer
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, 2018, 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.
MARIN CLEAN ENERGY
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2017 through January 31, 2018

<table>
<thead>
<tr>
<th></th>
<th>Actual - from April 1 through January 31</th>
<th>YTD Budget (Amended)</th>
<th>YTD Budget Variance (Under) Over</th>
<th>YTD Budget Variance (Under/Over %)</th>
<th>Annual Budget (Amended)</th>
<th>Budget Remaining</th>
</tr>
</thead>
<tbody>
<tr>
<td>ENERGY REVENUE</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Revenue - Electricity (net of allowance)</td>
<td>150,418,229</td>
<td>$ 173,565,030</td>
<td>$ 181,999,561</td>
<td>$ (8,434,531)</td>
<td>$ 209,162,000</td>
<td>$ 35,596,970</td>
</tr>
<tr>
<td>Other revenue</td>
<td>204,194</td>
<td>185,466</td>
<td>8,333</td>
<td>177,133</td>
<td>2125.59</td>
<td>10,000</td>
</tr>
<tr>
<td>TOTAL ENERGY REVENUE</td>
<td>150,622,423</td>
<td>173,750,496</td>
<td>182,007,894</td>
<td>(8,257,398)</td>
<td>209,172,000</td>
<td>35,421,504</td>
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<tr>
<td>ENERGY EXPENSES</td>
<td></td>
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<tr>
<td>Cost of energy</td>
<td>125,726,435</td>
<td>155,676,044</td>
<td>157,183,406</td>
<td>(1,507,362)</td>
<td>183,194,000</td>
<td>27,517,956</td>
</tr>
<tr>
<td>TOTAL ENERGY EXPENSES</td>
<td>125,726,435</td>
<td>155,676,044</td>
<td>157,183,406</td>
<td>(1,507,362)</td>
<td>183,194,000</td>
<td>27,517,956</td>
</tr>
<tr>
<td>NET ENERGY REVENUE</td>
<td>24,895,988</td>
<td>18,074,452</td>
<td>24,824,488</td>
<td>(6,750,036)</td>
<td>25,978,000</td>
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<tr>
<td>OPERATING EXPENSES</td>
<td></td>
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</tr>
<tr>
<td>Personnel</td>
<td>3,726,775</td>
<td>4,657,812</td>
<td>5,486,667</td>
<td>(828,855)</td>
<td>-15.11%</td>
<td>6,584,000</td>
</tr>
<tr>
<td>Data manager</td>
<td>2,721,986</td>
<td>3,000,861</td>
<td>3,159,409</td>
<td>(156,548)</td>
<td>-5.02%</td>
<td>3,794,000</td>
</tr>
<tr>
<td>Service fees - PG&amp;E</td>
<td>910,718</td>
<td>1,137,567</td>
<td>1,238,290</td>
<td>(100,723)</td>
<td>-8.13%</td>
<td>1,487,000</td>
</tr>
<tr>
<td>Technical and scheduling services</td>
<td>478,915</td>
<td>568,547</td>
<td>666,501</td>
<td>(97,954)</td>
<td>-14.70%</td>
<td>806,000</td>
</tr>
<tr>
<td>Legal counsel</td>
<td>503,407</td>
<td>446,703</td>
<td>670,000</td>
<td>(223,297)</td>
<td>-33.33%</td>
<td>804,000</td>
</tr>
<tr>
<td>Communications services and related expenses</td>
<td>913,153</td>
<td>654,343</td>
<td>1,642,500</td>
<td>(988,157)</td>
<td>-60.16%</td>
<td>1,971,000</td>
</tr>
<tr>
<td>Other services</td>
<td>326,718</td>
<td>444,117</td>
<td>1,234,167</td>
<td>(790,050)</td>
<td>-64.01%</td>
<td>1,481,000</td>
</tr>
<tr>
<td>General and administration</td>
<td>336,700</td>
<td>543,423</td>
<td>565,000</td>
<td>(21,577)</td>
<td>-3.82%</td>
<td>678,000</td>
</tr>
<tr>
<td>Occupancy</td>
<td>323,091</td>
<td>435,970</td>
<td>574,167</td>
<td>(138,197)</td>
<td>-24.07%</td>
<td>689,000</td>
</tr>
<tr>
<td>Integrated demand-side pilot programs</td>
<td>7,090</td>
<td>29,125</td>
<td>179,167</td>
<td>(150,042)</td>
<td>-83.74%</td>
<td>215,000</td>
</tr>
<tr>
<td>Marin County green business program</td>
<td>10,000</td>
<td>10,000</td>
<td>10,000</td>
<td>(10,000)</td>
<td>0.00%</td>
<td>10,000</td>
</tr>
<tr>
<td>Low income solar programs</td>
<td>17,800</td>
<td>40,000</td>
<td>40,000</td>
<td>33,333</td>
<td>20.00%</td>
<td>40,000</td>
</tr>
<tr>
<td>TOTAL OPERATING EXPENSES</td>
<td>10,276,353</td>
<td>11,958,468</td>
<td>15,459,200</td>
<td>(3,500,732)</td>
<td>-22.64%</td>
<td>18,559,000</td>
</tr>
<tr>
<td>OPERATING INCOME (LOSS)</td>
<td>14,619,635</td>
<td>6,115,984</td>
<td>9,365,289</td>
<td>(3,249,305)</td>
<td>7,419,000</td>
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<td>NONOPERATING REVENUES</td>
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<tr>
<td>Grant Income</td>
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<tr>
<td>Interest income</td>
<td>76,859</td>
<td>247,115</td>
<td>108,333</td>
<td>138,782</td>
<td>128.11%</td>
<td>130,000</td>
</tr>
<tr>
<td>TOTAL NONOPERATING REVENUES</td>
<td>76,859</td>
<td>247,115</td>
<td>227,167</td>
<td>19,948</td>
<td>243,000</td>
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<tr>
<td>NONOPERATING EXPENSES</td>
<td></td>
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</tr>
<tr>
<td>Depreciation (supplemental)</td>
<td>32,515</td>
<td>40,000</td>
<td>168,000</td>
<td>(128,000)</td>
<td>-76.19%</td>
<td>168,000</td>
</tr>
<tr>
<td>TOTAL NONOPERATING EXPENSES</td>
<td>108,755</td>
<td>133,492</td>
<td>268,833</td>
<td>(135,341)</td>
<td>289,000</td>
<td>155,508</td>
</tr>
<tr>
<td>TOTAL NONOPERATING INCOME (EXPENSES)</td>
<td>(31,896)</td>
<td>113,623</td>
<td>(41,667)</td>
<td>155,290</td>
<td>-372.70%</td>
<td>554,000</td>
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<tr>
<td>CHANGE IN NET POSITION</td>
<td>14,587,739</td>
<td>6,229,607</td>
<td>9,323,622</td>
<td>(3,094,015)</td>
<td>7,973,000</td>
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<tr>
<td>CAPITAL EXPENDITURES, INTERFUND TRANSFERS &amp; OTHER</td>
<td></td>
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<tr>
<td>Capital outlay</td>
<td>93,358</td>
<td>178,408</td>
<td>620,000</td>
<td>(441,592)</td>
<td>-71.22%</td>
<td>744,000</td>
</tr>
<tr>
<td>Depreciation (supplemental)</td>
<td>(76,240)</td>
<td>(93,492)</td>
<td>(100,833)</td>
<td>7,341</td>
<td>-7.28%</td>
<td>(121,000)</td>
</tr>
<tr>
<td>Transfer to Renewable Energy Reserve</td>
<td>1,000,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Transfer to Local Renewable Development Fund</td>
<td>(173,000)</td>
<td>186,000</td>
<td>186,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>TOTAL CAPITAL EXPENDITURES, INTERFUND TRANSFERS &amp; OTHER</td>
<td>1,190,118</td>
<td>270,916</td>
<td>705,167</td>
<td>(434,251)</td>
<td>-61.58%</td>
<td>809,000</td>
</tr>
<tr>
<td>Net increase (decrease) in available fund balance</td>
<td>$ 13,397,621</td>
<td>$ 5,958,691</td>
<td>$ 8,618,456</td>
<td>($2,659,765)</td>
<td>$ 7,164,000</td>
<td></td>
</tr>
</tbody>
</table>

See accountants' compilation report. 2
### MARIN CLEAN ENERGY
#### ENERGY EFFICIENCY PROGRAM FUND
##### BUDGETARY COMPARISON SCHEDULE
April 1, 2017 through January 31, 2018

<table>
<thead>
<tr>
<th>REVENUE AND OTHER SOURCES:</th>
<th>Amended Budget</th>
<th>Actual</th>
<th>Budget Remaining</th>
<th>Actual/Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public purpose energy efficiency program</td>
<td>$1,691,000</td>
<td>$1,173,246</td>
<td>$517,754</td>
<td>69.38%</td>
</tr>
<tr>
<td>Public purpose Low Income Families and Tenants pilot program</td>
<td>$1,750,000</td>
<td>114,468</td>
<td>1,635,532</td>
<td>6.54%</td>
</tr>
<tr>
<td><strong>TOTAL REVENUE AND OTHER SOURCES:</strong></td>
<td><strong>3,441,000</strong></td>
<td><strong>1,287,714</strong></td>
<td><strong>2,153,286</strong></td>
<td></td>
</tr>
</tbody>
</table>

| EXPENDITURES AND OTHER USES: | | | | |
|------------------------------|-------------------------------|------------------|---------------|
| Public purpose energy efficiency program | 1,691,000 | 1,173,246 | 517,754 | 69.38% |
| Public purpose Low Income Families and Tenants pilot program | 1,750,000 | 114,468 | 1,635,532 | 6.54% |
| **TOTAL EXPENDITURES AND OTHER USES:** | **3,441,000** | **1,287,714** | **2,153,286** | |

Net increase (decrease) in fund balance: $- $-

---

**LOCAL RENEWABLE ENERGY DEVELOPMENT FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2017 through January 31, 2018**

<table>
<thead>
<tr>
<th>REVENUE AND OTHER SOURCES:</th>
<th>Budget</th>
<th>Actual</th>
<th>Budget Remaining</th>
<th>Actual/Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer from Operating Fund</td>
<td>$186,000</td>
<td>$186,000</td>
<td>-</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

| EXPENDITURES AND OTHER USES: | | | | |
|------------------------------|-------------------------------|------------------|---------------|
| Capital Outlay and related | 186,000 | 34,188 | 151,812 | 18.38% |

Net increase (decrease) in fund balance: $- 151,812

Fund balance at beginning of period: $- 151,812

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**RENEWABLE ENERGY RESERVE FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2017 through January 31, 2018**

<table>
<thead>
<tr>
<th>REVENUE AND OTHER SOURCES:</th>
<th>Budget</th>
<th>Actual</th>
<th>Budget Remaining</th>
<th>Actual/Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other proceeds *</td>
<td>$800,000</td>
<td>$777,962</td>
<td>$761,350</td>
<td>97.25%</td>
</tr>
<tr>
<td>Transfer from Operating Fund</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Total revenue and other sources</strong></td>
<td><strong>$800,000</strong></td>
<td><strong>$777,962</strong></td>
<td><strong>$761,350</strong></td>
<td></td>
</tr>
</tbody>
</table>

| EXPENDITURES AND OTHER USES: | | | | |
|------------------------------|-------------------------------|------------------|---------------|
| 225,000 | - | 225,000 | 0.00% |

Net increase (decrease) in fund balance: $575,000 777,962

Fund balance at beginning of period: 443,721

Fund balance at end of period: $1,221,683

*Other proceeds relate to the transfer of the Solar One project.

See accountants' compilation report.
MARIN CLEAN ENERGY  
BUDGETARY SUPPLEMENTAL SCHEDULE  
April 1, 2017 through January 31, 2018

<table>
<thead>
<tr>
<th>Actual</th>
<th>Other services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audit</td>
<td>$36,496</td>
</tr>
<tr>
<td>Accounting</td>
<td>123,720</td>
</tr>
<tr>
<td>IT Consulting</td>
<td>69,250</td>
</tr>
<tr>
<td>Human resources &amp; payroll fees</td>
<td>12,189</td>
</tr>
<tr>
<td>Miscellaneous professional fees</td>
<td>202,462</td>
</tr>
<tr>
<td><strong>Other services</strong></td>
<td><strong>$444,117</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Actual</th>
<th>General and administration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Data and telephone service</td>
<td>$30,238</td>
</tr>
<tr>
<td>Meeting room rentals</td>
<td>6,996</td>
</tr>
<tr>
<td>Office equipment lease</td>
<td>5,434</td>
</tr>
<tr>
<td>Dues and subscriptions</td>
<td>241,012</td>
</tr>
<tr>
<td>Conferences and professional education</td>
<td>49,204</td>
</tr>
<tr>
<td>Travel</td>
<td>56,307</td>
</tr>
<tr>
<td>Business meals</td>
<td>7,358</td>
</tr>
<tr>
<td>Interest and late fees</td>
<td>1,143</td>
</tr>
<tr>
<td>Miscellaneous administration</td>
<td>84,490</td>
</tr>
<tr>
<td>Office supplies and postage</td>
<td>61,241</td>
</tr>
<tr>
<td><strong>General and administration</strong></td>
<td><strong>$543,423</strong></td>
</tr>
</tbody>
</table>

See accountants' compilation report.
March 2, 2018

TO: MCE Executive Committee

FROM: Elizabeth Kelly, General Counsel

RE: Sixth Agreement with Braun Blaising Smith & Wynne, P.C.  
(Agenda Item #04 – C.3)

ATTACHMENT: Proposed Sixth Agreement with Braun Blaising Smith & Wynne, P.C.

Dear Executive Committee Members:

________________________________________________________________________________________

**SUMMARY:**

Braun Blaising Smith & Wynne, P.C. (BBSW) has provided legal and regulatory assistance to MCE since 2013, through five agreements for services. Specifically, BBSW has provided assistance on the Long Term Procurement Plan (LTPP) proceedings, Energy Resource Recovery Account (ERRA) proceedings, and other regulatory proceedings as requested. BBSW 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 BBSW. Staff recommends approval of the proposed Sixth Agreement with Braun Blaising Smith & Wynne, P.C. in the amount of $145,000 for continuation of legal and regulatory services through Fiscal Year (FY) 2018/19.

**Fiscal Impacts:** Costs related to the proposed agreement are included in the FY 2018/19 Operating Fund Budget.

**Recommendation:** Approve the proposed Sixth Agreement with Braun Blaising Smith & Wynne, P.C.
MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT

SIXTH AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND BRAUN BLAISING SMITH & WYNNE, P.C.

THIS SIXTH AGREEMENT ("Agreement") is made and entered into this day March 2, 2018 by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and BRAUN BLAISING SMITH WYNNE, P.C., 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 as 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 $145,000.

5. TIME OF AGREEMENT:
This Agreement shall commence on April 1, 2018, and shall terminate on March 31, 2019. 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 therein. 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 thirty 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: Troy Nordquist
MCE Address: 1125 Tamalpais Avenue
San Rafael, CA 94901
Email Address: contracts@mcecleanenergy.org
Telephone No.: (415) 464-6027

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.

☐ Check applicable Exhibits

<table>
<thead>
<tr>
<th>EXHIBIT</th>
<th>CONTENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Scope of Services</td>
<td></td>
</tr>
<tr>
<td>B. Fees and Payment</td>
<td></td>
</tr>
</tbody>
</table>

CONTRACTOR’S INITIALS

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:________________________________________     By:________________________________________
CEO                                      Name:

                     Date:__________________          Date:__________________

By:________________________________________
Chairperson       

                     Date:__________________

MODIFICATIONS TO STANDARD SHORT FORM
☐ Standard Short Form Content Has Been Modified

List sections affected: ______________________________________________________________________________________________________________________________________
____________________________________________________________________________________________________________________________________

Approved by MCE Counsel: ___________________________ Date: ___________________
EXHIBIT A
AI #04_C.3: 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 hourly rate and the payment schedule as specified below:

<table>
<thead>
<tr>
<th>Position</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Partners</td>
<td>$405</td>
</tr>
<tr>
<td>Junior Partners</td>
<td>$335</td>
</tr>
<tr>
<td>Senior Associates</td>
<td>$295</td>
</tr>
<tr>
<td>Junior Associates</td>
<td>$265</td>
</tr>
<tr>
<td>Of Counsel</td>
<td>$305-$345</td>
</tr>
<tr>
<td>Contract Associate (As Authorized)</td>
<td>$290</td>
</tr>
<tr>
<td>Law Clerk and Associates Not Admitted to Bar</td>
<td>$165</td>
</tr>
</tbody>
</table>

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 services provided herein exceed the maximum sum of **$145,000** for the term of the Agreement.
March 2, 2018

TO: MCE Executive Committee

FROM: Elizabeth Kelly, General Counsel

RE: Fourth Agreement with Davis Wright Tremaine LLP (Agenda Item #04 – C.4)

ATTACHMENT: Proposed Fourth 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, 2016 and a Third Agreement on March 3, 2017 to continue legal services through March 31, 2018.

MCE staff has prepared the proposed Fourth Agreement with Davis Wright Tremaine LLP to continue the above services with an effective date of April 1, 2018 through March 31, 2019 with a maximum cost not to exceed $115,000.

Fiscal Impacts: Costs related to the proposed agreement are included in the FY 2018/19 Operating Fund Budget.

Recommendation: Approve the proposed Fourth Agreement with Davis Wright Tremaine LLP.
MA RIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT

FOURTH AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND DAVIS WRIGHT TREMAINE LLP

THIS FOURTH AGREEMENT ("Agreement") is made and entered into this day March 2, 2018 by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and Davis Wright Tremaine LLP, hereinafter referred to as "Contractor."

REQUITALS:

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 $115,000.

5. TIME OF AGREEMENT:
This Agreement shall commence on April 1, 2018, and shall terminate on March 31, 2019. 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: Troy Nordquist
MCE Address: 1125 Tamalpais Avenue
San Rafael, CA 94901
Email Address: contracts@mcecleanenergy.org
Telephone No.: (415) 464-6027

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.

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
<th>Check applicable Exhibits</th>
<th>CONTRACTOR’S INITIALS</th>
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<tr>
<td>A.</td>
<td>Scope of Services</td>
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<td>B.</td>
<td>Fees and Payment</td>
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<td>C.</td>
<td>Conflicts Waiver Letter</td>
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</table>

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: 
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 3 and Section 8 - Conflicts

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. In the instance that a fixed fee is not applicable or cannot be mutually agreed-upon, MCE shall pay Contractor at Contractor’s public agency rate plus a 10% discount.

Contractor shall bill MCE monthly. In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of $115,000 for the term of the Agreement.
March 2, 2018

TO: MCE Executive Committee

FROM: Justine Parmelee, Internal Operations Manager

RE: Seventh Agreement with Jay Marshall (Agenda Item #04 – C.5)

ATTACHMENT: Proposed Seventh 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 proposed Seventh Agreement would allow for Jay Marshall to continue providing core business IT services and support to the MCE staff between April 1, 2018 and March 31, 2019, including the planning and set-up of IT infrastructure at MCE’s new Concord office. The contract amount for these services would not exceed $113,000.

Fiscal Impacts: Costs related to the referenced agreement are included in the FY 2018/19 Operating Fund Budget.

MARIN CLEAN ENERGY

STANDARD SHORT FORM CONTRACT

SEVENTH AGREEMENT

BY AND BETWEEN

MARIN CLEAN ENERGY AND JAY MARSHALL

THIS SEVENTH AGREEMENT (“Agreement”) is made and entered into this day March 2, 2018 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 $113,000.

5. **TIME OF AGREEMENT:**
   This Agreement shall commence on April 1, 2018, and shall terminate on March 31, 2019. 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, 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 90 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:** Troy Nordquist
- **MCE Address:** 1125 Tamalpais Avenue
  - San Rafael, CA  94901
- **Email Address:** contracts@mcecleanenergy.org
- **Telephone No.:** (415) 464-6027

Notices shall be given to Contractor at the following address:

- **Contractor:** Jay Marshall
- **Address:** 16 Portola Avenue
  - San Rafael, CA 94903
- **Email Address:** jay@primemovertech.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.

- **Check applicable Exhibits**
- **CONTRACTOR’S INITIALS**

<table>
<thead>
<tr>
<th>EXHIBIT A.</th>
<th>Scope of Services</th>
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<tbody>
<tr>
<td>EXHIBIT B.</td>
<td>Fees and Payment</td>
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<tr>
<td>EXHIBIT C.</td>
<td>Insurance Reduction/Waiver</td>
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</tbody>
</table>

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: Sections 3 and 12*

Approved by MCE Counsel: ____________________________ Date: ____________
EXHIBIT A
AI #04_C.5: 7th Agrmt w/Jay Marshall
SCOPE OF SERVICES (required)

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

**Desktop Support**
- Maintain, monitor, and troubleshoot desktop and laptop computers
- Provide support for software, including Office, Adobe, anti-virus and anti-malware, and others
- Build/image machines and deploy to new employees
- Program security keyscans for new employees
- Provide support for connecting mobile devices to Google Apps
- Ensure software updates are applied as required for IT security
- Maintain inventory of all hardware and software components

**Server and Application Administration**
- Maintain, monitor, and troubleshoot servers, both on premise and cloud-based (ex: file server, Egnyte)
- Manage Google Apps
- Ensure software updates are applied as required for IT security
- Maintain inventory of all hardware and software components

**Network Infrastructure Administration**
- Maintain, monitor, and troubleshoot network infrastructure (ex: routers, WIFI, switches, VPN, firewalls)
- Provide seamless data and voice connectivity (LAN/WAN) between multiple office locations
- Manage VOIP telephone systems, including handsets, voicemail, Allworx telephony software, connections to Internet and SIP provider for telephony
- Coordinate support with internet service provider, as needed
- Setup and maintain interior wiring/cabling for new users and user relocation
- Maintain inventory of all hardware components

**IT Strategy**
- Develop and maintain cybersecurity response plan in conjunction with Internal Operations and Legal Teams to comply with internal policies
- Provide education on IT systems, applications, and security to employees
- Identify areas of need and develop solutions for improving systems
- Provide business continuity services and plan for emergency situations

**Assumptions and Understandings**
- Contractor shall not be responsible for the maintenance, programming, or operation of any security or safety alarm systems at an MCE office.
- Contractor shall be responsible for the complete and successful move, installation, and integration of all IT and communications equipment to the temporary and new office spaces located at 2300 Clayton Rd in Concord. This includes all individual work stations, conference rooms, server room, and other data and communication drop locations throughout the new office, and will take place between December 2017 and May 2018.
- 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 its full knowledge of MCE computer, telephone and internet systems, settings, and passwords.
- Contractor shall work with MCE’s Internal Operations team to choose an appropriate Subcontractor when on vacation leave.
- Contractor shall work on-site at an MCE 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.
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 services provided herein exceed the maximum sum of $113,000 for the term of the Agreement.
CONTRACTOR: JAY MARSHALL

CONTRACT TITLE: Seventh 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:

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<th>Check</th>
<th>Requested Limit Amount</th>
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<tr>
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<tr>
<td>Workers’ Compensation Insurance*</td>
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<td>*Sole Proprietors must provide representation of their exempt status below</td>
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<tr>
<td>Professional Liability Deductible</td>
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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: ____________________________
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 proposed Tenth Agreement would allow for Maher Accountancy to continue providing these essential services between April 1, 2018 and March 31, 2019. The contract amount would not exceed $165,000.

Fiscal Impacts: Costs related to the referenced agreement are included in the FY 2018/19 Operating Fund Budget.

Recommendation: Approve the proposed Tenth Agreement with Maher Accountancy.
March 2, 2018

TO: MCE Executive Committee

FROM: Elizabeth Kelly, General Counsel

RE: Eighth Agreement with Niemela Pappas & Associates (Agenda Item #04 – C.7)

ATTACHMENT: Proposed Eighth Agreement with Niemela Pappas & Associates

Dear Executive Committee Members:

________________________________________________________________________

SUMMARY:

Niemela Pappas & Associates has provided contract lobbyist services on behalf of MCE since 2012. Staff recommends creating a new agreement with Niemela Pappas & Associates in the amount of $94,500 for continuation of these services for Fiscal Year (FY) 2018/19.

Fiscal Impacts: Costs related to the referenced agreement are included in the FY 2018/19 Operating Fund Budget.

Recommendation: Approve the proposed Eighth Agreement with Niemela Pappas & Associates.
THIS EIGHTH AGREEMENT ("Agreement") is made and entered into this day March 2, 2018 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, 2018, and shall terminate on March 31, 2019. 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’ timesheets, 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. 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).
D. 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: Troy Nordquist
MCE Address: 1125 Tamalpais Avenue
San Rafael, CA 94901
Email Address: contracts@mcecleanenergy.org
Telephone No.: (415) 464-6027

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.

Check applicable Exhibits

| EXHIBIT A. | Scope of Services |
| EXHIBIT B. | 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: ________________________________ By: ________________________________
CEO Name: ________________________________
Date: ________________________________

By: ________________________________
Chairperson Date: ________________________________

MODIFICATIONS TO STANDARD SHORT FORM

☐ Standard Short Form Content Has Been Modified

List sections affected: ______________________________________________________

____________________________________________________________

Approved by MCE Counsel: ________________________________ Date: ________________
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, 2018 until the end of the Agreement.

In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of $94,500 for the term of the Agreement.
March 2, 2018

TO: MCE Executive Committee

FROM: Elizabeth Kelly, General Counsel

RE: Sixth Agreement with Troutman Sanders, LLP (Agenda Item #04 – C.8)

ATTACHMENT: Proposed Sixth 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 $255,000 with Troutman Sanders, LLP for energy transaction and related services through Fiscal Year (FY) 2018/19.

Fiscal Impacts: Costs related to the referenced agreement are included in the FY 2018/19 Operating Fund Budget.

Recommendation: Approve the proposed Sixth Agreement with Troutman Sanders, LLP.
THIS SIXTH AGREEMENT ("Agreement") is made and entered into this day March 2, 2018 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 $255,000.

5. TERM OF AGREEMENT:
   This Agreement shall commence on April 1, 2018, and shall terminate on March 31, 2019. 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 (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: Troy Nordquist
MCE Address: 1125 Tamalpais Avenue
San Rafael, CA  94901
Email Address: contracts@mcecleanenergy.org
Telephone No.: (415) 4 64-6027

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.

<table>
<thead>
<tr>
<th>Check applicable Exhibits</th>
<th>CONTRACTOR’S INITIALS</th>
</tr>
</thead>
<tbody>
<tr>
<td>EXHIBIT A. Scope of Services</td>
<td></td>
</tr>
<tr>
<td>EXHIBIT B. Fees and Payment</td>
<td></td>
</tr>
</tbody>
</table>

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:__________________

CONTRACTOR:
By:__________________________________
Name:_______________________________
Date:__________________

MODIFICATIONS TO STANDARD SHORT FORM

☑ Standard Short Form Content Has Been Modified

List sections affected: __Sections 5, 12, 16________________________________________________________
________________________________________________________________________________________

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 $595 per hour
- Christine Byrnes $473 per hour
- Sasha Robertson $405 per hour

Contractor shall bill monthly. 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 $255,000 for the term of the Agreement.
March 2, 2018

TO: MCE Executive Committee

FROM: Shalini Swaroop, Deputy General Counsel

RE: Second Agreement with Keyes & Fox, LLP (Agenda Item #04 – C.9)

ATTACHMENT: Proposed Second Agreement with Keyes & Fox, LLP

Dear Executive Committee Members:

__________________________________________________________

SUMMARY:

Keyes and Fox, LLP provides legal and regulatory services for MCE. Specifically, Keyes & Fox has provided assistance on the Energy Efficiency Business Plan proceedings, and the Energy Efficiency Rulemaking (EE OIR) proceeding, as well as MCE’s Annual Budget Filing (AL 25-E-A) and other regulatory proceedings as requested.

MCE staff has prepared the proposed Second Agreement with Keyes & Fox, LLP to continue the above services with an effective date of April 1, 2018 through March 31, 2019 with a maximum cost not to exceed $55,000.

Budget Impacts: Costs related to this Agreement are included in the 2018/19 Operating Fund Budget.

Recommendation: Approve the proposed Second Agreement with Keyes & Fox, LLP.
MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT

SECOND AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND KEYES & FOX, LLP

THIS SECOND AGREEMENT ("Agreement") is made and entered into this day March 2, 2018 by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and KEYES & FOX, LLP, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: Regulatory filings and advocacy before the CPUC 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 $55,000.

5. TIME OF AGREEMENT:
   This Agreement shall commence on April 1, 2018, and shall terminate on March 31, 2019. 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 RECOUCE 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: Troy Nordquist
MCE Address: 1125 Tamalpais Avenue
San Rafael, CA 94901
Email Address: contracts@mcecleanenergy.org
Telephone No.: (415) 464-6027

Notices shall be given to Contractor at the following address:

Contractor: Tim Lindl
Address: 436 14th Street, Suite 1305
Oakland, CA 94612
Email Address: tlindl@keyesfox.com
Telephone No.: (510) 314-8385

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.

Check applicable Exhibits

EXHIBIT A. Scope of Services
EXHIBIT B. 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: ________________________________________________________________

________________________________________________________

Approved by MCE Counsel: ________________________________ Date: ________________
EXHIBIT A
SCOPE OF SERVICES (required)

Contractor will provide task-specific legal and regulatory services and assistance at the direction of the Deputy General Counsel – Policy, 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:

<table>
<thead>
<tr>
<th>Staff Member</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>T Lindl</td>
<td>$240/hr</td>
</tr>
<tr>
<td>J Schlesinger</td>
<td>$215/hr</td>
</tr>
<tr>
<td>S Dunbar</td>
<td>$190/hr</td>
</tr>
<tr>
<td>B Artesinger</td>
<td>$180/hr</td>
</tr>
<tr>
<td>B Elder</td>
<td>$95/hr</td>
</tr>
</tbody>
</table>

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 services provided herein exceed the maximum sum of $55,000 for the term of the Agreement.
March 2, 2018

TO: MCE Executive Committee

FROM: Sarah Estes-Smith, Director of Internal Operations

RE: Fifth Agreement with North Bay Office Furniture LLC (Agenda Item #04 – C.10)

ATTACHMENT: Proposed Fifth Agreement with North Bay Office Furniture LLC

Dear Executive Committee Members:

______________________________

SUMMARY:

MCE is in the process of preparing for the opening of its new Concord office. The proposed Fifth Agreement with North Bay Office Furniture LLC would allow for procurement and installation of tables and chairs for the Large Conference Room, where MCE Board Meetings will be held, as well as desks for the offices.

To date, North Bay Office Furniture LLC has provided high-quality products and responsive service to MCE. Previous contracts have allowed for the procurement and installation of furniture at MCE’s San Rafael office, including the tables and chairs in the Charles McGlashan Conference Room, as well as the cubicles and desks in the offices.

Fiscal Impact: Costs incurred in FY 2017/18 are included in the FY 2017/18 Operating Budget. Costs expected to be incurred in FY 2018/19 are included in the FY 2018/19 Operating Budget.

Recommendation: Approve the proposed Fifth Agreement with North Bay Office Furniture LLC.
THIS FIFTH AGREEMENT ("Agreement") is made and entered into this day March 2, 2018 by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and NORTH BAY OFFICE FURNITURE LLC, hereinafter referred to as "Contractor."

RECAPITALS:
WHEREAS, MCE desires to retain a person or firm to provide the following services: delivery and installation of furniture for MCE’s Concord office;

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 $103,060.

5. TIME OF AGREEMENT:
This Agreement shall commence on March 2, 2018, and shall terminate on March 31, 2019. 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.
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6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☐)
Coversages 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.

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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.

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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.
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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.
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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: Troy Nordquist
MCE Address: 1125 Tamalpais Avenue
San Rafael, CA 94901
Email Address: contracts@mcecleanenergy.org
Telephone No.: (415) 464-6027

Notices shall be given to Contractor at the following address:

Contractor: Robert Ramirez
Address: 205 5th Street, Suite J
Santa Rosa, CA 95401
Email Address: robert@northbayofficefurniture.com
Telephone No.: (707) 888-1857

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.

<table>
<thead>
<tr>
<th>EXHIBIT A</th>
<th>ATTACHMENT A-1</th>
<th>EXHIBIT B</th>
<th>EXHIBIT C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scope of Services</td>
<td>Proposal</td>
<td>Fees and Payment</td>
<td>Labor Code and Prevailing Wage Requirements</td>
</tr>
</tbody>
</table>

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: ________________________________
Date: ____________________________

Name: ________________________________

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 deliver and install the following furniture as requested and directed by MCE staff, and as further detailed in Attachment A-1, up to the maximum time/fees allowed under this Agreement.

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Sierra HX Table Frames, offset corner</td>
<td>2,996.40</td>
</tr>
<tr>
<td>30</td>
<td>Sierra HX Table Frames</td>
<td>38,880.00</td>
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<tr>
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<td>Optional Modesty Panels</td>
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<tr>
<td>32</td>
<td>Willow Dual-Wide Monitor Arms</td>
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<tr>
<td>10</td>
<td>CPU Holder</td>
<td>1120.00</td>
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<td>20</td>
<td>NOVA Medium Back Chairs</td>
<td>4,160.00</td>
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<td>Hon Nucleus Side Chairs</td>
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<td>Hon Huddle Flip-top Tables</td>
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<td>TOTAL</td>
<td>103,059.55</td>
</tr>
</tbody>
</table>
# PROPOSAL

## North Bay Office Furniture LLC.
205 5th Street, Suite J  
Santa Rosa, CA 95401

(707) 999-1957  
Robert Ramirez

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### Concord Office

<table>
<thead>
<tr>
<th>Qty</th>
<th>Model</th>
<th>Description</th>
<th>Sell Price</th>
<th>Extended Price</th>
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<tr>
<td>2</td>
<td>SEHX54-72</td>
<td>Sierra HX Table Frame, SILVER Flat Foot, SILVER (set of 2) Programmable Switch</td>
<td>$1,498.20</td>
<td>$2,996.40</td>
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<td></td>
<td>FFK30-S</td>
<td>Top #1: Offset Corner, 56x40x29 Top #2: Offset Corner, 40x68x29 Kensington Maple with Sugar Maple 3mm edge</td>
<td></td>
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<td></td>
<td>ProSwitch</td>
<td>(2) different top sizes:</td>
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<td>30</td>
<td>SEHX-S</td>
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<td></td>
<td>ProSwitch</td>
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<td></td>
<td>Laminate:</td>
<td>Kensington Maple with Sugar Maple 3mm edge</td>
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<td>5</td>
<td>944-60-06</td>
<td>Optional Modesty Panel, 43&quot; Pewter</td>
<td>$138.00</td>
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<tr>
<td>32</td>
<td>DOUBLE-</td>
<td>Willow Dual-Wide monitor arm, SILVER End Clamp</td>
<td>$369.00</td>
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<td></td>
<td>WA200-C-S</td>
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<tr>
<td>10</td>
<td>000</td>
<td>CPU holder, Black</td>
<td>$112.00</td>
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<tr>
<td>20</td>
<td>10621K</td>
<td>NOVA, medium back chair, Black LEATHER</td>
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<td>$4,160.00</td>
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<td>22</td>
<td>Chair</td>
<td>Hon Nucleus side chair, arsm, casters Black frame and mesh back, black vinyl seat</td>
<td>$269.00</td>
<td>$5,918.00</td>
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<td>11</td>
<td>Table</td>
<td>Hon Huddle flip-top tables with metal base. Size: 60&quot; wide x 30&quot; deep laminate; TBD. Base: Black metal</td>
<td>$560.00</td>
<td>$6,160.00</td>
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<td>1</td>
<td>Service</td>
<td>Receive, deliver &amp; install above product. Freight included</td>
<td>$22,817.65</td>
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* **** Prevailing wage included ***  
* **** Weekend installation, included ***  
* Installation to NEW Concord location, TBD

Sub Total: $94,550.05  
Sales Tax 9.00% $8,506.50  
Total: $103,059.55  

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Customer:  
Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901

Date: 2/20/2018  
Proposal #24434

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MCE Standard Form (Updated 2/7/17)  
FIFTH Agreement – MCE & NORTH BAY OFFICE FURNITURE LLC  
Page 7 of 10
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:

50% Deposit due upon execution of this Agreement 51,529.77
Balance due upon completion of installation 51,529.78

Contractor shall bill MCE pursuant to the payment schedule listed above. In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of $103,060 for the term of the Agreement.
1. Contractor acknowledges that the project as defined in this Contract between Contractor and the MCE, to which this Terms for Compliance with California Labor Law Requirements is attached and incorporated by reference, is a "public work" as defined in Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code ("Chapter 1"). Further, Contractor acknowledges that this Contract is subject to (a) Chapter 1, including without limitation Labor Code Section 1771 and (b) the rules and regulations established by the Director of Industrial Relations ("DIR") implementing such statutes. Contractor shall perform all work on the project as a public work. Contractor shall comply with and be bound by all the terms, rules and regulations described in 1(a) and 1(b) as though set forth in full herein.

2. California law requires the inclusion of specific Labor Code provisions in certain contracts. The inclusion of such specific provisions below, whether or not required by California law, does not alter the meaning or scope of Section 1 of this document.

3. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Contract are on file at MCE's San Rafael Office and will be made available to any interested party on request. Contractor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Contractor shall post such rates at each job site covered by this Contract.

4. The project is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

5. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. Contractor shall, as a penalty to the MCE, forfeit two hundred dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Contract by Contractor or by any subcontractor.

6. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the MCE of the location of the records.

7. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Administrative Code Title 8, Section 200 et seq. concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Contract, Contractor shall provide MCE with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Contract, Contractor and each of its subcontractors shall submit to the MCE a verified statement of the journeyman and apprentice hours performed under this Contract.

8. Contractor acknowledges that eight hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. Contractor shall, as a penalty to the MCE, forfeit twenty-five dollars ($25) for each worker employed in the performance of this Contract by Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code Section 1815, work performed by employees of Contractor in excess of eight hours per day, and 40 hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay.

9. Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

10. For every subcontractor who will perform work on the project, Contractor shall be responsible for such subcontractor's compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Contractor shall include in the written contract between it and each subcontractor a copy of those statutory provisions and a requirement that each subcontractor shall comply with those statutory provisions. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the subcontractor and upon becoming aware of the failure of the
subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any failure.

11. To the maximum extent permitted by law, Contractor shall indemnify, hold harmless and defend (at Contractor’s expense with counsel reasonably acceptable to MCE) MCE, its officials, officers, employees, agents and independent contractors serving in the role of MCE officials, and volunteers from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Contractor, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with this Contract, including without limitation the payment of all consequential damages, attorneys’ fees, and other related costs and expenses. All duties of Contractor under this Section shall survive termination of this Contract.
March 2, 2018

TO: MCE Executive Committee

FROM: Katie Gaier, Manager of Human Resources

RE: MCE Compensation Study Adjustments (Agenda Item #06)

Dear Executive Committee Members:

**SUMMARY:**
In 2014, MCE positions, with the exception of the Chief Executive Officer, were studied as part of a comprehensive salary analysis and most positions received a salary increase accordingly in 2015 (Fiscal Year 2014/15). Since that time, MCE staff has surveyed new or significantly changed positions each fall for increases in the following year. A study was done in December 2017 and January 2018 and two positions were found to be below their relative labor market.

**Community Affairs Coordinator**
The position of Community Affairs Coordinator had not been filled for almost a year. With expansion into the nine new communities and the prospective increase in customers, there will be a continued need for community outreach and responsiveness. Because there were no incumbents at the time of the 2014 study, the position was not studied. It has, therefore, fallen behind in its relative labor market. The 2017/18 salary survey indicated a proposed salary range of $59,388 - $89,756.

**Chief Executive Officer**
The position of Chief Executive Officer (CEO) has not been studied in its labor market since MCE’s inception. Therefore, the only increases applied to this flat rate salary were the COLA increases in place since 2015. In addition, many other CCAs have set their salaries higher than MCE, resulting in the CEO position at MCE falling behind in its labor market. The 2017/18 salary survey, using other CCAs, indicated a proposed range of $275,000 - $316,250. Internally, the position of Chief Operating Officer (COO) has been established at a range of $169,116 - $281,694, creating compaction with the CEO’s salary. In addition to adjusting the CEO salary range as described above, staff recommends a 5% increase to the CEO’s current salary.

**Fiscal Impact:** Approval of the salary ranges for the above job classes does not have a fiscal impact. The cost of a market-based increase for the CEO effective April 1, 2018 is included in the FY 2018/19 Budget.

**Recommendation:** Approve the proposed compensation adjustments for MCE positions and provide a 5% salary increase for the Chief Executive Officer.
Dear Executive Committee Members:

**SUMMARY:**
The proposed Marketing Manager I and II job description addresses staffing needs that have been identified due to the increased and ongoing outreach and marketing tasks within the Public Affairs team.

The Marketing Manager I salary has been set at a level between Marketing Associate and Marketing Manager II as a normal progression within the three job classes and based on minimum qualifications and level of responsibility. The recommended salary for Marketing Manager I is $69,308 - $96,893. The salary for the Marketing Manager II will remain the same as the current salary for Marketing Manager at $77,187 - $103,404.

**Fiscal Impact:** Approval of the proposed job description and salary range does not have a fiscal impact. Expenditures related to hiring for the Public Affairs team are included in the FY 2018/19 Budget.

**Recommendation:** Approve the proposed Marketing Manager I and II job description, and salary range for the Marketing Manager I.
JOB DESCRIPTION
MARKETING MANAGER I AND II

Summary
The Marketing Manager I and II work under general supervision from the Manager of Marketing Communications and have a wide range of responsibilities related to the implementation of marketing efforts for the Public Affairs department of MCE.

Class Characteristics
The Marketing Managers I & II contribute to the planning and implementation of a wide variety of marketing campaigns and events and work closely with MCE staff and consultants as needed to implement effective marketing strategies.

In addition, the Marketing Manager II is responsible for managing media buys, developing press releases and communications materials, and developing and planning the MCE Public Affairs annual budget.

The Marketing Manager I is responsible for tracking the performance of MCE’s online and social media platforms; engaging with the public through social media, advertisements, photos, and video; and developing partnerships and collaborations with mission-aligned organizations.

The Marketing Manager I position is differentiated from Marketing Manager II based upon greater responsibilities and related experience.

Supervisory Responsibilities
The Marketing Manager II position requires supervisory responsibilities.

The Marketing Manager I position may have supervisory or lead worker responsibilities.

Essential Duties and Responsibilities (Illustrative Only)
The duties and responsibilities are dependent upon the level of assignment.

Communications
- Authors and distributes press releases.
- Develops and manages social media campaigns and content.
- Reviews and updates copy of MCE collateral.
- Updates website as needed.
- Prepares e-newsletters and strategizes subscription growth.
- Prepares and distributes miscellaneous documents as needed such as information packets for interested parties.
- Manages and maintains MCE’s social media platforms, including but not limited to
Facebook, Twitter, Instagram, LinkedIn, and Nextdoor.
- Respond to public social media comments and inquiries in a timely and professional manner.
- Contributes to the creation of advertising campaigns.

**Marketing Strategy & Analysis**
- Manages and creates strategic email campaigns to foster brand awareness and encourage MCE program participation.
- Analyzes email, advertising, social, and online campaign performance and provides regular reports.

**MCE Events and Ribbon Cuttings**
- Plans, organizes, and implements a wide variety of events including community meetings, press conferences and ribbon cutting ceremonies (this may include setting up and troubleshooting A/V equipment).

**Partnerships**
- Network, engage, and foster relationships with organizations and partners and that may assist MCE with its mission, public outreach, and brand equity growth.
- Provides basic marketing services, such as photography, to Deep Green commercial customers as needed.
- Establish and maintain relationships with Deep Green Champions and commercial customers.

**General**
- Provides supervision to assigned Public Affairs team staff members, including initial and annual performance evaluations.
- Manage intern or third party videographers.
- Acts as liaison with third party contractors specific to the Public Affairs team.
- As assigned, assists with the implementation of MCE's Strategic Plan.

**Education/Experience**
**Marketing Manager I:**
Education and experience equivalent to a Bachelor’s degree in communications, marketing, public affairs or a related field and at least 2 years’ experience in the implementation of marketing efforts. Supervisory or lead worker experience and work in a public agency or utility are desirable.

**Marketing Manager II:**
Education and experience equivalent to a Bachelor’s degree in communications, marketing, public affairs or a related field and at least 4 years’ experience in the implementation of marketing efforts. Supervisory experience and work in a public agency or utility are desirable.

**Knowledge of:**
- The organization and operations of a local government joint powers authority agency.
- The history of Community Choice Aggregation legislation and implementation in California and the history, implementation and operation of MCE.
- Principles, techniques and methods of public information and education, and community relations.
• Operational characteristics and activities necessary for effective on-the-ground community outreach.
• Practices and principles of public employee supervision.
• Best practices for event planning.
• Best practices and techniques of social media marketing.
• E-mail marketing platforms such as Constant Contact
• Microsoft Office Suite including Word, Excel, and PowerPoint, and Adobe Acrobat and Adobe InDesign

Ability to:
• Communicate effectively in writing and verbally.
• Interact effectively with customers, local community groups and organizations, and MCE staff and Board of Directors and committees.
• Establish and maintain effective working relationships with persons encountered in the performance of duties.
• Effectively manage work through other staff members, in particular those supervised.
• Manage projects and time efficiently.
• Be detail oriented and to multi-task when needed.
• Resolve issues quickly and effectively.
• Manage multiple priorities and quickly adapt to changing priorities in a fast paced, dynamic environment
• Take responsibility and work independently, as well as coordinate team efforts.
• Work accurately and swiftly under pressure
• Demonstrate patience, tact, and courtesy

Mathematical Skills
Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to compute rate, ratio, and percent and to draw and interpret bar graphs.

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 is occasionally required to stand.

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 office work environment is usually moderate.

The incumbent also works in the field at community meetings and other functions.

ADA Compliance
MCE will make reasonable accommodation of the known physical or mental limitations of a
qualified applicant with a disability upon request.
March 2, 2018

TO: MCE Executive Committee

FROM: Katie Gaier, Manager of Human Resources

RE: New MCE Staff Position (Agenda Item # 07B.)

ATTACHMENTS: A. Job Description – Power Settlements Analyst I
B. Job Description – Power Settlements Analyst II

Dear Executive Committee Members:

**SUMMARY:**
The proposed Power Settlements Analyst I and II job descriptions have been developed to provide for staffing levels based on responsibilities and minimum qualifications on the Power Resources team. Due to the expansion for service that begins on April 1, 2018, there is a need on the team for increased staff to manage the volume of contracts and provision of power to new and existing customers.

Based on similarities in minimum qualifications and responsibilities, it is being recommended that the salaries for the positions be set at the same levels as Power Supply Contracts Manager I and II, which are $77,577 - $122,298 and $105,853 - $158,436 respectively.

**Fiscal Impact:** Approval of the proposed job descriptions and salary ranges does not have a fiscal impact. Expenditures related to hiring for the Power Resources team are included in the FY 2018/19 Budget.

**Recommendation:** Approve the proposed Power Settlements Analyst I and II job descriptions and salary ranges for the positions.
SUMMARY
The Power Settlements Analyst I, under general direction of a Power Supply Contracts Manager II, has responsibility for power portfolio monitoring, tracking and resolution of CAISO Statement discrepancies, and operations reporting as well as invoice review and validation to support the MCE power supply portfolio. The incumbent may assist in the administration of RFO processes, MCE procurement process, ongoing correspondence with counterparties including performance tracking, and other duties as assigned in support of the power supply procurement process.

CLASS CHARACTERISTICS
The Power Settlements Analyst performs assignments under general direction of a Power Supply Contracts Manager II as part of the Power Resources and Procurement team and works with MCE’s technical team including external consultants, Portfolio Manager, and Scheduling Coordinator. This position provides support to the Power Resources and Procurement Team by developing reports and reviewing CAISO Statements, analyzing transactions, and identifying Imbalance energy impacts for existing and potential power supply contracts as well as assisting in reviewing, validating and processing power supply invoices for payment.

SUPERVISORY RESPONSIBILITIES
This position does not have lead worker and/or supervisory responsibilities

ESSENTIAL DUTIES AND RESPONSIBILITIES (ILLUSTRATIVE ONLY)
Power Supply Contract Facilitation

- Under direction of a Power Supply Contracts Manager II, establish standard operating procedures, protocols and safeguards to ensure procurement team decision making processes are aligned with agency goals
- Evaluates congestion impacts of contracted physical paths for nomination to the annual, monthly, and quarterly CAISO allocations and auctions
- Assists in monitoring positions and completing risk analysis for energy generation and trading portfolio
- Work with consultants, vendors, Scheduling Coordinator, and senior management to analyze portfolio positions, including power generation, load forecasts and load scheduling
• Interact with IT consultants and Scheduling software vendor for process improvements
to resolve system and application issues
• Work with accounting and settlement groups to deliver critical financial reporting
  information
• Serve as point of contact for counterparties in ensuring compliance with service
  agreements demonstrating excellent interpersonal skills and project management
  acumen
• Assist with creation of materials to facilitate Board review of counterparty performance
  with supplier agreements, and staff reports
• Conduct research and other due diligence to compile relevant information as needed for
  staff, technical consultants, legal consultants and Board members
• Maintain current knowledge of regulatory/ legislative and market trends and changes as
  well as current and future market conditions

Performance Monitoring

• Monitoring and management of assigned counterparty relationships as required to
  improve performance and contract compliance
• Performance auditing and monitoring for existing MCE contracts
• Track counterparty compliance with contract milestones and other deliverables
• Manage service vendor and contractor agreements
• Maintain and update files as needed
• Maintain, update, and track contract files through contract management system

Invoice Management and Validation

• Interface with power suppliers and contractors regarding timely invoicing
• Receive, file and process invoices in a timely and correct manner
• Perform validation on invoices as assigned to insure accurate charges and credits have
  been applied.
• CAISO statement validation and CAISO cost recovery from counterparties as provided
  for in contract terms.
• Track invoice payments and prepare related reports to management, technical team and
  external accountant
• Resolve, or provide support in resolving invoice and billing issues
• Provide information to assist external accountant with problem resolution

Other duties

• Prepare materials for the MCE staff to facilitate policy discussions related to
  procurement and resource planning
• Assist with the administration of RFO processes, the open season process and the
  assessment of unsolicited proposals
• May review and analyze proposals for electric power supply submitted to MCE by
  developers and brokers and provide summary information for staff and technical team
• May assist in managing MCE’s various renewable energy certificate accounts within
  the WREGIS system
• May assist with preparation of compliance reports and materials related to MCE power
  supply, including those required by the California Public Utilities Commission (CPUC),
California Energy Commission (CEC), The Climate Registry, and the Department of Energy (DOE).

- As assigned, assist with the implementation of MCE’s Strategic Plan.

**BREAKDOWN OF TIME**

- Vendor Performance Monitoring 25%
- Invoice Management and Validation 50%
- Document Processes and Procedures 10%
- Other as assigned 15%

**MINIMUM QUALIFICATIONS**

**Experience/Education**

Education and experience equivalent to a Bachelor’s degree in business, economics, operations research, accounting, or a related field and a minimum of two (2) years of progressively responsible experience in electric utility power settlements, a Community Choice Aggregation, Direct Access program or in a closely related field. Technical experience in the management of CAISO Settlements is desirable.

**Knowledge of**

- Microsoft Office software including Excel, Word and PowerPoint, Project.
- Energy generation technologies including carbon neutral electric energy, conventional energy, and renewable energy such as wind, biomass, geothermal, solar, concentrating solar, and hydroelectric
- Procurement process and use of renewable energy certificates to support mandatory and voluntary compliance programs
- The California Independent System Operator (CAISO) settlement process
- The structure and content of standard power purchase agreements for various resource types
- Renewable energy project development including environmental and local use permitting, interconnection agreements and processes
- California’s Renewables Portfolio Standard, Power Content Label and Power Source Disclosure program
- Power scheduling and settlement
- The Western Renewable Energy Information System (WREGIS)
- Regulatory reporting and compliance requirements of the California Public Utilities Commission (CPUC).

**Language and Reasoning Skills**

- Manage projects and time efficiently with a high level of attention to detail.
- Apply strong task prioritization, analytical and problem-solving skills.
- Exercise sound judgment, creative problem solving, and commercial awareness.
- Develop high-quality writing, research and communication work products.
- Deliver clear oral communications.
- Effectively interpret and apply contract language and commercial agreements.
- Analytical skills to evaluate contractor performance and potential project opportunities,
and project siting, permitting and interconnection issues.

- Interact professionally and effectively with counterparties, consultants, MCE staff team and, when necessary, the Board of Directors.

**Ability to**

- Be thorough and detail-oriented.
- Manage multiple priorities and quickly adapt to changing priorities in a fast paced dynamic environment.
- Establish and maintain effective working relationships with persons encountered during the performance of duties.
- Take responsibility and work independently, as well as work as a team member
- Prepare professional written work products.
- Perform quantitative data and statistical analysis and effectively communicate results to others.
- Work accurately and swiftly under pressure.
- Demonstrate patience, tact, and courtesy.

**MATHEMATICAL SKILLS**

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals; compute rate, ratio, and percent and to create and interpret bar graphs

**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 is occasionally required to stand.

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 person with a disability upon request.
POWER SETTLEMENTS ANALYST II
JOB DESCRIPTION

SUMMARY
The Power Settlements Analyst II, under general direction of the Director of Power Resources, has responsibility for power portfolio monitoring, tracking and resolution of California Independent System Operator (CAISO) Statement discrepancies, risk mitigation, and operations reporting as well as invoice review and validation to support the MCE power supply portfolio. The incumbent may assist in the administration of RFO processes, MCE procurement process, ongoing correspondence with counterparties including performance tracking, and other duties as assigned in support of the power supply procurement process.

CLASS CHARACTERISTICS
The Power Settlements Analyst performs assignments under general direction of a Power Supply Contracts Manager II as part of the Power Resources and Procurement team and works closely with MCE’s technical team including external consultants, Portfolio Manager, and Scheduling Coordinator. This position provides support to the Power Resources and Procurement Team by developing reports and reviewing CAISO Statements, analyzing transactions, and identifying Imbalance energy impacts and monitoring Congestion Revenue Rights (CRR) positions for existing and potential power supply contracts as well as reviewing, validating and processing power supply invoices for payment. The Power Settlements Analyst I focuses more on data analysis and decision support, while the Power Settlements Analyst II operates at a higher level of autonomy and provides a higher level of risk analysis and decision making.

SUPERVISORY RESPONSIBILITIES
This position may have lead worker and/or supervisory responsibilities.

ESSENTIAL DUTIES AND RESPONSIBILITIES (ILLUSTRATIVE ONLY)
Power Supply Contract Facilitation

- Under direction of a Power Supply Contracts Manager II, establish standard operating procedures, protocols and safeguards to ensure procurement team decision making processes are aligned with agency goals.
- Evaluates congestion impacts of contracted physical paths and identifies financially advantageous paths for nomination to the annual, monthly, and quarterly CAISO allocations and auctions.
- Responsible for developing and monitoring positions and completing risk analysis for energy generation and trading portfolio.
- Work with consultants, vendors, Scheduling Coordinator, and senior management to
analyze risk and value around complex transactions and portfolio positions, including power generation, load forecasts and load scheduling, hedging strategies

- Interact with IT consultants and Scheduling software vendor for process improvements to resolve system and application issues
- Work with accounting and settlement groups to deliver critical financial reporting information
- Serve as point of contact for counterparties in ensuring compliance with supply agreements demonstrating excellent interpersonal skills and project management acumen
- Assist with creation of materials to facilitate Board review of counterparty performance with supplier agreements, and staff reports
- Conduct research and other due diligence to compile relevant information as needed for staff, technical consultants, legal consultants and Board members
- Maintain current knowledge of regulatory/ legislative and market trends and changes as well as current and future market conditions

Performance Management and Monitoring

- Management and monitoring of assigned counterparty relationships as required to improve performance and contract compliance
- Management and monitoring of:
  - Scheduling Coordinator,
  - Settlement Quality Meter Data (SQMD), and
  - Portfolio Manager
- Performance auditing and monitoring for existing MCE service and power contracts
- Track counterparty compliance with contract milestones and other deliverables
- Facilitate & manage service vendor and contractor agreements
- Maintain and update files as needed
- Maintain, update, and track contract files through contract management system

Settlements and Invoice Management

- Identify opportunities for portfolio optimization, budget savings, congestion cost avoidance and project development
- Interface with power suppliers and contractors regarding timely invoicing
- Receive, file and process supplier invoices in a timely and correct manner
- Manage and/or perform validation on supplier invoices as assigned to insure accurate charges and credits have been applied.
- Manage CAISO statement validation and CAISO cost recovery from counterparties as provided for in contract terms.
- Under the direction of the Director of Power Resources, manage CAISO CRR allocation and auction participation, implement bidding strategy and assess performance.
- Use CAISO post-market data to measure resource performance and develop strategies for optimization
- Track supplier invoice payments and prepare related reports to management, technical team and external accountant
- Resolve, or provide support in resolving invoice and billing issues
- Provide information to assist external accountant with problem resolution
Risk Management

- Under the direction of the Director of Power Resources, develop and maintain risk guidelines for CAISO Energy Settlements and Congestion Revenue Rights (CRRs)
- Perform and maintain risk analysis for energy generation and trading portfolio
- In coordination with Finance and Operations teams, develop, maintain and enforce risk policies for CAISO invoicing and power supplier billing & invoicing.

Other duties

- Prepare materials for the MCE staff to facilitate policy discussions related to procurement and resource planning
- Assist with the administration of RFO processes, the open season process and the assessment of unsolicited proposals
- May review and analyze proposals for electric power supply submitted to MCE by developers and brokers and provide summary information for staff and technical team
- May assist in managing MCE’s various renewable energy certificate accounts within the WREGIS system
- May assist with preparation of compliance reports and materials related to MCE power supply, including those required by the California Public Utilities Commission (CPUC), California Energy Commission (CEC), The Climate Registry, and the Department of Energy (DOE).
- Work with Policy Team to provide expertise and input for CAISO policy, and stakeholder initiative processes which impact MCE Power Resources.
- As assigned, assist with the implementation of MCE’s Strategic Plan.

BREAKDOWN OF TIME

- Power Supply Contract Facilitation 10%
- Vendor Performance Monitoring 20%
- Settlements & Invoice Management 40%
- Document Processes and Procedures 10%
- Risk Management 10%
- Other as assigned 10%

MINIMUM QUALIFICATIONS

Experience/Education

Education and experience equivalent to a Bachelor’s degree in business, economics, operations research, or accounting, supplemented by a minimum of 6 years of progressively responsible experience in electric utility power settlements, a Community Choice Aggregation or Direct Access program or in a closely related field. Technical experience in the management of CAISO Settlements is required.

Knowledge of

- Microsoft Office software including Excel, Word and PowerPoint, Project.
- Energy generation technologies including carbon neutral electric energy, conventional energy, and renewable energy such as wind, biomass, geothermal, solar,
concentrating solar, and hydroelectric
• Procurement process and use of renewable energy certificates to support mandatory
and voluntary compliance programs
• The California Independent System Operator (CAISO) settlement process
• CAISO Market Initiatives and the CAISO Stakeholder Process
• The structure and content of standard power purchase agreements for various
resource types
• Renewable energy project development including environmental and local use
permitting, interconnection agreements and processes
• California’s Renewables Portfolio Standard, Power Content Label and Power
Source Disclosure program
• Power scheduling and settlement
• The Western Renewable Energy Information System (WREGIS)
• Regulatory reporting and compliance requirements of the California Public Utilities
Commission (CPUC).

Language and Reasoning Skills
• Manage projects and time efficiently with a high level of attention to detail.
• Apply strong task prioritization, analytical and problem-solving skills.
• Exercise sound judgment, creative problem solving, and commercial awareness.
• Develop high-quality writing, research and communication work products.
• Deliver clear oral communications.
• Effectively interpret and apply contract language and commercial agreements.
• Analytical skills to evaluate contractor performance and potential project opportunities,
and project siting, permitting and interconnection issues.
• Interact professionally and effectively with counterparties, consultants, MCE staff
team and, when necessary, the Board of Directors.

Ability to
• Be thorough and detail-oriented.
• Manage multiple priorities and quickly adapt to changing priorities in a fast
paced dynamic environment.
• Establish and maintain effective working relationships with persons encountered during
the performance of duties.
• Take responsibility and work independently, as well as work as a team member
• Prepare professional written work products.
• Perform quantitative data and statistical analysis and effectively communicate results
to others.
• Work accurately and swiftly under pressure.
• Demonstrate patience, tact, and courtesy.

MATHEMATICAL SKILLS
Ability to add, subtract, multiply, and divide in all units of measure, using whole
numbers, common fractions, and decimals; compute rate, ratio, and percent and to create
and interpret bar graphs

**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 is occasionally required to stand.

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 person with a disability upon request.
March 2, 2018

TO: MCE Executive Committee

FROM: Elizabeth Kelly, General Counsel

RE: Updating Procurement Authorities (Agenda Item #08)
   a) Adopting Resolution No. 2018-03 Rescinding Resolution No. 2017-02 and Delegating Energy Procurement Authority
   b) Adopting Resolution No. 2018-04 Designating the Chief Executive Officer as Purchasing Agent Pursuant to Government Code 25500 and Delegating Purchasing Agent Authority

ATTACHMENTS:
   A. Proposed Resolution No. 2018-03 Rescinding Resolution No. 2017-02 and Delegating Energy Procurement Authority
   B. Proposed Resolution No. 2018-04 Designating the Chief Executive Officer as Purchasing Agent Pursuant to Government Code 25500 and Delegating Purchasing Agent Authority
   C. Resolution No. 2017-02 Delegating Contracting Authorities
   D. Presentation Regarding Updating Procurement Authorities

Dear Executive Committee Members:

SUMMARY:

Staff recommends that the Board of Directors update the delegation of authorities provided to its CEO in order to address MCE’s business needs as a growing organization.

In order to support MCE’s growth and the routine contracting needs of the organization, MCE staff recommends the following modifications to the contracting authorities delegated to MCE’s CEO:

- Increase the CEO’s purchasing and contracting authority from $25,000 to $100,000;
- Specify exclusions from procurement limits; and
- Formally designate the CEO as MCE’s Purchasing Agent

MCE staff recommend replacing Resolution No. 2017-02 with two proposed resolutions: one for energy procurement and one for other contracting authorities. This approach will: (1) allow for administrative ease in updating specific contracting rules in the future, and (2) update the contracting delegations to better reflect MCE’s operational business needs.
No Changes.     Recommended Changes:
• Increase CEO authority to $100,000
• Specify exclusions from procurement limits
• Formally designate CEO as purchasing agent

These proposed Resolutions are described in more detail below.

1. Resolution No. 2018-03 Rescinding Resolution No. 2017-02 and Delegating Energy Procurement Authority

There are no changes proposed to the delegation of energy procurement authority. This proposed Resolution simply rescinds Resolution No. 2017-02¹ and replaces it with the same delegation of energy procurement authorities to the Technical Committee and the Chief Executive Officer.

2. Resolution No. 2018-04 Designating the CEO as Purchasing Agent and Delegating Purchasing Agent Authority

This proposed Resolution updates MCE’s non-energy contracting authorities. This proposed Resolution provides for a similar delegation of purchasing authority to the CEO as in Resolution No. 2017-02, but makes three material changes. The proposed Resolution would:

¹ The remainder of the contents of Resolution No. 2017-02 are included as set forth below in Proposed Resolution 2018-04.
a. Increase the CEO’s purchasing and contracting authority to $100,000;

b. Specify exclusions from procurement limits; and

c. Formally designate CEO as MCE’s purchasing agent.

Each of these changes is described below.

a. Increase the CEO’s purchasing and contracting authority from $25,000 to $100,000

This proposed Resolution would increase the authority of the CEO to enter into contracts with a not-to-exceed amount of less than or equal to $100,000, from the current CEO authority of $25,000. This change is proposed to align with MCE’s substantially increased budget, purchasing and contracting needs.

When MCE launched, it was the first CCA of its kind and had a budget of $330,000 (FY 2009). The contracting authority assigned to the CEO was $20,000 (Resolution 2010-05A), representing 6% of the annual MCE budget. The assigned contracting authority was subsequently increased to $25,000 under Resolution 2013-04. MCE has since launched service and expanded, other CCAs have launched, and MCE’s annual budget has grown to $385 million (FY 2018/19). This represents a 1,000-fold budget increase without any substantial increase in assigned contracting authority, and has led to some Board and Committee meetings being held simply for approval of contracts that are necessary for MCE’s routine operations.

Setting the maximum CEO contracting authority at $100,000 represents 0.02% of MCE’s current annual budget. The recommended change is consistent with other CCAs’ CEO authorities, including Monterey Bay Community Power ($100,000), Silicon Valley Clean Energy ($100,000) and Lancaster Choice Energy ($125,000).

b. Specify Exclusions from Procurement Limits

The proposed Resolution exempts certain transactions from the Purchasing Agent’s purchasing and procurement authority limits, provided that such expenditures are consistent with the Board-approved Budget. The purpose of this provision is to address scenarios where bidding and procurement rules are inapplicable, infeasible or unnecessary. The list of transactions is loosely based on the exemptions in the County of Marin Procurement Manual, but has been tailored by MCE staff to fit MCE’s unique business purposes.

c. Formally designate the CEO as MCE’s Purchasing Agent

Your Board can designate a purchasing agent to enter into contracts for the purchase of materials, supplies, equipment, and other personal property; for the rent of office furnishings and equipment; or for services and public works projects.² MCE’s CEO has been fulfilling this role, however, as MCE grows, the Board of Directors may choose to employ additional purchasing agents, such as a Chief Operating Officer. This proposed Resolution will simplify future revisions to designations of purchasing agents.

² The duties of a purchasing agent are defined in Government Code Section 25500 et seq.
**Fiscal Impact:** None.

**Recommendations:** Recommend that the Board of Directors:

1. Adopt proposed Resolution No. 2018-03 Rescinding Resolution No. 2017-02 and Delegating Energy Procurement Authority

2. Adopt proposed Resolution No. 2018-04 Designating the Chief Executive Officer as Purchasing Agent and Delegating Purchasing Agent Authority
A RESOLUTION OF THE BOARD OF DIRECTORS OF
MARIN CLEAN ENERGY RESCINDING RESOLUTION NO. 2017-02 AND
DELEGATING ENERGY PROCUREMENT AUTHORITY

WHEREAS, Resolution No. 2017-02 set forth contracting and procurement authority delegated by the Board of Directors; and

WHEREAS, the Board intends that this Resolution No. 2018-03, together with Resolution No. 2018-04, shall supersede and replace Resolution No. 2017-02; and

WHEREAS, the Board of Directors, by this delegation of energy procurement and contracting authority as described herein, shall not be divested of any such authority, but shall retain and may exercise such authority at such times as it may deem necessary and proper, at its sole discretion; and

WHEREAS, the Board of Directors shall retain contracting authority over all contracts required by law to be approved by the Board, including but not limited to any contracts to borrow money or otherwise incur debt.

NOW, THEREFORE, BE IT RESOLVED, by the MCE Board of Directors:

A. Resolution No. 2017-02 is hereby rescinded.

B. For purposes of this Resolution, "Energy Procurement" shall mean all contracting, purchase and sale of energy and energy-related products for MCE, including but not limited to products related to electricity, capacity, energy efficiency, distributed energy resources, demand response, and storage.

C. The Board of Directors hereby delegates the following contracting authority consistent with an approved resource plan and/or budget, as applicable, including contracts that are consistent with the current fiscal year's budget but extend beyond the current fiscal year:

1. Delegation to the Technical Committee

   The Technical Committee is hereby authorized to approve and direct the Chief Executive Officer ("CEO") and Technical Committee Chair to execute:

   a. contracts for Energy Procurement as herein defined;

   b. contracts for functions, programs or services related to Energy Procurement; and

   c. contracts related to MCE ownership, leasing or development of energy generation projects and assets.
2. Delegation to the Chief Executive Officer and Technical Committee Chair, Jointly

The CEO and Technical Committee Chair, jointly, are hereby authorized, after consultation with the appropriate Committee of the Board of Directors, to approve and execute contracts for Energy Procurement for terms of less than or equal to five years. The CEO shall timely report to the Board of Directors all such executed contracts.

3. Delegation to the Chief Executive Officer

The CEO is hereby authorized to approve and execute:

a. contracts for Energy Procurement for terms of less than or equal to 12 months, which the CEO shall timely report to the Board of Directors; and

b. amendments or addenda to existing Energy Procurement contracts, regardless of the existing contract’s price or total amount, which improve the terms of the contract to MCE’s benefit without increasing the contract’s not-to-exceed maximum dollar amount.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 15th day of March, 2018, by the following vote:

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City of San Ramon
City of Sausalito
City of St. Helena
Town of Tiburon
City of Walnut Creek
Town of Yountville

______________________________________
CHAIR, MCE

Attest:

______________________________________
SECRETARY, MCE
RESOLUTION NO. 2018-04

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY DESIGNATING THE CHIEF EXECUTIVE OFFICER AS THE PURCHASING AGENT PURSUANT TO GOVERNMENT CODE 25500 AND DELEGATING PURCHASING AGENT AUTHORITY

WHEREAS, Section 2.6 of the MCE Joint Powers Agreement provides that the power of MCE is subject to the same restrictions upon the manner of exercising power possessed by the County of Marin;

WHEREAS, Government Code Section 25500 et seq. defines the role of a purchasing agent, and authorizes the governing body of a county to employ a purchasing agent to enter into certain transactions; and

WHEREAS, the Board of Directors desires to appoint a purchasing agent for MCE; and

WHEREAS, the Board of Directors, by designating a purchasing agent and delegating certain contracting authority to the designated purchasing agent as described herein, shall not be divested of any such authority, but shall retain and may exercise such authority at such times as it may deem necessary and proper, at its sole discretion; and

WHEREAS, the Board of Directors shall retain contracting authority over all contracts required by law to be approved by the Board, including but not limited to any contracts to borrow money or otherwise incur debt.

NOW, THEREFORE, BE IT RESOLVED, by the MCE Board of Directors:

A. The Board of Directors hereby designates the Chief Executive Officer as purchasing agent for MCE.

B. This delegation of contracting authority to the purchasing agent shall be subject to any exemptions that may be adopted by the Board of Directors.

C. The Board of Directors hereby delegates the following contracting authority, consistent with an approved Integrated Resource Plan and/or budget, as applicable, including transactions that are consistent with the current fiscal year's budget but extend beyond the current fiscal year:

1. Delegation to the Executive Committee:

The Executive Committee is hereby authorized to approve and direct the purchasing agent to enter into all transactions, including contracts, amendments and addenda; provided that any transaction greater than $100,000 shall also be executed by the Executive Committee Chair.
2. Delegation to the Purchasing Agent:

The purchasing agent is hereby authorized to approve and enter into:

a. transactions for goods, equipment or services with a not-to-exceed maximum dollar amount of $100,000 per vendor for a given scope of work, per fiscal year;

b. amendments or addenda to existing contracts, regardless of the existing contract's price or total amount, which improves the terms of the contract to MCE's benefit without increasing the contract's not-to-exceed maximum dollar amount; and

c. in the event of an emergency situation, transactions with a not-to-exceed maximum dollar amount of:

   i. $150,000 in the aggregate; or

   ii. $500,000 in the aggregate with the prior written consent of the Chair or Vice Chair of the Executive Committee.

An "emergency situation" for purposes hereof is a sudden, unexpected occurrence that poses an imminent danger to life or property or other material financial loss or to essential public services that calls for immediate action with inadequate time for prior Board of Directors or Executive Committee approval. The purchasing agent shall deliver a report to the Board of Directors at the next regular meeting explaining the necessity for the action, a listing of expenditures made under these emergency powers and any recommended future actions.

3. Exemptions to Limits on Purchasing Agent’s Purchasing Authority:

The Board of Directors hereby provides that the following transactions are exempt from the above purchasing and procurement authority limits, provided that such expenditures are consistent with the budget adopted by the Board:

a. Utilities, where there is no reasonable basis for competitive procurement, including but not limited to telephonic communications, electric power, internet/cable, water, solid waste and debris collection (unless in relation to a construction project), and sewage;

b. Tariffed costs and fees, including but not limited to PG&E service fees and CAISO fees and costs, including MCE’s Estimated Aggregate Liability (EAL);

c. Notices required by law;

d. Fees and taxes required by law;
e. Payments made pursuant to a duly approved contract;

f. Routine office supplies;

g. Insurance policies consistent with MCE’s approved benefits policy;

h. Print services; and

i. Postage costs.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 15th day of March, 2018, by the following vote:

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AI #08_Att. B: Prop. Res. No. 2018-04 Designating the CEO as Purchasing Agent Pursuant to Gov. Code 25500 & Delegating Purchasing Agent Authority

City of San Pablo
City of San Rafael
City of San Ramon
City of Sausalito
City of St. Helena
Town of Tiburon
City of Walnut Creek
Town of Yountville

____________________________________
CHAIR, MCE

Attest:

___________________________________________
SECRETARY, MCE
RESOLUTION 2017-02

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY DELEGATING CONTRACTING AUTHORITIES

WHEREAS, Marin Clean Energy (MCE) is a Joint Powers Authority (JPA) established on December 19, 2008, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

WHEREAS, MCE members include the following communities: the County of Marin, the County of Napa, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the Town of Corte Madera, the City of El Cerrito, the Town of Fairfax, the City of Lafayette, the City of Larkspur, the City of Mill Valley, the City of Napa, the City of Novato, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Walnut Creek, and the Town of Yountville; and

WHEREAS, pursuant to its authority under Sections 4.6 and 4.7 of the Joint Powers Agreement the Board of Directors wishes to delegate authority to its committees and the Chief Executive Officer ("CEO"), for purposes of responding efficiently to requests from contractors, suppliers, lenders or other parties for documentation of such authority for MCE during the normal course of business; and

WHEREAS, Resolutions 2013-04 and 2016-05 set forth contracting authorities delegated by the Board of Directors; and

WHEREAS, the Board intends that this Resolution 2017-02 shall supersede and replace Resolutions 2013-04 and 2016-05.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of MCE:

A. Resolutions 2013-04 and 2016-05 are hereby rescinded and replaced by this Resolution 2017-02.

B. The Board of Directors, by this delegation of contracting authority as described herein, shall not be divested of any such authority, but shall retain and may exercise such authority at such times as it may deem necessary and proper, at its sole discretion.

C. The Board of Directors shall retain authority over all legally required authorities, including, for the avoidance of doubt, authority over contracting for borrowing as described in Government Code Section 536.35.7 or its successor.

D. For purposes of this Resolution, "Energy Procurement" shall mean all contracting for energy and energy-related products for MCE, including but not limited to products related to electricity, capacity, energy efficiency, distributed energy resources, demand response, and storage.

E. The Board of Directors hereby delegates the following contracting authorities consistent with an approved resource plan and/or budget, as applicable, including contracts that are consistent with the current fiscal year's budget but extend beyond the current fiscal year:
1. Delegation to the Executive Committee

The Executive Committee has all necessary and proper authority to approve and direct the CEO to execute all contracts, amendments and addenda; provided that any contract, amendment or addenda with total consideration greater than $25,000 shall also be executed by the Executive Committee Chair.

2. Delegation to the Technical Committee

The Technical Committee has all necessary and proper authority to approve and direct the CEO and Technical Committee Chair to execute:

a. contracts for Energy Procurement as herein defined;

b. contracts for functions, programs or services related to Energy Procurement, technical matters, and demand-side and customer-side offerings;

c. contracts related to MCE ownership or development of energy generation projects and assets.

3. Delegation to the Chief Executive Officer and Technical Committee Chair, Jointly

The CEO and Technical Committee Chair, jointly, shall have all necessary and proper authority, after consultation with a Committee of the Board, to approve and execute contracts for Energy Procurement for terms of less than or equal to five years. The CEO shall timely report to the Board all such executed contracts.

4. Delegation to the Chief Executive Officer

The CEO shall have all necessary and proper authority to approve and execute:

a. contracts for Energy Procurement for terms of less than or equal to 12 months, which the CEO shall timely report to the Board;

b. contracts with a not-to-exceed maximum dollar amount of less than or equal to $25,000 per vendor for a given scope of work, per fiscal year;

c. amendments or addenda to existing contracts, regardless of the existing contract's price or total amount, which improves the terms of the contract to MCE’s benefit without increasing the contract's not-to-exceed maximum dollar amount; and

d. in the event of an emergency situation contracts with a not-to-exceed maximum dollar amount of:

   i. $150,000 in the aggregate; or

   ii. $500,000 in the aggregate with the prior written consent of three (3) Executive Committee members

in order to avert or alleviate damage to property, to protect the health, safety and welfare of the community and MCE’s employees, or to repair or restore damaged or destroyed property of MCE.
An “emergency situation” for purposes hereof is a situation creating an imminent danger to life or property or other material financial loss that calls for immediate action with inadequate time for prior Board approval. The Chief Executive Officer shall within thirty (30) days of the emergency, deliver a report to the Board of Directors explaining the necessity for the action, a listing of expenditures made under these emergency powers and any recommended future actions.

PASSED AND ADOPTED at a regular meeting of the Board of Directors on this 16th day of February 2017, by the following vote:
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CHAIR, MCE BOARD

APPROVED
FEB 16 2017
MARIN CLEAN ENERGY

SECRETARY, MCE BOARD
Updating Contracting Authorities

Elizabeth Kelly, General Counsel
Best Practice: Update Procurement Rules

- Designate a Purchasing Agent
- Revise Purchasing Agent authority
- Clarify exemptions to procurement rules

Resolution 2017-02

- Energy Procurement Authority
- Other Procurement Authority

Res. 2018-03

- Energy Procurement Authority

Res. 2018-04

- Other Procurement Authority
Proposed Resolution 2018-03

Function: Delegating Energy Procurement Authority

Changes from Existing Resolution:
• None
Proposed Resolution 2018-04

Function: Designating CEO as Purchasing Agent

Changes from Existing Resolution:
1. Defines Purchasing Agent and appoints CEO
2. Increases authority of Purchasing Agent
3. Exempts certain transactions from purchasing and procuring authority limits
Proposed Resolution 2018-04

1. Defines Purchasing Agent and appoints CEO
   • Prepares for a future MCE state where other individuals are authorized to enter into transactions, e.g. COO
   • Distinguishes Energy Procurement from other procurement
Proposed Resolution 2018-04

2. Increases authority of Purchasing Agent
   - Increases the authority from $25k to $100k
   - Represents 0.02% of MCE annual budget
   - This increase is consistent with:
     - Monterey Bay Community Power
     - Silicon Valley Clean Energy
     - Lancaster Choice Energy ($125,000)
Proposed Resolution 2018-04

3. Exempts certain transactions from purchasing and procuring authority limits
   • Must be consistent with the adopted budget
   • Scenarios where bidding / procurement rules are inapplicable, infeasible or unnecessary
   • Sample Exemptions: Utilities, tariffed costs and fees, notices required by law, etc.
RECOMMENDATION

Recommend that the Board of Directors:

- Adopt proposed Resolution No. 2018-03 Rescinding Resolution No. 2017-02 and Delegating Energy Procurement Authority

- Adopt proposed Resolution No. 2018-04 Designating the Chief Executive Officer as Purchasing Agent and Delegating Purchasing Agent Authority
THANK YOU

Questions?
From: Kymberleigh Korpus [mailto:kkorpus@moraga.ca.us]
Sent: Thursday, December 14, 2017 10:14 AM
To: david.trotter@d trotterlaw.com
Subject: MCE, and the power to take property from Moraga residents by eminent domain
Importance: High

Dave:

I have another concern that I’m hoping you can help me with: As you know, I am deeply concerned that the terms of the Marin Clean Energy Authority Joint Powers Agreement gives MCE the “all powers common to the Parties and such additional powers accorded to it by law,” and authorizes MCE to “exercise all powers and do all acts necessary and proper to carry out the provisions of [the JPA Agreement] and fulfill [MCE’s] purposes.” This grant of powers is deeply concerning to the extent that it includes the authority and power of MCE to exercise in its own name the Town of Moraga’s power to acquire real property in Town by eminent domain.

The JPA Agreement gives this power and authority to MCE in section 2.5.4. This is problematic because: (i) I do not think it served the best interests of the Town or the residents to give another outside agency any decision making power (or influence) on the question of what should or can be built in Moraga, and (ii) as currently drafted, the JPA Agreement doesn’t even give the Moraga Town Council the right to veto any such exercise of the power of eminent domain against its citizens.

During our deliberations earlier this year as we tried to determine whether Moraga should join MCE, MCE strongly stated that it had no intent of exercise the power of eminent domain anywhere – much less in our town. That statement was not very reassuring to me, as organizations, policies, and plans all change over time. I want to make sure we provide adequate protections to our residents on this issue for now, and for the future, and when I expressed my concerns in this regard, the MCE representative stated that MCE would be willing to consider amending the JPA Agreement to remove this power from its arsenal, because that kind of tactic was not part of its business plan.

Would you be willing to follow up on this and see if you could get the JPA Agreement amended so MCE no longer has the ability to exercise the power of eminent domain to take property from our residents and put it to use in generating renewable energy?

I would really appreciate any headway you can make into this issue.

Kymberleigh

Kymberleigh N. Korpus
Town Councilwoman
kkorpus@moraga.ca.us

Town of Moraga
329 Rheem Blvd.,
Moraga, CA 94556
(925) 388-6555
www.moraga.ca.us
Marin Energy Authority
- Joint Powers Agreement -

Effective December 19, 2008
As amended by Amendment No. 1 dated December 3, 2009
As further amended by Amendment No. 2 dated March 4, 2010
As further amended by Amendment No. 3 dated May 6, 2010
As further amended by Amendment No. 4 dated December 1, 2011
As further amended by Amendment No. 5 dated July 5, 2012
As further amended by Amendment No. 6 dated September 5, 2013
As further amended by Amendment No. 7 dated December 5, 2013
As further amended by Amendment No. 8 dated September 4, 2014
As further amended by Amendment No. 9 dated December 4, 2014
As further amended by Amendment No. 10 dated April 21, 2016
As further amended by Amendment No. 11 dated May 19, 2016
As further amended by Amendment No. 12 dated July 20, 2017

Among The Following Parties:
City of American Canyon
City of Belvedere
City of Benicia
City of Calistoga
City of Concord
Town of Corte Madera
Town of Danville
City of El Cerrito
Town of Fairfax
City of Lafayette
City of Larkspur
City of Martinez
Town of Moraga
City of Mill Valley
City of Napa
City of Novato
City of Oakley
City of Pinole
City of Pittsburg
City of Richmond
Town of Ross
Town of San Anselmo
City of San Pablo
City of San Rafael
City of San Ramon
City of Sausalito
City of St. Helena
Town of Tiburon
City of Walnut Creek
Town of Yountville
County of Contra Costa
County of Marin
County of Napa
MARIN ENERGY AUTHORITY  
JOINT POWERS AGREEMENT

This Joint Powers Agreement ("Agreement"), effective as of December 19, 2008, is made and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 et seq.) of the California Government Code relating to the joint exercise of powers among the parties set forth in Exhibit B ("Parties"). The term “Parties” shall also include an incorporated municipality or county added to this Agreement in accordance with Section 3.1.

RECITALS

1. The Parties are either incorporated municipalities or counties sharing various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and their inhabitants.

2. In 2006, the State Legislature adopted AB 32, the Global Warming Solutions Act, which mandates a reduction in greenhouse gas emissions in 2020 to 1990 levels. The California Air Resources Board is promulgating regulations to implement AB 32 which will require local government to develop programs to reduce greenhouse emissions.

3. The purposes for the Initial Participants (as such term is defined in Section 2.2 below) entering into this Agreement include addressing climate change by reducing energy related greenhouse gas emissions and securing energy supply and price stability, energy efficiencies and local economic benefits. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar and wind energy production.

4. The Parties desire to establish a separate public agency, known as the Marin Energy Authority ("Authority"), under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) ("Act") in order to collectively study, promote, develop, conduct, operate, and manage energy programs.

5. The Initial Participants have each adopted an ordinance electing to implement through the Authority Community Choice Aggregation, an electric service enterprise agency available to cities and counties pursuant to California Public Utilities Code Section 366.2 ("CCA Program"). The first priority of the Authority will be the consideration of those actions necessary to implement the CCA Program. Regardless of whether or not Program Agreement 1 is approved and the CCA Program becomes operational, the parties intend for the Authority to continue to study, promote, develop, conduct, operate and manage other energy programs.
AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Parties as follows:

ARTICLE 1
CONTRACT DOCUMENTS

1.1 Definitions. Capitalized terms used in the Agreement shall have the meanings specified in Exhibit A, unless the context requires otherwise.

1.2 Documents Included. This Agreement consists of this document and the following exhibits, all of which are hereby incorporated into this Agreement.

- Exhibit A: Definitions
- Exhibit B: List of the Parties
- Exhibit C: Annual Energy Use
- Exhibit D: Voting Shares

1.3 Revision of Exhibits. The Parties agree that Exhibits B, C and D to this Agreement describe certain administrative matters that may be revised upon the approval of the Board, without such revision constituting an amendment to this Agreement, as described in Section 8.4. The Authority shall provide written notice to the Parties of the revision of any such exhibit.

ARTICLE 2
FORMATION OF MARIN ENERGY AUTHORITY

2.1 Effective Date and Term. This Agreement shall become effective and Marin Energy Authority shall exist as a separate public agency on the date this Agreement is executed by at least two Initial Participants after the adoption of the ordinances required by Public Utilities Code Section 366.2(c)(10). The Authority shall provide notice to the Parties of the Effective Date. The Authority shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated in accordance with Section 7.4, subject to the rights of the Parties to withdraw from the Authority.

2.2 Initial Participants. During the first 180 days after the Effective Date, all other Initial Participants may become a Party by executing this Agreement and delivering an executed copy of this Agreement and a copy of the adopted ordinance required by Public Utilities Code Section 366.2(c)(10) to the Authority. Additional conditions, described in Section 3.1, may apply (i) to either an incorporated municipality or county desiring to become a Party and is not an Initial Participant and (ii) to Initial Participants that have not executed and delivered this Agreement within the time period described above.
2.3 **Formation.** There is formed as of the Effective Date a public agency named the Marin Energy Authority. Pursuant to Sections 6506 and 6507 of the Act, the Authority is a public agency separate from the Parties. The debts, liabilities or obligations of the Authority shall not be debts, liabilities or obligations of the individual Parties unless the governing board of a Party agrees in writing to assume any of the debts, liabilities or obligations of the Authority. A Party who has not agreed to assume an Authority debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Parties agree to assume the debt, liability or obligation of the Authority. Notwithstanding Section 8.4 of this Agreement, this Section 2.3 may not be amended unless such amendment is approved by the governing board of each Party.

2.4 **Purpose.** The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to each Party to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. Without limiting the generality of the foregoing, the Parties intend for this Agreement to be used as a contractual mechanism by which the Parties are authorized to participate as a group in the CCA Program, as further described in Section 5.1. The Parties intend that subsequent agreements shall define the terms and conditions associated with the actual implementation of the CCA Program and any other energy programs approved by the Authority.

2.5 **Powers.** The Authority shall have all powers common to the Parties and such additional powers accorded to it by law. The Authority is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its purposes, including, but not limited to, each of the following:

2.5.1 make and enter into contracts;
2.5.2 employ agents and employees, including but not limited to an Executive Director;
2.5.3 acquire, contract, manage, maintain, and operate any buildings, works or improvements;
2.5.4 acquire by eminent domain, or otherwise, except as limited under Section 6508 of the Act, and to hold or dispose of any property;
2.5.5 lease any property;
2.5.6 sue and be sued in its own name;
2.5.7 incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Section 53850 et seq. and authority under the Act;
2.5.8 issue revenue bonds and other forms of indebtedness;
2.5.9 apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state or local public agency;
2.5.10 submit documentation and notices, register, and comply with orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;

2.5.11 adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority (“Operating Rules and Regulations”); and

2.5.12 make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services.

2.6 **Limitation on Powers.** As required by Government Code Section 6509, the power of the Authority is subject to the restrictions upon the manner of exercising power possessed by the County of Marin.

2.7 **Compliance with Local Zoning and Building Laws.** Notwithstanding any other provisions of this Agreement or state law, any facilities, buildings or structures located, constructed or caused to be constructed by the Authority within the territory of the Authority shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities, buildings or structures are constructed.

**ARTICLE 3**

**AUTHORITY PARTICIPATION**

3.1 **Addition of Parties.** Subject to Section 2.2, relating to certain rights of Initial Participants, other incorporated municipalities and counties may become Parties upon (a) the adoption of a resolution by the governing body of such incorporated municipality or such county requesting that the incorporated municipality or county, as the case may be, become a member of the Authority, (b) the adoption, by an affirmative vote of the Board satisfying the requirements described in Section 4.9.1, of a resolution authorizing membership of the additional incorporated municipality or county, specifying the membership payment, if any, to be made by the additional incorporated municipality or county to reflect its prorata share of organizational, planning and other pre-existing expenditures, and describing additional conditions, if any, associated with membership, (c) the adoption of an ordinance required by Public Utilities Code Section 366.2(c)(10) and execution of this Agreement and other necessary program agreements by the incorporated municipality or county, (d) payment of the membership payment, if any, and (e) satisfaction of any conditions established by the Board. Notwithstanding the foregoing, in the event the Authority decides to not implement a CCA Program, the requirement that an additional party adopt the ordinance required by Public Utilities Code Section 366.2(c)(10) shall not apply. Under such circumstance, the Board resolution authorizing membership of an additional incorporated municipality or county shall be adopted in accordance with the voting requirements of Section 4.10.
3.2 **Continuing Participation.** The Parties acknowledge that membership in the Authority may change by the addition and/or withdrawal or termination of Parties. The Parties agree to participate with such other Parties as may later be added, as described in Section 3.1. The Parties also agree that the withdrawal or termination of a Party shall not affect this Agreement or the remaining Parties’ continuing obligations under this Agreement.

**ARTICLE 4**

**GOVERNANCE AND INTERNAL ORGANIZATION**

4.1 **Board of Directors.** The governing body of the Authority shall be a Board of Directors ("Board") consisting of one director for each Party appointed in accordance with Section 4.2.

4.2 **Appointment and Removal of Directors.** The Directors shall be appointed and may be removed as follows:

4.2.1 The governing body of each Party shall appoint and designate in writing one regular Director who shall be authorized to act for and on behalf of the Party on matters within the powers of the Authority. The governing body of each Party also shall appoint and designate in writing one alternate Director who may vote on matters when the regular Director is absent from a Board meeting. The person appointed and designated as the Director or the alternate Director shall be a member of the governing body of the Party. As an alternative to appointing its own Director and alternate Director, the governing body of any Party may elect to designate another Party within the same county (the “designated Party”) to represent it on the Board with the Director and alternate Director from the designated Party (the “consolidated Parties”). Notwithstanding any provision in this Agreement to the contrary, in the case of such an election by one or more Parties in the same county, the designated Party shall have the combined votes and voting shares of the consolidated Parties and shall vote on behalf of the consolidated Parties. The governing body of a Party may revoke its designation of another Party to vote on its behalf at any time. Neither an election by a Party to designate another Party to vote on its behalf or a revocation of this election shall be effective unless provided in a written notice to the Authority.

4.2.2 The Operating Rules and Regulations, to be developed and approved by the Board in accordance with Section 2.5.11, shall specify the reasons for and process associated with the removal of an individual Director for cause. Notwithstanding the foregoing, no Party shall be deprived of its right to seat a Director on the Board and any such Party for which its
Director and/or alternate Director has been removed may appoint a replacement.

4.3 **Terms of Office.** Each Director shall serve at the pleasure of the governing body of the Party that the Director represents, and may be removed as Director by such governing body at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed to fill the position of the previous Director in accordance with the provisions of Section 4.2 within 90 days of the date that such position becomes vacant.

4.4 **Quorum.** A majority of the Directors shall constitute a quorum, except that less than a quorum may adjourn from time to time in accordance with law.

4.5 **Powers and Function of the Board.** The Board shall conduct or authorize to be conducted all business and activities of the Authority, consistent with this Agreement, the Authority Documents, the Operating Rules and Regulations, and applicable law.

4.6 **Executive Committee.** The Board may establish an executive committee consisting of a smaller number of Directors. The Board may delegate to the executive committee such authority as the Board might otherwise exercise, subject to limitations placed on the Board’s authority to delegate certain essential functions, as described in the Operating Rules and Regulations. The Board may not delegate to the Executive Committee or any other committee its authority under Section 2.5.11 to adopt and amend the Operating Rules and Regulations.

4.7 **Commissions, Boards and Committees.** The Board may establish any advisory commissions, boards and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, other energy programs and the provisions of this Agreement.

4.8 **Director Compensation.** Compensation for work performed by Directors on behalf of the Authority shall be borne by the Party that appointed the Director. The Board, however, may adopt by resolution a policy relating to the reimbursement of expenses incurred by Directors.

4.9 **Board Voting Related to the CCA Program.**

4.9.1. To be effective, on all matters specifically related to the CCA Program, a vote of the Board shall consist of the following: (1) a majority of all Directors shall vote in the affirmative or such higher voting percentage expressly set forth in Sections 7.2 and 8.4 (the “percentage vote”) and (2) the corresponding voting shares (as described in Section 4.9.2 and Exhibit D) of all such Directors voting in the affirmative shall exceed 50%, or such other higher voting shares percentage expressly set forth in Sections 7.2 and 8.4 (the “percentage voting shares”), provided that, in instances in which such other higher voting share percentage would result in any one
Director having a voting share that equals or exceeds that which is necessary to disapprove the matter being voted on by the Board, at least one other Director shall be required to vote in the negative in order to disapprove such matter.

**4.9.2.** Unless otherwise stated herein, voting shares of the Directors shall be determined by combining the following: (1) an equal voting share for each Director determined in accordance with the formula detailed in Section 4.9.2.1, below; and (2) an additional voting share determined in accordance with the formula detailed in Section 4.9.2.2, below.

**4.9.2.1 Pro Rata Voting Share.** Each Director shall have an equal voting share as determined by the following formula: \((1/\text{total number of Directors}) \times 50\), and

**4.9.2.2 Annual Energy Use Voting Share.** Each Director shall have an additional voting share as determined by the following formula: \((\text{Annual Energy Use}/\text{Total Annual Energy}) \times 50\), where

(a) “Annual Energy Use” means, (i) with respect to the first 5 years following the Effective Date, the annual electricity usage, expressed in kilowatt hours (“kWhs”), within the Party’s respective jurisdiction and (ii) with respect to the period after the fifth anniversary of the Effective Date, the annual electricity usage, expressed in kWhs, of accounts within a Party’s respective jurisdiction, and any additional jurisdictions which they represent, that are served by the Authority and (b) “Total Annual Energy” means the sum of all Parties’ Annual Energy Use. The initial values for Annual Energy use are designated in Exhibit C, and shall be adjusted annually as soon as reasonably practicable after January 1, but no later than March 1 of each year

**4.9.2.3** The voting shares are set forth in Exhibit D. Exhibit D may be updated to reflect revised annual energy use amounts and any changes in the parties to the Agreement without amending the Agreement provided that the Board is provided a copy of the updated Exhibit D.

**4.10 Board Voting on General Administrative Matters and Programs Not Involving CCA.** Except as otherwise provided by this Agreement or the Operating Rules and Regulations, each member shall have one vote on general administrative matters, including but not limited to the adoption and amendment of the Operating Rules and Regulations, and energy programs not involving CCA. Action on these items shall be determined by a majority vote of the quorum present and voting on the item or such higher voting percentage expressly set forth in Sections 7.2 and 8.4.
4.11 **Board Voting on CCA Programs Not Involving CCA That Require Financial Contributions.** The approval of any program or other activity not involving CCA that requires financial contributions by individual Parties shall be approved only by a majority vote of the full membership of the Board subject to the right of any Party who votes against the program or activity to opt-out of such program or activity pursuant to this section. The Board shall provide at least 45 days prior written notice to each Party before it considers the program or activity for adoption at a Board meeting. Such notice shall be provided to the governing body and the chief administrative officer, city manager or town manager of each Party. The Board also shall provide written notice of such program or activity adoption to the above-described officials of each Party within 5 days after the Board adopts the program or activity. Any Party voting against the approval of a program or other activity of the Authority requiring financial contributions by individual Parties may elect to opt-out of participation in such program or activity by providing written notice of this election to the Board within 30 days after the program or activity is approved by the Board. Upon timely exercising its opt-out election, a Party shall not have any financial obligation or any liability whatsoever for the conduct or operation of such program or activity.

4.12 **Meetings and Special Meetings of the Board.** The Board shall hold at least four regular meetings per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution or ordinance of the Board. Regular meetings may be adjourned to another meeting time. Special meetings of the Board may be called in accordance with the provisions of California Government Code Section 54956. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law. All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Section 54950 et seq.).

4.13 **Selection of Board Officers.**

4.13.1 **Chair and Vice Chair.** The Directors shall select, from among themselves, a Chair, who shall be the presiding officer of all Board meetings, and a Vice Chair, who shall serve in the absence of the Chair. The term of office of the Chair and Vice Chair shall continue for one year, but there shall be no limit on the number of terms held by either the Chair or Vice Chair. The office of either the Chair or Vice Chair shall be declared vacant and a new selection shall be made if: (a) the person serving dies, resigns, or the Party that the person represents removes the person as its representative on the Board or (b) the Party that he or she represents withdraws form the Authority pursuant to the provisions of this Agreement.

4.13.2 **Secretary.** The Board shall appoint a Secretary, who need not be a member of the Board, who shall be responsible for keeping the minutes of
all meetings of the Board and all other official records of the Authority.

4.13.3 **Treasurer and Auditor.** The Board shall appoint a qualified person to act as the Treasurer and a qualified person to act as the Auditor, neither of whom needs to be a member of the Board. If the Board so designates, and in accordance with the provisions of applicable law, a qualified person may hold both the office of Treasurer and the office of Auditor of the Authority. Unless otherwise exempted from such requirement, the Authority shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall act as the depositary of the Authority and have custody of all the money of the Authority, from whatever source, and as such, shall have all of the duties and responsibilities specified in Section 6505.5 of the Act. The Board may require the Treasurer and/or Auditor to file with the Authority an official bond in an amount to be fixed by the Board, and if so requested the Authority shall pay the cost of premiums associated with the bond. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The Board may transfer the responsibilities of Treasurer to any person or entity as the law may provide at the time. The duties and obligations of the Treasurer are further specified in Article 6.

4.14 **Administrative Services Provider.** The Board may appoint one or more administrative services providers to serve as the Authority’s agent for planning, implementing, operating and administering the CCA Program, and any other program approved by the Board, in accordance with the provisions of a written agreement between the Authority and the appointed administrative services provider or providers that will be known as an Administrative Services Agreement. The Administrative Services Agreement shall set forth the terms and conditions by which the appointed administrative services provider shall perform or cause to be performed all tasks necessary for planning, implementing, operating and administering the CCA Program and other approved programs. The Administrative Services Agreement shall set forth the term of the Agreement and the circumstances under which the Administrative Services Agreement may be terminated by the Authority. This section shall not in any way be construed to limit the discretion of the Authority to hire its own employees to administer the CCA Program or any other program.

**ARTICLE 5**

**IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS**

5.1 **Preliminary Implementation of the CCA Program.**
5.1.1 **Enabling Ordinance.** Except as otherwise provided by Section 3.1, prior to the execution of this Agreement, each Party shall adopt an ordinance in accordance with Public Utilities Code Section 366.2(c)(10) for the purpose of specifying that the Party intends to implement a CCA Program by and through its participation in the Authority.

5.1.2 **Implementation Plan.** The Authority shall cause to be prepared an Implementation Plan meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations as soon after the Effective Date as reasonably practicable. The Implementation Plan shall not be filed with the Public Utilities Commission until it is approved by the Board in the manner provided by Section 4.9.

5.1.3 **Effect of Vote On Required Implementation Action.** In the event that two or more Parties vote to approve Program Agreement 1 or any earlier action required for the implementation of the CCA Program (“Required Implementation Action”), but such vote is insufficient to approve the Required Implementation Action under Section 4.9, the following will occur:

5.1.3.1 The Parties voting against the Required Implementation Action shall no longer be a Party to this Agreement and this Agreement shall be terminated, without further notice, with respect to each of the Parties voting against the Required Implementation Action at the time this vote is final. The Board may take a provisional vote on a Required Implementation Action in order to initially determine the position of the Parties on the Required Implementation Action. A vote, specifically stated in the record of the Board meeting to be a provisional vote, shall not be considered a final vote with the consequences stated above. A Party who is terminated from this Agreement pursuant to this section shall be considered the same as a Party that voluntarily withdrew from the Agreement under Section 7.1.1.1.

5.1.3.2 After the termination of any Parties pursuant to Section 5.1.3.1, the remaining Parties to this Agreement shall be only the Parties who voted in favor of the Required Implementation Action.

5.1.4 **Termination of CCA Program.** Nothing contained in this Article or this Agreement shall be construed to limit the discretion of the Authority to terminate the implementation or operation of the CCA Program at any
time in accordance with any applicable requirements of state law.

5.2 **Authority Documents.** The Parties acknowledge and agree that the affairs of the Authority will be implemented through various documents duly adopted by the Board through Board resolution, including but not necessarily limited to the Operating Rules and Regulations, the annual budget, and specified plans and policies defined as the Authority Documents by this Agreement. The Parties agree to abide by and comply with the terms and conditions of all such Authority Documents that may be adopted by the Board, subject to the Parties’ right to withdraw from the Authority as described in Article 7.

---

**ARTICLE 6**

**FINANCIAL PROVISIONS**

6.1 **Fiscal Year.** The Authority’s fiscal year shall be 12 months commencing July 1 and ending June 30. The fiscal year may be changed by Board resolution.

6.2 **Depository.**

6.2.1 All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with funds of any Party or any other person or entity.

6.2.2 All funds of the Authority shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the fiscal year. The books and records of the Authority shall be open to inspection by the Parties at all reasonable times. The Board shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Authority, which shall be conducted in accordance with the requirements of Section 6505 of the Act.

6.2.3 All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board in accordance with its Operating Rules and Regulations. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the prior approval of the Board.

6.3 **Budget and Recovery Costs.**

6.3.1 **Budget.** The initial budget shall be approved by the Board. The Board may revise the budget from time to time through an Authority Document as may be reasonably necessary to address contingencies and unexpected
expenses. All subsequent budgets of the Authority shall be prepared and approved by the Board in accordance with the Operating Rules and Regulations.

6.3.2 County Funding of Initial Costs. The County of Marin shall fund the Initial Costs of the Authority in implementing the CCA Program in an amount not to exceed $500,000 unless a larger amount of funding is approved by the Board of Supervisors of the County. This funding shall be paid by the County at the times and in the amounts required by the Authority. In the event that the CCA Program becomes operational, these Initial Costs paid by the County of Marin shall be included in the customer charges for electric services as provided by Section 6.3.4 to the extent permitted by law, and the County of Marin shall be reimbursed from the payment of such charges by customers of the Authority. The Authority may establish a reasonable time period over which such costs are recovered. In the event that the CCA Program does not become operational, the County of Marin shall not be entitled to any reimbursement of the Initial Costs it has paid from the Authority or any Party.

6.3.3 CCA Program Costs. The Parties desire that, to the extent reasonably practicable, all costs incurred by the Authority that are directly or indirectly attributable to the provision of electric services under the CCA Program, including the establishment and maintenance of various reserve and performance funds, shall be recovered through charges to CCA customers receiving such electric services.

6.3.4 General Costs. Costs that are not directly or indirectly attributable to the provision of electric services under the CCA Program, as determined by the Board, shall be defined as general costs. General costs shall be shared among the Parties on such basis as the Board shall determine pursuant to an Authority Document.

6.3.5 Other Energy Program Costs. Costs that are directly or indirectly attributable to energy programs approved by the Authority other than the CCA Program shall be shared among the Parties on such basis as the Board shall determine pursuant to an Authority Document.

ARTICLE 7
WITHDRAWAL AND TERMINATION

7.1 Withdrawal.
7.1.1 General.

7.1.1.1 Prior to the Authority’s execution of Program Agreement 1, any Party may withdraw its membership in the Authority by giving no less than 30 days advance written notice of its election to do so, which notice shall be given to the Authority and each Party. To permit consideration by the governing body of each Party, the Authority shall provide a copy of the proposed Program Agreement 1 to each Party at least 90 days prior to the consideration of such agreement by the Board.

7.1.1.2 Subsequent to the Authority’s execution of Program Agreement 1, a Party may withdraw its membership in the Authority, effective as of the beginning of the Authority’s fiscal year, by giving no less than 6 months advance written notice of its election to do so, which notice shall be given to the Authority and each Party, and upon such other conditions as may be prescribed in Program Agreement 1.

7.1.2 Amendment. Notwithstanding Section 7.1.1, a Party may withdraw its membership in the Authority following an amendment to this Agreement in the manner provided by Section 8.4.

7.1.3 Continuing Liability; Further Assurances. A Party that withdraws its membership in the Authority may be subject to certain continuing liabilities, as described in Section 7.3. The withdrawing Party and the Authority shall execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Party from membership in the Authority. The Operating Rules and Regulations shall prescribe the rights if any of a withdrawn Party to continue to participate in those Board discussions and decisions affecting customers of the CCA Program that reside or do business within the jurisdiction of the Party.

7.2 Involuntary Termination of a Party. This Agreement may be terminated with respect to a Party for material non-compliance with provisions of this Agreement or the Authority Documents upon an affirmative vote of the Board in which the minimum percentage vote and percentage voting shares, as described in Section 4.9.1, shall be no less than 67%, excluding the vote and voting shares of the Party subject to possible termination. Prior to any vote to terminate this Agreement with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Party whose termination is proposed at least 30 days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement or the Authority Documents that the Party has allegedly violated. The Party subject to possible termination
shall have the opportunity at the next regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote regarding termination. A Party that has had its membership in the Authority terminated may be subject to certain continuing liabilities, as described in Section 7.3. In the event that the Authority decides to not implement the CCA Program, the minimum percentage vote of 67% shall be conducted in accordance with Section 4.10 rather than Section 4.9.1.

7.3 **Continuing Liability; Refund.** Upon a withdrawal or involuntary termination of a Party, the Party shall remain responsible for any claims, demands, damages, or liabilities arising from the Party’s membership in the Authority through the date of its withdrawal or involuntary termination, it being agreed that the Party shall not be responsible for any claims, demands, damages, or liabilities arising after the date of the Party’s withdrawal or involuntary termination. In addition, such Party also shall be responsible for any costs or obligations associated with the Party’s participation in any program in accordance with the provisions of any agreements relating to such program provided such costs or obligations were incurred prior to the withdrawal of the Party. The Authority may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with the Authority, as reasonably determined by the Authority, to cover the Party’s liability for the costs described above. Any amount of the Party’s funds held on deposit with the Authority above that which is required to pay any liabilities or obligations shall be returned to the Party.

7.4 **Mutual Termination.** This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its membership in the Authority, and thus terminate this Agreement with respect to such withdrawing Party, as described in Section 7.1.

7.5 **Disposition of Property upon Termination of Authority.** Upon termination of this Agreement as to all Parties, any surplus money or assets in possession of the Authority for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement and under any program documents, shall be returned to the then-existing Parties in proportion to the contributions made by each.

**ARTICLE 8**

**MISCELLANEOUS PROVISIONS**

8.1 **Dispute Resolution.** The Parties and the Authority shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Should
such efforts to settle a dispute, after reasonable efforts, fail, the dispute shall be settled by binding arbitration in accordance with policies and procedures established by the Board.

8.2 **Liability of Directors, Officers, and Employees.** The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. The Authority shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Section 995 et seq. Nothing in this section shall be construed to limit the defenses available under the law, to the Parties, the Authority, or its Directors, officers, or employees.

8.3 **Indemnification of Parties.** The Authority shall acquire such insurance coverage as is necessary to protect the interests of the Authority, the Parties and the public. The Authority shall defend, indemnify and hold harmless the Parties and each of their respective Board or Council members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Authority under this Agreement.

8.4 **Amendment of this Agreement.** This Agreement may be amended by an affirmative vote of the Board in which the minimum percentage vote and percentage voting shares, as described in Section 4.9.1, shall be no less than 67%. The Authority shall provide written notice to all Parties of amendments to this Agreement, including the effective date of such amendments. A Party shall be deemed to have withdrawn its membership in the Authority effective immediately upon the vote of the Board approving an amendment to this Agreement if the Director representing such Party has provided notice to the other Directors immediately preceding the Board’s vote of the Party’s intention to withdraw its membership in the Authority should the amendment be approved by the Board. As described in Section 7.3, a Party that withdraws its membership in the Authority in accordance with the above-described procedure may be subject to continuing liabilities incurred prior to the Party’s withdrawal. In the event that the Authority decides to not implement the CCA Program, the minimum percentage vote of 67% shall be conducted in accordance with Section 4.10 rather than Section 4.9.1.

8.5 **Assignment.** Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this Section 8.5 shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the
successors and assigns of the Parties. This Section 8.5 does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party’s contributions to the Authority, or the disposition of proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the Parties under this Agreement.

8.6 **Severability.** If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Parties, that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provision shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.

8.7 **Further Assurances.** Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, to effectuate the purposes and intent of this Agreement.

8.8 **Execution by Counterparts.** This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

8.9 **Parties to be Served Notice.** Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (a) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt and (b) by mail shall be conclusively deemed given 48 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of the Authority or Party, as the case may be, or such other person designated in writing by the Authority or Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties.
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties herein have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority).

By: ____________________________
   Name: Leon Garcia
   Title: Mayor
   Date: 4/7/13
   Party: City of American Canyon
ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: [Signature]

Name: Thomas Cromwell
Title: Mayor
Date: December 8, 2008
Party: City of Belvedere
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: [Signature]
Name: Elizabeth Patterson
Title: Mayor
Date: 12-29-14
Party: City of Benicia

APPROVED AS TO FORM
[Signature]
CITY ATTORNEY
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: [Signature]

Name: Dylan Farf

Title: City Manager

Date: April 7, 2016

Party: City of Calfato
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: [Signature]

Name: Mike Parness

Title: City Manager

Date: 4-11-16

Party: City of Napa
ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: ____________________________
Name: Alexandra Cock
Title: Mayor
Date: December 6, 2011
Party: Town of Corte Madera

ATTEST

_______________________________
Christine Green, Town Clerk
ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: [Signature]

Name: Charles F. McGowan

Title: President, Bd of Supervisors

Date: November 18, 2008

Party: County of Marin
ARTICLE 9

Maria Clean Energy IPA Agreement

SIGNATURE

Amendment No. 8

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority).

By: [Signature]

Name: Mark Luce,

Title: Chairman, Napa County Board of Supervisors

Date: 7/\text{xx}/\text{yy}

Party: Napa County

Approved as to form:

[Signature]

Minh Tran,

County Counsel
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority).

By: ____________________________
   [Signature]

Name: Scott East

Title: City Manager

Date: 1/8/14

Party: City of El Cerrito
ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: _________________

Name: David Weinswig
Title: Mayor
Date: 2.12.09
Party: Town of Fairfield

Exhibit A Page 17
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority).

By: ____________________________

Name: Mark Mitchell
Title: Mayor
Date: 3-14-16
Party: City of Lafayette

Attest:

[Signature]
Joanne Ribivitz, City Clerk
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the Parties herein have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: [Signature]

Name: Larry Chu

Title: Mayor, Larkspur

Date: November 16, 2011

Party: City of Larkspur
ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereby have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: [Signature]

Name: Shawn E. Boardman

Title: Mayor

Date: December 2, 2008

Party: City of Mill Valley
ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: __________________________
   Madeline R. Killmer

Name: Madeline R. Killmer

Title: Mayor

Date: October 7, 2011

Party: City of Novato
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: [Signature]

Name: [Name]

Title: [Title]

Date: [Date]

Party: [Party]
ARTICLE 3
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: [Signature]

Name: Carla Small

Title: Mayor

Date: 11/15/11

Party: Town of Novato

[Signature]
ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: [Signature]

Name: Peter Breen

Title: Mayor

Date: January 9, 2009

Party: Town of San Anselmo
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority).

By: __________________________

Name: Pati V. Morris

Title: Mayor, City of San Pablo

Date: Sept. 16, 2011

Party: City of San Pablo
ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement, establishing the Marin Energy Authority.

By: ____________________________
Name: Cyril N. Miller
Title: Mayor
Date: December 1, 2003
Party: City of San Rafael
ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: ____________________________
Name: Amy Beiser
Title: Mayor
Date: November 18, 2008
Party: City of Sausalito

Attest: ____________________________
Deputy City Clerk

Item: 5A
Meeting Date: 11-18-08
Page #: 24
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By:  
Name: Alan Colby

Title: Mayor

Date: 4/1/116

Party: City of St. Helena
ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Power Agreement establishing the Marin Energy Authority.

By: [Signature]

Name: ALICK PRUITT
Title: MAYOR

Date: 2/10/09
Party: TOWN OF TIBURON
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority).

By: [Signature]

Name: [Name]

Title: [Title]

Date: [Date]

Party: City of Walnut Creek
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority).

By: [Signature]

Name: Steven R. Rogers

Title: Town Manager

Date: 4/12/16

Party: Town of Yoursville
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: [Signature]

Name: Brad Kiger

Title: City Manager

Date: 7/26/17

Party: City of Martinez
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: [Signature]
Name: Joe Saporiti
Title: City Manager
Date: 7/24/2017
Party: City of Pittsburg
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: [Signature]

Name: Joe Gorton

Title: City Manager

Date: 7/13/117

Party: City of San Rafael
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: [Signature]

Name: Valerie J. Barone

Title: City Manager

Date: July 24, 2017

Party: City of Concord
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority).

By: [Signature]

Name: Frederick D. Glover
Title: Chair, Board of Supervisors
Date: August 1, 2017
Party: Contra Costa County
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: [Signature]

Name: Joseph A. Calabrigo

Title: Town Manager

Date: July 17, 2017

Party: Town of Danville
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: [Signature]

Name: Robert Freck
Title: Town Manager
Date: July 31, 2017
Party: Town of Moraga
ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: ________________________________

Name: Bryan A. Montgomery

Title: City Manager

Date: 8/1/12

Party: City of Oakley
IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: ________________

Name: Michelle Fitz

Title: City Manager

Date: 7/5/17

Party: City of Pinole

Approved as to form:

By: ________________

Name: Eric Casher

Title: City Attorney

Date: 7/5/17


Exhibit A

To the
Joint Powers Agreement
Marin Energy Authority

-Definitions-

“AB 117” means Assembly Bill 117 (Stat. 2002, ch. 838, codified at Public Utilities Code Section 366.2), which created CCA.

“Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.)

“Administrative Services Agreement” means an agreement or agreements entered into after the Effective Date by the Authority with an entity that will perform tasks necessary for planning, implementing, operating and administering the CCA Program or any other energy programs adopted by the Authority.

“Agreement” means this Joint Powers Agreement.

“Annual Energy Use” has the meaning given in Section 4.9.2.2.

“Authority” means the Marin Energy Authority.

“Authority Document(s)” means document(s) duly adopted by the Board by resolution or motion implementing the powers, functions and activities of the Authority, including but not limited to the Operating Rules and Regulations, the annual budget, and plans and policies.

“Board” means the Board of Directors of the Authority.

“CCA” or “Community Choice Aggregation” means an electric service option available to cities and counties pursuant to Public Utilities Code Section 366.2.

“CCA Program” means the Authority’s program relating to CCA that is principally described in Sections 2.4 and 5.1.

“Director” means a member of the Board of Directors representing a Party.

“Effective Date” means the date on which this Agreement shall become effective and the Marin Energy Authority shall exist as a separate public agency, as further described in Section 2.1.
“Implementation Plan” means the plan generally described in Section 5.1.2 of this Agreement that is required under Public Utilities Code Section 366.2 to be filed with the California Public Utilities Commission for the purpose of describing a proposed CCA Program.

“Initial Costs” means all costs incurred by the Authority relating to the establishment and initial operation of the Authority, such as the hiring of an Executive Director and any administrative staff, any required accounting, administrative, technical and legal services in support of the Authority’s initial activities or in support of the negotiation, preparation and approval of one or more Administrative Services Provider Agreements and Program Agreement 1. Administrative and operational costs incurred after the approval of Program Agreement 1 shall not be considered Initial Costs.

“Initial Participants” means, for the purpose of this Agreement, the signatories to this JPA as of May 5, 2010 including City of Belvedere, Town of Fairfax, City of Mill Valley, Town of San Anselmo, City of San Rafael, City of Sausalito, Town of Tiburon and County of Marin.

“Operating Rules and Regulations” means the rules, regulations, policies, bylaws and procedures governing the operation of the Authority.

“Parties” means, collectively, the signatories to this Agreement that have satisfied the conditions in Sections 2.2 or 3.2 such that it is considered a member of the Authority.

“Party” means, singularly, a signatory to this Agreement that has satisfied the conditions in Sections 2.2 or 3.2 such that it is considered a member of the Authority.

“Program Agreement 1” means the agreement that the Authority will enter into with an energy service provider that will provide the electricity to be distributed to customers participating in the CCA Program.

“Total Annual Energy” has the meaning given in Section 4.9.2.2.
Exhibit B

To the
Joint Powers Agreement
Marin Energy Authority

-List of the Parties-
City of American Canyon
City of Belvedere
City of Benicia
City of Calistoga
City of Concord
Town of Corte Madera
Town of Danville
City of El Cerrito
Town of Fairfax
City of Lafayette
City of Larkspur
City of Martinez
Town of Moraga
City of Mill Valley
City of Napa
City of Novato
City of Oakley
City of Pinole
City of Pittsburg
City of Richmond
Town of Ross
Town of San Anselmo
City of San Pablo
City of San Rafael
City of San Ramon
City of Sausalito
Town of Tiburon
City of Walnut Creek
Town of Yountville
County of Contra Costa
County of Marin
County of Napa
EXHIBIT C

Marin Energy Authority

- Annual Energy Use -

This Exhibit C is effective as of July 20, 2017.

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MCE Total Energy Use 5,981,951,917

*Data Provided by PG&E*
EXHIBIT D

Marin Energy Authority

- Voting Shares -

This Exhibit D is effective as of July 20, 2017.

<table>
<thead>
<tr>
<th>Party</th>
<th>kWh (2015*)</th>
<th>Section 4.9.2.1</th>
<th>Section 4.9.2.2</th>
<th>Voting Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of American Canyon</td>
<td>75,238,389</td>
<td>1.52%</td>
<td>0.63%</td>
<td>2.14%</td>
</tr>
<tr>
<td>City of Belvedere</td>
<td>7,161,787</td>
<td>1.52%</td>
<td>0.06%</td>
<td>1.58%</td>
</tr>
<tr>
<td>City of Benicia</td>
<td>112,631,790</td>
<td>1.52%</td>
<td>0.94%</td>
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</tr>
<tr>
<td>City of Calistoga</td>
<td>26,619,985</td>
<td>1.52%</td>
<td>0.22%</td>
<td>1.74%</td>
</tr>
<tr>
<td>City of Concord</td>
<td>584,690,000</td>
<td>1.52%</td>
<td>4.89%</td>
<td>6.40%</td>
</tr>
<tr>
<td>Town of Corte Madera</td>
<td>46,023,153</td>
<td>1.52%</td>
<td>0.38%</td>
<td>1.90%</td>
</tr>
<tr>
<td>County of Contra Costa</td>
<td>1,027,456,000</td>
<td>1.52%</td>
<td>8.59%</td>
<td>10.10%</td>
</tr>
<tr>
<td>Town of Danville</td>
<td>197,901,000</td>
<td>1.52%</td>
<td>1.65%</td>
<td>3.17%</td>
</tr>
<tr>
<td>City of El Cerrito</td>
<td>56,615,873</td>
<td>1.52%</td>
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<tr>
<td>Town of Fairfax</td>
<td>17,786,905</td>
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<td>0.15%</td>
<td>1.66%</td>
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<tr>
<td>City of Lafayette</td>
<td>113,958,395</td>
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<tr>
<td>City of Larkspur</td>
<td>36,481,157</td>
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</tr>
<tr>
<td>City of Martinez</td>
<td>162,001,000</td>
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<td>1.35%</td>
<td>2.87%</td>
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<tr>
<td>City of Mill Valley</td>
<td>44,019,391</td>
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<tr>
<td>County of Marin</td>
<td>223,280,476</td>
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<tr>
<td>Town of Moraga</td>
<td>53,568,000</td>
<td>1.52%</td>
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<tr>
<td>City of Napa</td>
<td>358,540,484</td>
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<tr>
<td>County of Napa</td>
<td>306,696,355</td>
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<td>2.56%</td>
<td>4.08%</td>
</tr>
<tr>
<td>City of Novato</td>
<td>182,518,152</td>
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<td>1.53%</td>
<td>3.04%</td>
</tr>
<tr>
<td>City of Oakley</td>
<td>127,957,000</td>
<td>1.52%</td>
<td>1.07%</td>
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</tr>
<tr>
<td>City of Pinole</td>
<td>69,497,000</td>
<td>1.52%</td>
<td>0.58%</td>
<td>2.10%</td>
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<tr>
<td>City of Pittsburg</td>
<td>521,305,000</td>
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</tr>
<tr>
<td>City of Richmond</td>
<td>369,368,162</td>
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<td>4.60%</td>
</tr>
<tr>
<td>Town of Ross</td>
<td>9,793,239</td>
<td>1.52%</td>
<td>0.08%</td>
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</tr>
<tr>
<td>Town of San Anselmo</td>
<td>31,630,085</td>
<td>1.52%</td>
<td>0.26%</td>
<td>1.78%</td>
</tr>
<tr>
<td>City of San Ramon</td>
<td>363,991,000</td>
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<td>3.04%</td>
<td>4.56%</td>
</tr>
<tr>
<td>City of Saint Helena</td>
<td>51,846,619</td>
<td>1.52%</td>
<td>0.43%</td>
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</tr>
<tr>
<td>City of San Pablo</td>
<td>69,813,169</td>
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<td>0.58%</td>
<td>2.10%</td>
</tr>
<tr>
<td>Location</td>
<td>Energy Use (kWh)</td>
<td>City of San Rafael</td>
<td>Sausalito</td>
<td>Walnut Creek</td>
</tr>
<tr>
<td>------------------------</td>
<td>------------------</td>
<td>--------------------</td>
<td>-----------</td>
<td>--------------</td>
</tr>
<tr>
<td>City of San Rafael</td>
<td>226,213,075</td>
<td>1.52%</td>
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<tr>
<td>City of Sausalito</td>
<td>31,778,338</td>
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<td>1.78%</td>
</tr>
<tr>
<td>Town of Tiburon</td>
<td>28,575,164</td>
<td>1.52%</td>
<td>0.24%</td>
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<tr>
<td>City of Walnut Creek</td>
<td>415,140,953</td>
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<td>3.47%</td>
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<tr>
<td>Town of Yountville</td>
<td>31,854,820</td>
<td>1.52%</td>
<td>0.27%</td>
<td>1.78%</td>
</tr>
<tr>
<td><strong>MCE Total Energy Use</strong></td>
<td><strong>5,981,951,917</strong></td>
<td>50.00%</td>
<td>50.00%</td>
<td><strong>100.00%</strong></td>
</tr>
</tbody>
</table>

*Data Provided by PG&E*
DRAFT

Board of Directors Meeting
Thursday, March 15, 2018
7:00 P.M.

One Concord Center
2300 Clayton Road, Suite 650
Concord, CA 94520

Remote Location:
MCE Charles F. McGlashan Board 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 Chief Executive Officer (Discussion)

4. Consent Calendar (Discussion/Action)
   C.1 Approval of 2.15.18 Meeting Minutes
   C.2 Approved Contracts Update
   C.3
5. MCE Reserve Policy (Discussion/Action)

6. New Board Member Additions to Committees (Discussion/Action)

7. Time-of-Use Rates (Discussion)

8. Communications Update (Discussion)

9. Board Member & Staff Matters (Discussion)

10. Adjourn