



MARIN COUNTY | NAPA COUNTY | UNINCORPORATED CONTRA COSTA COUNTY | UNINCORPORATED SOLANO COUNTY
BENICIA | CONCORD | DANVILLE | EL CERRITO | LAFAYETTE | MARTINEZ | MORAGA | OAKLEY | PINOLE
PITTSBURG | RICHMOND | SAN PABLO | SAN RAMON | WALNUT CREEK

Agenda Page 1 of 2

Executive Committee Meeting Friday, March 6, 2020 12:15 P.M.

Charles F. McGlashan Board Room, 1125 Tamalpais Avenue, San Rafael, CA 94901
Mt. Diablo Room, 2300 Clayton Road, Suite 1150, Concord, CA 94920

1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
 - C.1 Approval of 12.6.19 Meeting Minutes
 - C.2 Eighth Agreement with Braun Blaising Smith Wynne
 - C.3 Fifth Agreement with Keys and Fox, LLP
 - C.4 Tenth Agreement with Niemela Pappas & Associates
 - C.5 Second Agreement with Hall Energy Law, PC
 - C.6 MCE Resiliency Fund Expenditure for Vulnerable, Critical Needs Customers
6. Budget for Fiscal Year 2020/21 (Discussion/Action)
7. Draft Dynamic Rates for Upcoming Solano Inclusion (Discussion/Action)
8. Steps and Considerations for MCE to Access the Tax-Exempt Capital Markets (Discussion/Action)
9. Addition of Board Members to Committees (Discussion/Action)



Agenda material can be inspected at 1125 Tamalpais Avenue, San Rafael, CA 94901 on the Mission Avenue side of the building and at One Concord Center, 2300 Clayton Road, Concord, CA 94520 at the Clayton Road entrance. The meeting facilities are in accessible locations. If you are a person with a disability and require this document in an alternate format (example: Braille, Large Print, Audiotape, CD-ROM), you may request it by using the contact information below. If you require accommodation (example: ASL Interpreter, reader, note taker) to participate in any MCE program, service or activity, you may request an accommodation by calling (415) 464-6032 (voice) or 711 for the California Relay Service or by e-mail at djackson@mceCleanEnergy.org not less than **four work days** in advance of the event.

10. Review Draft 3.19.20 Board Agenda (Discussion)
11. Committee Matters & Staff Matters (Discussion)
12. Adjourn

DRAFT

**MCE EXECUTIVE COMMITTEE MEETING
MINUTES Friday, December 6, 2019
12:15 P.M.**

**Mt. Diablo Room
2300 Clayton Road, Suite 1150
Concord, CA 94520**

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

Present: Tom Butt, Committee Chair, City of Richmond (*San Rafael*)
Sloan Bailey, Town of Corte Madera (*San Rafael*)
Lisa Blackwell, Town of Danville (*Concord*)
Barbara Coler, Town of Fairfax, (*San Rafael*)
Bob McCaskill, City of Belvedere (*San Rafael*)
Tim McGallian, City of Concord (*Concord*)
Elizabeth Patterson, City of Benicia (*San Rafael*)
Kate Sears, County of Marin, (*San Rafael*)
Renata Sos, Town of Moraga, (*Concord*)

Absent: Denise Athas, City of Novato
Ford Greene, Town of San Anselmo
Kevin Haroff, City of Larkspur

Staff

& Others: Darlene Jackson, Board Clerk (*Concord*)
Joey Lande, Manager of Customer Programs (*San Rafael*)
Catalina Murphy, Legal Counsel (*San Rafael*)
Lindsay Saxby, Manager of Power Resources (*San Rafael*)
Enyo Senyo-Mensah, Administrative Associate (*Concord*)
Heather Shepard, Director of Public Affairs (*Concord*)
Shalini Swaroop, General Counsel (*San Rafael*)
Dawn Weisz, Chief Executive Officer (*San Rafael*)
Brett Wiley, Customer Programs Manager (*San Rafael*)

1. Roll Call

Chair Tom Butt called the regular Executive Committee meeting to order at 12:15 p.m. with quorum established by roll call.

2. Board Announcements (Discussion)

There were none.

3. Public Open Time (Discussion)

There were no speakers.

DRAFT

4. Report from Chief Executive Officer (Discussion)

CEO Dawn Weisz, reported the following:

- The Cities of Vallejo, Pleasant Hill and Fairfield will be joining MCE in 2020. A presentation was made to the City of Fairfield on December 3rd and the Council voted unanimously to join MCE.
- MCE presented to the Energy Division of the CPUC regarding resiliency, PSPS alerts and CCA advantage.
- Reminder of MCE's Holiday Party, tonight at the Napa Valley Marriott Hotel & Spa. Stop by the City of Benicia for their tree lighting on your way to the Holiday Party.
- There will be no /December Board Meeting.
- Congratulations to Board Member Tim McGallian who was appointed Mayor of the City of Concord.

5. Consent Calendar (Discussion/Action)

- C.1 Approval of 9.6.19 Meeting Minutes
- C.2 Approval of 11.1.19 Meeting Minutes
- C.3 Approval of 11.20.19 Special Meeting Minutes
- C.4 Second Amendment to the First Agreement with Hall Energy Law, PC
- C.5 Fourth Agreement with Recurve Analytics
- C.6 Fourth Agreement with The Energy Alliance Association
- C.7 First Agreement with EV Charging Pros
- C.8 Second Amendment to the Fourth Agreement with Keyes & Fox, LLP

Chair Butt opened the public comment period and there were no comments.

Action: It was M/S/C (Bailey/Patterson) **to approve Consent Calendar items C.1 – C.3.** Consent items C.4 - C.8 were pulled for discussion. Motion carried by unanimous vote. Absent: Directors Athas, Greene, and Haroff.

Following discussion of items C.4 – C.8:

Action: It was M/S/C (Bailey/Patterson) **to approve Consent Calendar items C.4 – C.8.** Motioned carried by unanimous vote. Absent: Directors Athas, Greene, and Haroff).

6. Amended and Restated Master Professional Services Agreement with Calpine Energy Solutions (Discussion/Action)

Dawn Weisz introduced Legal Counsel Catalina Murphy, who presented this item and addressed questions from Committee members.

Chair Butt opened the public comment period and there were no comments.

DRAFT

Action: It was M/S/C (Bailey/Coler) **to direct staff to complete the contract negotiations and execute the Amended and Restated Master Professional Services Agreement with Calpine Energy Solutions.** Motion carried by unanimous vote. (Absent: Directors Athas, Greene, and Haroff.).

7. Charles F. McGlashan Advocacy Award 2019 Nominations (Discussion/Action)

Justin Marquez, Community Equity Specialist presented this item and addressed questions from Committee members.

Chair Butt opened the public comment period and there were no comments.

Action: It was M/S/C (Sears/McCaskill) **to select the 2019 recipient(s) of the Charles F. McGlashan Advocacy Award to be presented at the next meeting of the MCE Board of Directors per staff recommendation of consideration of awarding both 2019 nominees.** Motion carried by unanimous vote. (Absent: Directors Athas, Greene, and Haroff).

8. Format of Approved Contracts Update (Discussion)

CEO Dawn Weisz, presented this item and addressed questions from Committee members.

Chair Butt opened the public comment period and there were no comments.

Action: No action was required.

9. Committee & Staff Matters (Discussion)

10. Adjournment

Chair Butt adjourned the meeting at 1:32 p.m. to the next scheduled Executive Committee Meeting on February 7, 2020.

Tom Butt, Committee Chair

Attest:

Dawn Weisz, Secretary



March 6, 2020

TO: MCE Executive Committee

FROM: Shalini Swaroop, General Counsel

RE: Eighth Agreement with Braun Blaising Smith Wynne, P.C. (Agenda Item #05-C.2)

ATTACHMENT: Proposed Eighth 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. Specifically, BBSW has provided assistance on the Integrated Resource Plan (IRP) proceedings, microgrid 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 an Eighth Agreement with BBSW in the amount of \$175,000 for continuation of legal and regulatory services in Fiscal Year (FY) 2020/21.

Fiscal Impacts: Costs related to the referenced agreement are included in the Proposed FY 2020/21 Operating Fund Budget.

Recommendation: Approve the proposed Eighth Agreement with Braun Blaising Smith Wynne, P.C.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**EIGHTH AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND BRAUN BLAISING SMITH WYNNE, P.C.**

THIS EIGHTH AGREEMENT ("Agreement") is made and entered into this day **March 6, 2020** 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. MCE will process payment for undisputed invoiced amounts within 30 days.

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 **\$175,000**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **April 1, 2020**, and shall terminate on **March 31, 2021**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

6. INSURANCE AND SAFETY:

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

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

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

6.1 GENERAL LIABILITY

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

6.2 AUTO LIABILITY

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

6.3 WORKERS' COMPENSATION

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

6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED)

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

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

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

9. ASSIGNMENT:

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

10. RETENTION OF RECORDS AND AUDIT PROVISION:

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of

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

11. WORK PRODUCT:

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

12. TERMINATION:

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

13. AMENDMENT:

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

14. ASSIGNMENT OF PERSONNEL:

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

15. JURISDICTION AND VENUE:

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

16. INDEMNIFICATION:

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

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

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

18. COMPLIANCE WITH APPLICABLE LAWS:

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

19. INVOICES; NOTICES

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

 Email Address: invoices@mcecleanenergy.org

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

Contract Manager: 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.

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

21. SEVERABILITY

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

22. COMPLETE AGREEMENT

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

23. COUNTERPARTS

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

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

APPROVED BY

Marin Clean Energy:

CONTRACTOR:

By: _____

By: _____

Title: _____

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
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:

Senior Shareholder:	\$420
Junior Shareholder:	\$360
Senior Associate:	\$310
Junior Associate:	\$275
Law Clerk:	\$165
Of Counsel:	\$315-\$365
Contract Associate (As Authorized):	\$310

Contractor shall bill in 0.10-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 **\$175,000** for the term of the Agreement.



March 6, 2020

TO: MCE Executive Committee

FROM: Shalini Swaroop, General Counsel

RE: Fifth Agreement with Keyes & Fox, LLP (Agenda Item #05-C.3)

ATTACHMENTS: Proposed Fifth Agreement with Keyes & Fox, LLP

Dear Executive Committee Members:

SUMMARY:

Keyes and Fox, LLP has provided legal and regulatory services for MCE since 2017. Specifically, Keyes & Fox, LLP has provided assistance on the Electric Energy Resource Recovery Account (ERRA) proceedings, the PG&E General Rate Case, energy efficiency issues, including the Low Income Families and Tenants application, and other regulatory proceedings as requested. In addition, Keyes and Fox, LLP provides legal support for complex contract transactions, such as the Calpine contract for billing and data services.

There is an ongoing need for the services provided by Keyes & Fox, LLP. Staff recommends approval of a Fifth Agreement with Keyes & Fox, LLP in the amount of \$150,000 for continuation of legal and regulatory services in Fiscal Year (FY) 2020/21.

Fiscal Impacts: Costs related to this Agreement are included in the Proposed FY 2020/21 Operating Fund Budget.

Recommendation: Approve the Fifth Agreement with Keyes & Fox, LLP.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

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

THIS FIFTH AGREEMENT ("Agreement") is made and entered into this day **March 6, 2020** 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, and general legal services;

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

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

1. SCOPE OF SERVICES:

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

2. FURNISHED SERVICES:

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

3. FEES AND PAYMENT SCHEDULE; INVOICING:

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

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 **\$150,000**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **April 1, 2020**, and shall terminate on **March 31, 2021**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

6. INSURANCE AND SAFETY:

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

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

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

6.1 GENERAL LIABILITY

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

6.2 AUTO LIABILITY

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

6.3 WORKERS' COMPENSATION

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

6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED)

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

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

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

9. ASSIGNMENT:

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

10. RETENTION OF RECORDS AND AUDIT PROVISION:

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of

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

11. WORK PRODUCT:

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

12. TERMINATION:

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

13. AMENDMENT:

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

14. ASSIGNMENT OF PERSONNEL:

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

15. JURISDICTION AND VENUE:

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

16. INDEMNIFICATION:

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

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

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

18. COMPLIANCE WITH APPLICABLE LAWS:

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

19. INVOICES; NOTICES

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

 Email Address: invoices@mcecleanenergy.org

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

 Contract Manager: 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: 580 California Street, 12th Fl

 San Francisco, CA 94104

 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.

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

21. SEVERABILITY

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

22. COMPLETE AGREEMENT

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

23. COUNTERPARTS

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

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

APPROVED BY

Marin Clean Energy:

CONTRACTOR:

By: _____

By: _____

Title: _____

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
SCOPE OF SERVICES (required)

Contractor will provide task-specific legal and regulatory services and assistance, including regulatory filings and advocacy at the California Public Utilities Commission (CPUC), at the direction of the General Counsel up to the maximum time/fees allowed under this Agreement.

EXHIBIT B
FEES AND PAYMENT SCHEDULE

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

Staff Member	Hourly Rate
Attorneys	
Jason Keyes	\$320/hr
Kevin Fox	\$360/hr
Sheridan Pauker	\$350/hr and \$385/hr for transactional work
Tim Lindl	\$295/hr
Jake Schlesinger	\$275/hr
S Dunbar	\$245/hr
Julia Kantor	\$225/hr
Melissa Birchard	\$220/hr
Beren Artesinger	\$210/hr
Non-Attorneys	
Miriam Makhyoun	\$185/hr
Justin Barnes	\$180/hr
Laurel Passera	\$150/hr
Ben Inskeep	\$145/hr
Blake Elder	\$120/hr
Vannessa Luthringer	\$95/hr

Contractor shall bill in 0.10-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 **\$150,000** for the term of the Agreement.



March 6, 2020

TO: MCE Executive Committee

FROM: Shalini Swaroop, General Counsel

RE: Tenth Agreement with Niemela Pappas & Associates (Agenda Item #05-C.4)

ATTACHMENT: Proposed Tenth 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 \$113,850 for Fiscal Year (FY) 2020/21 for continuation of these services.

Fiscal Impacts: Costs related to the referenced agreement are included in the Proposed FY 2020/21 Operating Fund Budget.

Recommendation: Approve the Tenth Agreement with Niemela Pappas & Associates.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

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

THIS TENTH AGREEMENT ("Agreement") is made and entered into this day **March 6, 2020** 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: contract lobbying 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. MCE will process payment for undisputed invoiced amounts within 30 days.

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 **\$113,850**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **April 1, 2020**, and shall terminate on **March 31, 2021**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

6. INSURANCE AND SAFETY:

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

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

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

6.1 GENERAL LIABILITY

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

6.2 AUTO LIABILITY

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

6.3 WORKERS' COMPENSATION

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

6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED)

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

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

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

9. ASSIGNMENT:

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

10. RETENTION OF RECORDS AND AUDIT PROVISION:

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of

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

11. WORK PRODUCT:

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

12. TERMINATION:

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

13. AMENDMENT:

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

14. ASSIGNMENT OF PERSONNEL:

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

15. JURISDICTION AND VENUE:

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

16. INDEMNIFICATION:

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

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

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

18. COMPLIANCE WITH APPLICABLE LAWS:

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

19. INVOICES; NOTICES

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

 Email Address: invoices@mcecleanenergy.org

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

Contract Manager: 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.

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

21. SEVERABILITY

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

22. COMPLETE AGREEMENT

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

23. COUNTERPARTS

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

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

APPROVED BY

Marin Clean Energy:

CONTRACTOR:

By: _____

By: _____

Title: _____

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
SCOPE OF SERVICES (required)

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

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

EXHIBIT B
FEES AND PAYMENT SCHEDULE

Contractor shall bill MCE monthly for all professional services rendered under this Agreement. A monthly retainer of \$9,412.50 will be paid by MCE to Contractor for each month of service beginning April 1, 2020 until the end of the Agreement. MCE will also pay an administrative fee for FPPC filings at the rate of \$75.00 per month, which will be added to the invoice of each monthly retainer.

In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$113,850** for the term of the Agreement.



March 6, 2020

TO: MCE Executive Committee

FROM: Lindsay Saxby, Manager of Power Resources

RE: Second Agreement with Hall Energy Law PC (Agenda Item #05-C.5)

ATTACHMENT: Proposed Second Agreement with Hall Energy Law, PC

Dear Executive Committee Members:

SUMMARY:

Hall Energy Law PC provides legal services pertaining to (a) new and existing power purchase agreements; (b) new and existing scheduling coordination and portfolio management agreements for energy, resource adequacy, or related products; (c) new and existing project development agreements, and; (d) review and counsel of documents, contracts and master agreements related to MCE's proposed non-recourse pre-payment program.

Fiscal Impacts:

Costs related to the referenced agreement are included in the Fiscal Year 2020/21 Operating Fund Budget.

Recommendation:

Approve the proposed Second Agreement with Hall Energy Law, PC.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**SECOND AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND HALL ENERGY LAW PC**

THIS SECOND AGREEMENT ("Agreement") is made and entered into this day **March 6, 2020** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and HALL ENERGY LAW PC, hereinafter referred to as "Contractor."

RECITALS:

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

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. MCE will process payment for undisputed invoiced amounts within 30 days.

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 **\$289,000**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **April 1, 2020**, and shall terminate on **March 31, 2021**. 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. 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) 464-6027

Notices shall be given to Contractor at the following address:

Contractor: Stephen Hall

 Address: 1161 NW Overton Street, Suite 701

 Portland, OR 97209

 Email Address: steve@hallenergylaw.com

 Telephone No.: (503) 477-9354

20. ACKNOWLEDGEMENT OF EXHIBITS

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

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

21. SEVERABILITY

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

22. COMPLETE AGREEMENT

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

23. COUNTERPARTS

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

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

APPROVED BY

Marin Clean Energy:

CONTRACTOR:

By: _____

By: _____

Title: _____

Name: _____

Date: _____

Date: _____

By: _____

Chairperson

Date: _____

MODIFICATIONS TO STANDARD SHORT FORM

Standard Short Form Content Has Been Modified

List sections affected: Section 16: Indemnification

Approved by MCE Counsel: _____

Date: _____

EXHIBIT A
SCOPE OF SERVICES (required)

Contractor will provide legal services to MCE as requested and directed by the COO, Manager of Power Resources, or Legal Counsel related to: (a) new and existing power purchase agreements; (b) new and existing scheduling coordination and portfolio management agreements for energy, resource adequacy, or related products; (c) new and existing project development agreements, and; (d) review and counsel of documents, contracts and master agreements related to MCE's proposed non-recourse pre-payment program up to the maximum time/fees allowed under this Agreement. Services may also include transaction support in drafting, negotiations, dispute resolution, and appropriate implementation of power supply transactions.

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:

Stephen Hall \$595 per hour

Contractor shall bill monthly in .10-hour increments. 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 **\$289,000** for the term of the Agreement.

EXHIBIT C
INSURANCE REDUCTION/WAIVER (if applicable)

AI #05_C 5_Att: 2nd Agrmt w/Hall Energy Law, PC

CONTRACTOR: Hall Energy Law PC

CONTRACT TITLE: Second Agreement by and between Marin Clean Energy and Hall Energy Law PC

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:

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

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

Automobile Liability Insurance requirement waived as Contractor will not be required to drive to complete work with MCE.

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 _____

Date _____

Contract Manager Signature: _____

Date: _____

Telephone: _____

Approved by: _____

Date: _____



March 6, 2020

TO: MCE Executive Committee

FROM: Alexandra McGee, Strategic Initiatives Manager

RE: MCE Resiliency Fund Expenditure for Vulnerable, Critical Needs Customers (Agenda Item #C.6)

Dear Executive Committee Members:

SUMMARY:

On November 21, 2019, your Board approved the creation of a Resiliency Fund with initial funding in the amount of \$3,000,000. The creation of this fund was in large part a response to PG&E's Public Safety Power Shutoff (PSPS) events. These events significantly impact the safety, reliability, health and welfare of our customers, and disproportionately affect vulnerable populations. MCE is working to help strengthen our communities by piloting battery storage and small-scale microgrids to retain some essential power supply during PSPS events and other outages while minimizing the use of carbon-emitting generators and fossil-fuel technologies.

MCE aims to invest in high quality, decentralized options to improve resiliency across our four-county service area in ways that can be implemented quickly and will help keep vulnerable customers safe during grid outages. Vulnerable customers include low-income customers, those with critical medical needs that could become life threatening without power, and those in state designated Disadvantaged Communities or census designated low-income communities. MCE has already begun extensive outreach with Offices of Emergency Services, Public Health officials, and other community partners to identify the most critical sites and vulnerable communities to target for initial investments.

Staff has investigated Goal Zero's portable lithium batteries which provide home backup power at the push of a button. The Yeti 3000 battery is equipped with over 3kWh of storage for long runtimes and produces 1500W of continuous power and a 3000W surge for running high-power devices. The battery can run for 1-2 days after charge from solar (<800 watts) or from a standard electrical outlet in 25 hours. The battery is rated for 500 cycles to 80% of its original capacity and over 2000 cycles in its life cycle.

The Yeti 3000 is a turnkey solution that MCE would like to offer at no-cost to some of our most vulnerable customers, thereby helping to provide some of the needed support to retain our customers' quality of life during an outage in advance of the next fire season. The Yeti 3000 retail price is \$2999.95 and MCE staff has negotiated a 30% discount for a bulk purchase,

reducing the price per unit to approximately \$2,100. Staff recommends allocating \$250,000 from the FY 2019/20 MCE Resiliency fund to purchase 100+ batteries (tax and shipping will need to be factored in) which will be distributed to our most vulnerable customers.

Fiscal Impacts: Expenditures related to the referenced purchase would be funded completely from the Board-approved FY 2019/20 MCE Resiliency Fund.

Recommendation: Approve the purchase of Yeti 3000 batteries in the amount of \$250,000 to support MCE's most vulnerable customers during grid outages.



March 6, 2020

TO: MCE Executive Committee

FROM: Garth Salisbury, Director of Finance
Maira Strauss, Senior Financial Analyst

RE: Fiscal Year 2020/21 Budget (Agenda Item #06)

ATTACHMENTS: A. Proposed FY 2019/20 Operating Fund Budget
B. Proposed FY 2019/20 Energy Efficiency Program Fund Budget
C. Proposed FY 2019/20 Local Renewable Energy and Program Development Fund Budget
D. Proposed FY 2019/20 Resiliency Fund Budget

Dear Executive Committee Members:

SUMMARY:

Before the end of every fiscal year (FY), MCE's staff presents proposed Budgets to the Board for consideration for MCE's Operating Fund, Energy Efficiency (EE) Program Fund, Local Renewable Energy and Program Development Fund and this year, a Resiliency Fund for the upcoming FY. These Budgets authorize staff to:

1. Spend funds within the limits and contingencies set forth in each budget line item;
2. Fund MCE's Local Renewable Energy and Program Development Fund, Electric Vehicle and other customer programs;
3. Fund MCE's Resiliency Fund; and
4. Add to MCE's Operating Fund balances and reserves.

The attached proposed Budgets reflect MCE's projected revenue, expenditures and contingencies for FY 2020/21, and are anticipated to allow MCE to continue delivering a minimum of 60% renewable energy and a further goal of 90% greenhouse gas (GHG)-free energy to our customers. The proposed FY 2020/21 Operating Fund Budget is projected to result in an increase of \$48,000,000 to MCE's net position at the end of the fiscal year assuming continuation of the current rate schedule and market prices.

Staff requests that the Executive Committee review and discuss the proposed Budgets at its March 6, 2020 meeting and recommend to the full Board for approval at its March 19, 2020 meeting.

Operating Fund Budget Highlights:

Attached is the Proposed FY 2020/21 Operating Fund Budget. For comparison purposes, FY 2020/21 is shown alongside the FY 2019/20 Amended Budget and the Projected FY 2019/20 Actuals

(April – December 2019 actuals and projections for January – March 2020). Proposed FY 2020/21 Budget comparisons (+/-) are made against the FY 2019/20 Amended Budget.

Revenue – electricity (+ \$28,800,000, 7% increase):

While sales volume (GWhrs) is projected to be flat due to the offsetting effects of the Solano County expansion and normal customer attrition, revenues from the sale of electricity are projected to increase by 6% to \$445.6 million due to the effects of a full year of the rate increase that was implemented last July and from sales of excess Resource Adequacy (RA).

Cost of energy (+\$36,543,000, 11% increase): Cost of energy includes expenses associated with the purchase of energy, charges by the California Independent Systems Operator (CAISO) for scheduled load, services performed by the CAISO, RA costs and other regulatory energy requirements necessary to meet the energy needs of our customers. Energy costs are anticipated to increase related to higher prices for system energy, RA and the effects of lower expected hydro production and the need to purchase GHG free replacement energy to meet our targets.

Personnel (+\$3,094,000, 35% increase): The anticipated increase in personnel costs is due to a number of factors:

- 1) The creation of two new functional departments at MCE; Strategic Initiatives, and Technology and Analytics. The creation of these new departments at MCE is in response to the demands of MCE'S businesses as they continue to evolve and reflect a bringing "in-house" some functions previously performed by external vendors, and bolstering staff capacity to bring in and implement grants for resiliency and other programs.
 - a. **Strategic Initiatives Department** includes MCE's resiliency, environmental justice and equity efforts as we address our most vulnerable customers. The creation of this new Department is in response to the Board's interest in addressing PSPS events in our service area and is a direct result of the need to coordinate across a number of MCE functional areas, and quickly and efficiently execute on deploying our Resiliency funding.
 - b. **Technology and Analytics** is a progressive investment in managing, storing and mining the massive amount of data that MCE has been compiling over the years. Our ability to improve efficiencies in procurement, load management, storage technologies and customer centric services will allow MCE to improve revenues, reduce costs and through specifically tailored programs, maintain and gain customer loyalty. The creation of this department is allowing some data management functions, previously performed by an offsite vendor, to be brought on-site, managed directly by staff (see reduction in Data Management costs below).

(Estimated at 7% of the additional costs)

- 2) As the first CCA in the state, MCE has inadvertently been used as a place for the growing CCA industry to source new employees. In fact, in recent years, MCE has lost a total of nine full-time employees to other CCAs, four full-time employees to private companies that directly serve the CCA industry, and two full-time employees to the statewide CCA trade association. Of these fifteen employees, four were director-level, and twelve had highly specialized expertise. Each employee departure takes a toll on MCE's ability to continue ongoing work and implement strategy, and creates a cost in time and resources recruiting for and re-hiring for critical roles. As we continuously endeavor to refill these positions, we must increase salaries to attract employees with comparable skill sets.

(Estimated at 4% of the additional costs).

- 3) Also, as MCE has grown in size and complexity, and as the CCA regulatory and market environment has gotten more complex, the level of expertise needed in our employee team has grown in parallel. This has called for higher level positions, and higher compensation levels that match the skills required.

(Estimated at 2% of the additional costs)

- 4) Increased budgeted personnel costs result from the full year impact of staff added during FY 2019/20, from four additional staff members pursuant to the new Departments referenced above and back-filling vacancies in various Departments. Additionally, the application of Cost of Living Adjustments (COLA) effective January 1st of each year, and performance-based increases added to current staff salaries consistent with MCE's Board-approved Employee Handbook added an additional 8% to projected costs. Once hired, a strong benefits package is a key to retention, maintaining stability in the staff team.

(Estimated at 8% of the additional costs)

- 5) In an effort to ensure competitiveness in the employment market, MCE took a closer look at our total compensation package with a particular focus on employee benefits, to ensure we can attract and retain top talent within the agency. This included looking at the latest U.S. jobs report which states our economy has posted over 100 straight months of increased employment. In addition, there is predicted to be a shortage of 20 million highly skilled workers by the end of 2020. While attraction and retention of talent have always been important elements of the agency, our current job market makes talent attraction and retention more critical than ever. MCE needed to upgrade its total compensation and benefits package on myriad fronts to ensure our agency is competitive to market, other CCAs/public agencies and is a desirable place to work. MCE's comprehensive compensation structure is established using public agency, industry comparisons, and cost-of-living adjustments linked to Federal and California Bay Area benchmarks. MCE strengthened our benefits package to better position the agency to attract and retain top talent. Before these changes were implemented mid last year, MCE was on pace to lose over 35% of its employees. Since these compensation and benefits improvements have been implemented, attrition has dropped to within industry standards (< 15%) and MCE has been able to attract top tier talent for the two new departments and other open positions.

(Estimated at 13% of the additional costs)

Overall, personnel costs represent 2.7% of the total Operating Fund. Personnel costs are net of a \$764,000 allocation of MCE staff time to Energy Efficiency Program administration.

Data Manager (-\$540,000, 8.6% decrease): These savings are reflective of a renegotiated contract and better efficiencies in data management services. Staff anticipates that the creation of the Technology and Analytics Department will result in a number of Data Manager services to be brought in house to be performed by staff.

Legal and Policy Services (+\$240,000, 22% increase): Legal counsel expenses support MCE's contracting, financial and regulatory activities including market restructuring issues. Legal counsel expenses are expected to increase to support increased regulatory activity and to support/advise MCE's staff on issues related to employment law, financial matters and the PG&E bankruptcy.

Communications Services (+\$792,000, 50% increase): Communications and related services include the costs associated with print, online, and other advertising; printing and mailing customer notices; maintaining the website; community outreach and sponsorships; and special events. In FY 2019/20 the approved amended budget included \$1,573,000 in Communication Services expenses, but dropped to a projected actual \$980,339 as some activity was deferred, and there were savings due to no community enrollments occurring. These costs are anticipated to be up significantly as MCE increases its marketing and sponsorships related to our Resiliency efforts, new grants and programs, enrollment in the new communities of unincorporated Solano County, increased outreach for disadvantaged communities/customers and to market MCE's superior product mix and value proposition as PG&E emerges from bankruptcy later this year.

Other services (+\$681,000 58% increase): Other services encompass expenses which are not captured in other budget categories, including information technology, certain consultants and other professional services. These expenses include consulting services related to, development and implementation of a Customer Relationship Management (CRM) software. In addition, the Power Resources Department has been managing a high number of contracts using manual and software-based solutions that are not integrated. An automated contract management platform will be implemented to create efficiencies while insuring greater rigor in tracking and oversight.

General and Administration (+\$716,000, 43% increase): General and administration costs include office supplies, data, travel, dues and subscriptions, support for California Community Choice Association (CalCCA), and other related expenses. Increased costs are associated with an increased number of employees, increased regulatory and legislative activities, and budgeting additional Software as a Service (SaaS) and CRM software development for use by our Public Affairs Department, Customer Programs Department, and Legal and Policy Department.

Finance and Contingency (-\$170,000, 12% decrease): Finance continues to be focused on enhancing MCE's credit ratings and liquidity, maximizing investment earnings/returns and managing credit risk across our platform with our renewable energy providers and numerous contractual counterparties and service providers. Finance will also be pursuing reducing our renewable energy costs through tax-exempt prepayment transactions and evaluating ways to reduce the cost of energy through third party credit intermediaries and project ownership.

Additionally, improved budgetary accuracy, discipline and accountability will continue to be a primary function of the Finance Department. We project to be under budget for the current fiscal year in every budgetary line item except Personnel which is projected to be over budget by less than 2%. In the past a contingency of approximately 8-10% was added to each functional budget line item given the continued growth of the organization and the consequent difficulty in accurately budgeting costs. In FY 2020/21, staff is proposing that contingency be reduced to approximately 3.8% (\$1.2 million) of the Operating Budget and that it once again be managed/allocated in Finance based upon actual outcomes and needs within the group budgets throughout the fiscal year.

Grant income (-\$89,000, 5% decrease): MCE receives grants from government and non-profit organizations to support certain activities connected to MCE's mission. Included are:

- 1) MCE's Building Energy Optimization project, in part funded by the California Energy Commission. This project includes, among other things, a focus on optimizing Distributed Energy Resources in the CCA marketplace (\$585,000)
- 2) Fire Rebuild Program, in part funded by the Bay Area Air Quality Management District. This program provides incentives for property owners who are rebuilding properties lost in the October 2017 and 2018 wildfires (\$200,000)

- 3) Green & Healthy Homes Initiative (GHHI Marin) funded in part by the Marin Community Foundation. GHHI is a partnership of local nonprofits, governments, and utilities that deliver services and education to create healthy, safe and energy efficient homes (\$398,000)
- 4) Resiliency Initiative. MCE received a grant from the Marin Community Foundation to support battery storage for social safety net non-profit organizations and affordable multifamily housing (\$475,000)

Interest income (+\$600,000, 43%increase): Increased interest income is expected to result from a continuation of a reallocation of investments into highly liquid FDIC insured accounts in accordance with the Investment Policy and higher balances in MCE's accounts.

Capital outlay (-\$96,000, 37%decrease): Expenditures associated with capital outlay include various leasehold improvements to MCE's facilities and furniture and equipment purchases. The decrease from the current fiscal year relates to the completion of construction of a solar canopy and electric vehicle chargers in MCE's San Rafael parking lot. Anticipated expenditures include upgrades to allow the solar canopy to serve the MCE San Rafael offices as well as the EV charging stations during outage events.

Energy Efficiency Program Fund

The Energy Efficiency Program Fund uses funding authorized by the California Public Utilities Commission (CPUC) to support multifamily, commercial, agricultural, industrial, single family and workforce development sub-programs. The Energy Efficiency Program Fund supports the activities of the Energy Efficiency Program and the Low-Income Families and Tenants (LIFT) Pilot Program. Both programs involve the reimbursement of eligible expenses by the CPUC and accordingly, revenues and expenses for these programs offset each other. This program has been dramatically increasing activity since CPUC approval in 2018 of MCE's Energy Efficiency Application, along with CPUC approval of MCE's LIFT application. The funds awarded from the CPUC will grow from \$4,133,000 in FY 2019/20 to \$8,664,056 in FY 2020/21.

Local Renewable Energy and Program Development Fund

The Local Renewable Energy Development Fund (LREDF) is financed by a transfer from the Operating Fund equal to 50% of the 1¢/kWh premium for Deep Green service. These resources are used to plan and develop local renewable energy projects including:

- **MCEv:** MCE's electric vehicle program (MCEv) promotes EV adoption through rebates for charging infrastructure at work places and multifamily dwellings, vehicle rebates for low income customers, and regional planning and permitting support.
- **Low Income Solar Program:** The low-income solar program provides rebates for low-income solar installations. Expenditures primarily target residential single-family and multifamily rooftop installations.
- **Regional Midstream Heat Pump Water Heater Program:** MCE is partnering with other Bay Area CCAs, and the Bay Area Regional Energy Network to co-fund a program aimed at engaging regional water heater contractors to increase the adoption rate of electric, grid-enabled heat pump water heaters.

Resiliency Fund

On November 21, 2019, your Board approved the creation of a Resiliency Fund with initial funding in the amount of \$3,000,000. The creation of this fund was in large part a response to PG&E's Public Safety Power Shutoff (PSPS) events. These events significantly impact the safety, reliability, health and welfare of our customers, and disproportionately affect vulnerable populations. MCE is working to help strengthen our communities by piloting battery storage and small-scale microgrids to retain some essential power supply during PSPS events and other outages while minimizing the use of carbon-emitting generators and fossil-fuel technologies. MCE has already begun extensive outreach with Offices of Emergency Services, Public Health officials, and other community partners to identify the most critical sites and vulnerable communities to target for initial investments.

Staff anticipates that over \$250,000 of this fund will be spent as of the end of the current fiscal year as early stage programs are implemented. The remainder of the initial funding amount could be expended very quickly on just two or three resiliency projects deemed critical to identified targeted areas. Staff recommends an additional \$3,000,000 of funding for the 2020/21 Fiscal Year to bring the total funding to \$6 million.

Fiscal Impacts: The net impact of the Proposed Operating Fund Budget is a projected \$48,000,000 contribution to MCE's net position during FY 2019/20 assuming no change to MCE's current rates or market prices for any unhedged power supply.

POTENTIAL FY 2020/21 BUDGET IMPACTS: A number of anticipated events could have a measurable effect on MCE's finances in the coming fiscal year. These include:

- 1) MCE Rates – MCE rates remain below PG&E's rates in all rate classes. However, PG&E expects to finalize its ERRA Filing (energy rates) in the next few months which may result in lower PG&E energy rates in MCE's territory;
- 2) Power Cost Indifference Adjustment – Staff expects PG&E to increase most vintages of the PCIA which could have a negative effect on customer behavior.
- 3) Direct Access (DA) Customer Exits – DA exits among MCE's customer base may be larger than anticipated;
- 4) Time-of-Use Rate (voluntary and mandatory) implementation may result in lower peak time revenues;
- 5) Customer energy usage – While staff has two years of historical data on customer usage for the most recent phase of expansion, customer behavior and weather patterns can have a measurable effect on energy sales.

These unknowns may affect MCE's finances such that staff may be required to come back to the Board for Budget Amendments if revenue or cost impacts are significant.

Recommendation: Recommend approval of the proposed FY 2020/21 Operating Fund, Energy Efficiency Program Fund, Local Renewable Energy Development Fund, and Resiliency Fund Budgets to the MCE Board of Directors.

Marin Clean Energy
Operating Fund
Proposed FY 2020/21 Budget
From April 1, 2020 through March 31, 2021

	FY 2019/20 Approved Amended Budget	FY 2019/2020 Projected Budget	FY 2020/21 Proposed Budget	Budget Variance (-) Under (+) Over	Budget Variance (-) Under (+) Over %
ENERGY REVENUE					
Revenue - Electricity (net of allowance)	\$ 416,758,000	\$ 414,002,922	\$ 445,609,000	\$ 28,851,000	7%
ENERGY EXPENSE					
Cost of energy	333,094,000	326,787,243	369,638,000	36,544,000	11%
NET ENERGY REVENUE	83,664,000	87,215,679	75,971,000	(7,693,000)	-9%
OPERATING EXPENSE					
Personnel	8,791,000	8,897,074	11,885,000	3,094,000	35%
Data Manager	6,270,000	6,120,896	5,780,000	(490,000)	-8%
Technical and scheduling services	917,000	856,923	990,000	73,000	8%
Service fees - PG&E	2,073,000	2,053,956	2,126,000	53,000	3%
Legal and Policy Services	1,060,000	926,339	1,299,000	239,000	23%
Communication Services	1,573,000	980,741	2,365,000	792,000	50%
Other Services	1,184,000	279,772	1,865,000	681,000	58%
General and Administration	1,664,000	1,142,160	2,380,000	716,000	43%
Occupancy	1,014,000	867,887	1,008,000	(6,000)	-1%
Finance and Contingency	1,370,000	444,659	1,200,000	(170,000)	-12%
TOTAL OPERATING EXPENSES	25,916,000	21,949,680	30,962,000	5,046,000	19%
OPERATING INCOME	57,748,000	65,265,999	45,009,000	(12,739,000)	-22%
NONOPERATING REVENUES					
Grant Income	1,748,000	603,228	1,659,000	(89,000)	-5%
Other Income	0.00	3,776,901	-	-	
Interest income	1,400,000	2,530,612	2,000,000	600,000	43%
TOTAL NONOPERATING REVENUES	3,148,000	6,910,741	3,659,000	511,000	16%
NONOPERATING EXPENSES					
Banking Fees and Financing Costs	253,000	114,555	218,000	(35,000)	-14%
Grant related consultants - TerraVerde	1,071,000	363,129	537,000	(534,000)	-50%
TOTAL NONOPERATING EXPENSES	1,324,000	456,536	755,000	(569,000)	-43%
CHANGE IN NET POSITION	59,572,000	71,720,204	47,913,000	(11,659,000)	-20%
Budgeted net position beginning of period	91,577,000	91,577,000	163,297,204	71,720,204	78%
Change in net position	59,572,000	71,720,204	47,913,000	(11,659,000)	-20%
Budgeted net position end of period	151,149,000	163,297,204	211,210,204	60,061,204	40%
CAPITAL EXPENDITURES, INTERFUND TRANSFERS & OTHER					
Capital outlay	259,000	151,180	163,000	(96,000)	-37%
Transfer to Resiliency Fund	3,000,000	3,000,000	3,000,000	-	0%
Transfer to LREPDF	846,000	846,000	930,000	84,000	10%
Operating Reserve Fund (Rate Stabilization)	-	-	-	-	
TOTAL CAPITAL EXPENDITURES, INTERFUND TRANSFERS & OTHER	4,105,000	3,997,180	4,093,000	(12,000)	0%
BUDGETED NET INCREASE IN OPERATING FUND BALANCE	55,467,000	71,905,956	43,820,000	(11,647,000)	-21%

Energy Efficiency Fund
Proposed Budget FY 2020/2021
From April 1, 2020 to March 31, 2021

	FY 2019/2020 Approved Budget	FY 2020/2021 Proposed Budget
REVENUE AND OTHER SOURCES:		
Public purpose energy efficiency program	\$ 2,383,000	\$ 6,908,519
Public purpose Low Income Families and Tenants Pilot Program	1,750,000	1,755,537
TOTAL REVENUE AND OTHER SOURCES:	4,133,000	8,664,056
EXPENDITURE AND OTHER USES:		
Public purpose energy efficiency program	2,383,000	6,908,519
Public purpose Low Income Families and Tenants Pilot Program	1,750,000	1,755,537
TOTAL EXPENDITURES AND OTHER USES	4,133,000	8,664,056
Net increase (decrease) in fund balance	\$ -	-

Marin Clean Energy
Local Renewable Energy & Program Development Fund
Proposed Budget FY 2020/2021
From April 1, 2020 to March 31, 2021

	FY 2019/2020 Approved Budget	FY 2020/2021 Proposed Budget
REVENUE AND OTHER SOURCES:		
Transfer from Operating Fund	\$ 846,000	\$ 1,500,000
Transfer from Renewable Energy Reserve Fund	1,222,000	-
Reserved Incentives From Prior Years	-	1,349,011
Deep Green Transfer		930,000
TOTAL REVENUE AND OTHER SOURCES:	2,068,000	3,779,011
EXPENDITURES AND OTHER USES:		
Local Pilot Programs	2,031,000	2,849,011
Low income solar programs	190,000	190,000
Regional Heat Pump Water Heater Program	-	300,000
TOTAL EXPENDITURES AND OTHER USES:	2,221,000	3,339,011
Net increase (decrease) in fund balance	\$ (153,000)	\$ 440,000
Fund Balance at beginning of period		(153,000)
Fund Balance at end of period		287,000

**Marin Clean Energy
Resiliency Fund
Proposed Budget FY 2020/2021
From April 1, 2020 to March 31, 2021**

	FY 2019/2020 Approved Budget	FY 2020/2021 Proposed Budget
REVENUE AND OTHER SOURCES:		
Transfer from Operating Fund	\$ 3,000,000	\$ 3,000,000
TOTAL REVENUE AND OTHER SOURCES	3,000,000	3,000,000
EXPENDITURES AND OTHER USES:		
Resiliency Efforts	300,000	5,750,000
Net increase (decrease) in fund balance		
Fund balance at beginning of period	3,000,000	2,750,000
Fund balance at end of period	2,700,000	-



March 6, 2020

TO: MCE Executive Committee

FROM: Justin Kudo, Strategic Analysis and Rates Manager

RE: Dynamic Rates for Upcoming Solano Inclusion (Agenda Item #07)

Dear Committee Members:

SUMMARY:

Staff has examined potential rate scenarios during the enrollment period for unincorporated Solano County customers and identified the potential for PG&E rates to have multiple changes during the first year of service. To ensure that the cost differential for these new customers is closely aligned with enrollment notices and communications, staff recommends that the Committee consider directing staff to create rates which allow these customers to have costs that are at or below PG&E customer costs for the first year of service in unincorporated Solano County.

MCE's rates for its other customers would be unaffected by this proposal, and potential changes to MCE's rates will be assessed at a future date when PG&E's rates and PCIA charges become known. The financial impacts to MCE of this proposal, discussed later in this report, are limited due to the relatively small number of affected customers.

Background

Due to delays in PG&E's 2019 and 2020 rate implementation, PG&E rate adjustments are expected to result in two (or more) off-cycle rate changes later in 2020. The impact and timing of these adjustments are still subject to change, but staff currently anticipates that PG&E's Power Charge Indifference Adjustment (PCIA) charges could increase and generation rates could decrease, which could push MCE customer's comparable costs above PG&E's. The PG&E rate changes are likely to begin on April 1st, during the unincorporated Solano County enrollment month, making communication with customers on cost differences challenging.

Much of the anticipated increase in PCIA for 2020 is due to a true-up for PG&E's under-recovery of PCIA costs during 2019. Since the Unincorporated Solano County customers were served by PG&E during 2019 and did not contribute to the under-collection, MCE believes these customers should not be subject to higher PCIA costs related to recovery of the under-collected 2019 PCIA costs.

To address these issues, staff has examined the feasibility of setting dynamic rates for customers in the upcoming enrollment. Unlike current rates which are typically established once annually and then left unchanged, dynamic rates would be adjusted to mitigate the impacts of each change to PG&E rates, which would effectively provide bill

protection to MCE's new customers for a period of one year. Dynamic rates could be applied for the first year of service (April, 2020 – March, 2021) in unincorporated Solano County, to allow clear customer communications about costs and avoid potential confusion.

Comparative Costs

One of the key ways that MCE communicates costs to customers is by their relative total MCE cost compared to what the total cost would otherwise be assessed by PG&E. MCE currently operates with a slight savings in cost for customers compared with PG&E, communicated on MCE's website, notifications, and marketing materials. These are updated with most PG&E rate changes, except those that do not affect MCE's comparative costs.

Comparisons between MCE and PG&E costs are calculated by comparing PG&E's and MCE's generation rate, plus applicable Power Charge Indifference Adjustment (PCIA) and Franchise Fee Surcharge (FFS) rates. Upcoming expected changes to PG&E generation and PCIA rates will directly impact comparative costs between MCE and PG&E service.

Projected PG&E Rate Changes

PG&E generation and PCIA rates will be affected by several pending or approved decisions at the California Public Utilities Commission:

- The Annual Electric True-Up for 2020, expected to result in a **1% generation rate increase** (PG&E AL-5661-E)
- The Tax Cuts and Jobs Act of 2017 reduced PG&E costs and therefore resulted in their rates being set too high; this correction will be refunded and result in an approximately **2% generation rate reduction** (D.19-08-023)
- An update to PG&E's fuel and purchased power cost forecast, resulting in an approximately **5% generation rate reduction and annual PCIA change** (A.19-16-001)
- Implementation of PG&E's 2020 General Rate Case Phase 1, resulting in an approximately **3% generation rate increase** (A. 18-12-009)
- Implementation of PG&E's 2020 General Rate Case Phase 2, resulting in an approximately **5% generation rate reduction** (A.16-06-013)

Overall, these changes suggest that PG&E's generation rates should decrease, but subsequent market or regulatory changes could cause them to be either higher or lower than expected. The PCIA is expected to increase by about \$0.005 to \$0.006/kWh (about \$2.75 on the typical household monthly bill), subject to the current cap on PCIA rate changes. The scope of these changes varies based on customer class (e.g. residential, small commercial, agricultural, etc.) and the year they moved to MCE service.

Staff also notes the potential for a second PCIA rate change in 2020 if any changes are made to the PCIA cap. It is currently unknown if PG&E would apply for such changes in the upcoming year, or how they would be resolved; figures in this report assume our current best estimates.

Adjustable Rate Structure

To protect Solano County customers from having costs higher than with PG&E service during the first year of their upcoming enrollment, staff recommends adjusting applicable rates for these customers with each PG&E rate change. Staff could account for changes to the PCIA and generation rates, and set new rates which achieve a customer cost that is at or below the PG&E customer cost.

This proposal would apply to rates for Light Green service. Deep Green customers would also benefit from these rates, because Deep Green is a flat \$0.01/kWh adder on the Light Green rate. Local Sol service is directly tied to resource costs and would remain at its normal rate.

Adjusting MCE rates typically takes between two and three weeks of development time. In the event that we are provided short notice on a PG&E rate change, Solano County customer rates would be updated as soon as possible given the lead time needed to calculate and implement an appropriate rate. This may result in brief gaps in adjustment to the dynamic rate, but should have minimal impact.

Fiscal Impacts

Staff analyzed costs based on unincorporated Solano County's 2018 usage, assuming an opt-out rate of 7% of total load and a wide range of possible PG&E rate changes. Setting dynamic rates for the 12-month period is expected to cost approximately \$1,986,382, depending on the final PG&E rates and implementation timing. Additionally, development costs to implement rate changes are expected to total \$12,000. These costs represent approximately 0.5% of MCE's projected revenues for FY 2020/2021.

Several factors could reduce or increase these costs, including but not limited to: enrollment rate, PCIA cap removal, direct access enrollments, load changes, or PG&E actual rates.

Recommendations:

Direct staff to implement dynamic rates for new customers in Solano County by adjusting rates for these customers as necessary to maintain cost parity or cost savings compared to PG&E customer costs.



March 6, 2020

TO: MCE Executive Committee

FROM: Garth Salisbury, Director of Finance

RE: Steps and Considerations for MCE to Access the Tax-Exempt Capital Markets (Agenda Item #08)

ATTACHMENT: Timeline to Issuing Bonds

Dear Executive Committee Members:

SUMMARY: MCE would like to take the steps necessary to be in a position to issue tax-exempt municipal bonds to finance an ownership interest in a generating or storage asset if/when the opportunity presents itself. The following is a detailed summary of the steps that would need to be taken for MCE to issue debt and the important issues to be considered by the MCE Board of Directors before doing so.

Rational for Preparing Now to Issue Bonds: MCE has taken many steps over the last year to strengthen our financial position including meeting our Reserve Policy/Liquidity goals and subsequently increasing them, setting up an Operating Fund Reserve, securing a second credit rating and a \$40 million line of credit with J.P. Morgan Chase Bank and, most recently, embarking on a program to reduce the cost of our renewable energy through a tax-exempt prepayment program. As MCE matures as a leading provider of renewable and GHG free energy, we must avail ourselves of all of the available tools to reach our goals of providing 85% renewable energy and 99% GHG free energy by 2029. Additionally, our mandates continue to evolve within our service area as we invest in and promote energy efficiency, EV adoption, local solar generation, battery storage and most recently, system resiliency/microgrids.

A logical next step for MCE might be to purchase generation or storage assets outright and to be in a position to do so quickly if an opportunity develops. Owning assets would only be considered if it was a more cost-effective alternative to a standard power purchase agreement or if asset ownership afforded synergies between MCE's other objectives (e.g. resiliency, GHG free resource adequacy, etc.) or additional measurable advantages in terms of operational efficiency. Our ability to issue tax-exempt debt to finance an ownership interest in a facility is a distinct advantage MCE has over investor owned utilities and direct access providers.

While there are no specific assets purchases currently under serious consideration, MCE must take a number of important steps to be in a position to quickly access the capital markets through

a tax-exempt debt offering. The attached timeline outlines an estimate of the time it would take—start to finish—to issue bonds. This 10-12 month timeline would put MCE at a significant disadvantage if we were asked to bid on an asset and close the transaction within 60-90 days. Consequently, Staff is asking that the MCE Board consider taking the initial steps to get ready and thus reduce the time to closing a bond issue to 2-3 months. It is these steps that we would like to outline for your consideration. Finally, we will discuss some important considerations before MCE would actually issue bonds and outline how MCE Management and the Board will need to work together before any such undertaking.

Steps to Issuing Tax-Exempt Bonds: The following is a short summary of the necessary steps that MCE would have to take before issuing bonds:

- 1) *Adopt a Debt Policy:* California law (SB 1029) now requires that any state and local government agency that intends to issue debt must formulate and adopt a Debt Policy. MCE falls under this requirement and the Board of Directors would be required to adopt a formal Debt Policy before any debt could be issued. This debt policy would articulate the situations and steps necessary for the issuance of debt, the types of debt that may be issued and how the debt fits into MCE's integrated resource plan, capital improvement program or strategic policy goals.
- 2) *Select a Municipal Financial Advisor:* Before MCE can issue debt, the Municipal Securities Rulemaking Board (MSRB) requires that MCE secure the services of a municipal financial advisor (MA or FA). An MA is an individual that is employed by a Municipal Advisory Firm and is licensed to advise municipal entities on financial matters including issuing bonds. The MA would assist MCE through the initial steps to get ready to issue debt and would assist in the negotiations with the underwriting team during the actual pricing of the bonds. An MA with specific experience advising public electric utilities would be selected through an RFP process.
- 3) *Select a Bond Counsel Firm:* MCE would need to select a law firm that specializes in municipal utility finance law in the State of California. Bond Counsel would draft the important documents (e.g. Bond Resolution or Indenture) that would dictate the terms of the bond issuance, the covenants that MCE would have to adhere to and the financial metrics that would have to be achieved and maintained to issue additional debt, etc. A nationally recognized Bond Counsel will also provide the critical tax opinion that the interest on the bonds is exempt from Federal and State of California Income Tax. Services of a Bond Counsel firm would be secured through an RFP process.
- 4) *Draft and Adopt a Bond Indenture:* The Bond Indenture dictates the requirements and conditions precedent before debt can be issued and the ongoing flow of funds, financial metrics and other operational requirements that MCE must maintain to protect bondholders and to ensure that the bonds are repaid (a.k.a. the "Bond Covenants"). Bond Counsel will draft the Indenture with input from MCE Staff, Board and MCE's MA. The Bond Indenture is a very important document that could have an impact on MCE's operations for as long as the bonds are outstanding. Some important standard Covenants include:
 - a. *Pledge of Revenue:* Indicates the revenues, sources of revenue and priority of payments pledged to repay the bonds.
 - b. *The Rate Covenant:* Requires that MCE produce in each year "net revenues" (revenues – all operating expenses) = to Debt Service (principal and interest payments) + an additional margin to protect bondholders (Debt Service Coverage

Ratio). The Rate Covenant requires that if MCE projects that net revenues *will not* produce the required debt service coverage, rates *will be increased* in an amount necessary to produce the required net revenues.

- c. *Additional Bonds Test*: Sets historical and projected debt service coverage levels that must have been achieved historically and are projected to be achieved in the future before additional bonds can be issued.
- 5) *Selection of Bond Underwriters*: Once documentation is underway, MCE could issue an RFP for a team of qualified banks that would underwrite the bonds once we determined that we were ready to issue debt. Importantly, the underwriters would have suggestions about the bond covenants and other aspects of the financing to be able to access the markets with the most appropriate debt products to produce the lowest possible borrowing costs. MCE could decide to retain one underwriter or a number of underwriters depending upon their specific expertise or marketing strengths. Underwriters are paid from bond proceeds if/when bonds are issued.

Once MCE has completed these critical steps, the agency would only be about 2-3 months away from accessing the bond market, even if that opportunity were delayed many years in to the future.

Important Considerations: Staff suggests taking the initial steps to get ready to issue bonds and engage the Board in discussions about the Debt Policy and Bond Indenture. The Debt Policy and Bond Covenants would be critically important factors in managing the situations in which MCE issues debt and in the success of the bond issue. Accordingly, understanding the implications of the Debt Policy and the Bond Covenants to MCE's future operations, rate setting flexibility and financial health are paramount and should be discussed among the Staff and the Board of Directors. Staff suggests creating an Ad Hoc Committee of the Board on Bonding to allow the appropriate representatives from the Board of Directors to be engaged on formulating these two critical documents.

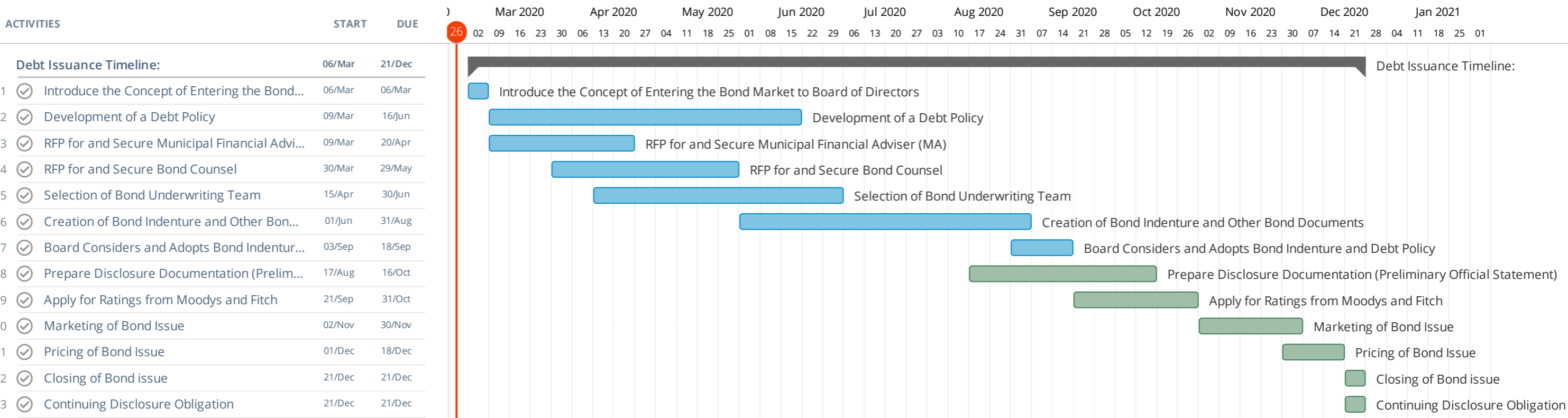
Fiscal Impacts: Staff estimates that taking the first steps as outlined above to get ready to issue debt would cost approximately \$125,000.

Recommendations:

1. Authorize staff to secure a Financial Advisor, Bond Counsel and potentially Underwriters to take the initial steps to get ready to access the tax-exempt capital markets.
2. Recommend that the MCE Board establish an Ad Hoc Committee on Bonding to assist in developing a Debt Policy and to be engaged to report back to the full Board as MCE staff and advisors develop a Bond Indenture for Board consideration.

MCE Debt Issuance Timeline

AI #08_Att._Timeline to Issuing Bonds





MCE Ad Hoc Audit Committee Overview and Scope

Approved: June 20, 2019

Typical Membership: 3 or 4

2019 Members:

1. Bob McCaskill
2. Elizabeth Pabon-Alvarado
3. Kevin Haroff
4. Raymond Withy

Membership Process: MCE strives to assemble an Ad Hoc Audit Committee comprised of at least one county representative and one city/town representative from each county in the MCE service area. Available seats on the Ad Hoc Audit Committee are therefore first offered to any interested and applicable Board member whose county is not yet represented by one county and one city member. Interested members can be added at a meeting of the Board when "New Committee Members" is on the Agenda. The Ad Hoc Audit Committee is typically formed by the Board in the spring in advance of the annual audit cycle that begins in May of each year.

Meeting Dates: To be determined; typically in summer months

Scope

Each year MCE contracts with an independent auditing firm to audit MCE's annual financial statements. The Ad Hoc Audit Committee is responsible for appointing the independent auditor, meeting with the auditor on at least one occasion without staff present, reviewing financial issues or judgments, and investigating other matters pertaining to the audit as it deems necessary. The mandate of the Ad Hoc Audit Committee begins once the Board approves its creation, and will end with the presentation of the audited financial statements to the Board.

Authority of Ad Hoc Audit Committee

- Approve the selection of auditor and execute the contract for services with MCE's auditor
- Receive the findings of the auditor and meet with the auditor privately as needed
- Investigate other matters pertaining to the audit as it deems necessary
- Report to the governing body that the audit committee has discussed the financial statements with management, with the independent auditors in private, and privately among committee members and believes that they are fairly presented, to the extent such a determination can be made solely on the basis of such conversations

MCE Board Offices and Committees

Board Offices:

Kate Sears, Chair
Tom Butt, Vice Chair
Vicken Kasarjian, Auditor/Treasurer
Dawn Weisz, Secretary

Executive Committee

1. Tom Butt, Chair
2. Denise Athas
3. Sloan Bailey
4. Lisa Blackwell
5. Barbara Coler
6. Ford Greene
7. Kevin Haroff
8. Bob McCaskill
9. Tim McGallian
10. Elizabeth Patterson
11. Kate Sears
12. Renata Sos

Technical Committee

1. Kate Sears, Chair
2. Kevin Haroff
3. Greg Lyman
4. Scott Perkins
5. Rob Schroder
6. Ray Withy
7. Justin Wedel
8. Ford Greene
9. John Gioia

Ad Hoc Contracts Committee – 2020

1. Mike Anderson
2. Kevin Haroff
3. Scott Perkins
4. Vincent Salimi

Ad Hoc Audit Committee - 2020



MARIN COUNTY | NAPA COUNTY | UNINCORPORATED CONTRA COSTA COUNTY | UNINCORPORATED SOLANO COUNTY
BENICIA | CONCORD | DANVILLE | EL CERRITO | LAFAYETTE | MARTINEZ | MORAGA | OAKLEY | PINOLE
PITTSBURG | RICHMOND | SAN PABLO | SAN RAMON | WALNUT CREEK

DRAFT

**Board of Directors Meeting
Thursday, March 19, 2020
7:00 P.M.**

**Charles F. McGlashan Board Room, 1125 Tamalpais Avenue, San Rafael, CA 94901
Mt. Diablo Room, 2300 Clayton Road, Suite 1150, Concord, CA 94920**

Agenda Page 1 of 2

1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)

CLOSED SESSION MATTERS

- Conference with Legal Counsel – Existing Litigation (Paragraph (1) of subdivision (d) of Section 54956.9) Name of Case: PG&E Bankruptcy Petition #: 19-30089, MCE as an Interested Party and Creditor
- Employment Litigation Matter -

OPEN SESSION

4. Roll Call/Quorum
5. Public Open Time
6. Report from Chief Executive Officer (Discussion)
7. Consent Calendar (Discussion/Action)
 - C.1 Approval of 11.21.19 Meeting Minutes
 - C.2 Approved Contracts Update



Agenda material can be inspected at 1125 Tamalpais Avenue, San Rafael, CA 94901 on the Mission Avenue side of the building and at One Concord Center, 2300 Clayton Road, Concord, CA 94520 at the Clayton Road entrance. The meeting facilities are in accessible locations. If you are a person with a disability and require this document in an alternate format (example: Braille, Large Print, Audiotape, CD-ROM), you may request it by using the contact information below. If you require accommodation (example: ASL Interpreter, reader, note taker) to participate in any MCE program, service or activity, you may request an accommodation by calling (415) 464-6032 (voice) or 711 for the California Relay Service or by e-mail at djackson@mceCleanEnergy.org not less than **four work days** in advance of the event.

8. Charles F. McGlashan Advocacy Awards 2019 (Discussion/Action)
9. Addition of Board Members to Committees (Discussion/Action)
10. Resolution No. 2020-XX Appointing Director of Finance as Treasurer (Discussion/Action)
11. Amendment to MCE Policy 014: Investment Policy (Discussion/Action)
12. Budget for Fiscal Year 2020/21 (Discussion/Action)
13. Dynamic Rates for Upcoming Solano Inclusion (Discussion/Action)
14. Resolution No. 2020-XX Amending MCE's Conflict of Interest Code (Discussion/Action)
15. Steps and Considerations for MCE to Borrow in the Tax-Exempt Capital Markets (Discussion/Action)
16. Board Matters & Staff Matters (Discussion)
17. Adjourn