



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

Kathrin Sears, Chair  
County of Marin

Tom Butt, Vice Chair  
City of Richmond

Bob McCaskill  
City of Belvedere

Alan Schwartzman  
City of Benicia

Sloan C. Bailey  
Town of Corte Madera

Greg Lyman  
City of El Cerrito

Barbara Coler  
Town of Fairfax

Don Tatzin  
City of Lafayette

Kevin Haroff  
City of Larkspur

Sashi McEntee  
City of Mill Valley

Brad Wagenknecht  
County and Cities of Napa

Denise Athas  
City of Novato

P. Rupert Russell  
Town of Ross

Ford Greene  
Town of San Anselmo

Arturo Cruz  
City of San Pablo

Andrew McCullough  
City of San Rafael

Ray Withy  
City of Sausalito

Emmett O'Donnell  
Town of Tiburon

Kevin Wilk  
City of Walnut Creek

1 (888) 632-3674  
[mceCleanEnergy.org](http://mceCleanEnergy.org)

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

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

**Agenda Page 1 of 3**

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



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



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



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**Agenda Page 3 of 3**

**12. Policy Update (Discussion)**

**13. Board Member & Staff Matters (Discussion)**

**14. Adjourn**



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**DRAFT**

**MCE BOARD MEETING MINUTES**

**Thursday, May 18, 2017**

**7:00 P.M.**

**THE CHARLES F. MCGLASHAN BOARD ROOM  
1125 TAMALPAIS AVENUE, SAN RAFAEL, CA 94901**

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**Roll Call:** Director Kate Sears called the regular Board meeting to order at 7:03 p.m. An established quorum was met.

**Present:** Denise Athas, City of Novato  
Sloan Bailey, Town of Corte Madera  
Tom Butt, City of Richmond  
Barbara Coler, Town of Fairfax  
Arturo Cruz, City of San Pablo  
Ford Greene, Town of San Anselmo  
Kevin Haroff, City of Larkspur  
Greg Lyman, City of El Cerrito  
Bob McCaskill, City of Belvedere  
Andrew McCullough, City of San Rafael  
P. Rupert Russell, Town of Ross  
Alan Schwartzman, City of Benicia  
Kate Sears, Chair, County of Marin  
Don Tatzin, City of Lafayette (Lafayette Location)  
Brad Wagenknecht, County of Napa  
Kevin Wilk, City of Walnut Creek (Lafayette Location)  
Ray Withy, City of Sausalito

**Absent:** Sashi McEntee, City of Mill Valley  
Emmett O'Donnell, Town of Tiburon

**Staff:** Carol Dorsett, Operations Associate  
Kirby Dusel, Resource Planning & Renewable Energy Programs  
Jesica Flores-Brooks, Administrative Assistant  
Brian Goldstein, Resource Planning & Implementation  
J.R. Killigrew, Community Development Manager  
Justin Kudo, Deputy Director, Account Services  
Paul Liotsakis, Customer Programs Manager  
Alexandra McGee, Community Power Organizer  
David McNeil, Finance Manager  
Justine Parmelee, Operations Associate (Lafayette Location)  
Shalini Swaroop, Deputy General Counsel  
Dawn Weisz, Chief Executive Officer

**DRAFT****Swearing In of New Board Member – Arturo Cruz, City of San Pablo****1. Board Announcements (Discussion)****2. Public Open Time (Discussion)**

Helene Marsh, member of the public, provided an update from her January 2017 presentation to the Board regarding Environmental Forum of Marin Master Class 43 Project Municipal Use of 100% Renewable Electricity.

**3. Report from Chief Executive Officer (Discussion)**

CEO Dawn Weisz reported on the following:

- MCE is video conferencing via Skype from a remote location in Lafayette for the first time. MCE Directors were told they were welcome to attend the Lafayette location.
- The following communities have voted to request membership in MCE:
  - Contra Costa County (unincorporated)
  - Town of Moraga
  - Town of Danville
  - City of Oakley
  - City of Pinole
  - City of Pittsburg
- MCE was selected for a \$1.75 million grant from the California Energy Commission.
- Upcoming dates for Technical Committee, June 1, 2017 and ExCom June 2, 2017. MCE is currently working on a date for the 2017 Fall Board Retreat.

**4. Consent Calendar (Discussion/Action)**

- C.1 3.16.17 Meeting Minutes
- C.2 Approved Contracts Update
- C.3 First Agreement with Free Range Videographers
- C.4 First Amendment to the First Agreement with The Energy Alliance Association
- C.5 Proposed Amendment to Ratepayer Rule No. 005

Chair Sears opened the public comment period and there were no speakers.

**ACTION:** It was M/S/C (Wagenknecht/Greene) to **approve Consent Calendar items**. Motion carried by unanimous vote. (Abstain on C.1: Director Schwartzman) (Absent: Directors McEntee and O'Donnell).

**5. Proposed 2017/18 Budget Amendment (Discussion/Action)**

David McNeil, Finance Manager, presented this item and addressed questions from Board members.

**DRAFT**

Chair Sears opened the public comment period and there were no speakers.

**ACTION:** It was M/S/C (Coler/Lyman) to **approve the proposed Amendment to the FY 2017/18 Operating Fund Budget.** Motion carried by unanimous vote. (Absent: Directors McEntee and O'Donnell).

**6. MCE Greenhouse Gas Emissions Analysis for CY 2015 (Discussion/Action)**

Kirby Dusel, Resource Planning & Renewable Energy Programs, presented this item and addressed questions from Board members.

Chair Sears opened the public comment period and there were no speakers.

**ACTION:** It was M/S/C (Greene/Athas) to **1. approve the use, distribution and web posting of MCE's Emission Factor Certification Template, as provided by The Climate Registry (CY 2015), and 2. approve the use, distribution and web posting of the "Understanding MCE's GHG Emission Factors – Calendar Year 2015" document.** Motion carried by unanimous vote. (Absent: Directors McEntee and O'Donnell).

**7. Draft Resolution No. 2017-03 to Revise Net Energy Metering (NEM) Tariff and Proposed Amendments to Local Sol and NEM Electric Schedules (Discussion/Action)**

Justin Kudo, Deputy Director, Account Services, introduced this item and addressed questions from Board members.

Chair Sears opened the public comment period and there were no speakers.

**ACTION:** It was M/S/C (Bailey/Haroff) to **approve draft Resolution No. 2017-03 and authorize staff to make the proposed amendments to the Local Sol and Net Energy Metering Electric Schedules.** Motion carried by unanimous vote. (Absent: Directors McEntee and O'Donnell).

**8. Draft Resolution No. 2017-04 Authorizing Entry Into and Execution of Certain Contracts Relating to the MCE Solar One Project (Discussion/Action)**

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

Chair Sears opened the public comment period and there were no speakers.

**ACTION:** It was M/S/C (Bailey/Haroff) to **approve Resolution No. 2017-04 authorizing entry into and execution of certain contracts relating to the MCE Solar One project.** Motion carried by unanimous vote. (Absent: Directors McEntee and O'Donnell).

**DRAFT**

**9. Update on Community Power Coalition (Discussion)**

Alexandra McGee, Community Power Organizer, introduced this item and addressed questions from Board members.

Chair Sears opened the public comment period and there were no speakers.

ACTION: No action required.

**10. Policy Update (Discussion)**

Shalini Swaroop, Deputy General Counsel, presented this item and addressed questions from Board members.

ACTION: No action required.

**11. Board Member & Staff Matters (Discussion)**

There were none.

**12. Adjournment**

The Board of Directors adjourned the meeting at 8:52 p.m. to the next Regular Board Meeting on July 20, 2017.

\_\_\_\_\_  
Kate Sears, Chair

Attest:

\_\_\_\_\_  
Dawn Weisz, Secretary



July 20, 2017

TO: MCE Board of Directors  
 FROM: Troy Nordquist, Contracts Manager & Legal Assistant  
 RE: Report on Approved Contracts (Agenda Item #04 – C.2)

Dear Board Members:

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**SUMMARY:** This report summarizes agreements entered into by the Chief Executive Officer and if applicable, the Chair of the Technical Committee since the last Board meeting in May. This summary is provided to your Board for information purposes only.

#### Review of Procurement Authorities

In February 2017, your Board adopted Resolution 2017-02 which included the following provisions:

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

*The CEO shall have all necessary and proper authority to approve and execute contracts for Energy Procurement for terms of less than or equal to 12 months, which the CEO shall timely report to the Board.*

The Chief Executive Officer is required to report all such contracts and agreements to the MCE Board on a regular basis.

#### Summary of Agreements

Month	Purpose	Contractor	Maximum Annual Contract Amount	Term of Contract
April	Silicon Valley Power 2017 Resource Adequacy 43 MW delivering July 1, 2017 through September 30, 2017	Silicon Valley Power (SVP)	\$38,700	3 Months
June	Calpeak Power 2018 Resource Adequacy delivering 193,000 MWh/yr. January 1, 2018 through December 31, 2018	Calpeak Power, LLC.	\$328,100	1 Year



June	Shell Energy 2018 Resource Adequacy delivering 313,000 MWh/yr. January 1, 2018 through December 31, 2018	Shell Energy North America	\$579,050	1 Year
June	San Francisco Public Utilities Commission 2017 Specified Source Energy - Carbon Free	San Francisco Public Utilities Commission (SFPUC)/Hetch-Hetchy	\$667,800	2 Months
July	Purchase of Renewable Energy from a Wind project delivering 310,000 MWh/yr. 2018-2019	3 Phases Renewables Inc.	\$2,092,500	2 Years

**Fiscal Impact:** Expenses associated with these Agreements are included in the FY 2017/18 Operating Fund.

**Recommendation:** Information only. No action required.



July 20, 2017

TO: MCE Board of Directors

FROM: Brian Rothstein, Power Settlements Analyst

RE: Proposed First Agreement with Czarnecki-Yester Consulting Group, LLC (Agenda Item #04 – C.3)

ATTACHMENTS: A. Draft First Agreement with Czarnecki-Yester Consulting Group, LLC (CYCG)  
B. CYCG Proposal for CAISO Settlement Support to MCE

Dear Board Members:

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**Summary:**

Since MCE's inception in 2010, MCE has been receiving California Independent System Operator (CAISO) Settlement Reports from the Czarnecki-Yester Consulting Group (CYCG) through our Scheduling Services contract with Shell Energy North America (SENA). Scheduling Coordination services transitioned to ZGlobal in the fall of 2016 and ZGlobal agreed to provide access to the CYCG reports for a six-month transition period until the ZGlobal Settlements platform was completed and validated for accuracy. With the transition from SENA to ZGlobal close to completion, MCE no longer has a mechanism to receive the CYCG reports.

Staff recommends contracting directly with CYCG for CAISO Settlements Reporting Services (also referred to as ISO SettlePro Bundled Services) through the end of 2018. Staff makes daily use of CYCG reports to facilitate CAISO invoice validation and disputes, power contract invoice validation, analysis of energy contract performance, backup data and auditing, as well as research and analysis of generator performance. These reports also provide a complete and auditable record of MCE's CAISO market activities, charges and payments.

A proposed Agreement with CYCG for ISO SettlePro Bundled Services beginning September 1, 2017 through the end of 2018 is outlined in Attachments A and B. The CYCG proposal also describes the optional "ISO SettlePro Data Visualization Service", which staff does not recommend contracting for at this time.

**Fiscal Impacts:** Costs related to the proposed contract are included in Technical and scheduling services in the FY 2017/18 Budget.

**Recommendation:**

Approve the Proposed First Agreement with Czarnecki-Yester Consulting Group, LLC.

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**FIRST AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND CZARNECKI-YESTER CONSULTING GROUP LLC**

**THIS FIRST AGREEMENT** ("Agreement") is made and entered into this day **July 20, 2017** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and Czarncki-Yester Consulting Group, LLC (CYCG), hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services: Hosted processing of California Independent Systems Operator (CAISO) settlement statement transactions.

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

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

**1. SCOPE OF SERVICES:**

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

**2. FURNISHED SERVICES:**

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

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

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

**4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$64,000**.

**5. TIME OF AGREEMENT:**

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

**6. INSURANCE AND SAFETY:**

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

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

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

**6.1 GENERAL LIABILITY**

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

**6.2 AUTO LIABILITY**

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

**6.3 WORKERS' COMPENSATION**

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

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

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

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

**7. NONDISCRIMINATORY EMPLOYMENT:**

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

**8. SUBCONTRACTING:**

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

**9. ASSIGNMENT:**

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

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

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 AND INTELLECTUAL PROPERTY:**

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. Notwithstanding the foregoing, Contractor shall retain ownership of and subsequent rights to all of Contractor's proprietary business processes, software, or other tools which Contractor previously developed, or may subsequently develop and/or customize specifically for the benefit of MCE; exclusive of work product, reports or documents that reference or contain data provided by or pertaining to MCE, its financial information, resource portfolio, customer information, or any other information proprietary to MCE or subject to legal restrictions on use and disclosure. Contractor's intellectual property regarding wholesale settlement transaction processing shall remain with Contractor and survive the termination of this Agreement.

#### **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) 464-6014  
 \_\_\_\_\_

Notices shall be given to Contractor at the following address:

Contractor:         Czarniecki-Yester Consulting Group LLC  
 \_\_\_\_\_  
 Address:           6629 Manzano St. #A  
 \_\_\_\_\_  
                           Chino, CA 91710  
 \_\_\_\_\_  
 Email Address:     [kencz@cycg.com](mailto:kencz@cycg.com)  
 \_\_\_\_\_  
 Telephone No.:     (909) 393-4445 Office   (626) 487-7405 Mobile  
 \_\_\_\_\_

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

**21. SEVERABILITY**

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

**22. COMPLETE AGREEMENT**

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

**23. COUNTERPARTS**

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

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

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

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

**APPROVED BY**

**Marin Clean Energy:**

**CONTRACTOR:**

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

Dawn Weisz, CEO

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

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

Name: Kenneth Czarnecki

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

Chairperson

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

Date:

---

**MODIFICATIONS TO STANDARD SHORT FORM**

**Standard Short Form Content Has Been Modified**

*List sections affected:* \_\_\_\_\_ 11. Work Product and Intellectual Property \_\_\_\_\_

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

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

## **EXHIBIT A SCOPE OF SERVICES**

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

### **Core ISOSettlePro System Functionality**

Contractor shall perform CAISO settlement statement reporting services utilizing its ISOSettlePro product for collection, storage and processing of settlement data.

- Contractor will use Automatic Program Interfaces (APIs) to access and store the MCE settlement statement information published by the CAISO. MCE will be responsible to work with its CAISO Scheduling Coordinator to grant CYCG certificate access to the CAISO systems on behalf of MCE as a pre-condition to this activity.
- Contractor will publish reports and provide other reporting services utilizing settlement statement information, including allocation reporting.

### **Predictive Settlements**

As requested by MCE based on business needs, Contractor will provide settlement functionality through ISOSettlePro as described below:

- Contractor will produce estimates of key CAISO payments and charges at two business days after the trade date (T+2BD), and again at eleven business days after the trade date (T+11BD).
- As requested by MCE, Contractor will provide predictive calculations by CAISO charge code, as resource summaries, or as financial totals.

### **Allocation Processing**

Contractor's allocation processing services identify the portion of each CAISO payment or charge attributable to a specific resource, trade, contract, or other underlying activity involving MCE's portfolio.

- Default processing: allocations performed using then-current CAISO configuration rules.
- As requested by MCE, Contractor will enhance allocation functionality to incorporate additional MCE-specific allocation rules.

### **Settlement Statement Processing**

- Contractor will use ISOSettlePro to poll the CAISO regularly for new settlement statements. Statements are automatically downloaded and processed to generate a variety of standard reports, including statement summaries and exception reports.
- Contractor will make requested reports available to MCE shortly after CAISO statement publication.

### **Management Reporting**

Contractor will provide any reports related to administrative or regulatory reporting and management requirements shortly after the receipt of the final settlement statement for the period.

### **Client-Specific Integration**

Contractor will create a set of customized reports and (if requested) downstream system integration files based on MCE's specific requirements.

### **Deliverables**

Contractor will produce allocation and reporting result files for each CAISO settlement statement type no later than 24 hours after CAISO statement publication.

### **Contractor Support Services**

Contractor shall provide bundled support services including implementation, business integration and optimization, change management and system support.

Implementation Services. Implementation services shall include all necessary setup and initial customization activities to ensure that MCE's operational requirements are satisfied and that MCE can use Contractor's software as intended. Additional implementation services include:

- Finalizing initial market and client requirements.
- Customization and configuration of output reports.



- Determining timelines for business process interfaces.
- Establishing communication mechanisms and protocols.

Business Integration and Optimization Services. Contractor shall ensure that its system software is optimized to meet MCE's business requirements. Key services include:

- Continually working with MCE to identify and implement potential process improvements.
- Maintaining a reasonable understanding of MCE's current and future business requirements.
- Participating in regular business process performance improvement sessions with MCE.
- Providing ISOSettlePro system training to MCE personnel.
- To the extent feasible, taking MCE's business requirements into consideration in prioritizing and timing releases of new ISOSettlePro functional enhancements.

Change Management. Any change in system operation or functionality requested by MCE that is not included in the original scope of Contractor's ISOSettlePro system described herein falls under the category of change management.

Key change management activities include:

- Design, development, and implementation of both client-initiated and market-driven changes.
- Tracking and status reporting of approved development activities.
- User acceptance testing
- The transition to production, subsequent business integration, and necessary optimization support for all implemented and accepted changes.

Note: If MCE requests additional services beyond the scope of this Agreement, such services and any separate rates for fees applicable thereto shall be agreed to by the parties in writing.

System support. Contractor's system support services shall include all necessary maintenance activities to ensure satisfaction of MCE's throughput requirements and to ensure that MCE personnel can use Contractor's software to maximize overall settlement business process performance. Additional system support activities shall include:

- Tracking all pending CAISO settlement changes and including the appropriate support in timely releases of the ISOSettlePro system.
- Providing MCE with unrestricted access to system support by phone and email.
- Assisting MCE with testing new ISOSettlePro releases whenever feasible.
- Providing a streamlined error reporting and resolution process.

**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:

Contractor shall provide ISOSettlePro services to MCE based on an all-inclusive fixed monthly fee. Services shall include any and all operations, development, and programming support involving the processing of CAISO settlement statements in support of MCE's allocation processing and reporting requirements, as described in Exhibit A.

**Fee Summary**

- Contractor will bill MCE \$4,000 per month for ISOSettlePro services as described in Exhibit A
- In the event that Contractor's in-person attendance is necessary for any meeting(s) at MCE offices, Contractor may request reimbursement for pre-approved travel expenses, up to the total amount budgeted therefor, by submitting invoices and/or receipts no later than 90 days from the date of travel.

Additional services requested by MCE beyond the scope of this Agreement and the rate(s) applicable must be agreed to by the parties in writing, in advance of Contractor's performance of the additional services.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$65,000** inclusive of travel expenses (if any), for the term of the Agreement.

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# Proposal

## California ISO Settlements Solution (Scope of work)

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Presented to:

***MCE Clean Energy***



Submitted by:

**Czarnecki-Yester Consulting Group, LLC  
(CYCG)**



**6629 Manzano Street Suite A  
Chino, CA 91710-6911**

**[www.cycg.com](http://www.cycg.com)**

**June 14, 2017**

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## Executive Summary

MCE Clean Energy (MCE) is seeking to extend its settlement and reporting Scheduling Coordinator (SC) services at the California Independent Systems Operator (CAISO). CYCG has been indirectly providing settlement services to MCE since 2010 via MCE's prior and current SCs. CYCG is submitting this proposal (Proposal) in response to MCE's request for CYCG to provide direct settlement and reporting support.

The Czarnecki-Yester Consulting Group LLC (CYCG) specializes in providing business and technical support to organizations operating in deregulated energy markets. CYCG's offerings include a full range of systems, services, and solutions specially tailored to address the requirements of CAISO SCs. One of these CYCG solutions is ISOSettlePro, a highly flexible service designed to automatically download, process, and report CAISO operational and settlement information.

Specifically, CYCG is proposing to provide ISOSettlePro to MCE as a hosted solution, allowing MCE to continue to obtain timely settlement and reporting results shortly after the CAISO publishes settlement statement files. Under this hosted arrangement, CYCG will continue its responsibility for daily system operation, change management, and information delivery. This will enable MCE to focus on information review and analysis by leveraging CYCG's operational capabilities and market expertise. MCE will be responsible for providing CYCG certificate access to its CAISO information via the CAISO Access Identity Management system and Application Access Request (AARF) forms.

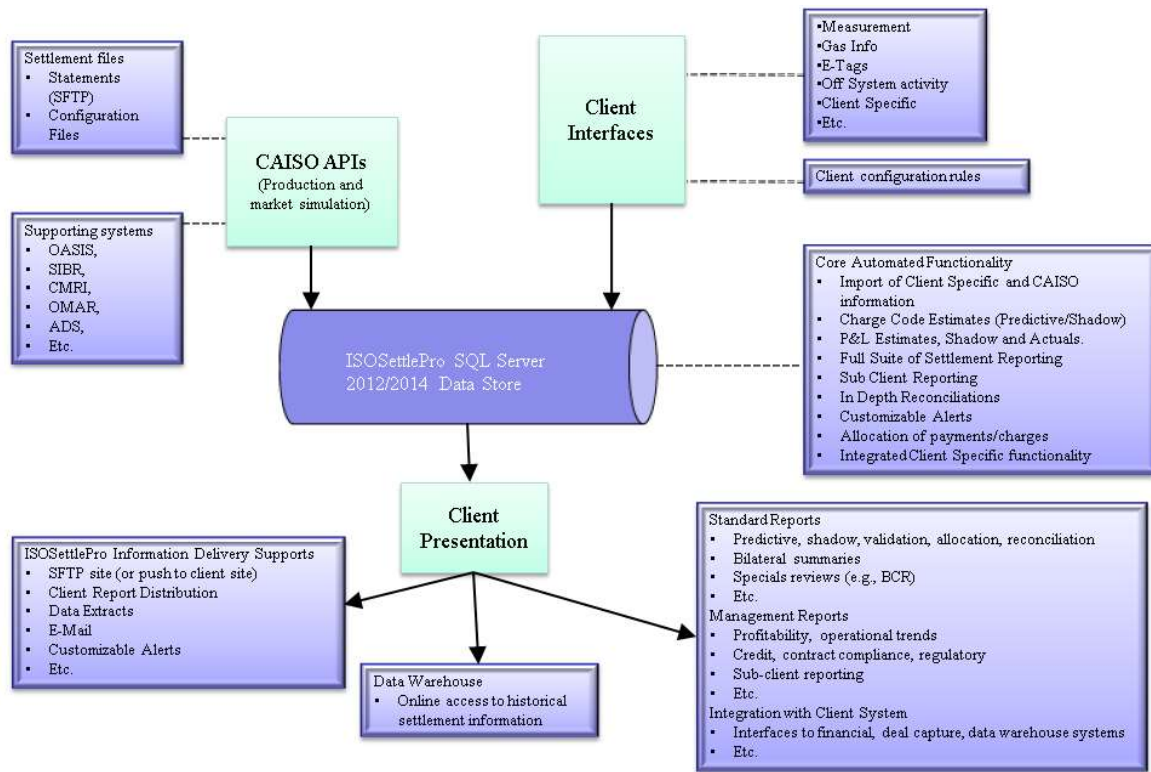
By combining the proven functionality of CYCG software with its associated support services, MCE will have a customized, robust CAISO operational and settlements solution that offers the greatest business value while simultaneously minimizing overall project risk and cost.

# The ISOSettlePro Solution

## Overview

ISOSettlePro has been designed to collect, store, and process settlement data in the most operationally efficient manner. Overall throughput – ranging from daily processing through special month-end analyses – has been highly optimized, allowing clients to obtain accurate results in an expedited manner. Because ISOSettlePro reporting relies on industry standard Microsoft products, minimal user training is needed to achieve proficiency in accessing and analyzing critical settlement related information.

The diagram below represents typical information flows of the entire ISOSettlePro product.



## Core ISOSettlePro System Functionality

This section describes the specific subset of ISOSettlePro functionality that CYCG will provide MCE under the terms of this Proposal. MCE will be responsible to work with its CAISO Scheduling Coordinator to grant CYCG certificate access to the CAISO systems on behalf of MCE.

In general, CYCG will use Automatic Program Interfaces (APIs) to access and store the MCE settlement statement information published by the CAISO. (A pre-condition to this activity is that MCE will arrange to provide CYCG with the necessary system access certificates.) CYCG

will utilize its core ISOSettlePro product to publish reports and provide other reporting services utilizing settlement statement information, including allocation reporting.

### **Predictive Settlements**

Two business days after the trade date (T+2BD), and again at eleven business days after the trade date (T+11BD), ISOSettlePro will combine “best available” client data (positions, schedules, measurement information, real-time transactions, expected energy files, etc.) and CAISO OASIS information to produce estimates of key CAISO payments and charges. These predictive calculations can be reported by CAISO charge code, as resource summaries, or as financial totals. CYCG will work with MCE to provide this settlement functionality based on MCE’s business requirements.

### **Allocation Processing**

In ISOSettlePro, *allocation* is the process of identifying that portion of each CAISO payment or charge that is attributable to a specific resource, trade, contract, or other underlying activity involving MCE’s portfolio. As a default, ISOSettlePro performs allocations by using then-current CAISO configuration rules. If requested, CYCG will enhance this functionality to incorporate additional MCE-specific allocation rules related to MCE’s management requirements.

### **Settlement Statement Processing**

The ISOSettlePro software regularly polls the CAISO to determine if new settlement statements are available, then automatically downloads and processes those statements to generate a variety of standard reports, including statement summaries and exception reports. These reports will be available to MCE shortly after CAISO statement publication.

### **Management Reporting**

In addition to basic statement processing, ISOSettlePro reports address wide range of administrative and management needs, including support for annual NERC-WECC analysis, quarterly FERC filings, and other regulatory requirements. These reports will be available shortly after the receipt of the final settlement statement for the period; for example, FERC EQR information is typically published after receipt of the last settlement statement for a given trade month.

### **Client-Specific Integration**

The ISOSettlePro solution will be implemented in a manner that enables it to be easily integrated within MCE’s business and information processes. CYCG will create a set of customized reports and (if requested) downstream system integration files based on MCE’s specific requirements.

### **Deliverables**

The ISOSettlePro solution will produce allocation and reporting result files for each CAISO settlement statement type (initial, recalc at T+12BD, recalc at T+55BD, rerun at T+9M, etc.) typically within a few hours of CAISO statement publication, but no later than 24 hours after CAISO statement publication.

## **CYCG Support Services**

This Proposal includes a full set of CYCG support services, allowing MCE to maximize the benefit of both the ISOSettlePro system and CYCG market knowledge. These bundled services involve implementation, business integration and optimization, change management, and system support.

### **Implementation Services**

Implementation services include all necessary setup and initial customization activities to ensure that MCE's operational requirements are satisfied and to ensure that MCE personnel can use the CYCG software as intended. This service typically includes:

- Finalizing initial market and client requirements.
- Customization and configuration of output reports.
- Determining timelines for business process interfaces.
- Establishing communication mechanisms and protocols.

### **Business Integration and Optimization Services**

Business integration and optimization services include the tasks that ensure that CYCG system software is optimized to meet MCE's business requirements. Key activities in this area include:

- CYCG will continually work with MCE to identify and implement potential process improvements.
- CYCG will endeavor to maintain an understanding of MCE's current and future business requirements.
- To ensure that MCE and CYCG share business and technical understanding, CYCG will participate in regular business process performance improvement sessions with MCE.
- CYCG will provide ISOSettlePro system training to MCE personnel.
- From time to time, CYCG proactively releases new ISOSettlePro functionality. CYCG's clients routinely influence the prioritization and timing of these enhancement efforts.

### **Change Management**

Because of the dynamic nature of the California wholesale energy market, and to allow for MCE's internal business process enhancements, CYCG recognizes that changes in MCE's requirements are inevitable. Any change in system operation or functionality requested by MCE that is not included in the original scope of the ISOSettlePro system falls under the category of *change management*. Key change management activities include:

- Design, development, and implementation of both client-initiated and market-driven changes.
- Tracking and status reporting of approved development activities.
- User acceptance testing



- The transition to production, subsequent business integration, and necessary optimization support for all implemented and accepted changes.

**System Support**

System support services include all necessary maintenance activities to ensure that MCE’s throughput requirements continue to be satisfied and to ensure that MCE personnel can use the CYCG software to maximize overall settlement business process performance. These CYCG support service activities include:

- CYCG will track all pending CAISO settlement changes and include the appropriate support in timely releases of the ISOSettlePro system.
- CYCG will provide MCE with unrestricted access to system support by phone and email.
- CYCG will assist MCE with testing new ISOSettlePro releases whenever feasible.
- CYCG will provide a streamlined error reporting and resolution process.

**ISOSettlePro Data Visualization Functionality**

CYCG also provides a Data Visualization (DV) service that can be added to our ISOSettlePro service described above. Note this service is not available without the ISOSettlePro service. This DV service enables users to quickly perform analytics on CAISO performance. This service allows users to understand their CAISO data by automatically turning data into informative graphs, tables, charts, and other formats. DV reveals information by helping analysts rapidly identify profit and loss analysis, determine CAISO patterns, trends, and exceptions. DV also facilitates the communication of complex information through readily understood graphical displays. The DV functionality described in this Proposal will allow MCE to apply these tools and techniques to CAISO settlement transactions with few restrictions.



### **Data Visualization Setup**

CYCG will provide appropriate end user licenses to operate the DV software, CYCG will work with MCE to understand the basic types of analytics, visualizations, and dashboards it will want to produce. CYCG will subsequently ensure that the ISOSettlePro database architecture is optimized to support those requirements. MCE will then be able to access CYCG ISOSettlePro data stores and perform data visualization and analysis over a highly secure internet connection.

### **Data Visualization Information Availability**

CYCG will ensure that all ISOSettlePro data required by MCE will remain available to the MCE DV analysts, including data for all trade dates from the start of MCE's activities with the CAISO through the present date. CYCG will continually add new transaction information into the data stores, ensuring that that MCE's reports, dashboards, and other DV analysis products remain current.

### **Data Visualization Change Management**

Because of the dynamic nature of the California wholesale energy market, and to allow for MCE's internal business process enhancements, CYCG recognizes that changes in MCE's requirements are inevitable. Any change in system operation or functionality requested by MCE that is not included in the original scope of the DV setup falls under the category of change management.

In general, the DV services discussed in this Proposal will require access to CYCG's ISOSettlePro data stores. Accordingly, CYCG's change management services will include the following activities:

- Where applicable, CYCG will optimize MCE's access to existing ISOSettlePro data stores.
- CYCG will track all pending CAISO settlement changes and work with MCE to determine how these market changes might impact their ongoing DV activities.
- Any enhancements that CYCG makes to ISOSettlePro – either as a result of CAISO market rule changes or as a result of internal process improvements – will include timely and appropriate support for MCE's DV activities.
- CYCG may proactively suggest or introduce other changes and enhancements – either to ISOSettlePro or the associated DV tools – that may be beneficial to MCE. CYCG will ensure that there will be no adverse impacts to MCE as a result of this effort.
- CYCG will work with Tableau to understand and evaluate any and all changes that Tableau plans to introduce in its software tools. CYCG will, in turn, work with MCE to minimize any potential impacts of these changes to MCE's ongoing DV activities.

### **Data Visualization System Support**

System support services include all maintenance activities that may be necessary to ensure that MCE's throughput requirements continue to be satisfied and, furthermore, to ensure that

MCE personnel can use the CYCG software to maximize their overall settlement business process performance. These CYCG support service activities include:

- CYCG will perform all ongoing settlement operational activities in a timely manner, ensuring that new information is continually added to the ISOSettlePro data stores used by MCE DV activities.
- CYCG will provide MCE with unrestricted access to system support by phone and email.
- CYCG will assist MCE with testing new ISOSettlePro releases whenever feasible.
- CYCG will provide a streamlined error reporting and resolution process.

It should be noted that the new CYCG DV functionality will allow MCE analysts to directly access ISOSettlePro data and develop their own customized reports. Consequently, while CYCG will assist with this effort wherever feasible, the primary responsibility for the development, accuracy, and ongoing use of these DV products will remain with the MCE analysts.

## CYCG Fees and Charges

It is CYCG's intention to provide ISOSettlePro services to MCE under the terms of a simple, all-inclusive fixed monthly fee arrangement. These services will include *any and all* operations, development, and programming support involving the processing of CAISO settlement statements and related information.

### Fee Summary

CYCG will provide core ISOSettlePro services under the terms of this Proposal for a flat fee of \$4,000 per month. Payment terms from MCE to CYCG will be NET 15.

Note that, CYCG will not charge for any associated implementation or change management services.

The following table summarizes the costs for the project and its options.

Activity	Cost Basis	Rate
ISOSettlePro Bundled Services	Fixed monthly fee	\$4,000 per month
ISOSettlePro Data Visualization Service (optional)	Fixed monthly fee	\$500 per designated user/ per month

CYCG will guarantee that these prices remain unchanged through calendar year 2017.

### Contract Term and Considerations

The term of this agreement will be from the date of current services via ZGlobal conclusion (scheduled for August 31) through the calendar year 2018. Either party may terminate this service with a 30 day written notice.

### Other Services

As stated above, this Proposal addresses MCE's primary requirement of processing CAISO settlement statement data for the purpose of providing settlements and reporting services.

If MCE requests CYCG to provide any additional services beyond the terms of this Proposal, then CYCG may provide those services under a separate rate. All travel and any other significant expenses incurred by CYCG at the request of MCE will be arranged with – and approved by – the appropriate MCE personnel in advance.

Similarly, if MCE requests CYCG to provide additional services involving the processing and reporting of any data other than the primary CAISO settlement statement data, then depending on the nature and scope of each such request, MCE and CYCG may enter into separate additional agreements.

It should be noted that CYCG is unaware of any additional service not identified in this Proposal that would be needed in order to ensure that it fulfills the terms of this Proposal.

## **Other Issues and Considerations**

This section briefly discusses other relevant issues and considerations that frequently arise during contract development.

### **Financial Liability**

The primary service to be provided by CYCG under this Proposal is the hosted processing of CAISO settlement statement transactions. Although CYCG will maintain its systems and provide its services on a “best efforts” basis, CYCG will not assume financial liability for problems arising from the use of CYCG products or services. However, on a regular basis, CYCG will provide MCE with the opportunity to independently develop and submit test data files designed to verify the accuracy of any aspect of the CYCG settlement process.

### **Conflict of Interest**

CYCG represents and warrants that its performance of the services described in this Proposal will not violate nor conflict in any respect with any written or oral agreement or understanding with any person or entity or any law, rule, or regulation applicable to it. Specifically, CYCG has no currently existing or contemplated agreement or other commitment that will in any way adversely impact its ability to provide MCE with the high quality services it expects.

### **Confidentiality**

CYCG acknowledges that prior to, during, and after the course of its services with MCE, it will be exposed to documents and other information regarding the affairs of MCE that must remain confidential. Accordingly, CYCG will commit to complying with any appropriate confidentiality agreements reasonably desired by MCE. These agreements may be made at either the corporate level (which would be binding upon all CYCG principals, employees, subcontractors, and other agents) or may be made with individual CYCG service providers on an ad hoc basis. It should be noted that no confidentiality agreement currently exists between CYCG and MCE.

### **Data, Business Process, and Software Ownership**

CYCG acknowledges that all MCE-related data it receives is the exclusive property of MCE and will not be retained by CYCG without the consent of MCE. Upon termination of this agreement, CYCG will deliver all relevant settlement data to MCE, and will not retain a copy. However, CYCG will retain the ownership and subsequent rights to all CYCG business processes and software used during this agreement, including any programs and other software tools that may have been developed or customized specifically for the benefit of MCE.

## **Use of Subcontractors**

CYCG may avail itself of limited service offerings from third-party providers, if and when such supplemental, cost-effective, and highly qualified services become available, and only to the extent appropriate for the engagement. CYCG will ensure that any terms and conditions binding CYCG (including confidentiality agreements) will also be binding on these subcontractors. Based on CYCG's current understanding of the project and MCE's requirements, CYCG has no current plans to utilize subcontracting services.

## **Intellectual Property**

A significant part of the value of this service offering is CYCG's intellectual property regarding wholesale settlement transaction processing. This intellectual property will remain with CYCG throughout the engagement and will continue to remain with CYCG after these services are terminated.

## Contact Information

Contact information for the Czarnecki-Yester Consulting Group LLC is as follows:

Name	E-Mail Address	Phone Number
Ken Czarnecki	<a href="mailto:Kencz@cycg.com">Kencz@cycg.com</a>	(909) 393-4445





July 20, 2017

TO: MCE Board of Directors  
FROM: Katie Gaier, Manager of Human Resources  
RE: New MCE Staff Position (Agenda Item #04 - C.4)  
ATTACHMENT: Job Description – Human Resources Associate

Dear Board Members:

**SUMMARY:**

Staff seeks approval of the addition of a Human Resources Associate on the Internal Operations Team.

**BACKGROUND:**

The increase in the MCE service area has resulted in growth in staffing needs, such that by August 1 there will be 50 MCE employees, including extra-hire staff. By federal and state law, there are compliance requirements that MCE will need to follow with 50 or more employees, such as the Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). In addition, the volume of Human Resources work has increased with the growth in size such that the workload cannot be effectively sustained by one employee. In order for the Manager of Human Resources to focus on higher-level work that is commensurate with the position, the Internal Operations team has identified the need to add a Human Resources Associate, dedicated to providing administrative support to the HR function within MCE. It is recommended that your Board approve the addition of this position at a salary range of \$60,450 - \$84,498, consistent with similarly situated MCE positions with the same level of responsibility and minimum qualifications.

**Fiscal Impact:** Any costs associated with the proposed position are included in FY 2017/18 Budget.

**Recommendation:** Approve the proposed Human Resources Associate job description and salary range, effective August 1, 2017.



**DRAFT**  
**JOB DESCRIPTION**  
**HUMAN RESOURCES ASSOCIATE**

**SUMMARY**

The Human Resources Associate works under general supervision of the Manager of Human Resources. The position has responsibility for a wide range of human resources matters, with particular emphasis on providing administrative support in the areas of recruitment and hiring, benefits, classification, new employee orientation, employee professional development and training, file maintenance, and other tasks as assigned.

**CLASS CHARACTERISTICS**

The Human Resources Associate performs assignments under the general supervision of the Manager of Human Resources. The incumbent provides administrative support to the human resources activities and responsibilities of MCE, utilizing employee confidentiality and privacy guidelines.

**SUPERVISORY RESPONSIBILITIES**

This position may have lead work and/or supervisory responsibility for Administrative Assistants and Interns.

**ESSENTIAL DUTIES AND RESPONSIBILITIES (ILLUSTRATIVE ONLY)**

**Recruitment and Hiring**

- Assists Directors and other supervisors in recruitment planning for new hires
- Prepares job announcements for new staff hiring
- Distributes job announcements internally and externally and to identified advertising resources
- Manages the recruitment and staffing areas of the MCE website
- Manages MCE's recruitment email account
- Receives applications and saves application materials in recruitment files
- Maintains application materials according to set procedures
- Coordinates interview schedules and prepares for interviews, in person or using Skype or other web-based technology
- Prepares interview materials according to set procedures
- Communicates with applicants during the recruitment and hiring process
- Checks applicant references as requested and maintains responses in appropriate files
- Prepares offer letters to selected employees
- May assist in the review of testing materials

### New Employee Orientation

- Prepares for new employee arrival and participates in employee welcome activities, in coordination with Internal Operations staff, IT, and the employee's supervisor
- Schedules HR orientation according to start date and corresponding payroll dates
- Prepares HR orientation packets for new hires
- Coordinates with directors to schedule and complete MCE overview presentations
- May conduct HR orientation for new hires according to set procedures and guidelines

### Benefits

- Updates and maintains benefits section of employee files
- Updates and maintains benefits forms and ensures forms are available to employees
- Supports the Manager of HR through the following:
  - Reviews and approves benefits invoices and forwards to appropriate Internal Operations staff for processing
  - Coordinates annual open enrollments for benefits and MCE's Flexible Spending Account (FSA)
  - Enrolls employees in MCE benefits and ensures dates and level of coverage are consistent with MCE and carrier regulations and guidelines
  - Liaisons with MCE insurance broker for open enrollment as well as on-going coverage or payment issues
  - Coordinates COBRA notices and enrollment for qualifying employees and/or dependents

### Classification

- Updates job descriptions as needed and ensures correct naming, formatting, and filing of documents
- Communicates job classification changes to appropriate staff
- Maintains MCE job classification tracking system
- May assist in surveying for comparable classes and salaries
- May assist in developing and revising job descriptions
- May assist in drafting staff reports for ExCom and/or Board approval

### Employee Training and Development

- Identifies and coordinates opportunities for employee training and development
- Assists with tracking budget for professional development
- Ensures new employees and supervisors receive mandatory trainings
- Coordinates schedule for monthly, annual, and other trainings as needed
- Conducts regular check-ins with all staff members to determine new needs and interests

### Staff Event Coordination

- Maintains calendars of staff anniversaries/birthdays and coordinates related activities and events
- Organizes and coordinates staff events, including but not limited to monthly happy hour, annual campout, volunteer activities, field trips, Administrative Professionals' Day and other holidays, team outings, and individual employee recognition
- Ensures budget compliance for all of the above activities

### File Maintenance

- Creates and maintains human resources files, including employee files, according to set procedures and guidelines
- Ensures confidentiality of employee and other related HR files

- Provides employee access to individual personnel files as requested

#### Other

- Maintains confidentiality of personnel records and files
- Exercises discretion and tact in processing documents and information of a confidential or sensitive nature
- Ensures human resources documents (internal and external) align with the branding guidelines as defined by the Public Affairs Team
- Assists the Manager of Human Resources with calendar coordination, meeting preparation, and other administrative tasks
- As assigned, assists with the implementation of MCE's Strategic Plan
- As assigned, provide front desk coverage and meeting support

#### **MINIMUM QUALIFICATIONS**

To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required.

#### **Experience/Education**

Education and experience equivalent to an Associate degree and three (3) years of progressively responsible experience as an administrative support professional working in complex work environments, particularly in a public agency, one year of which must have been in a human resources administrative support role.

#### **Knowledge of:**

- Principles and practices of administrative support and office management.
- Microsoft Office Suite (Excel, Word, Adobe, PowerPoint, Outlook, Access).
- Google Applications (Gmail, Drive, Docs, Sheets, Slides, Forms).
- Best practices related to human resources responsibilities in a public agency.
- Document retention requirements and practices.
- Principles and practice of lead work or supervisory direction in a public agency

#### **Ability to:**

- Maintain the highest level of confidentiality in regard to human resources matters.
- Take responsibility and work independently.
- Coordinate team efforts.
- Work accurately and swiftly under pressure.
- Handle multiple ongoing projects in a fast-paced, team-oriented environment.
- Demonstrate patience, tact, and courtesy.
- Communicate effectively in written and verbal form.
- Establish and maintain effective working relationships with persons encountered during the performance of duties.
- Demonstrate highest level of accountability, integrity, judgment, and confidentiality.

#### **Language and Reasoning Skills**

- Exercise sound judgment, creative problem solving, and commercial awareness.
- Manage multiple priorities and quickly adapt to changing priorities in a fast-paced, dynamic environment.
- Develop high-quality writing, research, and communication work products.

- Deliver clear oral communication.
- Interact effectively as needed with supervisor, MCE's Chief Executive Officer and Board of Directors, MCE staff, job applicants, consultants, benefits providers, and other external parties as needed.
- Apply strong problem-solving skills.
- Be thorough and detail-oriented and focus on work at hand.

### **Mathematical Skills**

- Add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals.
- Compute rate, ratio, and percent.

### **Physical Demands**

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

### **Work Environment**

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

### **ADA Compliance**

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



July 20, 2017

TO: MCE Board of Directors

FROM: Nicole Busto, Deputy Director, Marketing Communications

RE: Proposed First Amendment to the First Agreement with Cypher Group, LLC (Agenda Item #04 – C.5)

ATTACHMENTS: A. Draft First Amendment to the First Agreement with Cypher Group, LLC  
B. First Agreement with Cypher Group LLC

Dear Board Members:

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**SUMMARY:**

Cypher Group, LLC (dba Catchword) is providing re-naming services to MCE. In August, 2016, May 2017 and June 2017, the Executive Committee discussed the challenges that the name MCE can create in discussions in the regulatory and legislative areas, news articles and press, with communities exploring membership, and in frequently misrepresenting MCE's identity. The Executive Committee then held a special meeting on June 12, 2017 to further discuss naming options, and approved the process of exploring a potential new name for MCE.

Catchword was identified as the top vendor in a formal Request for Offer (RFO) process conducted by MCE Public Affairs staff. The RFO included reviewing six submissions from naming agencies. Proposals were evaluated on the following criteria: proposed scope of work, quality of work samples, competitiveness of timeline and pricing, qualifications and references, and completeness of proposal. The top three submitters were interviewed by phone.

As recommended in Catchword's renaming process, an 11-member Naming Committee composed of MCE Board Members and Staff, and elected officials from Contra Costa County was formed. The re-naming process was segmented into two phases, to minimize expenses should the Naming Committee elect to terminate further exploration after the first phase is completed. Activities for Phase 1 include a background materials review by Catchword, questionnaire issued to the Naming Committee Members and 15 additional stakeholders, briefing meeting, creative brief, first round of name development, and presentation of the first round of 40-60 potential names. All Phase 1 activities are estimated to conclude on or near August 1.

The proposed First Amendment to the First Agreement with Cypher Group, LLC includes all activities related to Phase 2 of the re-naming process. These activities involve an insights document of MCE's naming preferences, second round of name development of approximately 750 names, preliminary trademark screening, and presentation of the second round of 10-12 potential names. To authorize the Naming Committee to determine if the Phase 2 contract amendment is needed on or before August 4, staff recommends the approval of the First Amendment to the First Agreement with Cypher Group, LLC in the amount of \$23,100 for activities related to the final phase of naming exploration, subject to Naming Committee request for Phase 2 work.

**Fiscal Impacts:** Costs related to the proposed contract amendment are included in the FY 2017/18 Operating Fund Budget.

**Recommendation**

Approve the proposed First Amendment to the First Agreement with Cypher Group, LLC, subject to Naming Committee request for Phase 2 work.

**FIRST AMENDMENT TO FIRST AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND CYPHER GROUP, LLC**

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This FIRST AMENDMENT is made and entered into on JULY 20, 2017, by and between MARIN CLEAN ENERGY, (hereinafter referred to as "MCE") and CYPHER GROUP, LLC (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and the Contractor entered into an agreement to provide renaming services as directed by MCE staff dated June 16, 2017 ("Agreement"); and

WHEREAS, Section 4 of the Agreement, and Exhibit B thereto, provided compensation to Contractor in an amount not to exceed \$25,000 for the renaming services described within the scope therein; and

WHEREAS the parties desire to amend the Agreement to increase the contract amount by \$23,100, for a total not to exceed \$48,100; and

WHEREAS, Section 5 the Agreement stated that the Agreement shall terminate on September 30, 2017; and

WHEREAS the parties desire to further amend the Agreement to extend the time of the Agreement.

NOW, THEREFORE, the parties agree to modify Sections 4 and 5 and Exhibits A and B as set forth below:

AGREEMENT

1. Section 4 is hereby amended to read as follows:

**MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$48,100**.

2. Section 5 is hereby amended to read as follows:

**TIME OF AGREEMENT:**

This Agreement shall commence on **June 16, 2017**, and shall terminate on **November 1, 2017**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.



3. Exhibit A is hereby amended and replaced in its entirety to read as follows:

Contractor will provide MCE re-naming services as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement.

Background Materials Review: Week of 06/12/17

Contractor will review client-provided brand platform, target audience, organization's business strategy, competitors, and any additional pertinent documentation.

Questionnaire: Week of 06/19/17

In order to capture key stakeholder opinions and ensure alignment on the goals and objectives for the masterbrand, Contractor will provide questionnaires for up to 20 respondents.

Briefing Meeting: Week of 06/26/17

At the Briefing Meeting with the core team, Contractor will share a summary of findings from the questionnaire and interview responses. Together we will also identify the team's naming preferences: messaging, styles, construction, and tonality.

Creative Brief: Week of 07/03/17

The Creative Brief serves as the guide for the Contractor creative team to develop names. This document will include the relevant information gained through the questionnaires, interviews, and the Briefing Meeting. This document will be provided to the core team for review and approval before Round 1 creative development begins.

Round 1 Creative: Week of 07/12/17

During Round 1, Contractor will develop a broad range of company names. From the masterlist of names, Contractor will present 40-60 masterbrand names to the core team during the Round 1 presentation. The goal of this meeting is to gauge the team's preferences and focus the name development parameters.

Insights Document to MCE: 1 day

The naming preferences revealed during the Round 1 presentation are summarized in the Insights Document, which serves as an addendum to the Creative Brief. The Insights Document is reviewed and approved by the core team before the Round 2 creative begins.

Round 2 Name Development: 10 days

During Round 2, 750+ names will be developed.

Trademark Screening: 3 days

Catchword will "shortlist" 100-150 names from the masterlist for preliminary trademark screening within the markets and registration classes that the client has identified. Domain availability screening will also be conducted on potential names.

Round 2 Presentation (10-15 names): 1 day

At the Round 2 presentation, Catchword will share 10-12 preferred masterbrand names. All names that survive preliminary trademark screening will also be included within the presentation. Presentation of the names will be provided in context for visualization.

4. Exhibit B is hereby amended and replaced in its entirety to read as follows:

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

**Cost Breakdown:**

- Immersion: Background materials review; stakeholder questionnaire; briefing meeting: \$2,500
- Creative Development: Creative brief; round 1 creative: \$22,500
- Round 2 Creative: \$23,000
- Travel Reimbursement: up to \$100

**Payment Schedule:**

- \$12,500 due upon execution of the agreement
- \$12,500 due upon completion of Round 1 Creative presentation
- \$11,500 due upon acceptance of the amendment and Terms & Conditions
- \$11,500 due upon completion of Round 2 Creative Presentation

**In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of \$48,100 for the term of the Agreement.**

5. Except as otherwise provided herein, all terms and conditions of the Agreement shall remain in full force and effect.

**FIRST AMENDMENT TO FIRST AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND CYPHER GROUP, LLC**

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IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the day first written above.

CONTRACTOR:

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

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

MARIN CLEAN ENERGY:

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

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

MARIN CLEAN ENERGY:

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

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

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**FIRST AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND CYPHER GROUP, LLC**

**THIS FIRST AGREEMENT** ("Agreement") is made and entered into this day **June 16 2017** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and Cypher Group, LLC, hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services: MCE's re-naming project;

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

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

**1. SCOPE OF SERVICES:**

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

**2. FURNISHED SERVICES:**

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

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

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

**4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$25,000**.

**5. TIME OF AGREEMENT:**

This Agreement shall commence on **June 16, 2017**, and shall terminate on **September 30, 2017**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

**6. INSURANCE AND SAFETY:**

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

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

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

#### **6.1 GENERAL LIABILITY**

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

#### **6.2 AUTO LIABILITY**

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

#### **6.3 WORKERS' COMPENSATION**

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

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

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

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

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

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

#### **8. SUBCONTRACTING:**

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

#### **9. ASSIGNMENT:**

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

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

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

Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged. 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:**

Unless otherwise provided in or limited by the Special Terms and Conditions attached hereto as Exhibit C, 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.

**21. 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.

**23. 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: Kristen Pembroke, Client Services Director

Address: 409 13<sup>th</sup> St., 12<sup>th</sup> Floor Oakland, CA 94612

Email Address: Kristen@catchwordbranding.com

Telephone No.: 510-628-0080 x101

**24. ACKNOWLEDGEMENT OF EXHIBITS**

The provisions of the Exhibits listed below are hereby incorporated into this Agreement by this reference. In the event of a conflict between any provision(s) of this Agreement and the Special Terms and Conditions set forth in Exhibit C, the provisions of Exhibit C shall be controlling. In all other instances the terms of this Agreement shall govern in the event of a conflict.

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

**25. 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.

**26. 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.

**27. COUNTERPARTS**

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

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

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

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

APPROVED BY  
Marin Clean Energy:

By: [Signature]  
CEO  
Date: 6-16-17

CONTRACTOR:

By: [Signature]  
Name: Kristen Pembroke  
Date: 6.19.17

**MODIFICATIONS TO STANDARD SHORT FORM**

Standard Short Form Content Has Been Modified

List sections affected: 11. Work Product, 22. Acknowledgment of Exhibits

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

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



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

Contractor will provide MCE re-naming services as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement.

**Background Materials Review: Week of 06/12/17**

Contractor will review client-provided brand platform, target audience, organization's business strategy, competitors, and any additional pertinent documentation.

**Questionnaire: Week of 06/19/17**

In order to capture key stakeholder opinions and ensure alignment on the goals and objectives for the masterbrand, Contractor will provide questionnaires for up to 20 respondents.

**Briefing Meeting: Week of 06/26/17**

At the Briefing Meeting with the core team, Contractor will share a summary of findings from the questionnaire and interview responses. Together we will also identify the team's naming preferences: messaging, styles, construction, and tonality.

**Creative Brief: Week of 07/03/17**

The Creative Brief serves as the guide for the Contractor creative team to develop names. This document will include the relevant information gained through the questionnaires, interviews, and the Briefing Meeting. This document will be provided to the core team for review and approval before Round 1 creative development begins.

**Round 1 Creative: Week of 07/12/17**

During Round 1, Contractor will develop a broad range of company names. From the masterlist of names, Contractor will present 40-60 masterbrand names to the core team during the Round 1 presentation. The goal of this meeting is to gauge the team's preferences and focus the name development parameters.

**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:

**Cost Breakdown:**

- Immersion: Background materials review; stakeholder questionnaire; briefing meeting: \$2,500
- Creative Development: Creative brief; round 1 creative: \$22,500

**Payment Schedule:**

- 50% due upon execution of the agreement
- 50% due upon completion of Round 1 Creative presentation

*In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of \$25,000 for the term of the agreement.*

**EXHIBIT C**  
**SPECIAL TERMS AND CONDITIONS**

**1. RIGHTS IN WORK PRODUCT:**

Upon receipt of full payment for services and expenses, the specified work product selected by Client as outlined in the SOW shall become Client's property. "Specified work product" is defined as one name selected from the Catchword provided names for MCE's use as a proprietary brand name. Catchword retains ownership of any work product not selected by Client. Catchword has the right to use all such non-selected names, creative lists, ideas, concepts, designs and techniques in its business, subject to the confidentiality obligations above. Client shall have a non-exclusive, non-transferable, irrevocable right to use and copy the materials containing the work product solely for its own internal business purposes. Catchword shall acquire no ownership of any intellectual property rights subsisting in any material provided by the Client to Catchword.

**2. WARRANTY OF WORK PRODUCT:**

Catchword does not make any warranty or representation regarding whether the Work Product may be registered for trademark protection or whether it infringes upon a third party's intellectual property rights. Client shall have sole responsibility for ensuring that selected work products are registerable as trademarks, or other intellectual property, and do not infringe the rights of any third party." Because language and slang are highly complex and constantly evolving, Catchword does not represent or warrant that its Work Product are free from negative connotations, semantic differences, difficult pronunciation, or spelling issues in all target languages and cultures. Catchword's linguistic analysis data and conclusions are not determinative.

**3. CLIENT RESPONSIBILITIES:**

Client shall have sole responsibility for ensuring that selected work products are registerable as trademarks, or other intellectual property, and do not infringe the rights of any third party. Client will indemnify, defend and hold harmless Catchword, its directors, officers, employees, sub-contractors, and other agents (collectively "Indemnified Persons") from and against any and all claims, liabilities, losses, damages, costs, demands, judgments, actions, causes of action and expenses in connection therewith (including reasonable legal fees and disbursements) in connection with actual or threatened actions ("Losses") relating to or arising out of providing services to Client; provided, however that Client will not be liable under this indemnity to the extent any of the foregoing Losses are determined, in a final judgment by a court of competent jurisdiction, not subject to further appeal, to have resulted primarily from the gross negligence, willful misconduct or bad faith of any Indemnified Person or entity in connection with the performance of services.

**4. PROPRIETARY AND CONFIDENTIAL INFORMATION:**

Contractor's name-development process is proprietary. Any document or disclosure describing its process or service fees is deemed proprietary and confidential. Proprietary and confidential information may not be disclosed or duplicated, except to Client employees and authorized consultants directly involved in the naming process or processing payment. Notwithstanding the provisions of this Paragraph, Contractor acknowledges that this Agreement with its Exhibits, Contractor's correspondence with MCE, and work product ensuing from this Agreement may be subject to disclosure pursuant to California Public Records Act (CA Gov't Code section 6250 et seq.) If MCE is required to disclose any proprietary and confidential information as described herein, pursuant to a request for public records or any other applicable law, order, regulation or ruling, MCE shall immediately notify Contractor of the request or requirement in order to allow Contractor to i) seek an appropriate protective order or other remedy; (ii) consult with MCE with respect to appropriate steps to resist or narrow the scope of the request; or (iii) to waive compliance, in whole or in part, with the terms of this Paragraph. In the event that such protective order or other remedy or waiver is not timely obtained, MCE shall disclose only such portion of Confidential Information which is legally required to be disclosed to the party seeking disclosure, and shall require to the extent possible that any Confidential Information so disclosed will be accorded confidential treatment.

**5. NON-CONTINGENT PAYMENT:**

The process of selecting and launching a new name involves numerous factors outside of Catchword's control, including delays and cancellations of product launch, human subjectivity, etc. As such, project payment is not contingent on Client selection or adoption of a name.



July 20, 2017

TO: MCE Board of Directors

FROM: Beckie Menten, Director of Customer Programs

RE: Proposed Second Agreement with Open Energy Efficiency, LLC  
(Agenda Item #04 – C.6)

ATTACHMENT: Proposed Second Agreement with Open Energy Efficiency, LLC

Dear Board Members:

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**SUMMARY:**

In September 2016, MCE entered into a contract with Open Energy Efficiency, LLC (OpenEE) to use their software, OpenEEmeter, to calculate metered energy efficiency savings for participants in MCE energy efficiency programs. The First Agreement with OpenEE included data assessment, cleaning, and preparation services; installation of the core analytic engine; and the deployment of an energy efficiency dashboard. The maximum cost of this scope of services was \$23,500.

This proposed Second Agreement would enhance MCE's existing OpenEEmeter platform to allow for monitoring of energy savings from PACE-funded projects in Marin County. This effort is a partnership with Marin County to ensure that projects enabled through the Open PACE (Property Assessed Clean Energy) Marketplace are achieving the expected energy savings. The maximum cost under the proposed Second Agreement would be \$22,500, and the County of Marin would be reimbursing MCE for \$5,000.

**Fiscal Impacts:** This Agreement would be funded by CPUC ratepayer funds for energy efficiency programs. Costs related to the Agreement are included in the 2017/18 Energy Efficiency Program Fund Budget. Costs that occur in subsequent periods would be included in the appropriate Energy Efficiency Program Fund Budget.

**Recommendation:** Approve the proposed Second Agreement with Open Energy Efficiency, LLC.

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**SECOND AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND OPEN ENERGY EFFICIENCY, LLC**

**THIS SECOND AGREEMENT** ("Agreement") is made and entered into this day **July 20, 2017** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and OPEN ENERGY EFFICIENCY, LLC, hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services: enhance MCE's existing Open Energy Efficiency meter ("OpenEEmeter") platform and evaluate the energy savings from Property Assessed Clean Energy (PACE) projects in Marin County;

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

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

**1. SCOPE OF SERVICES**

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

**2. FURNISHED SERVICES**

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

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

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

**4. MAXIMUM COST TO MCE**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$22,500**.

**5. TIME OF AGREEMENT**

This Agreement shall commence on **July 20, 2017**, and shall terminate on **July 31, 2018**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

**6. INSURANCE AND SAFETY**

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

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

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

### **6.1 GENERAL LIABILITY**

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

### **6.2 AUTO LIABILITY**

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

### **6.3 WORKERS' COMPENSATION**

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

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

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

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

### **7. NONDISCRIMINATORY EMPLOYMENT**

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

### **8. SUBCONTRACTING**

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

### **9. ASSIGNMENT**

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

### **10. RETENTION OF RECORDS AND AUDIT PROVISIONS**

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. Unless otherwise specifically agreed in writing by the parties, Contractor shall retain ownership of and all subsequent rights in its proprietary systems, software, or other intellectual property developed by Contractor and utilized in the course of this Agreement.

#### **12. TERMINATION**

Upon termination under any provision of this Paragraph, the Postgres database with outputs of meter results prepared by Contractor pursuant to this Agreement (including data collected from Pacific Gas and Electric Company's Share-My-Data integration) shall, at the option of MCE, be delivered to MCE, or any party MCE may designate, upon written request, and Contractor shall be entitled to receive just and equitable compensation for satisfactory work completed to the date of 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) 464-6014  
 \_\_\_\_\_

Notices shall be given to Contractor at the following address:

Contractor:         Matt Golden  
 \_\_\_\_\_  
 Address:            364 Ridgewood Avenue  
 \_\_\_\_\_  
                           Mill Valley, CA 94901  
 \_\_\_\_\_  
 Email Address:     matt@efficiency.org  
 \_\_\_\_\_  
 Telephone No.:     (415) 902-4546  
 \_\_\_\_\_

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

**21. SEVERABILITY**

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

**22. COMPLETE AGREEMENT**

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this



Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

**23. COUNTERPARTS**

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

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

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

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

**APPROVED BY**

**Marin Clean Energy:**

**CONTRACTOR:**

By: \_\_\_\_\_  
Dawn Weisz, CEO

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

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

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

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

**MODIFICATIONS TO STANDARD SHORT FORM**

**Standard Short Form Content Has Been Modified**

*List sections affected:* \_\_\_\_\_ #11. Work Product; #12. Termination \_\_\_\_\_

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

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

## **EXHIBIT A SCOPE OF SERVICES**

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

### **Primary Objectives**

The purpose of this Agreement is to allow MCE to track and report energy savings associated with PACE loans to help empower MCE customers to make informed choices about home energy upgrades. Accordingly, Contractor shall:

- Enhance MCE's existing OpenEEmeter platform (including data pipeline, datastore, and security features) to allow for continuous feedback on the performance of new and existing PACE projects as well as other energy efficiency programs.
- Evaluate the energy savings from PACE projects occurring in Marin County by gathering necessary historical usage data and connecting it to Marin County records.

### **MCE Responsibilities**

MCE will collect PACE project data from Marin County, containing physical addresses of participating properties, and provide this data to Contractor in .csv file format in accordance with requirements of MCE's customer information Non-Disclosure Agreement.

### **Contractor Deliverables**

Using the property address data provided by MCE, Contractor shall:

- Download a full usage dataset directly via MCE's account on PG&E's 'Share My Data' portal and refresh on a weekly basis for the duration of the Agreement.
- Link physical addresses of projects provided by Marin County to the address fields in the accounts found in Share My Data.
- Calculate gross normalized metered savings for the set of PACE projects and output them in the MCE OpenEEmeter datastore, as well as MCE custom dashboards.
- Automatically recalculate project savings and update performance dashboards for all PACE projects for the duration of the Agreement.

### **Glossary**

For purposes of this Second Agreement, the terms listed below shall be defined as provided:

- Gross normalized metered savings: Savings calculated according to the daily model specifications published at <http://docs.caltrack.org>.
- OpenEEmeter: an open-source platform that provides standardized energy efficiency savings calculations and performance feedback.
- Postgres (PostgreSQL): an open-source object-relational database management system.
- Property Assessed Clean Energy (PACE): a financing mechanism for energy efficiency upgrades or renewable energy installations for residential, commercial and industrial property owners, in which loans for eligible projects are repaid over a selected term via an annual assessment on the owner's property tax bill.

**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:

OpenEEmeter Platform Setup:	\$30,000 (waived)
CCA Share my Data integration:	\$10,000
One-time matching of addresses to usage records:	\$2,500
Platform hosting for 1 year:	\$10,000
<hr/>	
Total:	\$22,500

In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$22,500** for the term of the Agreement.



July 20, 2017

TO: MCE Board of Directors

FROM: John Dalessi, Operations and Development  
Alex DiGiorgio, Deputy Director of Community Development

RE: Receive Applicant Analysis and Consider:

1. Proposed Resolution 2017-06 of the Board of Directors of MCE approving Contra Costa County (unincorporated); the Cities of Concord, Martinez, Oakley, Pinole, Pittsburg and San Ramon; and the Towns of Danville and Moraga as members of MCE
2. Proposed Amendment 12 to the MCE JPA Agreement
3. Proposed Resolution 2017-07 Delegating Energy Procurement Authorities for New Member Communities (Agenda Item #05)

ATTACHMENTS:

- A. MCE Applicant Analysis for 2017
- B. Proposed Resolution No. 2017-06 of the Board of Directors of MCE approving Contra Costa County (unincorporated); the Cities of Concord, Martinez, Oakley, Pinole, Pittsburg and San Ramon; and the Towns of Danville and Moraga as members of MCE
- C. Proposed Amendment 12 to the MCE JPA Agreement
- D. Proposed Resolution 2017-07 Delegating Energy Procurement Authorities for New Communities
- E. Policy 007 – New Customer Communities
- F. MCE Affiliate Membership Process
- G. MCE Membership Application Checklist

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**Background on CCA in California**

Community choice aggregation (CCA) programs have continued to emerge throughout California, including well over 80 different jurisdictions. In 2016 CCA service was launched by San Francisco's CleanPowerSF (service began Q2 2016) and San Mateo County's Peninsula Clean Energy (service began Q3 2016). In Q2 2017 three new CCA programs launched including Apple Valley Choice Energy, Santa Clara County's Silicon Valley Clean Energy Authority, and Humboldt County's Redwood Coast Energy Authority.

Elsewhere in California, cities and counties are joining together to form CCA programs. The multi-county structure is common as San Luis Obispo, Santa Barbara, and Ventura Counties have joined together. Santa Cruz, Monterey, and San Benito Counties have formed a JPA to operate a joint CCA program in 2018. Multiple jurisdictions in the LA

County Area have voted to join a JPA with the County of Los Angeles to launch a CCA program in 2018. Yolo, Placer and Alameda Counties have each formed their own JPAs to launch CCA programs in 2018. Mendocino County has joined Sonoma Clean Power, although not all incorporated jurisdictions have done so.



### Background on MCE Inclusion Process

On September 29, 2016, your Board authorized an “inclusion period” for interested Contra Costa communities to complete the steps required to join MCE as a member. The inclusion period was established to create efficiencies in workflow, achieve economies of scale, and streamline procurement procedures.

During the inclusion period (December 1, 2016 – June 30, 2017) each of the following jurisdictions completed all membership steps to join MCE, to be effective on the date of MCE Board approval. The requisite Council vote and/or CCA ordinance was passed in each jurisdiction on the following dates:

1. Moraga – April 26, 2017
2. Contra Costa County (unincorporated) – May 2, 2017
3. Danville – May, 2 2017
4. Oakley – May 9, 2017
5. Pittsburg – May 15, 2017
6. Pinole – May 16, 2017
7. Concord – May 23, 2017

8. Martinez – June 7, 2017
9. San Ramon – June 27, 2017

### **New MCE Member Community Overview**

Information is provided below regarding each of the cities that have completed required membership steps under the inclusion period that concluded on June 30:

- The **Town of Moraga** spans approximately 9.4 square miles in the central-western part of the County commonly known as ‘Lamorinda’ (the combined name of three incorporated jurisdictions: Lafayette, Moraga, and Orinda). As of 2010, the Town has a population of just over 16,000. Moraga’s Town Council was the first to vote to join MCE in 2017.
- **Contra Costa County** (unincorporated) was one of the original 27 counties of California and is home to approximately 1,050,000 people. It spans more than 800 square miles and is by far the most heavily populated prospective MCE jurisdiction. Correspondingly, it also represents the single largest electricity load—approximately 25% of the combined load of all eligible incorporated and unincorporated communities. The cities of Concord and Pittsburg together represent another 25%. Contra Costa (aka “CoCo”) is a dynamic jurisdiction in terms of geography and demographics, and includes Mt. Diablo, historic Delta communities, extensive Bay shore borders, multiple oil refineries and heavy industry, rich agricultural lands, and a broad array of ethnic groups, foreign languages, and socio-economic diversity.
- The **Town of Danville** is located within the San Ramon Valley in the southwestern part of the County and is home to approximately 45,000. The incorporated area spans approximately 18 square miles.
- The **City of Oakley** is located in the eastern-most part of the County along the Delta and is home to approximately 40,600. The City incorporated relatively recently (1999) and spans just over 16 square miles. Oakley has been exploring CCA generally, and MCE membership specifically, for longer than most other jurisdictions seeking membership this inclusion period. In 2016, Oakley nearly joined MCE along with Lafayette and Walnut Creek. The City’s moto is “A Place for Families in the Heart of the Delta.”
- The **City of Pittsburg** is located along the County’s northern waterfront and is home to more than 70,000. It is well known for its rich history, ethnic diversity, heavy industry, and busy riverfront areas. It has substantial Latino, Asian, Pacific Islander, and African-American communities, and spans nearly 20 square miles. Pittsburg has the third largest electricity load among this year’s prospective new communities. The City also has a small municipal utility (Island Energy) located within its borders, which serves Mare Island with gas and electricity services. For this reason, the City has had the help of seasoned energy professionals as it explored the possibility of joining MCE.
- The **City of Pinole** is among the County’s smallest jurisdictions and is home to approximately 20,000. It has a sizable Latino population and spans approximately 13.5 square miles. The downtown area has many turn-of-the-century buildings, which contrast with the many “big box” stores closer to the Hilltop Mall border. Pinole’s MCE inclusion would complete West Contra Costa County’s membership, along with Richmond, San Pablo, and El Cerrito.

- The **City of Concord** is Contra Costa's largest incorporated jurisdiction with a population of nearly 130,000 and more than 30.5 square miles within its borders. It is located toward the geographic center of the County at the base of Mt. Diablo and is home to many large businesses. The City has two BART stations and about one-fifth of the County's population reportedly commutes to Concord for work. Concord alone represents more than 12% of MCE's prospective additional electricity load, the second largest among all applicant communities. The Concord Naval Weapons Station is a focus of the City's redevelopment efforts and it is widely considered to be an ideal site for innovative renewable energy projects. Chevron and PG&E are among the City's largest employers.



- The **City of Martinez** is the County seat and is home to just under 40,000. It is well known for its historic architecture, vibrant history, and large nearby oil refineries. Multiple building trades unions have their union halls located within the City. Martinez is well known for being the home of John Muir, whose spirit of conservationism continues to color the City's identity.
- The **City of San Ramon** is the namesake jurisdiction of the San Ramon Valley in the southwestern part of the County and is home to approximately 75,000. Its Bishop Ranch office park development is occupied by offices of multiple large corporations, including Chevron and AT&T. PG&E is among the City's largest employers.

The next step required to complete membership is MCE Board approval subject to a positive result of a quantitative applicant analysis for the purpose of determining projected environmental benefits (e.g. incremental increases in renewable energy

deliveries and expected reductions in greenhouse gases (GHGs) related to electric energy consumption) as well as potential financial impacts related to the addition of customers located within the aforementioned jurisdictions. This analysis has been completed, and is attached hereto.

### **Quantitative Analysis of Potential MCE Member Communities**

The projected impacts of this prospective membership expansion are entirely positive, demonstrating meaningful increases in renewable energy sales, expected reductions in GHG emissions, and positive fiscal impacts for MCE and its customers.<sup>1</sup> The quantitative applicant analysis indicates that the additional customer base is expected to yield annual net revenues of \$33 million resulting in a positive fiscal impact on MCE and the existing customer base. These benefits could supplement MCE reserves, expand funding for clean energy or local energy programs, or reduce MCE rates. If used solely for rate reductions, the impact would be a reduction in MCE rates of 9%. The analysis also indicates that service to the new customers would increase the amount of renewable energy being used in California's energy market by approximately 763,898 MWh per year while reducing GHG emissions by an estimated 204 million pounds of carbon dioxide equivalent per year.

The positive result of the applicant analysis is the final step required for the requisite new communities to be added to MCE's service territory, and Board action to finalize membership is recommended at this time. The attached Resolution and updated JPA Agreement will comply with the statutory requirements of AB 117, the legislation enabling CCA service in California.

### **Fiscal Impact**

General budgetary impacts of the recommended actions will be positive as increases in revenues will more than compensate for increased expenses after enrollment occurs. Specific budgetary impacts for FY 2017/18 will be included in a budget adjustment to be recommended to the Board in September.

### **Recommendations**

Approve the following:

1. Resolution No. 2017-06 of the Board of Directors of MCE approving Contra Costa County (unincorporated); the Cities of Concord, Martinez, Oakley, Pinole, Pittsburg and San Ramon; and the Towns of Danville and Moraga as members of MCE.
2. Amendment 12 to the MCE JPA Agreement.
3. Resolution 2017-07 Delegating Energy Procurement Authorities for New Member Communities.

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<sup>1</sup> Note that any rate/financial impacts were based on wholesale electricity pricing at the time the quantitative analysis was completed. Such pricing is subject to change. Actual rate/financial impacts will be based on wholesale electricity pricing that is offered to MCE at the time of power supply contract execution.



# Marin Clean Energy Applicant Analysis for 2017

July 11, 2017

## SUMMARY

MCE's currently effective policy regarding new membership requires the completion of a quantitative analysis as part of the preliminary evaluative process. The primary focus of the quantitative analysis is to determine the anticipated fiscal impacts that would affect MCE's existing customer base following the addition of the prospective new community – in particular, the quantitative analysis must demonstrate that the addition of the prospective new community is projected to result in a neutral or positive fiscal impact for MCE and the existing customer base; this is a threshold requirement that must be met before proceeding with further membership activities. In addition, the quantitative analysis addresses the projected environmental impacts that would result from offering CCA service to the prospective new community. More specifically, the analysis prospectively determines whether or not the new community will accelerate greenhouse gas (GHG) reductions (beyond those reductions already achieved by MCE's existing membership) while increasing the amount of renewable energy being used within California's energy market.

During the course of the past several months, MCE has received membership requests from nine municipalities that have taken the requisite steps to be considered for membership in MCE. These municipalities include Concord, Danville, Martinez, Moraga, Oakley, Pinole, Pittsburg, San Ramon, and unincorporated Contra Costa County. MCE established a July 1<sup>st</sup>, 2017 cutoff date for consideration of membership requests in this phase, and these requests are being evaluated together, due to the efficiencies in resource planning, electric procurement and customer outreach that would be gained from extending service to the new communities at the same time. The membership requests have been grouped together and the quantitative analysis performed on the aggregate electric load data of all seven municipalities. The results of the quantitative analysis are summarized in this report.

In general, the quantitative analysis indicates that rate benefits would likely accrue to existing MCE customers following the addition of prospective customers located within the applicant jurisdictions. **It is estimated that the additional customer base would yield annual net revenues of \$33 million resulting in a positive fiscal impact on MCE and the existing customer base. These benefits could supplement MCE reserves, expand funding for clean energy or local energy programs, or reduce MCE rates. If used solely for rate reductions, the impact would be a reduction in MCE rates of 9%. The analysis also indicates that service to the new customers would increase the amount of renewable energy being used in California's energy market by approximately 763,898 MWh per year while reducing GHG emissions by an estimated 204 million pounds of carbon dioxide equivalent per year.**

## BACKGROUND

Since its inception in 2010, MCE has successfully undergone several expansions with the most recent occurring in September 2016. Initially serving approximately 8,000 customers in May 2010, MCE has grown over the years to its current customer base of nearly 260,000 electric customers. Past expansions have been beneficial in reducing MCE's average costs and contributing to MCE's ability to achieve its

environmental goals while maintaining competitive rates. MCE's expansion phases are summarized in Table 1.

*Table 1: MCE Expansion History*

<b>MCE Phase No.</b>	<b>Status &amp; Description of Phase</b>	<b>Implementation Date</b>
<b>Phase 1: 8,000 Accounts</b>	<b>Complete:</b> MCE Member (municipal) accounts & a subset of residential, commercial and/or industrial accounts, comprising approximately 20 percent of total customer load within MCE's original Member Agencies.	May 7, 2010
<b>Phase 2: 5,700 Accounts</b>	<b>Complete:</b> Additional commercial and residential accounts, comprising approximately 20 percent of total customer load within MCE's original Member Agencies (incremental addition to Phase 1).	August 2011
<b>Phase 3: 74,000 Accounts</b>	<b>Complete:</b> Remaining accounts within Marin County.	July 2012
<b>Phase 4: 33,000 Accounts</b>	<b>Complete:</b> Residential, commercial, agricultural, and street lighting accounts within the City of Richmond.	July 2013
<b>Phase 5: 18,000 Accounts</b>	<b>Complete:</b> Residential, commercial, agricultural, and street lighting accounts within the unincorporated areas of Napa County, subject to economic and operational constraints.	February 2015
<b>Phase 6: 34,000 Accounts</b>	<b>Complete:</b> Residential, commercial, agricultural, and street lighting accounts within the City of San Pablo, the City of Benicia and the City of El Cerrito, subject to economic and operational constraints.	May 2015
<b>Phase 7: 84,000 Accounts</b>	<b>Complete:</b> Residential, commercial, agricultural, and street lighting accounts within the Cities of American Canyon, Calistoga, Lafayette, Napa, Saint Helena, Walnut Creek and the Town of Yountville.	September 2016

In evaluating requests for membership, MCE uses qualitative and quantitative criteria listed below. The focus of the present analysis is to address criteria A, B, and C.

**Membership Criteria:**

- A. Including new community is projected to result in a neutral or positive fiscal impact for MCE and the existing customer base.
- B. Including new community will enhance strength of local programs, including an increase in distributed generation, and will accelerate greenhouse gas reductions on a larger scale.
- C. Including new community will increase the amount of renewable energy being used in California's energy market.
- D. There will be an increase in opportunities to launch and operate MCE energy efficiency programs to reduce energy consumption and reliance on fossil fuels.
- E. New opportunities are available to deploy local solar and other distributed renewable generation through the MCE Net Energy Metering Tariff and Feed in Tariff.
- F. Greater demand for jobs and economic activity is likely to result from service in new community.
- G. Inclusion of new community is likely to create stronger voice for MCE at the State and regulatory level.

**ANALYSIS**

MCE conducted an analysis of the potential new electric customers to estimate the revenues and costs associated with extending MCE service to the applicant jurisdictions. The analysis incorporated historical monthly electric usage data provided by PG&E for all current electric customers located within these municipalities.

The number of potential customers by applicant municipality is shown in Figure 1.

**Figure 1: Electric Service Accounts by Municipality**

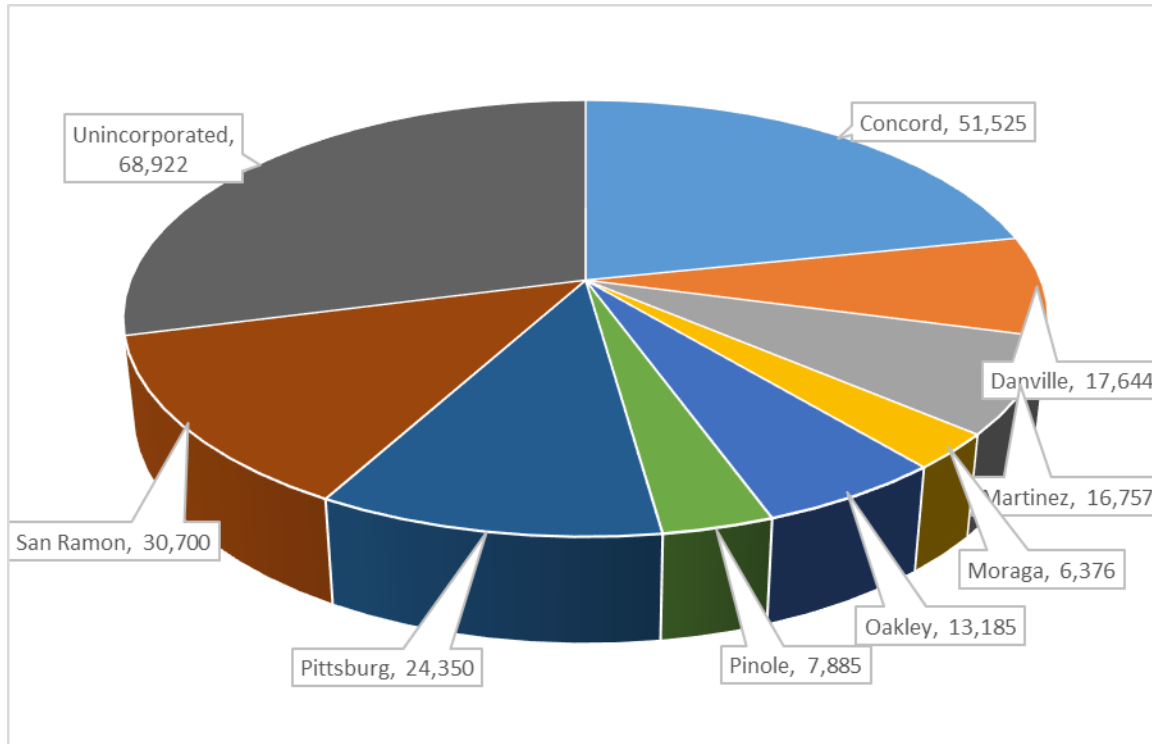


Table 2 summarized the aggregate account and electricity usage data for the major customer classifications in the applicant municipalities. The electric data indicate the potential for over 237,000 new MCE customers with a potential increase in annual electricity sales approximating 2,880,000 MWh per year. The aggregate peak demand of these customers is estimated at 525 MW.<sup>1</sup>

**Table 2: 2016 Applicant Electric Data**

Classification	Accounts	Annual Energy (MWh)	Monthly Per Account (kWh)
<b>Residential</b>	217,142	1,436,703	551
<b>Small Commercial</b>	15,719	264,514	1,402
<b>Medium Commercial</b>	1,521	284,185	15,570
<b>Large Commercial</b>	684	365,227	44,496
<b>Industrial</b>	23	500,150	1,812,137
<b>Agricultural and Pumping</b>	432	12,753	2,460
<b>Street Lighting</b>	1,803	18,935	875
<b>Total</b>	237,324	2,882,466	1,012
<b>Peak Demand (MW)</b>			525

<sup>1</sup> These figures are for bundled electric customers of PG&E and exclude customers taking service from non-utility energy service providers through the state’s direct access program as well as certain accounts on generation service contracts. These figures are unadjusted for expected customer participation rates.

As compared to the current MCE customer base, summarized in Table 3 below, the applicant municipalities include a similar mix of customer service classifications, with a slightly higher proportion of residential customers and proportionately fewer small commercial customers. Aggregate per capita electricity consumption is higher in the new communities by approximately 23% for residential customers and 13% overall. The industrial sector in the applicant communities includes significantly larger electric loads, with per capital consumption in this sector being nearly three times the current MCE industrial customer base. Overall energy consumption is more heavily weighted toward residential and industrial uses.

**Table 3: 2016 MCE Electricity Data**

<b>Classification</b>	<b>Accounts</b>	<b>Annual Energy (MWh)</b>	<b>Monthly Per Account (KWh)</b>
<b>Residential</b>	226,253	1,219,077	449
<b>Small Commercial</b>	24,228	425,828	1,465
<b>Medium Commercial</b>	2,289	424,682	15,461
<b>Large Commercial</b>	861	414,586	40,126
<b>Industrial</b>	32	232,654	605,870
<b>Agricultural and Pumping</b>	1,708	22,134	1,080
<b>Street Lighting</b>	1,875	17,645	784
<b>Total</b>	257,246	2,756,606	893
<b>Peak Demand (MW)</b>			484

In regards to seasonal consumption patterns, electricity usage in the applicant communities exhibits a somewhat more pronounced summer peak than does the current MCE customer base. These differences can be seen in comparing Figure 2 and Figure 3 below. All else being equal, service costs are higher during the summer season due to higher costs for energy and capacity needed to supply the load. For sales to residential customers that generally take service under a flat, non-seasonal rate structure, per unit operating margins are lower during the summer months, but still positive. Higher residential sales during all seasons of the year will yield increased net revenues.

For non-residential customers, MCE has a seasonal rate structure with higher summer rates that generate higher per unit operating margins. Consequently, higher sales to non-residential customers will yield the greatest increases in net revenues during the summer season.

Overall, the difference in seasonal consumption patterns is relatively minor. Of greater importance is the overall increase in sales volume, which is expected to reduce MCE's average costs and generate additional net revenue.

Figure 2: Applicant Communities Hourly Load Profile (KW)

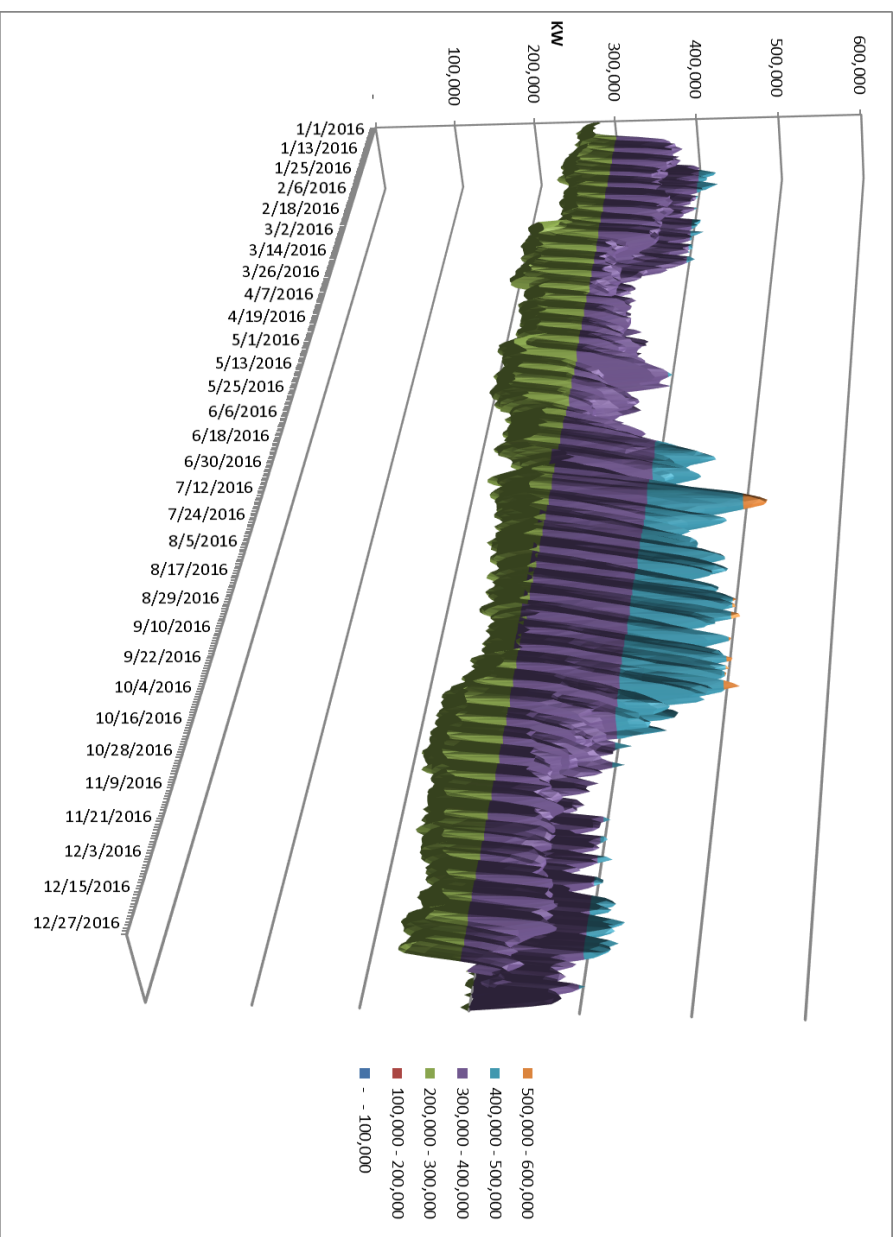
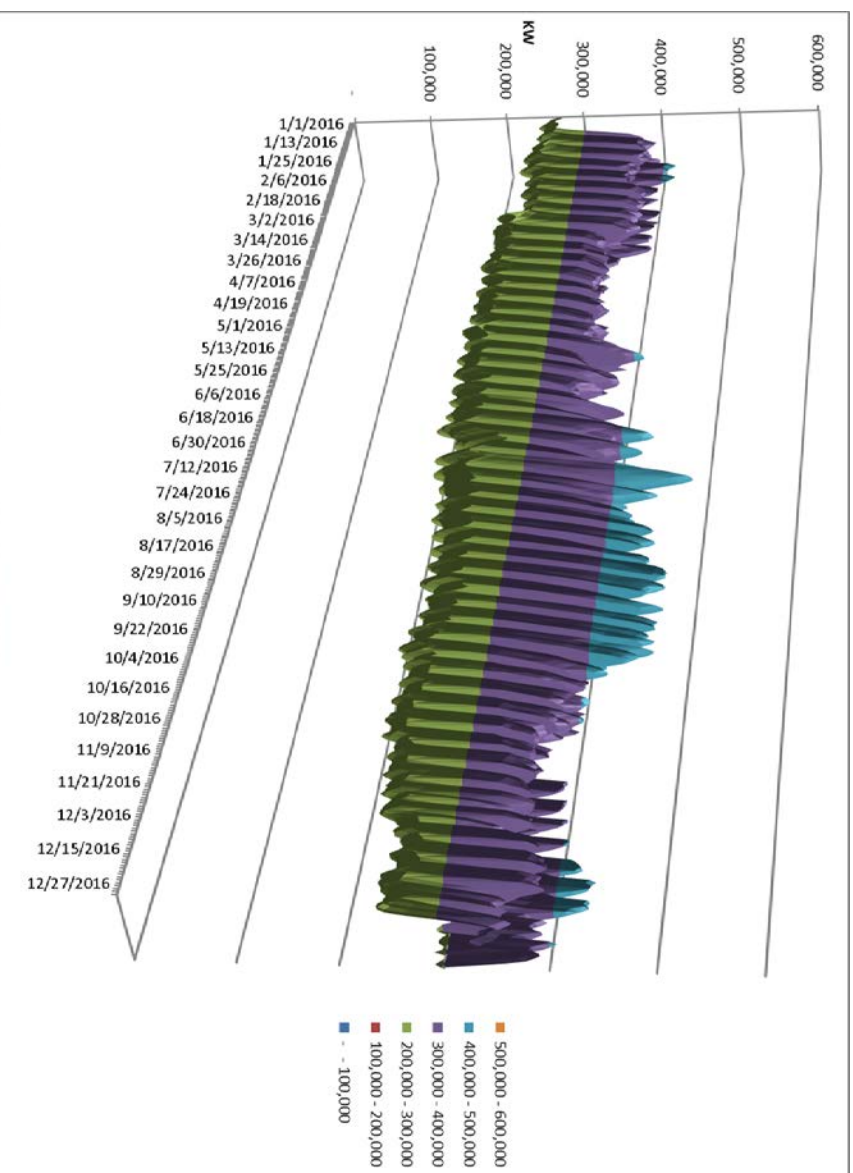
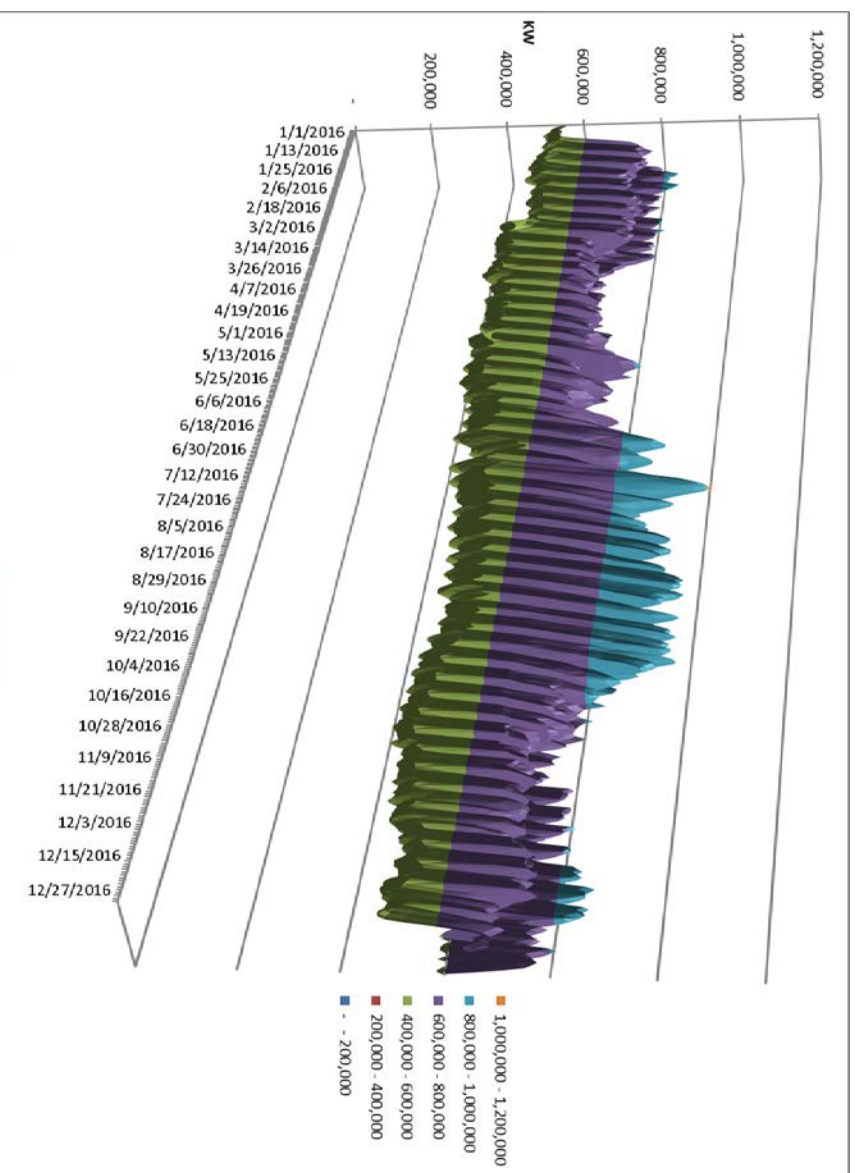


Figure 3: MCE Hourly Load Profile (KW)



**Figure 4: MCE Adjusted Hourly Load Profile Including Applicant Communities**



**FISCAL IMPACTS**

For purposes of the fiscal impact analysis, it was assumed that service would be initiated to the new communities in May, 2018 and that 90% of customers who would be offered MCE service would elect to participate.<sup>2</sup> This would equate to an increase in annual MCE electricity sales of 2,596,525 MWh or approximately 94%. In order to quantify rate impacts, the incremental revenues and costs were examined for the next two fiscal years beginning April 1, 2018 and continuing through March 31, 2020.

The incremental revenue surplus, based on the difference between projected revenues and costs directly related to the addition of these customers, represents the fiscal benefit related to expansion. Incremental revenues were projected based on forecast sales by customer type and current MCE rates. The incremental cost analysis accounts for ongoing costs related to additional power supplies, customer billing, customer service support (call center), PG&E service fees, incremental staffing and legal costs, communications and ongoing customer notices associated with serving the additional customers.

Table 4 presents the estimated potential fiscal impacts for the next two fiscal years.

<sup>2</sup> MCE may choose to offer service to the new customers in multiple phases. For purposes of this analysis it is assumed that all customers would be offered the chance to enroll during May 2018. Any phase-in plan would be reflected in a revised Implementation Plan.



**Table 4: MCE Fiscal Impact from Applicant Communities**

	<b>FY 2018/2019</b>	<b>FY 2019/2020</b>
<b>Volume (MWh)</b>	2,279,387	2,596,525
<b>Revenue</b>	\$160,991,628	\$182,258,326
<b>Costs</b>		
<b>Power Supply Cost</b>	\$111,917,340	\$127,910,908
<b>Billing and Other Costs</b>	\$10,122,062	\$11,455,553
<b>Total Cost</b>	\$122,039,403	\$139,366,461
<b>Targeted Reserve (@4%)</b>	\$6,439,665	\$7,290,333
<b>Fiscal Benefit</b>	\$32,512,560	\$35,601,532
<b>% Benefit</b>	9%	9%

The fiscal impact analysis indicates that the addition of the applicant communities' customers to MCE's total customer base would provide benefits to MCE and its existing ratepayers; it is estimated that expanding MCE service to the applicant communities would provide financial benefits equivalent to 9% of annual revenues. This benefit accrues due to the margins generated by a higher sales volume; economies of scale as fixed administrative costs can be spread over a larger sales base; and a reduction in MCE's average power supply costs, as the cost of marginal power purchases is below MCE's average cost of power.

Additional costs related to the expansion would be incurred during the current fiscal year, prior to initiation of service to the new customers. These costs would be incurred for marketing and outreach, customer noticing, regulatory, legal, internal operations, resource planning and electric procurement activities that would be necessary to incorporate the new member communities and its customers into MCE and provide outreach to the new customers. The projected implementation costs are preliminarily estimated at \$1.8 million, subject to further refinement during a future budget amendment process.

#### **FISCAL IMPACT SENSITIVITIES**

The fiscal impact estimate is based on current power supply pricing, which could change prior to the time when power supply contracts are executed to cover the new load. It is also possible that lower cost renewable energy product types, such as resources characterized as Product Content Category 2 (PCC2) under the renewable portfolio standards rules, may be less readily available in light of increased demands. Additionally, actual customer participation may vary from the currently projected 90% participation rate. A sensitivity analysis was performed to evaluate the risk associated with these variables. The sensitivity results, shown in Table 5, indicate that fiscal impacts will be positive under a reasonable range of possible scenarios.

**Table 5: Fiscal Impact Sensitivities**

<b>Scenario</b>	<b>Fiscal Impact (% of Revenue)</b>
<b>Base Projection</b>	9%
<b>Power Costs + 10%</b>	6%
<b>Power Costs +30%</b>	1%
<b>No PCC2</b>	8%
<b>75% Participation Rate</b>	8%
<b>0% Industrial Participation</b>	8%

**CAPITAL AND LIQUIDITY IMPACTS**

MCE has sufficient cash liquidity to fund the growth in customers and energy sales related to the expansion. MCE currently has over \$30 million in unrestricted cash and \$25 million available under its line of credit, which is adequate to fund incremental administrative and power supply costs prior to receipt of incremental customer billings. Assuming all customers were enrolled during May 2018, the total cash needed to fund the expansion is estimated to be \$14.5 million. These cash requirements would be less to the extent that enrollments are phased in over multiple months.

**RENEWABLE ENERGY IMPACTS**

Renewable energy requirements were calculated for the applicant municipalities to ensure compliance with the statewide Renewables Portfolio Standard (RPS) as well as the more aggressive MCE renewable energy content standards adopted by MCE. The total renewable energy requirement associated with prospective expansion to the applicant municipalities would be approximately 1,568,820 MWh annually. This renewable energy volume is equivalent to the energy produced by 180 MW of geothermal capacity (or a similar baseload renewable generating technology using a fuel source such as biomass or landfill gas) or approximately 600 MW solar PV generating capacity.

**Table 6: Incremental Renewable Energy Requirements (CY 2019)**

<b>Renewable Energy Product Content Category</b>	<b>Annual MWh</b>
<b>PCC1</b>	1,115,606
<b>PCC2</b>	374,774
<b>PCC3</b>	<u>78,441</u>
<b>Total Renewable Energy</b>	1,568,820

Enrolling the applicant municipalities' electric customers in MCE service will increase the amount of renewable energy being used in California's energy market by approximately 763,898 MWh annually, based on the increased renewable energy procurement targets voluntarily adopted by MCE's governing Board relative to California's then-current RPS mandate (which must be met by PG&E).

**Table 7: Renewable Energy Impacts (CY 2019)**

	<b>Annual MWh</b>
<b>Retail Sales</b>	2,596,525
<b>MCE Renewable Energy Standard</b>	1,568,820
<b>State Renewable Portfolio Standard</b>	804,923
<b>Increase in Renewable Energy</b>	763,898

### **GREEN HOUSE GAS EMISSIONS IMPACTS**

With regard to projected GHG emission reductions that would result from the expansion of MCE service to the applicant communities, estimates were derived by comparing the most current, validated emission statistics related to the MCE and PG&E electric supply portfolios. With regard to these statistics, PG&E and MCE both recently reported their respective emission statistics for the 2015 calendar year. Due to typical timelines affecting the availability of such information, PG&E's current statistics (focused on the 2015 calendar year) will generally reference data related to utility operations occurring twelve to twenty-four months prior to the current calendar year. This waiting period is necessary to facilitate the compilation of final electric energy statistics (e.g., customer energy use and renewable energy deliveries) and to allow sufficient time for data computation, review and third-party audit before releasing such information to the public. As noted by PG&E, its 2015 emission factor was determined to be 405 lbs. CO<sub>2</sub>/MWh. By comparison, MCE's aggregate portfolio emission factor for the 2015 calendar year for the default Light Green product was determined to be 331 lbs. CO<sub>2</sub>e/MWh, a difference of 18%.

To estimate the projected GHG emissions reductions that would likely result from the addition of prospective CCA customers located within the applicant municipalities, MCE calculated the difference between its own emission factor and the related metric reported by PG&E: 74 lbs. CO<sub>2</sub>/MWh. This difference was multiplied by the projected increase in annual electricity sales that would result from the addition of the applicant municipalities' CCA customers, resulting in a projected GHG emissions savings related to the transition of these customers to MCE's cleaner electricity supply. The projected emissions savings/reduction related to this service transition (from PG&E to MCE) was determined to be approximately 204 million pounds of carbon dioxide equivalent per year.

It is noteworthy that the future emission factors reported by MCE and PG&E will likely differ from the statistics applied in this analysis – this is due to a variety of factors, including planned/unplanned changes in renewable energy procurement (including planned increases in California's RPS procurement requirements), variations in hydroelectric power production (which may change substantially from year to year based on prevailing regional hydrological conditions) and changes/adjustments in the general procurement policies of each service provider as well as many other factors. Also note that MCE has committed to assembling a power supply portfolio that not only exceeds the renewable energy content offered by PG&E but also provides customers with a "cleaner" energy alternative, as measured by a comparison of the portfolio GHG emission rate (or emission factor) published by each organization. As such, MCE plans to continue procuring electricity from non-GHG emitting resources in sufficient quantities to maintain an emission rate that is continually lower than PG&E's.

**RESOLUTION NO. 2017-06**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF MCE APPROVING THE COUNTY OF CONTRA COSTA (UNINCORPORATED), THE CITIES OF CONCORD, MARTINEZ, OAKLEY, PINOLE, PITTSBURG AND SAN RAMON, AND THE TOWNS OF DANVILLE AND MORAGA AS MEMBERS OF MCE**

**WHEREAS**, on September 24, 2002, the Governor signed into law Assembly Bill 117 (Stat. 2002, Ch. 838; see California Public Utilities Code section 366.2; hereinafter referred to as the "Act"), which authorizes any California city or county, whose governing body so elects, to combine the electricity load of its residents and businesses in a community-wide electricity aggregation program known as Community Choice Aggregation ("CCA"); and,

**WHEREAS**, the Act expressly authorizes participation in a CCA program through a joint powers agency, and on December 19, 2008, Marin Clean Energy ("MCE"), (formerly the Marin Energy Authority) was established as a joint power authority pursuant to a Joint Powers Agreement, as amended from time to time ("MCE Joint Powers Agreement"); and,

**WHEREAS**, on February 2, 2010, the California Public Utilities Commission certified the "Implementation Plan" of MCE, confirming MCE's compliance with the requirements of the Act; and,

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

**WHEREAS**, requested membership in MCE was made by the County of Contra Costa (unincorporated) April 4, 2017, the Cities of Concord May 23, 2017, Martinez June 7, 2017, Oakley December 15, 2016, Pinole June 6, 2017, Pittsburg April 26, 2017 and San Ramon June 27, 2017, and the Towns of Danville May 16, 2017 and Moraga June 14, 2017; and,

**WHEREAS**, the ordinance approving membership in MCE was made by the County of Contra Costa (unincorporated) June 6, 2017, the Cities of Concord June 13, 2017, Martinez June 21, 2017, Oakley May 23, 2017, Pinole June 20, 2017, Pittsburg June 5, 2017 and San Ramon July 11, 2017, and the Towns of Danville June 6, 2017 and Moraga June 14, 2017; and,

**WHEREAS**, the applicant analysis for the County of Contra Costa (unincorporated), the Cities of Concord, Martinez, Oakley, Pinole, Pittsburg and San

Ramon, and the Towns of Danville and Moraga was completed on July 11, 2017, and yielded a positive result;

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED**, by the Board of Directors of MCE that the County of Contra Costa (unincorporated), the Cities of Concord, Martinez, Oakley, Pinole, Pittsburg and San Ramon, and the Towns of Danville and Moraga are approved as members of MCE.

**PASSED AND ADOPTED** at a regular meeting of the MCE Board of Directors on the twentieth day of July, 2017 by the following vote:

	<b>AYES</b>	<b>NOES</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
Town of Corte Madera				
City of El Cerrito				
Town of Fairfax				
City of Lafayette				
City of Larkspur				
County of Marin				
City of Mill Valley				
City of Napa				
County of Napa				
City of Novato				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Walnut Creek				
Town of Yountville				

\_\_\_\_\_  
KATE SEARS, CHAIR

ATTEST:

\_\_\_\_\_  
DAWN WEISZ, SECRETARY

**AMENDMENT NO. 12 TO MARIN ENERGY AUTHORITY  
JOINT POWERS AUTHORITY AGREEMENT**

1. Exhibit B to the Agreement, which includes a “List of the Parties” to the Agreement, is hereby amended to reflect the Marin Clean Energy (formerly the Marin Energy Authority) current membership, which includes the following local public entities:

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

2. Exhibit C to the Agreement, which specifies “Annual Energy Use” for each party to the Agreement, is hereby amended to reflect annual energy use within each member’s jurisdiction

inclusive of the County of Contra Costa (unincorporated) Cities of Concord, Martinez, Oakley, Pinole, Pittsburg, San Ramon, and the Towns of Danville and Moraga.

3. Exhibit D to the Agreement, which specifies “Voting Shares” for each party to the Agreement, is hereby amended to reflect the current voting shares of each member in accordance with the provisions of Section 4.9.2 of the Agreement.

4. This Amendment No. 12 does not limit the authority of the Board to update Exhibits B, C and D in the future without further amending the Agreement as provided by Sections 1.3 and 4.9.2.3 of the Agreement.

This Amendment No. 12 to the Marin Energy Authority Joint Powers Authority Agreement was duly adopted by the Board of Directors in accordance with Article 8.4 of this Agreement on July 20, 2016.



**Exhibit C  
To the  
Joint Powers Agreement  
MCE**

**- Annual Energy Use -**

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

<b>Party</b>	<b>kWh*</b>
City of American Canyon	75,238,389
City of Belvedere	7,161,787
City of Benicia	112,631,790
City of Calistoga	26,619,985
City of Concord	584,690,000
Town of Corte Madera	46,023,153
County of Contra Costa	1,027,456,000
Town of Danville	197,901,000
City of El Cerrito	56,615,873
Town of Fairfax	17,786,905
City of Lafayette	113,958,395
City of Larkspur	36,481,157
City of Martinez	162,001,000
City of Mill Valley	44,019,391
County of Marin	223,280,476
Town of Moraga	53,568,000
City of Napa	358,540,484
County of Napa	306,696,355
City of Novato	182,518,152
City of Oakley	127,957,000
City of Pinole	69,497,000
City of Pittsburg	521,305,000
City of Richmond	369,368,162
Town of Ross	9,793,239
Town of San Anselmo	31,630,085
City of San Ramon	363,991,000
City of Saint Helena	51,846,619
City of San Pablo	69,813,169
City of San Rafael	226,213,075
City of Sausalito	31,778,338
Town of Tiburon	28,575,164
City of Walnut Creek	415,140,953
Town of Yountville	31,854,820
<b>MCE Total Energy Use</b>	<b>5,981,951,917</b>

\*Data Provided by PG&E

# Exhibit D To the Joint Powers Agreement MCE

## - Voting Shares -

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

<b>Party</b>	<b>kWh (2015*)</b>	<b>Section 4.9.2.1</b>	<b>Section 4.9.2.2</b>	<b>Voting Share</b>
City of American Canyon	75,238,389	1.52%	0.63%	<b>2.14%</b>
City of Belvedere	7,161,787	1.52%	0.06%	<b>1.58%</b>
City of Benicia	112,631,790	1.52%	0.94%	<b>2.46%</b>
City of Calistoga	26,619,985	1.52%	0.22%	<b>1.74%</b>
City of Concord	584,690,000	1.52%	4.89%	<b>6.40%</b>
Town of Corte Madera	46,023,153	1.52%	0.38%	<b>1.90%</b>
County of Contra Costa	1,027,456,000	1.52%	8.59%	<b>10.10%</b>
Town of Danville	197,901,000	1.52%	1.65%	<b>3.17%</b>
City of El Cerrito	56,615,873	1.52%	0.47%	<b>1.99%</b>
Town of Fairfax	17,786,905	1.52%	0.15%	<b>1.66%</b>
City of Lafayette	113,958,395	1.52%	0.95%	<b>2.47%</b>
City of Larkspur	36,481,157	1.52%	0.30%	<b>1.82%</b>
City of Martinez	162,001,000	1.52%	1.35%	<b>2.87%</b>
City of Mill Valley	44,019,391	1.52%	0.37%	<b>1.88%</b>
County of Marin	223,280,476	1.52%	1.87%	<b>3.38%</b>
Town of Moraga	53,568,000	1.52%	0.45%	<b>1.96%</b>
City of Napa	358,540,484	1.52%	3.00%	<b>4.51%</b>
County of Napa	306,696,355	1.52%	2.56%	<b>4.08%</b>
City of Novato	182,518,152	1.52%	1.53%	<b>3.04%</b>
City of Oakley	127,957,000	1.52%	1.07%	<b>2.58%</b>
City of Pinole	69,497,000	1.52%	0.58%	<b>2.10%</b>
City of Pittsburg	521,305,000	1.52%	4.36%	<b>5.87%</b>
City of Richmond	369,368,162	1.52%	3.09%	<b>4.60%</b>
Town of Ross	9,793,239	1.52%	0.08%	<b>1.60%</b>
Town of San Anselmo	31,630,085	1.52%	0.26%	<b>1.78%</b>
City of San Ramon	363,991,000	1.52%	3.04%	<b>4.56%</b>
City of Saint Helena	51,846,619	1.52%	0.43%	<b>1.95%</b>
City of San Pablo	69,813,169	1.52%	0.58%	<b>2.10%</b>
City of San Rafael	226,213,075	1.52%	1.89%	<b>3.41%</b>
City of Sausalito	31,778,338	1.52%	0.27%	<b>1.78%</b>
Town of Tiburon	28,575,164	1.52%	0.24%	<b>1.75%</b>
City of Walnut Creek	415,140,953	1.52%	3.47%	<b>4.99%</b>
Town of Yountville	31,854,820	1.52%	0.27%	<b>1.78%</b>
<b>MCE Total Energy Use</b>	<b>5,981,951,917</b>	<b>50.00%</b>	<b>50.00%</b>	<b>100.00%</b>

\*Data Provided by PG&E

**PROPOSED RESOLUTION 2017-07**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF  
MARIN CLEAN ENERGY DELEGATING  
ENERGY PROCUREMENT AUTHORITIES FOR NEW MEMBER COMMUNITIES**

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

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

**WHEREAS**, from time to time the MCE Board approves membership of new communities to the MCE JPA (“new member communities”); and

**WHEREAS**, pursuant to its authority under Sections 4.6 and 4.7 of the Joint Powers Agreement the Board of Directors wishes to delegate authority to its committees and the Chief Executive Officer (“CEO”), for purposes of completing requisite energy procurement activities that may be necessary to support the electric energy requirements for new member communities; and

**WHEREAS**, Resolution 2017-02 set forth contracting authorities delegated by the Board of Directors; and

**WHEREAS**, the Board intends that this Resolution 2017-07 shall supplement Resolution 2017-02.

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

- A. Resolution 2017-02 is hereby supplemented by this Resolution 2017-07.
- B. The Board of Directors, by this delegation of contracting authority as described herein, shall not be divested of any such authority, but shall retain and may exercise such authority at such times as it may deem necessary and proper, at its sole discretion.
- C. The Board of Directors shall retain authority over all legally required authorities, including, for the avoidance of doubt, authority over contracting for borrowing as described in Government Code Section 536.35.7 or its successor.
- D. For purposes of this Resolution, “Energy Procurement” shall mean all contracting for energy and energy-related products for MCE, including but not limited to products related to electricity, capacity, energy efficiency, distributed energy resources, demand response, and storage.
- E. The Board of Directors hereby delegates the following contracting authorities for Energy Procurement consistent with MCE’s planned inclusion activities for new member communities and the general resource planning principles set forth in MCE’s approved integrated resource plan:

### **1. Delegation to the Executive Committee**

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

### **2. Delegation to the Technical Committee**

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

- a. contracts for Energy Procurement as herein defined;
- b. contracts for functions, programs or services related to Energy Procurement, technical matters, and demand-side and customer-side offerings;
- c. contracts related to MCE ownership or development of energy generation projects and assets.

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

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

### **4. Delegation to the Chief Executive Officer**

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

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

**PASSED AND ADOPTED** at a regular meeting of the Board of Directors on this 20<sup>th</sup> day of July 2017, by the following vote:

	<b>AYES</b>	<b>NOES</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
Town of Corte Madera				
City of El Cerrito				
Town of Fairfax				
City of Lafayette				
City of Larkspur				
County of Marin				
City of Mill Valley				
City of Napa				
County of Napa				
City of Novato				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Walnut Creek				
Town of Yountville				

\_\_\_\_\_  
CHAIR, MCE BOARD

ATTEST:

\_\_\_\_\_  
SECRETARY, MCE BOARD



## **POLICY NO. 007 – NEW CUSTOMER COMMUNITIES**

Whereas MCE’s founding mission is to address climate change by using a wide range of renewable energy sources, reducing energy related greenhouse gas emissions and promoting the development of energy efficiency programs; and

Whereas creating opportunities for customer electric service in new communities may allow MCE to further progress towards its founding mission; and

Whereas MCE currently provides a minimum 50% renewable energy supply to all MCE customers (through its default Light Green retail service option), which substantially exceeds similar renewable energy supply percentages provided by California’s investor-owned utilities (IOUs); and

Whereas the inclusion of new communities to MCE’s membership will increase state-wide renewable energy percentages due to 1) MCE’s specified minimum renewable energy supply percentage of 50%, and 2) access to its 100% renewable option; and

Whereas the inclusion of new communities to MCE’s membership will also decrease greenhouse gas emissions within the Western United States as a result of minimum renewable energy supply percentages exceeding such percentages provided by California’s IOUs; and

Whereas the inclusion of new communities reaffirms the viability of community choice aggregation, and provides an incentive for other cities and counties to pursue more renewable energy options within their own jurisdictions.

Therefore, it is MCE’s policy to explore and support customer electric service in new communities to further agency goals.

In consideration of the above MCE may allow access to service in new communities through two channels, affiliate membership or special-consideration membership, as applicable.

Affiliate membership considered if:

1. All applicable membership criteria are satisfied,
2. New community is located in a county that is not more than 30 miles from MCE existing county jurisdiction, and
3. Customer base in new community is 40,000 or less or is within a County already served by MCE.

Special-consideration membership considered if:

1. All applicable membership criteria are satisfied,
2. New community is located in a county that is more than 30 miles from MCE existing jurisdiction and/or the customer-base in the new community is greater than 40,000.



## **MCE Affiliate Membership Process**

Step 1: Governing body submits letter to MCE from new community jurisdiction, requesting consideration as a member.

Step 2: Staff evaluates request to determine: (a) if internal resources are available to consider new membership, and (b) if a formal 'inclusion period' is in effect or should be offered to create staff efficiencies.

Step 3: MCE staff request Membership Application from new community governing body.

Step 4: Membership Application submitted to MCE. Request submitted to MCE Board to consider adherence to criteria D, E, F and G below, and to authorize membership of new community, subject to a net positive result in quantitative membership analysis by staff.

Step 4: Following MCE Board approval, staff executes agreement with governing body of new jurisdiction to fund costs of membership analysis (cost waived under inclusion period). Staff undertakes and completes analysis, with primary focus on quantitative criteria A, B and C below. If needed, re-analysis may be conducted over time to account for varying market conditions.

Step 5: Results of membership analysis presented to MCE Board. 1). If quantitative affiliate membership criteria are met, MCE Board adopts resolution to include municipality in MCE Joint Powers Authority membership. 2). If quantitative criteria are not met but other compelling criteria are present, Board may consider approval of membership.

Step 6: Mayor/Board President of new jurisdiction executes JPA Agreement.

Step 7: MCE submits updated Implementation Plan to CPUC.

### **Membership Criteria:**

- A. Including new community is projected to result in a neutral or positive fiscal impact for MCE and the existing customer base.
- B. Including new community will enhance strength of local programs, including an increase in distributed generation, and will accelerate greenhouse gas reductions on a larger scale.
- C. Including new community will increase the amount of renewable energy being used in California's energy market.
- D. There will be an increase in opportunities to launch and operate MCE energy efficiency programs to reduce energy consumption and reliance on fossil fuels.
- E. New opportunities are available to deploy local solar and other distributed renewable generation through the MCE Net Energy Metering Tariff and Feed in Tariff.
- F. Greater demand for jobs and economic activity is likely to result from service in new community.
- G. Inclusion of new community is likely to create stronger voice for MCE at the State and regulatory level.



## MCE Membership Application Checklist

- ✓ Request for load data for PG&E signed by Mayor, City Manager, Board president or Chief County Administrator
- ✓ County assessor data for all building stock in jurisdiction
- ✓ Adoption of a resolution requesting membership in MCE
- ✓ Adoption of the ordinance required by the Public Utilities Code Section 366.2(c) (10) to join MCE's CCA program, adopted governing Board, subject to MCE Board approval
- ✓ Executed 'Agreement for Services' or 'Memorandum of Understanding' (if during inclusion period) to cover:
  - Community agrees to publicize and share information about MCE with community during the 6 month enrollment period. Options to publicize include but are not limited to website, social media, public events, community workshops, and newsletter announcements (where feasible), as well as distribution of flyers and handouts provided by MCE at community offices.
  - Community agrees to provide desk space for up to 2 MCE staff during the 6 month enrollment period, and agrees to consider ongoing desk space availability if needed for effective and efficient outreach.
  - Community agrees to assign staff member as primary point of contact with MCE. Assigned staff member will support and facilitate communication with other community staff and officials, as well as provide input and high-level assistance on community outreach.
  - Community agrees to cover of quantitative analysis cost, not to exceed \$10,000; waived under inclusion period.



July 20, 2017

TO: MCE Board of Directors

FROM: David McNeil, Manager of Finance

RE: Resolution 2017-08 Approving Third Amendment to Credit Agreement with River City Bank in the Principal Amount of \$25,000,000; and, 2. Resolution 2017-09 Regarding Authority to Execute Third Amendment to Credit Agreement with River City Bank (Agenda Item #06)

ATTACHMENTS: A. Non-Revolving Credit Agreement with River City Bank  
B. First Amendment to the Credit Agreement  
C. Second Amendment to the Credit Agreement  
D. Proposed Third Amendment to the Credit Agreement  
E. Proposed Second Amendment to Assignment of Deposit Account  
F. Certification Regarding Authority to Execute Credit Agreement  
G. Proposed Resolution No. 2017-09 Regarding Authority to Execute Third Amendment to Credit Agreement with River City Bank  
H. Proposed Resolution No. 2017-08 Approving Third Amendment to Credit Agreement with River City Bank

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**Dear Board Members:**

**Summary:**

MCE Staff have negotiated the terms of an amendment to MCE's Credit Agreement with River City Bank. The \$15,000,000 Non-Revolving Credit Agreement (Attachment A) was approved by your Board in August 2015 to enable MCE to borrow funds and order the issuance of letters of credit to support power purchase contracts. The First Amendment (Attachment B) consisted of minor administrative changes. The Second Amendment (Attachment C) changed the facility from a non-revolving to a revolving credit agreement, increased the Credit Commitment amount from \$15,000,000 to \$20,000,000, extended the expiration of the Agreement to August 31, 2017 and increased the Debt Service Reserve (DSR) amount from \$1,650,000 to \$2,200,000. The proposed Third Amendment (Attachment D) includes the following changes:

- Increase the Credit Commitment amount from \$20,000,000 to \$25,000,000;
- Extend the expiration of the agreement from August 31, 2017 to August 31, 2019;
- Increase the DSR amount from \$2,200,000 to \$2,500,000;
- Remove the adverse material clause, which allows River City Bank to withdraw the line of credit if, in its reasonable determination, a material adverse event impacting MCE has occurred;

- Change the basis for calculating the credit covenants from quarterly to annual following the release of MCE's annual, audited financial statements;
- Provide MCE with the option of obtaining a letter of credit from MUFG Union Bank (rated A2 by Moody's) of up to \$25,000,000. The letter of credit could be drawn by MCE if River City Bank fails to perform its obligations under the Credit Agreement.
- Reduce the interest rate on borrowings; and
- Reduce the Letter of Credit issuance fee.

The proposed Third Amendment to the Credit Agreement reduces borrowing and letter of credit costs, and provides greater certainty that the credit line will be available to MCE. The Second Amendment to the Assignment of Deposit Account (Attachment E) facilitates the increase in the DSR amount. The DSR amount represents deposit funds held by RCB to secure the line of credit and is equal to 10% of the Credit Commitment. Approval by River City Bank of the proposed Third Amendment is conditioned on 1) payment of renewal fees and 2) the approval by your Board of the referenced Agreements.

**Fiscal Impact:**

Costs associated with the proposed Third Amendment to the Credit Agreement and the proposed Second Amendment to Assignment of Deposit Account are included in the FY 2017/18 Budget.

**Recommendations:**

1. Adopt Proposed Resolution No. 2017-08 Approving the Third Amendment to Credit Agreement with River City Bank
2. Adopt Proposed Resolution No. 2017-09 Regarding Authority to Execute Third Amendment to Credit Agreement

**\$15,000,000**

**NON-REVOLVING CREDIT AGREEMENT**

**Dated as of August 21, 2015**

**by and between**

**MARIN CLEAN ENERGY,  
as Borrower**

**and**

**RIVER CITY BANK,  
as Lender**

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## **NON-REVOLVING CREDIT AGREEMENT**

This NON-REVOLVING CREDIT AGREEMENT (this "*Agreement*") is entered into as of August 21, 2015, by and between **MARIN CLEAN ENERGY**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. ("*Borrower*"), and **RIVER CITY BANK**, a California corporation ("*Lender*").

### WITNESSETH:

WHEREAS, Borrower has requested, and Lender has agreed to make available to Borrower, a non-revolving credit facility upon and subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

#### SECTION 1. DEFINITIONS AND INTERPRETATION.

*Section 1.1. Definitions.* All capitalized terms used in this Agreement and not otherwise defined have the meanings ascribed to them on **Exhibit A**.

#### *Section 1.2. Other Interpretive Provisions.*

(a) Defined Terms. Unless otherwise specified herein or therein, all terms defined in this Agreement will have the same defined meanings when used in any certificate or other document made or delivered pursuant hereto. The meaning of defined terms is equally applicable to the singular and plural forms of the defined terms.

(b) References. The words "hereof", "herein", "hereunder" and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement; and subsection, section, schedule and exhibit references are to this Agreement unless otherwise specified.

(c) Certain Common Terms. The term "documents" includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced. The term "including" is not limiting and means "including without limitation."

(d) Performance; Time. Whenever any performance obligation hereunder is stated to be due or required to be satisfied on a day other than a Business Day, such performance may be made or satisfied on the next succeeding Business Day. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including." If any provision of this Agreement refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision will be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

(e) Contracts. Unless otherwise expressly provided herein, references to agreements and other contractual instruments, including this Agreement and the other Loan Documents, will be deemed to include all subsequent amendments thereto, restatements thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(f) Laws. References to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

(g) Dollars and \$. All references to "dollars" or "\$" refer to United States dollars.

*Section 1.3. Accounting Principles.*

(a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein will be construed, and all financial computations required under this Agreement will be made, in accordance with GAAP, consistently applied.

(b) References herein to "fiscal year", "fiscal quarter" and "fiscal month" refer to such fiscal periods of Borrower.

(c) If any change in GAAP results in a change in the calculation of the financial covenants or interpretation of related provisions of this Agreement or any other Loan Document, then Borrower and Lender agree to amend such provisions of this Agreement so as to equitably reflect such changes in GAAP with the desired result that the criteria for evaluating Borrower's financial condition will be the same after such change in GAAP as if such change had not been made.

SECTION 2. THE NON-REVOLVING CREDIT.

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

*Section 2.2. Advances.* Advances under this Agreement may be requested in writing by Borrower or any Authorized Representative appointed by Borrower. Borrower agrees that

Lender may rely upon any written notice given by any person Lender in good faith believes is an Authorized Representative without the necessity of independent investigation.

*Section 2.3. Promissory Notes.* Each Advance made under the Non-Revolving Credit will be evidenced by a promissory note (each, a "*Promissory Note*") made, executed and delivered by Borrower and payable to the order of Lender in the form (with appropriate insertions) attached hereto as **Exhibit B** (the "*Letter of Credit Note*"), **Exhibit C** (the "*Cash Advance Note*"), or, if converted to a Term Loan as provided in Section 5, **Exhibit D** (the "*Term Note*"), as set forth herein.

(a) Letter of Credit Notes. For each Letter of Credit requested by Borrower and issued by the L/C Issuer in accordance with Section 4, Borrower will execute and deliver to Lender a Letter of Credit Note in the stated principal amount equal to the face amount of such Letter of Credit. Each Letter of Credit Note will be deemed an Advance in the full stated principal amount thereof for purposes of determining the Non-Revolving Credit Commitment; provided that each Letter of Credit Note will evidence Borrower's obligation to repay the lesser of the stated principal amount thereof or the outstanding principal amount of any Advances actually made by Lender under the Non-Revolving Credit as a result of an unreimbursed drawing (the "*Unreimbursed Amount*"), in accordance with Section 4.3. Each Letter of Credit Note will (i) be due and payable in full on the earlier of (x) the applicable Maturity Date, or (y) the Non-Revolving Credit Termination Date, and (ii) bear interest on the Unreimbursed Amount from and after the Honor Date, payable monthly as provided in Section 3. All references to "Advances" in Section 3 shall, with respect to a Letter of Credit Note, refer solely to the outstanding Unreimbursed Amount(s) evidenced by such Letter of Credit Note. Subject to the terms and conditions of this Agreement and provided that no Event of Default has occurred, Borrower will have a one-time option to convert the indebtedness evidenced by the Letter of Credit Notes into a Term Loan as provided in Section 5.

(b) Cash Advance Notes. Borrower may request Advances under the Non-Revolving Credit in the form of cash disbursements (each a "*Cash Advance*") deposited by Lender into a designated account of Borrower maintained with Lender. Borrower will make each request for a Cash Advance in writing in substantially the form of **Exhibit G**. On the date of each Cash Advance, Borrower will execute a Cash Advance Note to evidence the Cash Advance. Each Cash Advance Note will (i) be due and payable in full on the Non-Revolving Credit Termination Date, and (ii) bear interest, payable monthly as provided in Section 3. Subject to the terms and conditions of this Agreement and provided that no Event of Default has occurred, Borrower will have the option to convert the indebtedness evidenced by the Cash Advance Notes into a Term Loan as provided in Section 5.

*Section 2.4. Repayment on Non-Revolving Credit Termination Date.* All Advances (including all outstanding principal and accrued but unpaid interest) that have not been converted to a Term Loan shall be due and payable in full on the Non-Revolving Credit Termination Date. Until the Non-Revolving Credit Termination Date, Borrower shall repay the Advances with interest as provided herein and in the applicable Promissory Notes.

SECTION 3. INTEREST, LATE FEES, PREPAYMENTS AND APPLICATIONS.

*Section 3.1. Interest Payments.*

(a) Advances. The outstanding principal balance of Advances will bear interest (which Borrower hereby promises to pay at the rates and at the times set forth therein) prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full. The determination of the Applicable Rate by Lender shall be conclusive and binding on Borrower in the absence of demonstrable error.

(b) Interest Payment Dates. Borrower will pay regular monthly payments of all accrued but unpaid interest on the Advances as of each Payment Date beginning on October 1, 2015, with all subsequent interest payments due and payable on each Payment Date thereafter. Interest on the Advances will be payable monthly in arrears on each Payment Date. Interest on any installment of principal that is not paid when due (whether by lapse of time, acceleration or otherwise) will be due and payable on demand. Borrower will make all payments at the address specified in Section 3.4.

(c) Late Fees. If Borrower fails to make any payment of principal or interest under the Promissory Notes or any other sum payable hereunder or under any other Loan Document within five (5) calendar days after its due date, Lender will be entitled at its option to impose a late charge in an amount equal to six percent (6.00%) of the amount of such past due payment, which charge, if imposed by Lender, shall be due and payable by Borrower immediately upon receipt of written notice thereof.

*Section 3.2. Computation of Interest; Minimum and Maximum Interest Rates.* All interest on the Advances will be calculated on the basis of a year of 360 days for the actual number of days elapsed. In no event shall the applicable interest rate exceed than the maximum rate allowed by law (including Government Code Section 53854).

*Section 3.3. Prepayments.*

(a) Voluntary Prepayment. Borrower may voluntarily prepay Advances, in whole or in part, at any time without any penalty or fee. In connection with such prepayment, Borrower may prepay the principal amount of any Promissory Note together with interest accrued thereon, at its option and without premium, prior to the applicable Maturity Date or the Termination Date, as the case may be.

(b) Mandatory Prepayment. Borrower will, upon demand, prepay Advances at any time and to the extent that the outstanding principal amount of all Advances exceeds the Non-Revolving Credit Commitment.



(c) Application of Prepayments. All prepayments shall be applied in accordance with Section 3.4.

*Section 3.4. Place and Application of Payments and Collections.* All payments of principal, interest, fees and all other Obligations payable hereunder will be made to Lender at the following address no later than 2:00 p.m. (Pacific Standard Time) on the date any such payment is due and payable:

River City Bank  
Loan Center  
2485 Natomas Park Drive, Suite 400  
Sacramento, CA 95833

So long as any Event of Default has occurred and is continuing, Borrower agrees that Lender, in its sole and absolute discretion, may apply any payments or collections received by Lender in respect of the Non-Revolving Credit to any of the Obligations in any manner or order as Lender desires. Lender's receipt and application of payments or collections shall not constitute a waiver or cure of any Default.

*Section 3.5. Notations.* All Advances made and evidenced by the Promissory Notes and the rates of interest applicable thereto will be recorded by Lender on its books and records or, at its option in any instance, endorsed on a schedule to the Promissory Notes, and the unpaid principal balance and interest rates so recorded or endorsed by Lender will be *prima facie* evidence in any court or other proceeding brought to enforce the Promissory Note of the principal amount remaining unpaid, the status of the Advances evidenced by the Promissory Note and the applicable interest rates; provided, however, that the failure of Lender to record any of the foregoing will not limit or otherwise affect the obligation of Borrower to repay the principal amount of the Promissory Note together with accrued interest thereon. Prior to any negotiation of the Promissory Note, Lender will record on a schedule thereto the status of all amounts evidenced by the Promissory Note and the rates of interest applicable thereto.

#### SECTION 4. LETTERS OF CREDIT.

##### *Section 4.1. Letter of Credit Commitment.*

(a) Subject to the terms and conditions set forth herein, the L/C Issuer agrees, in reliance upon the agreements of Borrower, (1) from time to time on any Business Day during the period from the date of this Agreement until the Letter of Credit Expiration Date, to issue Letters of Credit in Dollars for the account of Borrower, and to amend or extend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; provided that after giving effect to any L/C Credit Extension, the aggregate principal amount of all Advances shall not exceed the Non-Revolving Commitment. Each request by Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence and the other terms and conditions of this Agreement.

- (b) The L/C Issuer shall have no obligation to issue any Letter of Credit if:
- (i) The expiry date of the requested Letter of Credit would occur more than twelve months after the date of issuance or last extension;
  - (ii) The expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date;
  - (iii) The requested Letter of Credit requires the L/C Issuer to provide a notice of non-renewal, if any, earlier than 120 days before the expiration of the Letter of Credit;
  - (iv) The requested Letter of Credit contains terms and conditions required by the beneficiary that are deemed unacceptable to the L/C Issuer;
  - (v) Any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin the L/C Issuer from issuing such Letter of Credit, or any law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the date of this Agreement, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable as of the date of this Agreement and which the L/C Issuer in good faith deems material to it;
  - (vi) The issuance of such Letter of Credit would violate one or more policies of the L/C Issuer generally applicable to the issuance of letters of credit;
  - (vii) The Letter of Credit is to be denominated in a currency other than Dollars;
  - (viii) The Letter of Credit provides for automatic reinstatement or renewal of the stated amount after any drawing thereunder; or
  - (ix) The issuance of the Letter of Credit would result in an L/C Credit Extension and a deemed Advance under the corresponding Letter of Credit Note that exceeds the Non-Revolving Credit Commitment at the time of issuance.
- (c) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.
- (d) The L/C Issuer shall have no obligation to amend any Letter of Credit if (i) the L/C Issuer would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (ii) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

*Section 4.2. Issuance and Amendment of Letters of Credit.*

(a) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of Borrower delivered to Lender and the L/C Issuer in the form of a Letter of Credit Application substantially in the form of **Exhibit E**, completed to the satisfaction of Lender and the L/C Issuer and signed by a Responsible Officer of Borrower. Such Letter of Credit Application may be sent via electronic image or other electronic format, by US mail, overnight courier, or by any other means acceptable to Lender and the L/C Issuer and must be received by Lender and the L/C Issuer not later than ten (10) Business Days (or such later date as Lender and the L/C Issuer may agree in their sole discretion) before the proposed issuance date or date of amendment, as the case may be. In the case of a request for initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to Lender and the L/C Issuer: (i) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (ii) the amount thereof; (iii) the expiry date thereof; (iv) the name and address of the beneficiary thereof; (v) the documents to be presented by such beneficiary in the case of any drawing thereunder; (vi) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (vii) the purpose and nature of the requested Letter of Credit; and (viii) such other matters as Lender or the L/C Issuer may require. In the case of a request for amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to Lender and the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of the amendment (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as Lender or the L/C Issuer may require. Additionally, Borrower will furnish to Lender and the L/C Issuer such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any L/C Issuing Documents, as Lender or the L/C Issuer may request.

(b) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with Lender that the Lender has received a copy of such Letter of Credit Application from Borrower and, if not, the L/C Issuer will provide Lender with a copy thereof. Unless the L/C Issuer has received written notice from Lender or Borrower, at least two (2) Business Days prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions set forth in Section 8 has not then been satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of Borrower or enter into the applicable amendment, as the case may be, in each case in such form as may be approved from time to time by the L/C Issuer and in accordance with the L/C Issuer's usual and customary business practices.

(c) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to the beneficiary thereof, the L/C Issuer will also deliver to Borrower and Lender a true and complete copy of such Letter of Credit or amendment.

*Section 4.3. Drawings and Reimbursements of Letters of Credit.*

(a) Upon the presentment of any notice of drawing under any Letter of Credit by the beneficiary thereof which the L/C Issuer determines to be in compliance with the conditions for payment thereunder, the L/C Issuer will notify Borrower and Lender of the intended date of

honor of such drawing. Not later than 5:00 p.m. (Pacific Standard Time) on the date (the "Reimbursement Date") that is three (3) calendar days after any payment by the L/C Issuer under a Letter of Credit (each such date, an "Honor Date"), Borrower shall reimburse the L/C Issuer by making payment to Lender in an amount equal to the amount of such payment. If Borrower fails to so reimburse the L/C Issuer on or before the Reimbursement Date, Lender will make an Advance under the Letter of Credit Note to be disbursed as of the Honor Date in an amount equal to the Unreimbursed Amount, subject to the limits of the Non-Revolving Credit Commitment and the conditions precedent set forth in Section 8.

(b) With respect to any Unreimbursed Amount that is not fully refinanced by an Advance under a corresponding Letter of Credit Note for any reason, Borrower shall be deemed to have incurred an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate.

*Section 4.4. Obligations Absolute.*

(a) The obligation of Borrower to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that any Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of Borrower or any waiver by the L/C Issuer which does not in fact materially prejudice Borrower;

(v) any honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable.

(vii) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or discharge of, any party to the Loan Documents.

(b) Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with Borrower's instructions or other irregularity, Borrower will immediately notify Lender and the L/C Issuer in writing. Borrower shall be conclusively deemed to have waived any such claim it would have against Lender or the L/C Issuer and its correspondents unless such notice is given.

*Section 4.5. Role of L/C Issuer.* Borrower agrees that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by such Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering such document. None of the L/C Issuer, Lender, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to Borrower for (i) any action taken or omitted in connection herewith at the request of Borrower; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or L/C Issuing Document. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. Neither the L/C Issuer or Lender, nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in Section 4.4; provided, however, that anything in such clauses to the contrary notwithstanding, Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower which Borrower proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) complying with the terms and conditions of such Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their

face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunications (“*SWIFT*”) message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

*Section 4.6. Applicability of ISP, Limitation of Liability.* Unless otherwise expressly agreed by the L/C Issuer and Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to Borrower for, and the L/C Issuer’s rights and remedies against Borrower shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law of any jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Finance Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

*Section 4.7. Letter of Credit Fees.* Borrower shall pay to Lender fees for each Letter of Credit as follows:

(a) Issuance Fee. Upon issuance of any Letter of Credit, an amount equal to 1.25% per annum of the face amount of any Union Letter of Credit or 1.00% per annum for any RCB Letter of Credit (the “*Issuance Fee*”).

(b) Renewal Fee. Upon renewal or extension of any Letter of Credit, whether automatic, by operation of the Letter of Credit or other request by beneficiary under the Letter of Credit, the applicable Issuance Fee plus a renewal fee equal to \$1,250.00 (collectively, the “*Renewal Fee*”).

(c) Other Letter of Credit Costs and Fees. Borrower shall be subject and agrees to pay any and all fees due under a Union Letter of Credit that are imposed or charged to Lender by MUFG Union Bank, N.A., in connection with the Union Letter of Credit as provided on **Exhibit F**. In addition, Borrower agrees to pay Lender for any Letter of Credit amendment or other fees as quoted on Lender’s Letter of Credit Fee Schedule provided to Borrower by Lender. Nothing in this Section 4.7(c) shall obligate Borrower to pay more than one Issuance Fee upon issuance of each Letter of Credit and one Renewal Fee (including the applicable Issuance Fee) upon each renewal or extension thereof.

*Section 4.8. Conflicts and Inconsistencies with L/C Issuing Documents.* In the event of any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of any L/C Issuing Document, the terms and conditions of this Agreement shall control, and if any L/C Issuing Document contains provisions that impose obligations on the L/C

Issuer or grant rights to Borrower beyond those imposed or granted under this Agreement, such provisions shall be of no force or effect and shall not be binding on the L/C Issuer.

## SECTION 5. CONVERSION OF PROMISSORY NOTES TO TERM NOTES.

*Section 5.1. Term Loans.* Provided no Default or Event of Default has occurred or is continuing, Borrower shall have an option to convert outstanding balances under the Letter of Credit Notes or a Cash Advance Note to a term loan (each a "Term Loan") payable in sixty (60) equal monthly amortizing payments of principal and interest at the Applicable Rate.

*Section 5.2. Conversion of Letter of Credit Notes.* To the extent there are any unpaid Advances under any Letter of Credit Notes due and payable on the Termination Date, Borrower, by written notice to Lender on the Termination Date, may request that the aggregate outstanding Advances and other indebtedness under the Letter of Credit Notes be converted to a single Term Loan. Borrower's option to convert the Letter of Credit Notes may be exercised no more frequently than once and must be exercised on the Termination Date. The Term Loan described in this Section 5.2 will accrue interest from the Termination Date and will be evidenced by a single Term Note made, executed and delivered by Borrower in the form (with appropriate insertions) attached hereto **Exhibit D**.

*Section 5.3. Conversion of Cash Advance Notes.* At any time before the Non-Revolving Credit Termination Date, Borrower, by written notice to Lender, may request that any unpaid Advances under the Cash Advance Notes be converted to a Term Loan. Any Term Loan described in this Section 5.3 may, at Lender's option, be evidenced by a Term Note or by a modification of the applicable Cash Advance Note.

## SECTION 6. COLLATERAL.

*Section 6.1. Debt Service Reserve Account.* As a condition to Lender's obligation to make any Advances hereunder, Borrower will open and establish a restricted deposit account or certificate of deposit with Lender (the "Debt Service Reserve Account") with a balance of not less than \$1,657,487.00 at any time. The Debt Service Reserve Account will be held in the name of Borrower and will serve as collateral for the Obligations. Borrower will pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of the Debt Service Reserve Account.

*Section 6.2. Assignment of Debt Service Reserve Account.* As security for the prompt payment and performance by Borrower of all Obligations, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, transfers, delivers, and confirms unto Lender, and hereby grants to Lender a continuing security interest in (i) the Debt Service Reserve Account, (ii) all replacements, substitutions or proceeds thereof, (iii) all instruments and documents now or hereafter evidencing the Debt Service Reserve Account, (iv) all powers, options, rights, privileges and immunities pertaining to the Debt Service Reserve Account, including the right to make withdrawals therefrom, and (v) all interest, income, profits and proceeds of the foregoing. Borrower hereby acknowledges and agrees that Lender shall have exclusive control over the

Debt Service Reserve Account, and Borrower shall have no right to withdraw funds from the Debt Service Reserve Account; provided, however, that Borrower may withdraw funds from the Debt Service Reserve Account from time to time if (1) the balance of the Debt Service Reserve Account will not be less than \$1,657,487.00 after giving effect to such withdrawal, (2) no default or Event of Default has occurred and is continuing, and (3) no Event of Default would occur as a result of such withdrawal. If an Event of Default shall occur hereunder or under any of the Obligations, then Lender may, without notice or demand on Borrower, at its option: (A) withdraw any or all of the funds (including without limitation, interest) then remaining in the Debt Service Reserve Account and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery, and all reasonable attorneys' fees, costs and expenses incurred by Lender in connection with the Event of Default, to any amounts due and unpaid under this Agreement, any Promissory Note or any other Obligations in such manner and order as Lender shall deem appropriate in its sole discretion, (B) exercise any and all rights and remedies of a secured party under any applicable Uniform Commercial Code, and/or (C) exercise any other remedies available at law or in equity. All rights and remedies of Lender hereunder and under that certain Assignment of Deposit Account entered into as of the date hereof between Borrower and Lender shall be cumulative.

#### SECTION 7. REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants to Lender as follows:

*Section 7.1. Organization and Qualification; Authority; Consents.* Borrower (a) is a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) that is qualified to be a community choice aggregator pursuant to California Public Utilities Code Section 366.2 and (b) has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying unless the failure to be so licensed or qualified would not have a material adverse effect on its business, operations or assets. Borrower has the agency power to enter into this Agreement and the other Loan Documents to which it is a party, to request the Advances and incur the Obligations provided for herein, to execute Promissory Notes in evidence thereof, to pledge and encumber assets as security therefor, and to perform each and all of the promises herein and therein. This Agreement and the other Loan Documents to which Borrower is a party do not, nor does the performance or observance by Borrower of any of the matters or things herein or therein provided for, contravene any provision of law or the Joint Powers Agreement or any covenant, indenture or agreement of or affecting Borrower or any of its Properties, including the Shell Agreements. The execution, delivery, performance and observance by Borrower of this Agreement and the other Loan Documents do not and, at the time of delivery hereof, will not require any consent or approval of any other Person, other than such consents and approvals that have been given or obtained.

*Section 7.2. Legal Effect.* This Agreement and the other Loan Documents to which Borrower is a party constitute legal, valid and binding agreements of Borrower, enforceable in accordance with their respective terms, subject to laws relating to bankruptcy, insolvency or



other laws affecting the enforcement of creditors' rights generally and the application of equitable remedies if equitable remedies are sought.

*Section 7.3. Subsidiaries.* Borrower has no Subsidiaries.

*Section 7.4. Use of Proceeds.* Borrower will use the proceeds of the Advances solely for purposes consistent with the purpose of Borrower as set forth in the Joint Powers Agreement, including for purposes consistent with the community choice aggregation program established by Borrower pursuant to California Public Utilities Code Section 366.2.

*Section 7.5. Financial Reports.* Effective with the delivery to Lender of the financial statements required by Section 9.2, the statements of financial condition of Borrower as at the date of such statements delivered to Lender, and the related statements of income, retained earnings and cash flows of Borrower for the fiscal year then ended and accompanying notes thereto, which financial statements are accompanied by the audit of independent public accountants, and the unaudited interim statements of financial condition of Borrower as at the date of such statements delivered to Lender and the related statements of income and cash flows of Borrower for the period then ended, fairly present the financial condition of Borrower as at said dates and the results of its operations and cash flows for the periods then ended in conformity with GAAP applied on a consistent basis. Borrower has no contingent liabilities which are material to it other than, with respect to any financial statements delivered to Lender, as indicated on said financial statements.

*Section 7.6. Full Disclosure.* The statements and other information furnished to Lender in connection with the negotiation of this Agreement and the other Loan Documents and the commitment by Lender to provide the financing contemplated hereby do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading; provided that Lender acknowledges that, as to any projections furnished to Lender, Borrower only represents that the same were prepared on the basis of information and estimates Borrower believed to be reasonable at the time such information was prepared.

*Section 7.7. Litigation.* There is no litigation or governmental proceeding pending, nor to the knowledge of Borrower threatened in writing, against Borrower which if adversely determined would result in any material adverse change in the financial condition, Properties, business or operations of Borrower.

*Section 7.8. Good Title.* Borrower has good and defensible title to its Properties as reflected on the most recent balance sheet of Borrower furnished to Lender, subject to no Liens other than Permitted Liens or as otherwise limited by applicable law.

*Section 7.9. Members.* Borrower is not a party to any contracts or agreements with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts or agreements between Persons not affiliated with each other.

*Section 7.10. Compliance with Laws.* Borrower is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to its Properties or business operations (including, without limitation, laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes and substances), non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower. Borrower has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

*Section 7.11. Other Agreements.* Borrower is not in default under the terms of any covenant, indenture or agreement of or affecting Borrower or any of its Properties, which default if uncured would have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

*Section 7.12. No Default.* No Default or Event of Default has occurred or is continuing.

#### SECTION 8. CONDITIONS PRECEDENT.

The obligation of Lender to make any Advance is subject to the following conditions precedent:

*Section 8.1. All Advances.* As of the time of the making of each Advance (including the initial Advance unless otherwise specified):

(a) each of the representations and warranties set forth in Section 7 hereof and in the other Loan Documents shall be true and correct as of said time, except that the representations and warranties made under Section 7.5 (except for the initial Advance) shall be deemed to refer to the most recent financial statements furnished to Lender pursuant to Section 9.2 hereof; and

(b) Borrower shall be in full compliance with all of the material terms and conditions of this Agreement, the Promissory Notes, the Assignment of Debt Service Reserve Account and all other Loan Documents, and no Default or Event of Default shall have occurred or be continuing.

*Section 8.2. Initial Advance.* At or prior to the making of the first Advance, the following conditions precedent must also be satisfied:

(a) Lender shall have received properly completed and executed originals of the following in form and substance approved by Lender:

- (i) this Agreement;
- (ii) the Request for Advance and Letter of Credit Application (if applicable);

(iii) each of the resolutions adopted by the Board of Directors of Borrower with respect to this Agreement and the other Loan Documents, certified by an Authorized Representative;

(iv) an incumbency certificate containing the name, title and genuine signatures of each of Borrower's Authorized Representatives;

(v) payment by Borrower of the Loan Fee and all payments and expenses required to be paid by Borrower pursuant to Section 11.4(a) of this Agreement;

(vi) an updated Schedule 9.7 listing all outstanding Indebtedness for Borrowed Money;

(vii) copies (executed and certified, as may be appropriate) of the organizational documents of Borrower and all legal documents or proceedings (including minutes of board meetings) taken in connection with the execution and delivery of this Agreement to the extent Lender or its counsel may reasonably request; and

(viii) the Assignment of Debt Service Reserve Account.

(b) The Debt Service Reserve Account shall have been established with Lender; and

(c) Any legal matters incident to the execution and delivery of this Agreement and the other Loan Documents and to the transactions contemplated hereby and thereby shall be reasonably satisfactory to Lender and its counsel.

#### SECTION 9. COVENANTS.

Borrower agrees that, so long as any credit is available to or in use by Borrower hereunder, except to the extent compliance in any case or cases is waived in writing by Lender:

*Section 9.1. Maintenance of Business.* Borrower shall preserve and maintain its existence. Borrower shall preserve and keep in force and effect all licenses, permits and franchises necessary to the proper conduct of its business and shall conduct its business affairs in a reasonable and prudent manner. Borrower shall maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel, and shall provide Lender with written notice of any change in executive and management personnel.

*Section 9.2. Financial Reports.* Borrower shall maintain a standard system of accounting in accordance with GAAP and shall furnish to Lender and its duly authorized representatives such information respecting the business and financial condition of Borrower as Lender may reasonably request; and without any request, shall furnish to Lender:

(a) as soon as available, and in any event within forty-five (45) days after the close of each quarter, an unaudited balance sheet of Borrower as of the last day of the period then ended and

the statements of income, retained earnings and cash flows of Borrower for the period then ended, prepared in accordance with GAAP and in a form acceptable to Lender;

(b) as soon as available, and in any event within six (6) months after the close of each annual accounting period of Borrower, a copy of the audited balance sheet of Borrower as of the last day of the period then ended and the statements of income, retained earnings and cash flows of Borrower for the period then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous fiscal year, accompanied by an unqualified opinion thereon of Borrower's independent public accountants, to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such fiscal year and the results of its operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;

(c) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower's operations and financial affairs given to it by its independent public accountants;

(d) promptly after knowledge thereof shall have come to the attention of any responsible officer of Borrower, written notice of any litigation threatened in writing or any pending litigation or governmental proceeding or labor controversy against Borrower which, if adversely determined, would materially adversely effect the financial condition, Properties, business or operations of Borrower or result in the occurrence of any Default or Event of Default hereunder; and

(e) promptly after the request therefore, all such other information as Lender may reasonably request.

Each of the financial statements furnished to Lender pursuant to subsection (b) of this Section 9.2 shall be accompanied by a written certificate signed by the chief financial officer of Borrower to the effect that to the best of such officer's knowledge and belief no Default or Event of Default has occurred during the period covered by such statements or, if any such Default or Event of Default has occurred during such period, setting forth a description of such Default or Event of Default and specifying the action, if any, taken by Borrower to remedy the same.

*Section 9.3. Maintenance of Debt Service Reserve Account.* Borrower shall ensure that the Debt Service Reserve Account remains pledged and assigned to Lender as collateral for the Obligations in accordance with Section 6.

*Section 9.4. Primary Depository Relationship.* Borrower shall maintain its primary business banking deposit account relationship with Lender for so long as any amounts under this Agreement, any Promissory Note or Letter of Credit remain outstanding. In the event that this condition is not met, as determined by Lender, the Applicable Rate (or the Default Rate, if applicable) and any commissions charge on any outstanding Letters of Credit will immediately increase by an additional 0.25 percentage points.

*Section 9.5. Fixed Charge Coverage Ratio.* Borrower agrees to maintain a minimum Fixed Charge Coverage Ratio at all times greater than or equal to 1.25, measured quarterly as of the end of each fiscal quarter. As used herein,

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

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

“*Change in Net Position*” is defined as the difference between current Net Position and prior period’s Net Position.

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

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

*Section 9.6. Total Liabilities to Tangible Adjusted Unrestricted Net Position.* Borrower agrees to maintain a maximum Total Liabilities to Tangible Adjusted Unrestricted Net Position not at any time greater than 2.50:1.00, measured quarterly. As used herein,

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

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

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

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

*Section 9.7. Inspection.* Borrower shall permit Lender and its duly authorized representatives and agents, at such times and intervals as Lender may designate, but in any event, no more than six (6) times during any twelve (12) month period so long as no Default or Event of Default has occurred and is continuing: (i) to visit and inspect any of the Properties, books and

financial records of Borrower and to examine and make copies of the books of accounts and other financial records of Borrower, and (ii) to discuss the affairs, finances and accounts of Borrower with, and to be advised as to the same by, the executive officers of Borrower and other officers, employees and independent public accountants of Borrower (and by this provision Borrower each authorizes such accountants to discuss with Lender or its agents and representatives the finances and affairs of Borrower). Without limiting the generality of the foregoing, Borrower shall promptly provide all information and access requested by Lender as Lender determines is necessary or required in connection with the preparation of its own financial statements.

*Section 9.8. Liens.* Borrower shall not create, incur or permit to exist any Lien of any kind on any Property owned by Borrower or any Subsidiary; provided, however, that the foregoing shall not apply to nor operate to prevent:

(a) Liens arising by statute in connection with worker's compensation, unemployment insurance, old age benefits, social security obligations, taxes, assessments, statutory obligations or other similar charges, good faith cash deposits in connection with tenders, contracts or leases to which Borrower is a party or other cash deposits required to be made in the ordinary course of business, provided in each case that the obligation is not Indebtedness for Borrowed Money and that the obligation secured is not overdue or, if overdue, is being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest and adequate reserves have been established therefor;

(b) mechanics', workmen's, materialmen's, landlords', carriers', or other similar Liens arising in the ordinary course of business with respect to obligations which are not due or which are being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest;

(c) the pledge of assets for the purpose of securing an appeal, stay or discharge in the course of any legal proceeding, provided that the aggregate amount of liabilities of Borrower secured by a pledge of assets permitted under this subsection, including interest and penalties thereon, if any, shall not be in excess of \$500,000 at any one time outstanding;

(d) the Liens identified on Schedule 7.4 hereto; and

(e) the Liens of Shell Energy under the Shell Security Agreement and Shell Collateral Account Agreements.

The Liens described in clauses (a) through (e) of this Section 9.8 are collectively referred to in this Agreement as the "*Permitted Liens*."

*Section 9.9. Investments, Acquisitions, Loans, Advances and Guaranties.* Borrower shall not directly or indirectly, make, retain or have outstanding any investments (whether through purchase of stock or obligations or otherwise) in, or loans or advances (other than for travel advances and other similar cash advances made to employees, vendors and suppliers in the ordinary course of business) to, any other Person, or acquire all or any substantial part of the assets or business of any other Person or division thereof, or be or become liable as endorser, guarantor,

surety or otherwise for any debt, obligation or undertaking of any other Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter of credit which supports an obligation of another, or subordinate any claim or demand it may have to the claim or demand of any other Person.

*Section 9.10. Compliance with Laws.* Borrower shall comply in all respects with the requirements of all laws, rules, regulations, ordinances and orders applicable to or pertaining to its Properties or business operations, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower or could result in a Lien upon any of its Property.

*Section 9.11. Burdensome Contracts With Members.* Borrower shall not enter into any contract, agreement or business arrangement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts, agreements or business arrangements between Persons not affiliated with each other.

*Section 9.12. Notices of Claims and Litigation.* Borrower shall promptly inform Lender in writing of (a) all material adverse changes in Borrower's financial condition, (b) all existing or written threats of litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower which could materially affect the financial condition of Borrower.

*Section 9.13. Other Agreements.* Borrower shall comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party and notify Lender immediately in writing of any default in connection with any other such agreements.

*Section 9.14. Performance.* Borrower shall timely perform and comply with all terms, conditions, and provisions set forth in this Agreement, the Promissory Notes and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any Default in connection with any Loan Document.

*Section 9.15. Compliance Certificates.* Borrower shall, unless waived in writing by Lender, provide Lender, at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

*Section 9.16. Fiscal Year.* Borrower shall not change its fiscal year without the prior written consent of Lender.

*Section 9.17. Indebtedness for Borrowed Money.* As of the date hereof, Borrower has no outstanding Indebtedness for Borrowed Money, except as set forth on Schedule 7.4. Except as disclosed on Schedule 7.4, Borrower shall not issue, incur, assume, create or have outstanding any Indebtedness for Borrowed Money; provided, however, that the foregoing shall not restrict nor operate to prevent the Obligations of Borrower owing to Lender hereunder.

SECTION 10. EVENTS OF DEFAULT AND REMEDIES.

*Section 10.1. Events of Default.* Any one or more of the following will constitute an "Event of Default" hereunder:

- (a) any default in the payment when due (whether by lapse of time, acceleration or otherwise) of (i) any payment of principal or interest under the Promissory Notes, or (ii) any other Obligation within five (5) days after payment or performance is due from Borrower; or
- (b) any representation or warranty made by Borrower herein or in any other Loan Document, or in any statement or certificate furnished by it pursuant hereto or thereto, or in connection with any Letter of Credit Application or Advance (including an L/C Borrowing) made hereunder, is inaccurate or untrue in any material respect as of the date of the issuance or making thereof; or
- (c) any event occurs or condition exists (other than those described in clauses (a) through (b) above) which is specified as an event of default under any of the other Loan Documents, or any of the Loan Documents for any reason ceases to be in full force and effect, or any of the Loan Documents is declared to be null and void, or Borrower takes any action for the purpose of repudiating or rescinding any Loan Document executed by it; or
- (d) any judgment, order, writ of attachment, writ of execution, writ of possession or any similar legal process is entered or filed against Borrower or any of Borrower's Properties and remains unvacated, unbonded and unstayed for a period of ten (10) or more calendar days; or
- (e) Borrower defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement in favor of any other creditor or Person that may materially affect any of Borrower's Properties, Borrower's ability to repay the Non-Revolving Credit or Borrower's ability to perform its Obligations under this Agreement or any of the other Loan Documents; or
- (f) a material adverse change occurs in Borrower's financial condition, or Lender believes, in its reasonable discretion, the prospect of payment or performance of Borrower's obligations under this Agreement is materially impaired; or
- (g) Borrower (i) takes any steps to effect a Winding-Up, (ii) fails to pay, or admits in writing its inability to pay, its debts generally as they become due; or
- (h) a custodian, receiver, administrative receiver, administrator, trustee, examiner, liquidator or similar official is appointed over Borrower or any substantial part of any of its Properties, or a Winding-Up proceeding is instituted against Borrower, and such appointment continues undischarged or such proceeding continues undismitted or unstayed for a period of thirty (30) or more days, or Borrower becomes unable to pay or admits in writing its inability to pay its debts as they become due.



*Section 10.2. Non-Insolvency Default Remedies.* Upon the occurrence of any Event of Default described in clauses (a) through (g) of Section 10.1, Lender or any permitted holder of any Promissory Note may, by notice to Borrower, take any of the following actions:

- (a) terminate any obligation to extend any further credit hereunder (including but not limited to Advances) on the date (which may be the date thereof) stated in such notice;
- (b) declare all Advances and all indebtedness under the Promissory Notes then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other Obligations of Borrower to Lender, to be immediately due and payable without further demand, presentment, protest or notice of any kind; and
- (c) exercise and enforce any and all rights and remedies contained in any other Loan Document or otherwise available to Lender at law or in equity.

*Section 10.3. Insolvency Default Remedies.* Upon the occurrence of any Event of Default described in Section 10.1(h), all Advances and all indebtedness under the Promissory Notes then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other Obligations of Borrower to Lender, will immediately become due and payable without presentment, demand, protest or notice of any kind, and the Lender shall have no obligation to extend any further credit hereunder (including but not limited to Advances).

#### SECTION 11. MISCELLANEOUS.

*Section 11.1. Holidays.* If any payment hereunder becomes due and payable on a day which is not a Business Day, the due date of such payment will be extended to the next succeeding Business Day on which date such payment will be due and payable. In the case of any principal falling due on a day which is not a Business Day, interest on such principal amount will continue to accrue during such extension at the Applicable Rate, which accrued amount will be due and payable on the next scheduled date for the payment of interest.

*Section 11.2. No Waiver, Cumulative Remedies.* No delay or failure on the part of Lender or on the part of the holder of any Promissory Note in the exercise of any power or right will operate as a waiver thereof or as an acquiescence in any Default, nor will any single or partial exercise of any power or right preclude any other or further exercise thereof, or the exercise of any other power or right. All rights and remedies of Lender and the holder of any Promissory Note are cumulative to, and not exclusive of, any rights or remedies which any of them would otherwise have. Borrower agrees that in the event of any breach or threatened breach by Borrower of any covenant, obligation or other provision contained in this Agreement, Lender shall be entitled (in addition to any other remedy that may be available to Lender) to: (i) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision; and (ii) an injunction restraining such breach or threatened breach. Borrower further agrees that neither Lender nor any other person or entity shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 11, and Borrower irrevocably

waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

*Section 11.3. Amendments, Etc.* No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document nor consent to any departure by Borrower therefrom, will in any event be effective unless the same is in writing and signed by Lender. No notice to or demand on Borrower in any case will entitle Borrower to any other or further notice or demand in similar or other circumstances.

*Section 11.4. Costs and Expenses.*

(a) Borrower shall pay all reasonable out-of-pocket expenses incurred by Lender, if any, in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) including, without limitation, a \$2,500.00 documentation fee.

(b) Borrower agrees to pay on demand all reasonable costs and expenses (including attorneys' fees and expert witness fees), if any, incurred by Lender or any other holder of the Obligations in connection with any Event of Default or the enforcement of this Agreement, any other Loan Document or any other instrument or document to be delivered hereunder, including without limitation any action, suit or proceeding brought against Lender by any Person which arises out of the transactions contemplated hereby or out of any action or inaction by Lender hereunder or thereunder.

*Section 11.5. Indemnity.* Whether or not the transactions contemplated hereby shall be consummated, Borrower shall indemnify, defend and hold harmless Lender and the L/C Issuer and their respective officers, directors, employees, counsel, agents and attorneys-in-fact (each, an "Indemnified Person") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses or disbursements (including attorneys' costs and expert witnesses' fees), of any kind or nature whatsoever; that (a) arise from or relate in any way to the execution, delivery, enforcement, performance and administration of this Agreement and any other Loan Document, or the transactions contemplated hereby and thereby, and with respect to any investigation, litigation or proceeding (including any Winding-Up or appellate proceeding) related to this Agreement or the Advances or the use of the proceeds thereof, whether or not any Indemnified Person is a party thereto, and/or (b) may be incurred by or asserted against such Indemnified Person in connection with or arising out of any pending or threatened investigation, litigation or proceeding, or any action taken by any Person, arising out of or related to any Property of Borrower (all the foregoing, collectively, the "Indemnified Liabilities"); provided that Borrower shall have no obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities to the extent arising from the gross negligence or willful misconduct of such Indemnified Person.

No action taken by legal counsel chosen by Lender or the L/C Issuer in defending against any investigation, litigation or proceeding or requested remedial, removal or response action vitiates or in any way impairs Borrower's obligation and duty hereunder to indemnify and hold

harmless Lender unless such action involved gross negligence or willful misconduct. Neither Borrower nor any other Person is entitled to rely on any inspection, observation, or audit by Lender or its representatives or agents. Lender and the L/C Issuer owe no duty of care to protect Borrower or any other Person against, or to inform Borrower or any other Person of, any adverse condition affecting any site or Property. Neither Lender nor the L/C Issuer are obligated to disclose to Borrower or any other Person any report or findings made as a result of, or in connection with, any inspection, observation or audit by Lender or the L/C Issuer or their respective representatives or agents.

The obligations of Borrower in this Section 11.5 shall survive the payment and performance of all other Obligations. At the election of any Indemnified Person, Borrower shall defend such Indemnified Person using legal counsel satisfactory to such Indemnified Person in such Indemnified Person's sole discretion, at the sole cost and expense of Borrower. All amounts owing under this Section 11.5 shall be paid within thirty (30) days after demand.

*Section 11.6. Right of Set Off.* To the extent permitted by applicable law, Lender reserves a right of setoff in all of Borrower's accounts with Lender (whether checking, savings, or some other account). Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums due and owing from Borrower against any and all such accounts. This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include the Loan Loss Reserve Accounts, the Energy Efficiency Account or any trust accounts that are not subject to setoff under applicable law. In addition, Lender's right of setoff shall apply to the Shell Energy Accounts, but only to the extent that the funds on deposit therein are not subject to a valid and perfected first-priority security interest in favor of Shell Energy.

*Section 11.7. Survival of Representations.* All representations and warranties made herein or in certificates given pursuant hereto will survive the execution and delivery of this Agreement and the other Loan Documents, and will continue in full force and effect with respect to the date as of which they were made as long as any credit is in use or available hereunder.

*Section 11.8. Notices.* Except as otherwise specified herein, all notices hereunder will be in writing (including by hand, post, courier or telecopy) and will be given to the relevant party at its address or telecopier number set forth below, or such other address or telecopier number as such party may hereafter specify by notice to the other given by certified or registered mail, by Federal Express or DHL, by telecopy or by other telecommunication device capable of creating a written record of such notice and its receipt. Notices hereunder will be addressed:

To Borrower at:

Marin Clean Energy  
1125 Tamalpais Ave.  
San Rafael, CA 94901  
Telephone: (415) 464-6010  
Telecopy: (415) 499-7880  
Attention: Executive Officer

With a copy (not constituting notice) to:

Richards Watson & Gershon  
44 Montgomery Street, Suite 3800  
San Francisco, California 94104-4811  
Telephone: (415) 421-8484  
Telecopy: (415) 421-8486  
Attention: Greg Stepanicich

To Lender at:

River City Bank  
2485 Natomas Park Drive, Suite 400  
Sacramento, CA 95833  
Telephone: (916) 567-2700  
Telecopy: (916) 567-2780  
Attention: Alice Harris  
Loan Center

Each such notice, request or other communication will be effective (i) if given by telecopier, when such telecopy is transmitted to the telecopier number specified in this Section and a confirmation of such telecopy has been received by the sender; (ii) if given by mail, three (3) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (iii) if given by any other means, when delivered at the addresses specified in this Section 11.8; *provided that* any notice given pursuant to Section 2.2 hereof will be effective only upon receipt.

For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address.

*Section 11.9. Headings.* Section headings used in this Agreement are for convenience of reference only and are not a part of this Agreement for any other purpose.

*Section 11.10. Severability of Provisions.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the

extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

*Section 11.11. Counterparts.* This Agreement may be executed in any number of counterparts, and by different parties hereto on separate counterparts, and all such counterparts taken together will be deemed to constitute one and the same instrument.

*Section 11.12. Assignments, Binding Nature, Governing Law, Etc.* This Agreement will be binding upon Borrower and its permitted successors and assigns, and will inure to the benefit of Lender and the benefit of its permitted successors and assigns, including any permitted subsequent holder of the Promissory Note. This Agreement and the rights and duties of the parties hereto will be construed and determined in accordance with the internal laws of the State of California without regard to principles of conflicts of laws. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby. Borrower may not assign its rights hereunder without the written consent of Lender. Lender may assign its rights hereunder without the consent of Borrower, but only if after any such assignment Lender acts as the lead agent or administrative agent with respect to this Agreement.

*Section 11.13. Submission to Jurisdiction; Waiver of Jury Trial.* Borrower hereby submits to the nonexclusive jurisdiction of the United States District Court for the Eastern District of California and of any California State court sitting in the County of Sacramento for purposes of all legal proceedings arising out of or relating to this Agreement, the other Loan Documents or the transactions contemplated hereby or thereby. Borrower irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court has been brought in an inconvenient forum. Borrower hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to any Loan Document or in the transactions contemplated thereby.

*Section 11.14. Time is of the Essence.* Time is of the essence in the performance and enforcement of this Agreement and the other Loan Documents.

*Section 11.15. Consent to Loan Participation.* Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Non-Revolving Credit to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to this Agreement, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interest in the Promissory Note and will have all the rights granted under the participation agreement or agreements governing the same of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally

agrees that either Lender or such purchaser may enforce Borrower's obligations under this Agreement irrespective of the failure or insolvency of any holder of any interest in the Promissory Note. Borrower further agrees that the purchaser of any such participation interests may enforce the interests irrespective of any personal claims or defenses that Borrower may have against Lender.

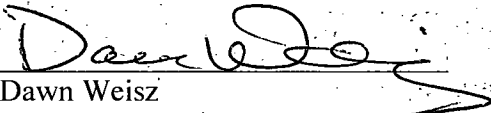
*Section 11.16. No Recourse Against Constituent Members of Borrower.* Borrower is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. Borrower shall be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and the Promissory Notes. Lender shall not make any claims, take any actions or assert any remedies against any of Borrower's constituent members in connection with any payment default by Borrower under this Agreement or any other Loan Document.

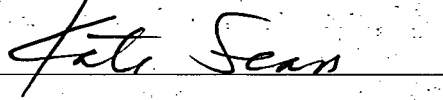
**[remainder of page left intentionally blank; signature page follows]**

Upon your acceptance hereof in the manner hereinafter set forth, this Agreement will constitute a contract between us for the uses and purposes hereinabove set forth.

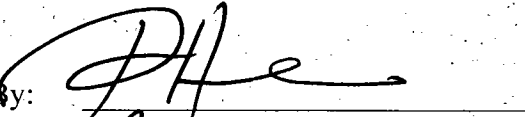
Executed and delivered in Sacramento, California, as of the first date written above.

MARIN CLEAN ENERGY

By:   
Dawn Weisz  
Executive Officer

By:   
Chairman of the Board

RIVER CITY BANK

By:   
Name: PATRICK MCHONE  
Its: CHIEF CREDIT OFFICER

**SCHEDULE 7.4**

**Indebtedness for Borrowed Money**



EXHIBIT A

**Definitions**

“*Advance*” and “*Advances*” is defined in Section 2.1.

“*Agreement*” means this Non-Revolving Credit Agreement, as the same may be amended, modified or restated from time to time in accordance with the terms hereof.

“*Applicable Rate*” means a variable rate of interest equal to the One-Month LIBOR plus 1.75 percentage points per annum as adjusted for any maximum or minimum rate limitations as provided in the Loan Documents. The Applicable Rate is subject to increase as provided in Section 9.4.

“*Authorized Representative*” means those persons shown on the list of officers provided by Borrower pursuant to Section 8.2(a)(iv), or on any update of any such list provided by Borrower to Lender, or any further or different officer of Borrower so named by any Authorized Representative of Borrower in a written notice to Lender.

“*Borrower*” is defined in the introductory paragraph.

“*Business Day*” means a day (other than a Saturday or Sunday) on which banks are not authorized or required to be closed in Sacramento, California.

“*Capital Lease*” means at any date any lease of Property which in accordance with GAAP is required to be capitalized on the balance sheet of the lessee.

“*Capitalized Lease Obligation*” means the amount of liability as shown on the balance sheet of any Person in respect of a Capital Lease as determined at any date in accordance with GAAP.

“*Cash Advance Note*” means a Promissory Note substantially in the form of **Exhibit C** attached hereto, executed by Borrower in connection with each Cash Advance.

“*Consulting Engineer*” means the engineer, engineering firm or consulting firm retained from time to time by Borrower to provide independent analysis and planning advice regarding the business strategy and operations of Borrower.

“*Debtor Relief Laws*” means the United States Bankruptcy Code and all other liquidation, conservatorship, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“*Default*” means any event or condition the occurrence of which would, with the passage of time or the giving of notice, or both, constitute an Event of Default.

*"Default Rate"* means the Applicable Rate plus five percent (5.0%).

*"Dollars and \$"* mean lawful money of the United States.

*"Energy Efficiency Account"* means the River City Bank Account No. xxxxxx-181 held by Borrower with Lender.

*"Event of Default"* is defined in Section 10.1.

*"GAAP"* means generally accepted accounting principles as established and interpreted by the Governmental Accounting Standards Board (GASB) and as applied by Borrower.

*"Governmental Authority"* means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

*"Honor Date"* is defined in Section 4.3(a).

*"Indebtedness for Borrowed Money"* means, for any Person (without duplication), (i) all indebtedness created, assumed or incurred in any manner by such Person representing money borrowed (including by the issuance of debt securities), (ii) all indebtedness for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business not more than 90 days past due), (iii) all indebtedness secured by any Lien upon Property of such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness, (iv) all Capitalized Lease Obligations of such Person, and (v) all obligations of such Person on or with respect to letters of credit, banker's acceptances and other evidences of indebtedness representing extensions of credit whether or not representing obligations for borrowed money.

*"Indemnified Liabilities"* is defined in Section 11.5.

*"Indemnified Person"* is defined in Section 11.5.

*"Initial Rate Set Date"* means the date of issuance of each Promissory Note at which time Lender will determine the One-Month LIBOR which shall be in effect until the next Rate Change Date.

*"ISP"* means, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice, Inc. (or other such later version thereof as may be in effect at the time of issuance).

*"Joint Powers Agreement"* means the Joint Powers Agreement of Borrower effective as of December 19, 2008, and as amended from time to time.

“*L/C Borrowing*” means an Advance arising from a drawing under a Letter of Credit that Borrower has not reimbursed by the Reimbursement Date in accordance with Section 4.3(a).

“*L/C Credit Extension*” means, with respect to any Letter of Credit, the issuance thereof, increase in the amount thereof, or extension of the expiration date thereof.

“*L/C Issuer*” means either River City Bank or MUFG Union Bank, N.A. on behalf of River City Bank, as the case may be.

“*L/C Issuing Documents*” means, with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and Borrower or in favor of the L/C Issuer and relating to any such Letter of Credit.

“*Lender*” is defined in the introductory paragraph.

“*Letter of Credit*” means any letter of credit issued hereunder that provides for the payment of cash upon the honoring of a presentation thereunder.

“*Letter of Credit Application*” means a written request for a Letter of Credit substantially in the form of **Exhibit E** attached hereto.

“*Letter of Credit Expiration Date*” means the day that is thirty (30) calendar days before the Termination Date.

“*Letter of Credit Fees*” mean the fees and charges related to the issuance of a Letter of Credit as provided in Section 4.6.

“*Letter of Credit Note*” means a Promissory Note substantially in the form of **Exhibit B** attached hereto, executed by Borrower in connection with each unreimbursed drawing under a Letter of Credit in accordance with Section 2.3(a).

“*Lien*” means any mortgage, lien, security interest, pledge, charge or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

“*Loan Documents*” means this Agreement, the Promissory Notes, the Assignment of Debt Service Reserve Account, the Letters of Credit, the L/C Issuing Documents and all other documents, certificates, instruments and agreements relating to the foregoing or otherwise executed by Borrower in connection with the Non-Revolving Credit.

“*Loan Fee*” means one-quarter of one percent (0.25%) of the Non-Revolving Credit Commitment.

“*Loan Loss Reserve Accounts*” means the River City Bank Account Nos. xxxxxx-960, xxxxxx-088 and xxxxxx-096, and any other “Loan Loss Reserve Account”

established pursuant to the MCE On-Bill Repayment Program Operating Agreement between Borrower and Lender dated as of July 8, 2013, as amended from time to time.

*"Maintenance and Operation Costs"* shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and shall mean the reasonable and necessary costs paid or incurred by Borrower for maintaining and operating the System, including costs of electric energy and power generated or purchased, costs of transmission and fuel supply, and including all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and including all administrative costs of Borrower that are charged directly or apportioned to the maintenance and operation of the System, such as salaries and wages of employees, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of Borrower such as fees and expenses of an independent certified public accountant and the Consulting Engineer, and including Borrower's share of the foregoing types of costs of any electric properties co-owned with others, excluding in all cases depreciation, replacement and obsolescence charges or reserves therefore and amortization of intangibles and extraordinary items computed in accordance with GAAP or other bookkeeping entries of a similar nature. Maintenance and Operation Costs shall include all amounts required to be paid by Borrower under Take or Pay Contracts.

*"Maturity Date"* means, for any Letter of Credit Note, the initial expiration date of the Letter of Credit corresponding to such Letter of Credit Note; and for any Cash Advance Note or Term Note, the date so specified in such Cash Advance Note or Term Note as the Maturity Date.

*"Non-Revolving Credit"* is defined in Section 2.1.

*"Non-Revolving Credit Commitment"* means, at any time of determination, an amount equal to \$15,000,000.00 less the aggregate principal amount of Advances made by Lender under the Non-Revolving Credit.

*"Non-Revolving Credit Termination Date"* means the earlier to occur of (a) the Termination Date, and (b) the date on which Lender's obligation to make Advances under the Non-Revolving Credit terminates pursuant to Section 10.

*"Obligations"* means and includes all loans, advances, debts, liabilities and obligations of Borrower to Lender, of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter owed by Borrower to Lender, whether in connection with the Loan Documents or otherwise, including without limitation all interest, fees (including Letter of Credit Fees), charges, expenses, attorneys' fees and accountants' fees chargeable to Borrower or payable by Borrower thereunder.

*"One-Month LIBOR"* means, as of each Rate Change Date or the Initial Rate Set Date, the rate determined by Lender to be the One-Month LIBOR rate as posted on

Bankrate.com (or, if such rate becomes unavailable to Lender, a substitute rate based on an index selected by Lender in its sole discretion) as in effect from time to time, which rate is not necessarily the lowest rate charged by Lender on its loans and is set by Lender in its sole discretion.

“*Payment Date*” means, other than the Termination Date or any Maturity Date, the first day of each calendar month.

“*Permitted Liens*” is defined in Section 9.8.

“*Person*” means an individual, partnership, corporation, company, limited liability company, association, trust, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof.

“*Property*” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“*Rate Change Date*” means the first calendar day of each calendar month.

“*Reimbursement Date*” is defined in Section 4.3(a).

“*Related Parties*” means, with respect to any Person, such Person’s affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s affiliates.

“*Responsible Officer*” means the Chief Executive Officer of Borrower.

“*RCB Letter of Credit*” means a Letter of Credit issued by River City Bank.

“*Shell Agreements*” means (i) that certain Master Power Purchase and Sale Agreement, dated as of February 5, 2010, between Shell Energy and Borrower, (ii) the Shell Security Agreement, (iii) the Shell Collateral Account Agreement, and (iv) any and all amendments, modifications, and restatements of the documents referred to in the preceding clauses (i) through (iii).

“*Shell Collateral Account Agreements*” means the “Secured Account Agreement(s)” as defined in the Shell Security Agreement.

“*Shell Energy*” means Shell Energy North America (US), L.P., a Delaware limited partnership.

“*Shell Energy Accounts*” means the River City Bank Account Nos. xxxxxx-221 and xxxxxx-388, and any other accounts maintained with Lender in which Borrower has granted a security interest to Shell Energy pursuant to the Shell Security Agreement.

“*Shell Security Agreement*” means that certain Second Amendment to and Restatement of Security Agreement, dated as of February 2, 2012, between Shell Energy and Borrower.

*"System"* means (i) all facilities, works, properties, structures and contractual rights to distribution, metering and billing services, electric power, scheduling and coordination, transmission capacity, and fuel supply of Borrower for the generation, transmission and distribution of electric power, (ii) all general plant facilities, works, properties and structures of Borrower, and (iii) all other facilities, properties and structures of Borrower, wherever located, reasonably required to carry out any lawful purpose of Borrower. The term shall include all such contractual rights, facilities, works, properties and structures now owned or hereafter acquired by Borrower.

*"Termination Date"* means August 31, 2016.

*"UCC"* means the Uniform Commercial Code as enacted in the State of California.

*"UCP"* means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce ("ICC") Publication No. 600 (or other such later version thereof as may be in effect at the time of issuance).

*"Union Letter of Credit"* means a Letter of Credit issued by MUFG Union Bank, N.A.

*"Winding-Up"* means, in relation to a Person, a voluntary or involuntary case or other proceeding or petition seeking dissolution, liquidation, reorganization, administration, assignment for the benefit of creditors or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official over that Person or any substantial part of that Person's Properties.

**EXHIBIT B****LETTER OF CREDIT NOTE**

\$ \_\_\_\_\_

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

FOR VALUE RECEIVED, **MARIN CLEAN ENERGY**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the lesser of (a) the principal sum of \_\_\_\_\_/100 DOLLARS (\$ \_\_\_\_\_), or (b) the aggregate unpaid principal amount of Advances made to Borrower by Lender under the Letter of Credit described below to which this Letter of Credit Note (this "*Note*") relates, pursuant to the terms of that certain Non-Revolving Credit Agreement (the "*Credit Agreement*") dated as of July 31, 2015, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Note shall be made to Lender at its address specified in the Credit Agreement, or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

This Note is executed in connection with that certain standby letter of credit (the "*Letter of Credit*") dated as of [\_\_\_\_], and issued by [\_\_\_\_], as "*Issuing Bank*," for the benefit of [\_\_\_\_], as "*Beneficiary*," in the face amount of [\_\_\_\_]. Under Section 4.3 of the Credit Agreement, if Borrower fails to reimburse the Issuing Bank for the honor of a drawing under the Letter of Credit on or before the Reimbursement Date, the Unreimbursed Amount will become an Advance of principal under this Note made as of the Honor Date and will bear interest from the Honor Date.

Payment Terms. Borrower agrees to pay monthly payments of interest only on the unpaid principal balance of this Note as of each Payment Date beginning on the latter of (a) the first Payment Date after the Honor Date, or (b) October 1, 2015, with all subsequent payments due and payable on each Payment Date thereafter as provided in Section 3 of the Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on the earlier of (x) the expiration date of the Letter of Credit, subject to amendment or extension from time to time in accordance with the terms of the Loan Documents, or (y) the Non-Revolving Credit Termination Date. Under Section 5.2 of the Credit Agreement and subject to the conditions set forth therein, Borrower may request that any amounts due and payable hereunder on the Termination Date be converted into a Term Loan evidenced by a Term Note.

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 10.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise

“*System*” means (i) all facilities, works, properties, structures and contractual rights to distribution, metering and billing services, electric power, scheduling and coordination, transmission capacity, and fuel supply of Borrower for the generation, transmission and distribution of electric power, (ii) all general plant facilities, works, properties and structures of Borrower, and (iii) all other facilities, properties and structures of Borrower, wherever located, reasonably required to carry out any lawful purpose of Borrower. The term shall include all such contractual rights, facilities, works, properties and structures now owned or hereafter acquired by Borrower.

“*Termination Date*” means August 31, 2016.

“*UCC*” means the Uniform Commercial Code as enacted in the State of California.

“*UCP*” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“*ICC*”) Publication No. 600 (or other such later version thereof as may be in effect at the time of issuance).

“*Union Letter of Credit*” means a Letter of Credit issued by MUFG Union Bank, N.A.

“*Winding-Up*” means, in relation to a Person, a voluntary or involuntary case or other proceeding or petition seeking dissolution, liquidation, reorganization, administration, assignment for the benefit of creditors or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official over that Person or any substantial part of that Person’s Properties.



any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. This Note and the holder hereof are entitled to all of the rights benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

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

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender's rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

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

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.

MARIN CLEAN ENERGY

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

Dawn Weisz  
Executive Officer

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

Chairman of the Board

**EXHIBIT C****CASH ADVANCE NOTE**

\$ \_\_\_\_\_

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

FOR VALUE RECEIVED, **MARIN CLEAN ENERGY**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of \_\_\_\_\_/100 DOLLARS (\$ \_\_\_\_\_), pursuant to the terms of that certain Non-Revolver Credit Agreement (the "*Credit Agreement*") dated as of July 31, 2015, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Cash Advance Note (this "*Note*") shall be made to Lender at its address specified in the Credit Agreement, or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Payment Terms. Under the terms of the Credit Agreement, Borrower may request Cash Advances under the Non-Revolver Credit. This Note evidences a Cash Advance and will bear interest from the date of such Cash Advance. Borrower agrees to pay monthly payments of interest only on the unpaid principal balance of this Note as of each Payment Date beginning on the latter of (a) the first Payment Date after the date of the Cash Advance, or (b) October 1, 2015, with all subsequent payments due and payable on each Payment Date thereafter as provided in Section 3 of the Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on the Non-Revolver Credit Termination Date. Under Section 5.3 of the Credit Agreement and subject to the conditions set forth therein, at any time before the Non-Revolver Credit Termination Date, Borrower may request that any amounts due and payable hereunder be converted into a Term Loan evidenced by a Term Note.

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

Miscellaneous. This Note and the holder hereof are entitled to all of the rights benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the

terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

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

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender's rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

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

MARIN CLEAN ENERGY

By: \_\_\_\_\_  
Dawn Weisz  
Executive Officer

By: \_\_\_\_\_  
Chairman of the Board

**EXHIBIT D****TERM NOTE**

\$ \_\_\_\_\_

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

FOR VALUE RECEIVED, **MARIN CLEAN ENERGY**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of \_\_\_\_\_/100 DOLLARS (\$ \_\_\_\_\_), pursuant to the terms of that certain Non-Revolving Credit Agreement (the "*Credit Agreement*") dated as of July 31, 2015, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Term Note (this "*Note*") shall be made to Lender at its address specified in the Credit Agreement, or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Payment Terms. Under Section 5 of the Credit Agreement and subject to the conditions set forth therein, Borrower may request that unpaid Advances under the Letter of Credit Notes and/or the Cash Advance Notes be converted to a Term Loan. This Note evidences a Term Loan made to Borrower as of \_\_\_\_\_ [date] in the original principal amount of \$ \_\_\_\_\_, and will bear interest from the date hereof. Borrower agrees to repay this Note by making sixty (60) equal monthly payments of principal hereunder in the amount of \$ \_\_\_\_\_ each, plus all accrued but unpaid interest on the unpaid principal balance of this Note as of each Payment Date, beginning on the first Payment Date after the date of this Note, with all subsequent payments due and payable on each Payment Date thereafter as provided in the Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on \_\_\_\_\_ [date – not to exceed 60 months].

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

Miscellaneous. This Note and the holder hereof are entitled to all of the rights benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

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

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender's rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

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

MARIN CLEAN ENERGY

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

Dawn Weisz  
Executive Officer

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

Chairman of the Board

EXHIBIT E

**Letter of Credit Application**



**River City Bank**

**APPLICATION AND AGREEMENT FOR IRREVOCABLE STANDBY LETTER OF CREDIT**

PLEASE CHECK AND COMPLETE APPLICABLE BOXES BELOW.

Marin Clean Energy ("Applicant") requests the Issuing Bank selected below ("Bank") to issue an irrevocable standby letter of credit ("Credit") with the following terms and conditions for delivery to the beneficiary named below ("Beneficiary") by Courier:

Select (X)	Issuing Bank
	River City Bank
	Union Bank
Amount in USD\$	\$
Applicant	Marin Clean Energy
Beneficiary	(Enter complete name and address of energy company)
Expiration Date	
Other LC Conditions	<input type="checkbox"/> Partial Drawing Allowed <input type="checkbox"/> Partial Drawings NOT Allowed
Credit Available by Payment:	Against presentation of the documents detailed therein.
Documents Required: (Provide an attachment from energy contract which provides language required from Beneficiary)	A dated statement purportedly signed by an authorized officer or representative of Beneficiary stating: "The undersigned being a duly authorized officer or representative of [Beneficiary Name] hereby represents and warrants that the amount of the accompanying draft represents and covers: [insert text as required]"
Special Conditions	<input type="checkbox"/> Automatic Renewal Clause for [12 months] with [120] days prior Notification of non-renewal <input type="checkbox"/> Other
Final Expiration Date (if applicable)	
IMPORTANT NOTICE	(A) Applicant understands that the risk is greater if Applicant requests a standby letter of credit which requires only a simple demand without any supporting documentation. Typically, standby letters of credit require the beneficiary to provide some written statement in order to obtain payment. However, a beneficiary that can obtain a standby letter of credit available only against presentation of a simple demand, relieves itself of any documentary requirements.  (B) Applicant understands that the final form of Credit may be subject to such revision and changes as are deemed necessary or appropriate by Bank and Applicant hereby consents to such revisions and changes.
<p>The opening of the Credit is subject to the terms and conditions appearing on this page and on the subsequent page(s) hereof and on the terms and conditions of the Non-Revolving Credit Agreement, as may be amended from time to time, between Applicant and Bank.</p> <p>Applicant agrees to be bound by the terms and conditions set forth or referred to above and certifies to Bank that Applicant has duly and validly executed and entered into the below Authorization and Agreement.</p>	



**AUTHORIZATION AND AGREEMENT BY APPLICANT**

The undersigned Applicant hereby requests Bank to issue the Credit, and, in consideration of issuance by Bank, irrevocably agrees: (i) to all terms and conditions of this Application and Agreement and the Credit; (ii) that Bank is issuing the Credit for Applicant based solely on Applicant's credit with Applicant having sole right to give instructions and make agreements or amendments with respect to this Application and Agreement and the Credit, and any presentation made under the Credit.

Marin Clean Energy

Authorized Signature

Date:

In consideration of MUFJ Union Bank, N.A. ("Bank") issuing an irrevocable standby letter of credit (as amended or modified from time to time, the "Credit") as provided on the previous page(s) of this Application and Agreement for Irrevocable Standby Letter of Credit (the "Agreement") for the account of the party or parties executing such previous pages as applicant (individually and collectively, "Applicant" or "you"), you hereby agree with Bank as follows:

1. That you shall:

(a) Pay Bank, on demand, such amounts as are required to pay or reimburse Bank for all disbursements ("Disbursement(s)") made or to be made by Bank or Bank's correspondents in connection with the Credit.

(b) Pay Bank, on demand, all commissions, fees and other charges ("Charge(s)") arising out of or in connection with the Credit (including without limitation those for the account of the person or entity in whose favor the Credit is issued (the "Beneficiary") if the Beneficiary fails to pay on first demand).

(c) Pay Bank, on demand, all expenses ("Expense(s)") which Bank or Bank's correspondents may sustain or incur in connection with the Credit.

(d) Make each such payment in immediately available funds in the currency of the applicable Disbursement, Charge or Expense; provided, however, if such payment is to be in a currency other than U.S. Dollars, Bank may, at its option, require such amount to be paid in an equivalent amount of U.S. Dollars converted at Bank's then current rate of exchange.

You agree that Bank may make demand for payment in writing or by telephone, facsimile, SWIFT, telex, Bank's Global Trade Services web product or other method of teletransmission (collectively, "Telecommunications"), and expressly authorize Bank to debit any of your accounts maintained with Bank or any of Bank's affiliates or subsidiaries for any or all of your obligations hereunder as and when the same become due.

2. In addition to all other amounts required to be paid hereunder, you agree to pay Bank, on demand: (a) all charges, costs and expenses (including without limitation the allocated costs of Bank's business staff and reasonable attorneys' fees and costs of all kinds, including the allocated costs of Bank's in-house legal counsel and staff) incurred by Bank in connection with (i) any amendments or negotiations in respect of any documents evidencing your obligations hereunder; (ii) any legal advice sought by Bank in connection with Bank's rights, remedies, legal position or obligations; (iii) enforcing your obligations hereunder; and (iv) any proceeding for declaratory relief, interpleader, injunction, restraining order or similar relief, or any counterclaim or appeal to any such proceeding brought by or against Bank; (b) all taxes levied or imposed by any government agency in connection with this Agreement or the Credit; and (c) interest on any amount owed hereunder which is not paid when due as provided under the Non-Revolving Credit Agreement, and if the Non-Revolving Credit Agreement is not in effect, then at a per annum rate (computed for actual days elapsed on the basis of a 360-day year) equal to (i) 5% in excess of the Reference Rate in the case of amounts due in U.S. Dollars; or (ii) 5% in excess of the rate Bank determines to be its cost of funding the relevant loan or advance (the "Funding Rate") in the case of amounts due in a currency other than U.S. Dollars. Each of these rates shall change from time to time as and when the Reference Rate or the applicable Funding Rate, as the case may be, changes. As used herein, "Reference Rate" means the rate announced by Bank from time to time at its corporate headquarters as its Reference Rate. The Reference Rate is an index rate determined by Bank from time to time as a means of pricing certain extensions of credit and is neither directly tied to any external rate or index nor necessarily the lowest rate of interest charged by Bank at any given time. No provision of this Agreement shall require the payment or permit the collection of interest in excess of the maximum rate permitted by applicable law.

3. In connection with the Credit, you acknowledge and agree:

(a) That the Credit may be issued by any branch of Bank.

(b) That Bank and Bank's correspondents shall be entitled to make payments or to accept or negotiate drafts drawn under the Credit if the documents presented thereunder appear on their face to be in compliance with the terms and conditions of the Credit. In addition, neither Bank nor Bank's correspondents shall have any liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of the documents presented under the Credit, for the authority of any persons signing such documents, for the description, quantity, quality, weight, condition, packing, delivery, value or existence of the goods represented by such documents, for the acts, omissions, good faith, solvency, performance or capacity of the Beneficiary of the Credit, the consignors, carriers, forwarders, consignees or insurers of the goods described therein, or any other persons, for the performance of any contracts which you enter into with the Beneficiary of the Credit, or for the consequences arising out of any delay or loss in transit of any messages, letters or documents, any delay, interruption, mutilation or other error in the transmission of any communications by any method of Telecommunications or any error in the translation or interpretation of any technical terms or any messages or documents relating to the Credit.

(c) Except in the case where the Credit expressly provides otherwise, the Credit shall be subject to, and performance by Bank, Bank's correspondents and the Beneficiary under the Credit shall be governed by, the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500, or such subsequent revision thereof, adopted by the International Chamber of Commerce, as is in effect on the date the Credit is issued.

(d) If the Credit is expressed to be governed by the laws of any jurisdiction other than the laws of the State of California, or any other state that has adopted into law a law in the same form as Section 5113 of the California Commercial Code as in effect on the date the Credit is issued, and the Credit expressly provides that it shall be available to successors in interest (or parties similar in nature) to the named Beneficiary, that Bank shall regard any person or entity purporting to be such a successor as such a successor, without any responsibility for verifying the facts of such purported succession, all on your complete responsibility, even if the wrong party is paid.

(e) If you, or some other person or entity acting on your behalf, grant Bank a security interest in any real or personal property as collateral for your obligations arising in connection with the Credit, that Bank, at its discretion, may continue to hold such collateral even after the expiration date of the Credit until the Credit is returned to Bank undrawn, and that in no event shall any release of the collateral be construed to be a release or discharge of your obligations relating to the Credit.

(f) If you have requested that the Credit recite that it is issued for a party other than you ("Account Party"), that such Account Party has and will have no interest in the Credit or its subject matter and that all interests in the Credit and its subject matter will be held exclusively and absolutely by you.

(g) That you irrevocably waive and surrender, and agree not to exercise, any rights that would otherwise accrue to you through Bank or Bank's making payment under the Credit, whether by operation of law, equity or contract and whether under the doctrine of subrogation or otherwise, and that you agree that you will pursue only such remedies as you may have or such obligations as you may be owed in respect of such payments solely and directly on the basis of the contract(s) you have with, or the tort liability of, the Beneficiary or transferee of the Credit, the assignee of the proceeds of the Credit, or other persons or entities, as applicable.

(h) If the Credit is the subject of an "extend or pay" request received by Bank from the Beneficiary and provided by Bank to you, that you will continue to be liable to Bank for the Credit, even though an expiry or reduction in amount thereof might otherwise appear to occur after Bank's receipt, until the matter has been resolved to Bank's satisfaction. You understand that Bank retains every right to decline to amend or extend the Credit.

(i) If the Beneficiary of the Credit is a bank or other financial institution (other than Bank) which, in reliance upon the Credit, is asked to issue its own guaranty or other form of undertaking (including a letter of credit) on your behalf (a "Local Bank") and, in fact, issues such guaranty or other form of undertaking on your behalf, that Bank shall have no responsibility to you for the wording of such guaranty or other form of undertaking, or its legal effect, whether under foreign law or

otherwise, and that you will have complete, continuing liability to the Local Bank and to Bank for any and all claims made under such guaranty or other form of undertaking until it terminates, whether or not the Credit has expired.

(j) If any commercial type documents (such as invoices or bills of lading, but not a default or claim statement) are required to be presented under the Credit, that Bank shall have no responsibility whatsoever for examining any such documents under any standard under any circumstances.

4. The occurrence of any one or more of the following shall constitute a Default ("Default") hereunder: (a) your failure to make any payment required hereunder when due, or to perform or observe any other covenant, obligation or agreement contained herein; (b) any breach, misrepresentation or other default by you, any guarantor or any person or entity other than you providing security for your obligations hereunder (each, including you, an "Obligor") under any security agreement, guaranty or other agreement between Bank and any Obligor; (c) the insolvency of any Obligor or the failure of any Obligor generally to pay such Obligor's debts as such debts become due; (d) the commencement as to any Obligor of any voluntary or involuntary proceeding under any laws relating to bankruptcy, insolvency, reorganization, arrangement, debt adjustment or debtor relief; (e) the assignment by any Obligor for the benefit of such Obligor's creditors; (f) the appointment or commencement of any proceeding for the appointment of a receiver, trustee, custodian or similar official for all or substantially all of any Obligor's property; (g) the commencement of any proceeding for the dissolution or liquidation of any Obligor; (h) the termination of existence or death (if an individual) of any Obligor; (i) the revocation of any guaranty or subordination agreement given in connection with your obligations hereunder; (j) the failure of any Obligor to comply with any order, judgment, injunction, decree, writ or demand of any court or other public authority; (k) the filing or recording against any Obligor or the property of any Obligor of any notice of levy, notice to withhold or other legal process for taxes other than property taxes; (l) the default by any Obligor who or which is personally liable for your obligations hereunder on any other obligation concerning the borrowing of money; (m) the issuance against any Obligor or the property of any Obligor of any writ of attachment, execution or other judicial lien; or (n) the deterioration of the financial condition of any Obligor which results in Bank deeming itself, in good faith, insecure.

Immediately and without notice upon the occurrence of a Default specified in clauses (c), (d), (e) or (f) of this Section 4, or, at the option and upon the declaration of Bank, upon the occurrence of any other Default, your obligations hereunder shall immediately become due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived, and Bank may immediately, and without the expiration of any period of grace, enforce payment of such obligations and exercise any and all other rights and remedies granted to it hereunder or by law. If at the time of any such Default and acceleration of your obligations hereunder, Bank remains liable under the Credit for any reason, then you will provide Bank, on demand, with sufficient funds ("Contingent Security") from which to pay all amounts which Bank may thereafter be called upon to pay in respect of the Credit. All amounts constituting Contingent Security shall be deposited in an account to be maintained with Bank and are hereby pledged to Bank by you as security for your obligations hereunder.

5. This Agreement may not be amended, modified or waived except by a written instrument signed by the party or parties against whom enforcement thereof is sought. No failure or delay on Bank's part in exercising any right hereunder shall operate as a waiver of any right, nor shall any partial exercise of any such right preclude any other further exercise thereof or the exercise of any other right. Each waiver or consent under any provision hereof shall be effective only in the specific instance and for the specific purpose for which given. If this Agreement is executed by more than one person or entity, the obligations of each of you hereunder shall be joint and several, and each of you agree that any one of you, acting alone, shall have full right and authority, binding on all of you, to request or consent to amendments, renewals, extensions, waivers or modifications of the Credit. You hereby acknowledge and agree that Bank is authorized, at any time and from time to time, without notice to you (any such notice being expressly waived), and to the fullest extent permitted by law, to set off and apply any and all deposits (whether general or special, time or demand, or provisional or final) at any time held, and all other indebtedness at any time owing by Bank to or for your credit, against any and all of your obligations hereunder.

6. You shall indemnify and hold Bank and each of Bank's employees, officers, shareholders, affiliates, correspondents, agents and representatives and, as to each entity, each of its respective employees, officers, shareholders, affiliates, correspondents, agents and representatives (each, a "Bank-related Person") harmless from and against any and all claims, demands, actions, causes of action, liabilities, damages, losses, costs and expenses (including without limitation the allocated costs of Bank's business staff and reasonable attorneys' fees and costs of all kinds, including the allocated costs of Bank's in-house legal counsel and staff) incurred by Bank and each Bank-related Person arising from (a) the matters contemplated by this Agreement or the Credit; (b) any contention that you have failed to comply with any law, rule, regulation, order or directive applicable to your sales, leases or performance of services to your customers; or (c) any dispute with the Beneficiary or a transferee of the Credit, an assignee of the proceeds of the Credit or any third party relating to the Credit (including without limitation actions brought by you to enjoin payment or drawings under the Credit); provided, however, that this indemnity shall not apply to any of the foregoing incurred solely as a result of the gross negligence or willful misconduct of Bank or any Bank-related Person. The obligation to indemnify set forth in this section shall survive the payment and satisfaction of all of your obligations and liabilities to Bank.

7. Any written notice or other written communication to be given by Bank under this Agreement will be addressed to you at the address specified on the previous page(s) of this Agreement, or at such other address as you may specify in writing. Unless Bank advises you otherwise, all written communications to Bank should be sent to your office of account. Notices are effective upon receipt; provided, however, that notices received after 3:00 p.m., California time, on a Business Day, or on a day other than a Business Day, shall be deemed received as of the next Business Day. As used herein, "Business Day" means a day (other than a Saturday or Sunday) on which banks are open for business in California. Bank shall be protected in acting on any oral or written request or instruction, whether received in writing, by telephone or other form of Telecommunication, which Bank in good faith believes to be genuine and to have been made by you or your authorized agents.

8. This Agreement shall be binding upon and inure to the benefit of Bank, Applicant and each of our respective successors and permitted assigns (and the heirs and personal representatives of Applicant if Applicant is an individual); provided, however, that Applicant may not assign its rights or delegate its duties without the prior written consent of Bank. If, at the request of Applicant, the amount of the Credit is increased, the maturity of the Credit or the time for presentation of drafts or acceptance of documents thereunder is extended or the terms of the Credit are otherwise modified, this Agreement shall continue to be binding on Applicant with regard to the Credit as so increased, extended or otherwise modified, to the drafts and documents covered thereby, and to any actions taken by Bank or Bank's correspondents in accordance with such increase, extension or other modification.

9. This Agreement hereby incorporates any alternative dispute resolution agreement previously, concurrently or hereafter executed between Bank and Applicant. In the event of any challenge to the legality or enforceability of any provision of this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorneys' fees and the allocated costs of Bank's in-house legal counsel and staff, incurred in connection therewith. This Agreement will control in the event of any conflict between it and any other document or agreement entered into between Bank and Applicant. This Agreement shall be governed by and construed in accordance with the laws of the State of California, and Applicant hereby consents to service of process by any means authorized by California law. Applicant hereby waives notice of acceptance by Bank of this Agreement.

EXHIBIT F

**Union Bank Fee Schedule**



## Preferred Pricing Exclusively for River City Bank's Client Marin Clean Energy - Schedule of Fees and Charges for Global Trade Services

### Standby Letters of Credit

<b>Issuance</b>	
Opening Commission	1.25% p.a., minimum \$ 500
Plus processing fee if paid by invoice	\$ 150
Periodic Commission	1.25% p.a., minimum \$ 500
Auto-Renewal/Evergreen	\$ 1,250 per renewal period + Periodic Commission
<b>Amendment</b>	
Increase or Extension	1.25% p.a., minimum \$ 500
Narrative	\$ 150
<b>Advice</b>	
Advising Fee	\$ 150
Amendment	\$ 150
Add Confirmation	by arrangement, minimum \$ 250
<b>Examination/Payment</b>	
Standby Letter of Credit	1/4% per drawing, minimum \$ 200
Direct Pay Examination/Payment	\$ 150
Discrepancy	\$ 100 per examination
Expired, Unused, or Canceled	\$ 150
Drafted - Not issued	\$ 250 per draft
Transfer Letter of Credit	1/4%, minimum \$ 250
Direction to Pay Proceeds	1/4%, minimum \$ 250

### Other Trade Services

<b>Postage</b>	
Domestic	\$ 15
Registered/Certified Mail	\$ 25
<b>Courier</b>	
Domestic	\$ 30
International	\$ 65
Handling Charge (Customer's Courier)	\$ 10
Scan Shipping Documents	by arrangement
<b>Fax/Email Messages</b>	
Domestic	\$ 10
International	\$ 20
<b>Swift or Telex</b>	
Short (1 Page)	\$ 30
Long (2 + Pages)	\$ 65
<b>Payment</b>	
Fedwire or CHIPS	\$ 30
Cashier's Check	\$ 45
Foreign Currency Processing	\$ 65
<b>International Services Activity Statement-Mailed</b>	
Account charge/quarter	\$ 45
Payment by invoice/year	\$ 180
<b>Special Handling</b>	
Excess Detail	by arrangement, minimum \$ 125
Consultation Fee (Applies to Drafting only)	\$ 250 per hour, minimum \$ 250
Credit Reports	by arrangement, minimum \$ 100
Tracers	\$ 35
Trade Finance Investigations	per hour \$ 75, plus cable charges

*Note: Fees assessed by other banks will be additional. Transactions that are not standard may be subject to different charges. MUFG Union Bank, N.A., reserves the right to charge for services not covered by this fee schedule, and to effect any alterations or amendments as we may consider necessary. Preferred Pricing Exclusively for River City Bank's Client Marin Clean Energy - Valid through August 21, 2016 and subject to Annual Renewal.*



**EXHIBIT G  
REQUEST FOR CASH ADVANCE UNDER  
NON-REVOLVING CREDIT AGREEMENT DATED AUGUST 21, 2015  
(the "Agreement")**

Marin Clean Energy ("Borrower") hereby requests River City Bank as Lender to fund a Cash Advance under the above referenced Agreement for the express purpose and under the terms provided herein.

<b>Purpose:</b>	
<b>Date of this Request:</b>	
<b>Amount:</b>	
<b>Date of Proposed Advance:</b>	
<b>Interest and Term:</b>	<input type="checkbox"/> Interest Only with Full Repayment due on Termination Date (August 31, 2016) <input type="checkbox"/> Term Note with Advance payable over 60 months
<b>Account Number for Disbursement:</b>	
<p>The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the Proposed Advance:</p> <p>(A) The representations and warranties of the Borrower set forth in the Agreement and in the Loan Documents are and will be true and correct in all material respects, on and as of the date of the Proposed Advance,</p> <p>(B) At the time and immediately after giving effect to the Proposed Advance, no default or Event of Default has occurred and is continuing.</p>	
<p>The Borrower has caused this Request for Cash Advance to be executed and delivered by its duly authorized officer as of the date first written above.</p> <p>By: _____</p> <p>Title: _____</p>	

**FIRST AMENDMENT TO**

**\$15,000,000**

**NON-REVOLVING CREDIT AGREEMENT**

**Dated as of March 17, 2016**

**by and between**

**MARIN CLEAN ENERGY,  
as Borrower**

**and**

**RIVER CITY BANK,  
as Lender**

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This First Amendment to Non-Revolving Credit Agreement (this "First Amendment") is entered into as of March 17, 2016, by and between **MARIN CLEAN ENERGY**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. ("Borrower"), and **RIVER CITY BANK**, a California corporation ("Lender").

WITNESSETH:

WHEREAS, Borrower has requested, and Lender has agreed to make available to Borrower a non-revolving credit facility upon and subject to the terms and conditions set forth in a Non-Revolving Credit Agreement dated August 21, 2015 between Borrower and Lender (the "Agreement") for issuance of Letters of Credit as sub-facilities thereunder and;

(1) Section 2.3 of the Agreement requires Borrower to execute a Letter of Credit Note in a form attached thereto as Exhibit B upon issuance of each Letter of Credit and ;

(2) Borrower and Lender desires to clarify the maturity date of the Letter of Credit Note as stated in Section 2.3(a)(i) of the Agreement and to clarify the paragraph titled "Maturity Date" as stated in the Exhibit B and replace it with the Exhibit B attached hereto wherein such clarification appears.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

(1) Section 2.3(a)(i) of the Agreement is modified as follows:

"...(i) be due and payable on (x) the applicable Maturity Date, or (y) the Non-Revolving Credit Termination Date, whichever occurs later".

(2) The Original Note attached as Exhibit B to the Agreement is hereby replaced in its entirety by the Exhibit B attached hereto.

**Borrower's Representations and Warranties.** By signing this Agreement, Borrower represents and warrants that (a) Borrower is duly authorized to enter into this Agreement and (b) No default or Event of Default has occurred or is continuing under the Agreement.


**Continuing Validity.** Except as expressly changed in this First Amendment, the terms of the original Agreement remain unchanged and in full force and effect. Consent by Lender to this First Amendment does not waive Lender's right to strict performance of the Agreement as changed, nor obligate Lender to make any future change in terms. Nothing in this First Amendment will constitute a satisfaction of the obligation(s) under the Agreement. It is the intention of Lender to retain as liable parties all makers and endorsers of the original Agreement, including accommodation parties, unless a party is expressly released by Lender in writing. Any

maker or endorser, including accommodation makers, will not be released by virtue of this First Amendment. If any person who signed the original Agreement does not sign this First Amendment below, then all persons signing below acknowledge that this First Amendment is given conditionally, based on the representation to Lender that the non-signing party consents to the changes and provisions of this First Amendment or otherwise will not be released by it. This waiver applies not only to any initial extension, modification or release, but also to all such subsequent actions.


Executed and delivered in Sacramento, California, as of the first date written above.

MARIN CLEAN ENERGY

By:   
Dawn Weisz  
Chief Executive Officer

By:   
Kate Sears  
Chair of the Board

RIVER CITY BANK

By:   
Name: Bruce Harris  
Its: S/D



## EXHIBIT B

## LETTER OF CREDIT NOTE

\$ \_\_\_\_\_

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

FOR VALUE RECEIVED, **MARIN CLEAN ENERGY**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the lesser of (a) the principal sum of \_\_\_\_\_/100 DOLLARS (\$ \_\_\_\_\_), or (b) the aggregate unpaid principal amount of Advances made to Borrower by Lender under the Letter of Credit described below to which this Letter of Credit Note (this "*Note*") relates, pursuant to the terms of that certain Non-Revolving Credit Agreement (the "*Credit Agreement*") dated as of August 21, 2015, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Note shall be made to Lender at its address specified in the Credit Agreement, or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

This Note is executed in connection with that certain standby letter of credit (the "*Letter of Credit*") dated as of [\_\_\_\_], and issued by [\_\_\_\_], as "*Issuing Bank*," for the benefit of [\_\_\_\_], as "*Beneficiary*," in the face amount of [\_\_\_\_]. Under Section 4.3 of the Credit Agreement, if Borrower fails to reimburse the Issuing Bank for the honor of a drawing under the Letter of Credit on or before the Reimbursement Date, the Unreimbursed Amount will become an Advance of principal under this Note made as of the Honor Date and will bear interest from the Honor Date.

Payment Terms. Borrower agrees to pay monthly payments of interest only on the unpaid principal balance of this Note as of each Payment Date beginning on the latter of (a) the first Payment Date after the Honor Date, or (b) October 1, 2015, with all subsequent payments due and payable on each Payment Date thereafter as provided in Section 3 of the Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on (x) the expiration date of the Letter of Credit, subject to amendment or extension from time to time in accordance with the terms of the Loan Documents, or (y) the Non-Revolving Credit Termination Date, whichever occurs later. Under Section 5.2 of the Credit Agreement and subject to the conditions set forth therein, Borrower may request that any amounts due and payable hereunder on the Termination Date be converted into a Term Loan evidenced by a Term Note.

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

Miscellaneous. This Note and the holder hereof are entitled to all of the rights benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

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

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender's rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

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

AI #06\_Att. B: 1st Amendment to Credit Agreement

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.

MARIN CLEAN ENERGY

By: \_\_\_\_\_  
Dawn Weisz  
Executive Officer

**\$20,000,000**

**SECOND AMENDMENT TO  
CREDIT AGREEMENT**

**Dated as of May 19, 2016**

**by and between**

**MARIN CLEAN ENERGY,  
as Borrower**

**and**

**RIVER CITY BANK,  
as Lender**

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This Second Amendment to Credit Agreement (this “Second Amendment”) is entered into as of **May 19, 2016**, by and between **MARIN CLEAN ENERGY**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (“Borrower”), and **RIVER CITY BANK**, a California corporation (“Lender”).

WITNESSETH:

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

WHEREAS, Borrower has requested an increase in the maximum Non-Revolving Credit Commitment from \$15,000,000.00 to \$20,000,000.00 and in exchange has offered to increase the minimum balance in the Debt Service Reserve Account from \$1,657,478.00 to \$2,200,000.00;

WHEREAS, under the current terms of the Credit Agreement, Borrower may not re-borrow Advances as they are repaid. Borrower has requested a change in the non-revolving structure of the Non-Revolving Credit to a revolving structure, such that availability is restored under the Non-Revolving Credit Commitment as prior Cash Advances are repaid and as Letters of Credit are cancelled;

WHEREAS, Borrower has requested an extension of the Termination Date from August 31, 2016 to August 31, 2017; and

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

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

**I. Revolving Structure**

The Non-Revolving Credit, as described in Section 2.1 of the Credit Agreement, is hereby modified as follows:

- (1) Section 2.1 is amended by deleting the phrase from the end of the last sentence of the section that reads “and Borrower may not re-borrow Advances as they are repaid,” and replacing it with “and Borrower may periodically borrow, repay in whole or part, and re-borrow Advances in accordance with the terms herein.”
- (2) All references to the term “Non-Revolving Credit” in the Credit Agreement and any and all Exhibits thereto are replaced with the term “Revolving Credit.”

- (3) All references to the term “Non-Revolving Credit Commitment” in the Credit Agreement and any and all Exhibits thereto are replaced with the term “Revolving Credit Commitment.”
- (4) The definition of “Non-Revolving Credit Commitment” is hereby replaced with the following definition for “Revolving Credit Commitment” in the exhibit titled Exhibit A Definitions as follows:

“Revolving Credit Commitment” means, at any time of determination, an amount equal to \$20,000,000.00 less (i) the aggregate face amount of each outstanding Letter of Credit Note and (ii) the aggregate outstanding principal amount under each Cash Advance Note.
- (5) All references to the term “Non-Revolving Credit Termination Date” in the Credit Agreement and any and all Exhibits thereto are replaced with the term “Revolving Credit Termination Date.”
- (6) The definition of “Non-Revolving Credit Termination Date” is hereby replaced with the following definition for “Revolving Credit Termination Date” in the exhibit titled Exhibit A Definitions as follows:

“Revolving Credit Termination Date” means the earlier to occur of (a) the Termination Date, and (b) the date on which Lender’s obligation to make Advances under the Revolving Credit terminates pursuant to Section 10.
- (7) The following Section 2.3 is hereby added to the Credit Agreement:

“2.3. Revolving Credit. This is a revolving line of credit and any Advance that is repaid may be re-borrowed up to but excluding the Revolving Credit Termination Date.”

## **II. Commitment**

The maximum amount available for Advances under the Credit Agreement is hereby increased from \$15,000,000.00 to \$20,000,000.00, as provided in the new definition of “Revolving Credit Commitment” herein.

## **III. Term Extension**

- (1) The term of the Credit Agreement is hereby extended through August 31, 2017.
- (2) The definition of “Termination Date” is hereby restated to read as follows:

“Termination Date means August 31, 2017.”

## **IV. Debt Service Reserve Account**

- (1) The minimum balance in the Debt Service Reserve Account is hereby increased from \$1,657,487.00 to \$2,200,000.00.
- (2) The first sentence of Section 6.1 is hereby amended to read: “As a condition to Lender’s obligation to make any Advances hereunder, Borrower will open and establish a restricted deposit account or certificate of deposit with Lender (the “Debt Service Reserve Account”) with a balance of not less than \$2,200,000.”
- (3) Subsection “(1)” within Section 6.2 is hereby amended to read “the balance of the Debt Service Reserve Account will not be less than \$2,200,000.00 after giving effect to such withdrawal,”

**V. Interest Rate Floor**

The following sentence is added to the end of the definition of “Applicable Rate”:  
“Under no circumstances will the Applicable Rate be less than 1.75% unless prohibited by applicable law.”

**VI. Conditions Precedent to Effectiveness**

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

(1) Documents.

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

- (a) This Second Amendment;
- (b) The First Amendment to Assignment of Deposit Account of even date herewith; and
- (c) The Invoice for fees and costs associated with this transaction.

(2) Compiled Financial Statements.

Lender shall have received recent financial statements of Borrower compiled by a certified public accountant substantiating a financial condition of Borrower satisfactory to Lender.

(3) Organizational Documents.

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

(4) Debt Service Reserve Account Deposit.

Borrower shall have deposited into the Debt Service Reserve Account in immediately available funds the sum sufficient to increase the balance therein to \$2,200,000.00. (Balance as of 5/10/16: \$1,659,163.75; estimated increase required: \$540,836.25)

(5) Loan and Processing Fees.

Lender shall have received in immediately available funds (a) the sum of \$30,000.00 in payment of a loan fee (0.15% of the Revolving Credit Commitment) and (b) the sum of \$2,500.00 in payment of a documentation fee.

(6) Costs and Expenses.

Lender shall have received payment in immediately available funds all costs and expenses (including without limitation all attorney’s fees) incurred by Lender in connection with the negotiation, documentation and closing of the transaction contemplated hereby. (Legal fee estimate as of 5/10/16: \$2,000.00 – subject to change)

(7) Representations and Warranties.

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

continuing.

**VII. Representations and Warranties**

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

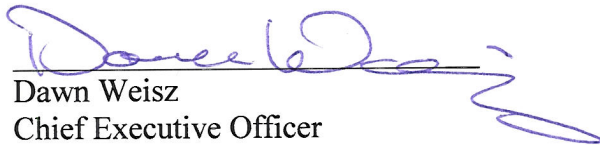
**VIII. Continuing Validity**

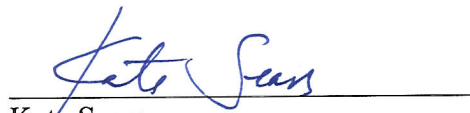
Except as expressly changed in this Second Amendment, the terms of the original Credit Agreement remain unchanged and in full force and effect. Consent by Lender to this Second Amendment does not waive Lender's right to strict performance of the Credit Agreement as changed, nor obligate Lender to make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

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


**MARIN CLEAN ENERGY**

By:

  
Dawn Weisz  
Chief Executive Officer

  
Kate Sears  
Chair, MCE Board of Directors

**RIVER CITY BANK**

By: 

Name: Crystal Williams

Its: VP



**\$25,000,000**

**THIRD AMENDMENT TO  
CREDIT AGREEMENT**

**Dated as of July 20, 2017**

**by and between**

**MARIN CLEAN ENERGY,  
as Borrower**

**and**

**RIVER CITY BANK,  
as Lender**

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

WITNESSETH:

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

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

WHEREAS, Borrower has requested:

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

WHEREAS, in consideration for these changes Borrower has offered to

- (1) increase the minimum balance in the Debt Service Reserve Account from \$2,200,000.00 to \$2,500,000.00 and
- (2) modify certain conditions regarding the conversion of Letter of Credit Notes and Cash Advance Notes to Term Loans;

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

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

**I. Commitment**

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

**II. Term Extension**

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

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

**III. Revolving Credit**

Section 2.1 is hereby restated to read as follows:

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

**IV. Revolving Credit Note**

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

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

(2) The form of Cash Advance Note provided as “Exhibit C Cash Advance Note” to the Credit Agreement is superseded by “Exhibit C Revolving Credit Note” attached hereto.

(3) The form of a request for a Cash Advance Note provided as “Exhibit G Request for Cash Advance Under Non-Revolving Credit Agreement dated August 21,

2015” is superseded by “Exhibit G Request for Revolving Credit Advance” attached hereto.

- (4) The definition of “Revolving Credit Commitment” is hereby restated as follows: “Revolving Credit Commitment” means, at any time of determination, amount equal to \$25,000,000.00 less (i) the aggregate face amount of each outstanding Letter of Credit Note, (ii) the aggregate outstanding principal amount of each Advance, and (iii) the aggregate principal amount of each Term Loan.

**V. Letter of Credit Fees**

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

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

**VI. Conversion of Advances to Term Loans**

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

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

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

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

**VII. Debt Service Reserve Account**

- (1) The minimum balance in the Debt Service Reserve Account is hereby increased from \$2,200,000.00 to \$2,500,000.00 (10% of the total Revolving Credit Commitment amount) as evidenced by the Amended Assignment of Deposit Account Agreement.

- (2) The first sentence of Section 6.1 is hereby amended to read:

“As a condition to Lender’s obligation to make any Advances hereunder, Borrower will open and establish a restricted deposit account or certificate of deposit with Lender (the “Debt Service Reserve Account”) with a balance of not less than \$2,500,000.00 (10% of the total Revolving Credit Commitment amount)”

- (3) Subsection “(1)” within Section 6.2 is hereby amended to read:

“the balance of the Debt Service Reserve Account will not be less than \$2,500,000.00 (10% of the total Revolving Credit Commitment amount) after giving effect to such withdrawal,”

## VIII. Use of Proceeds

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

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

## IX. Applicable Rate

(1) The definition of “Applicable Rate” is amended by decreasing xxx% to xxx% as follows:

“Applicable Rate” means a variable rate of interest equal to the One-Month LIBOR plus xxx percentage points per annum as adjusted for any maximum or minimum rate limitations as provided in the Loan Documents. The Applicable Rate is subject to increase as provided in Section 9.4.

(2) The interest rate floor is reduced from xxx% to xxx%, provided at the end of the definition of “Applicable Rate” as follows:

“Under no circumstances will the Applicable Rate be less than xxx% unless prohibited by applicable law.”

## X. Covenants

(1) Section 9.5, entitled “Fixed Charge Coverage Ratio”, is amended to change the frequency with which the Fixed Charge Coverage Ratio is measured from quarterly to annually, as follows:

Borrower agrees to maintain a minimum Fixed Charge Coverage Ratio at all times greater than or equal to 1.25, measured **annually** as of Borrower’s fiscal year end. As used herein,

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

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

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

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

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

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

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

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

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

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

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

**XI. Events of Default – Material Adverse Change**

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

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

**XII. Loan Fee**

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

**XIII. Conditions Precedent to Effectiveness**

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

(1) Documents.

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

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

(2) Organizational Documents.

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

(3) Debt Service Reserve Account Deposit.

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

(4) Loan and Processing Fees.

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

(5) Costs and Expenses.

Lender shall have received payment in immediately available funds all costs and expenses (including without limitation all attorney's fees) incurred by Lender in connection with the negotiation, documentation and closing of the transaction contemplated hereby. (Legal fee estimate as of 7/5/2017: \$xxxxxx – subject to change)

(6) Representations and Warranties.

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

**XIV. Representations and Warranties**

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

**XV. Continuing Validity**

Except as expressly changed in this Third Amendment, the terms of the original Credit Agreement remain unchanged and in full force and effect. Consent by Lender to this Third Amendment does not waive Lender's right to strict performance of the Credit Agreement as changed, nor obligate Lender to make any future change in terms. Nothing in this Third Amendment will constitute a satisfaction of the obligation(s) of Borrower under the Credit Agreement. It is the intention of Lender to retain as liable parties all makers and endorsers of the original Credit Agreement,

including accommodation parties, unless a party is expressly released by Lender in writing. No maker or endorser, including accommodation makers, will be released by virtue of this Third Amendment. If any person who signed the original Credit Agreement does not sign this Third Amendment below, then all persons signing below acknowledge that this Third Amendment is given conditionally, based on the representation to Lender that the non-signing party consents to the changes and provisions of this Third Amendment or otherwise will not be released by it. This waiver applies not only to any initial extension, modification or release, but also to all such subsequent actions.

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

**MARIN CLEAN ENERGY**

By: \_\_\_\_\_  
Dawn Weisz  
Chief Executive Officer

**RIVER CITY BANK**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



## Second Amendment to Assignment of Deposit Account

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

### WITNESSETH:

WHEREAS, Lender has made available to Borrower a credit facility upon and subject to the terms and conditions set forth in a Revolving Credit Agreement dated as of August 21, 2015, as amended March 17, 2016, May 19, 2016, and of even date herewith, between Borrower and Lender for issuance of Letters of Credit and Revolving Credit Notes thereunder (the “Loan”);

WHEREAS, Borrower has assigned to Lender a security interest in a deposit account with Lender with reference number xxxxxxxxxx (the “Debt Service Reserve Account”) pursuant to an Assignment of Deposit Account dated August 21, 2015 (the “Assignment”); and

WHEREAS, Borrower has requested an increase in the Loan from \$20,000,000.00 to \$25,000,000.00 and in exchange has offered to increase the minimum balance in the Debt Service Reserve Account from \$2,200,000.00 to \$2,500,000.00 (10% of the total Revolving Credit Commitment amount).

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

The “Minimum Required Balance” described in the Collateral Description section of the Assignment is hereby increased from \$2,200,000.00 to \$2,500,000.00 (10% of the total Revolving Credit Commitment amount).

Except as expressly amended in this Amendment, the Assignment remains unchanged and in full force and effect.

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

### MARIN CLEAN ENERGY

By: \_\_\_\_\_  
Dawn Weisz  
Chief Executive Officer

**RIVER CITY BANK**

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

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

Its: \_\_\_\_\_

**EXHIBIT C****REVOLVING CREDIT NOTE**

\$25,000,000

July 20, 2017

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MARIN CLEAN ENERGY

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

Dawn Weisz  
Chief Executive Officer

**EXHIBIT G  
REQUEST FOR REVOLVING CREDIT ADVANCE**

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

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

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

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

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

X \_\_\_\_\_

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

Its: \_\_\_\_\_

**CERTIFICATION OF MARIN CLEAN ENERGY  
REGARDING AUTHORITY TO EXECUTE CREDIT AGREEMENT**

**In my capacity as Secretary of Marin Clean Energy (“MCE”), I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT:**

**MCE’s EXISTENCE.** The complete and correct name of the MCE is Marin Clean Energy. MCE is a public agency formed under the provisions of the Joint Exercise Powers Act of the State of California, Government Code section 6500 *et seq.* MCE is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of California.

MCE is duly authorized to transact business, having obtained all necessary filings, governmental licenses and approvals in the State of California in which MCE is doing business.

MCE has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. MCE maintains an office at 1125 Tamalpais Ave., San Rafael, CA 94901. Unless MCE has designated otherwise in writing, the principal office is the office at which MCE keeps its books and records. The Authority will notify Lender prior to any change in the location of the Authority’s state of organization or any change in MCE’s name. MCE shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to MCE and MCE’s business activities.

**RESOLUTIONS ADOPTED.** At a meeting of the Marin Clean Energy Board of Directors, duly called and held on the 20<sup>th</sup> day of July, 2017, the Board adopted Resolution **2017-\_\_\_\_\_**, a true copy of which is attached hereto, regarding authority of MCE’s representatives to execute the Third Amendment to the Credit Agreement.

**IN TESTIMONY WHEREOF, I have hereunto set my hand and attest that the signature set opposite each name listed in such Board adopted Resolution is its genuine signature.**

**I have read all the provisions of this Certification, and I personally and on behalf of MCE certify that all statements and representations made in this Certification are true and correct. This Certification is dated on this \_\_\_ day of July, 2017.**

**MARIN CLEAN ENERGY**

By: \_\_\_\_\_  
Dawn Weisz, Secretary

[Copy of Resolution Regarding Authority to Execute Third Amendment]

**RESOLUTION NO. 2017-**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF  
MARIN CLEAN ENERGY REGARDING AUTHORITY TO EXECUTE THIRD  
AMENDMENT TO CREDIT AGREEMENT WITH RIVER CITY BANK**

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

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

**WHEREAS**, River City Bank (RCB) has been MCE's primary bank since March 8, 2010; and

**WHEREAS**, MCE continues to expand the number of entities with which it contracts for power supply, and it is beneficial to utilize industry standard credit terms for power purchase contracts; and

**WHEREAS**, MCE staff negotiated the terms of a non-revolving credit facility with River City Bank to provide credit support for future power purchase contracts; and

**WHEREAS**, the RCB credit facility allows MCE to borrow cash or to direct the issuance of standby letters of credit (SBLC) that would be used as credit support for MCE's forward purchases of energy.

**WHEREAS**, MCE Board of Directors approved the Non-Revolving Credit Agreement by and between MCE and RCB on August 21, 2015; and

**WHEREAS**, CEO Dawn Weisz approved the First Amendment to the Non-Revolving Credit Agreement on February 23, 2016 by and between MCE and RCB making ministerial changes to the Agreement; and

**WHEREAS**, MCE Board of Directors approved the Second Amendment to the Non-Revolving Credit Agreement to convert the Non-Revolving Credit Agreement to a revolving credit agreement and to increase the principal amount of the credit agreement from \$15,000,000 to \$20,000,000 on May 19, 2016; and

**WHEREAS**, the proposed Third Amendment to the Credit Agreement would extend the termination date of the Agreement from August 31, 2017 to August 31, 2019, increase the principal amount of the credit agreement from \$20,000,000 to \$25,000,000 and amend certain other terms and conditions in MCE's favor.



**WHEREAS**, the Third Amendment to the Credit Agreement requires an updated Resolution to confirm the MCE’s authorized representatives and scope of their authorized actions for purposes of the amended Credit Agreement.

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

That the following named individuals are the authorized representatives of MCE for all purposes pertaining to execution and administration of the Third Amendment to the Credit Agreement and any documents related thereto, with titles and genuine signatures provided below:

<b>NAMES</b>	<b>TITLES</b>	
<b>Dawn Weisz</b>	<b>Secretary</b>	_____
<b>Dawn Weisz</b>	<b>Chief Executive Officer and Responsible Officer</b>	_____
<b>Kathrin Sears</b>	<b>Chair of the Board</b>	_____

**ACTIONS AUTHORIZED.** Any one (1) of the authorized representatives listed above may enter into any agreements of any nature with River City Bank (“Lender”), and those agreements will bind MCE. Specifically, but without limitation, each of the authorized representatives is authorized, empowered, and directed to do the following for and on behalf of MCE with respect to a loan or loans and any other financial accommodations from Lender:

**Borrow Money.** To borrow and authorize advances, letters of credit and other lending accommodations from time to time from Lender, on such terms as may be agreed upon between MCE and Lender, such sum or sums of money as in its judgment should be borrowed, without limitation.

**Execute Notes.** To execute and deliver to Lender any loan agreement, promissory note or notes, letter of credit applications, requests, or other evidence of MCE’s credit accommodations, in form and substance acceptable to Lender, at such rates of interest and on such terms as may be agreed upon, evidencing the sums of money so borrowed or any of MCE’s indebtedness to Lender, and also to execute and deliver to Lender one or more renewals, extensions, modifications, refinancings, consolidations, or substitutions for one or more of the notes, any portion of the notes, or any other evidence of credit accommodations.

**Grant Security.** To pledge, transfer, endorse, hypothecate, or otherwise encumber and deliver to Lender any property now or hereafter belonging to MCE or in which MCE now or hereafter may have an interest, including without limitation all of MCE’s personal property (tangible or intangible), as security for the payment of any loans or credit accommodations so obtained, any promissory notes so executed (including any amendments to or modifications, renewals, and extensions of such promissory notes), or any other or further indebtedness of MCE to Lender at any time owing, however the same may be evidenced. Such property may be pledged, transferred, endorsed, hypothecated or encumbered at the time such loans are obtained or such

indebtedness is incurred, or at any other time or times, and may be either in addition to or in lieu of any property theretofore mortgaged, pledged, transferred, endorsed, hypothecated or encumbered.

**Execute Security Documents.** To execute and deliver to Lender any assignment agreements, pledge agreements, mortgages, deeds of trust, security agreements, financing statements and other documents which Lender may require and which shall evidence the terms and conditions under and pursuant to which such liens and encumbrances, or any of them, are given; and also to execute and deliver to Lender any other written instruments, any chattel paper, or any other collateral, of any kind or nature, which Lender may deem necessary or proper in connection with or pertaining to the giving of the liens and encumbrances.

**Negotiate Items.** To draw, endorse, and discount with Lender all drafts, trade acceptances, promissory notes, or other evidences of indebtedness payable to or belonging to MCE or in which MCE may have an interest, and either to receive cash for the same or to cause such proceeds to be credited to MCE's account with Lender, or to cause such other disposition of the proceeds derived therefrom as it may deem advisable.

**Further Acts.** In the case of lines of credit, to designate additional or alternate individuals as being authorized to request advances under such lines, and in all cases, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements as any Authorized Representative may in his or her discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Resolution.

**NOTICES TO LENDER.** MCE will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (A) change in MCE's name; (B) change in MCE's assumed business name(s); (C) change in the management or in the members of MCE; (D) change in the authorized signer(s); (E) change in MCE's principal office address; (F) change in MCE's state of organization; (G) conversion of MCE to a new or different type of business entity; or (H) change in any other aspect of MCE that directly or indirectly relates to any agreements between MCE and Lender. No change in MCE's name or state of organization will take effect until after Lender has received notice.

**CERTIFICATION CONCERNING OFFICERS AND RESOLUTIONS.** The authorized representatives named above are duly elected, appointed, or employed by or for MCE, as the case may be, and each occupies the position set opposite his or her name. This Resolution now stands of record on the books of MCE, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

**CONTINUING VALIDITY.** Any and all acts authorized pursuant to this Resolution and performed prior to the passage hereof are hereby certified as duly ratified and approved. This Resolution shall be continuing, shall remain in full force and effect and Lender may rely on it until written notice of its revocation shall have been delivered to and received by Lender at Lender's address shown above (or such addresses as Lender may designate from time to time). Any such notice shall not affect any of MCE's agreements or commitments in effect at the time notice is given.

**PASSED AND ADOPTED** at a regular meeting of the MCE Board of Directors on this 20<sup>th</sup> day of July 2017, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
Towne of Corte Madera				
City of El Cerrito				
Town of Fairfax				
City of Lafayette				
City of Larkspur				
City of Mill Valley				
City of Napa				
City of Novato				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Walnut Creek				
Town of Yountville				
County of Marin				
County of Napa				

\_\_\_\_\_  
 Kathrin Sears  
 Chair, Marin Clean Energy Board

\_\_\_\_\_  
 Dawn Weisz  
 Secretary, Marin Clean Energy Board

**RESOLUTION NO. 2017-08**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF  
MARIN CLEAN ENERGY APPROVING THIRD AMENDMENT TO CREDIT  
AGREEMENT WITH RIVER CITY BANK IN THE PRINCIPAL AMOUNT OF  
\$25,000,000**

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

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

**WHEREAS**, River City Bank (RCB) has been MCE's primary bank since March 8, 2010; and

**WHEREAS**, MCE continues to expand the number of entities with which it contracts for power supply, and it is beneficial to utilize industry standard credit terms for power purchase contracts; and

**WHEREAS**, MCE staff negotiated the terms of a non-revolving credit facility with River City Bank to provide credit support for future power purchase contracts; and

**WHEREAS**, the RCB credit facility allows MCE to borrow cash or to direct the issuance of standby letters of credit (SBLC) that would be used as credit support for MCE's forward purchases of energy.

**WHEREAS**, MCE Board of Directors approved the Non-Revolving Credit Agreement by and between MCE and RCB on August 21, 2015; and

**WHEREAS**, CEO Dawn Weisz approved the First Amendment to the Non-Revolving Credit Agreement on February 23, 2016 by and between MCE and RCB making ministerial changes to the Agreement; and

**WHEREAS**, MCE Board of Directors approved the Second Amendment to the Non-Revolving Credit Agreement to convert the Non-Revolving Credit Agreement to a revolving credit agreement and to increase the principal amount of the credit agreement from \$15,000,000 to \$20,000,000 on May 19, 2016; and

**WHEREAS**, the proposed Third Amendment to the Non-Revolving Credit Agreement would extend the termination date of the Agreement from August 31, 2017 to August 31, 2019, increase the principal amount of the credit agreement from \$20,000,000 to \$25,000,000 and amend certain other terms and conditions in MCE's favor.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Directors of MCE that the MCE Board approves the Third Amendment to the Non-Revolving Credit Agreement with River City Bank.

**PASSED AND ADOPTED** at a regular meeting of the MCE Board of Directors on this 20<sup>th</sup> day of July 2017, by the following vote:

	<b>AYES</b>	<b>NOES</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
Town of Corte Madera				
City of El Cerrito				
Town of Fairfax				
City of Lafayette				
City of Larkspur				
County of Marin				
City of Mill Valley				
City of Napa				
County of Napa				
City of Novato				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Walnut Creek				
Town of Yountville				

\_\_\_\_\_  
CHAIR, MCE BOARD

ATTEST:

\_\_\_\_\_  
SECRETARY, MCE BOARD



July 20, 2017

TO: MCE Board of Directors

FROM: Emily Fisher, Legal Counsel

RE: Resolution No. 2017-10 Delegating Authority for Destruction of Non-Judicial Public Records (Agenda Item #07)

ATTACHMENTS: A. Policy No. 003: Records Retention  
B. Proposed Resolution 2017-10 Delegating Authority for Destruction of Non-Judicial Public Records

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Dear Board Members:

**SUMMARY:** In August 2016, your Board approved an updated records retention policy and schedule (Policy No. 003: Records Retention). To ensure that the Policy and retention schedule are efficiently administered, the Board may delegate to MCE staff the custodial authority to destroy non-judicial public records and documents in accordance with the approved schedule and applicable state law. The proposed Resolution No. 2017-10 would delegate such authority to MCE's Director of Internal Operations or the Director's designee.

**OVERVIEW:** The proposed Resolution fulfills the requirements of Government Code Section 26205.1, whereby a public agency's governing body may delegate to staff the authority for the destruction of non-judicial public records that are duplicates, or are no longer required to be retained under any applicable law. This delegation of authority expressly excludes any records that are required by law to be maintained in perpetuity.

This delegation of authority is critical for staff's ability to administer MCE's Records Retention Policy more efficiently, by eliminating some administrative steps and Board approval requirements that otherwise apply to the destruction of public records. The proposed Resolution enables staff to ensure that MCE's electronic and paper records storage capacity is not burdened with material that is redundant and/or has no further legitimate legal, fiscal, policy, or historical basis for retention.

**FISCAL IMPACT:** None.

**RECOMMENDATION:** Adopt proposed Resolution 2017-10.



## POLICY NO. 003 – RECORDS RETENTION

Records will be retained according to the following schedule. After the required retention date has passed all documents or electronic files will be deleted or discarded.

Record Type	Required Retention	Sample Descriptions
Executed Contracts	10 years after termination date of the contract	Power supply contracts, contracts with vendors or consultants
Invoices from Vendors	2 years after completion of contract	Vendor invoices for payment
Non-Successful Bids and Proposals	2 years after close of RFO/RFP	Open season bids, other competitive procurements
Non-Disclosure Agreements	In perpetuity	NDA with vendor, employee, Board member or advisor
Board Approved Decisions	In perpetuity	Resolutions, meeting minutes, and other items approved at regular or special Board meetings
Board and Committee Meeting Materials	In perpetuity	Agendas, staff reports and other material provided to Board members in preparation for meetings
Board Approved Budgets	In perpetuity	Final, approved budgets
Drafts of Documents	30 days after final version is approved	Draft of contracts, programs, RFPs, etc.
General Electronic Correspondence	2 years or at staff discretion	Email correspondence
Customer- Data Requests	2 years	Cost comparisons, bill analyses, usage history, billing history

Customer Database Information	5 years	Customer lists, data reports, program data, account balances
Ad Hoc Customer Reports and Lists	5 years	Mailing lists, analysis reports
AMI Data Lists and Report	At staff discretion, deletion after staff use is completed	Non-aggregated customer AMI data
Marketing Material	2 years after public distribution	Flyers, brochures, electronic advertisements
General Educational or Informational Material	2 years	Brochures, reports, electronic information
Miscellaneous Personnel Information	6 years after employee end date	I-9, background checks, confidential medical records
Employee Files	6 years after employee end date	Resume, offer letter, change of status, benefits, evaluations, and new hire forms
Recruitment Files	6 years after employee end date	Application, job announcement, testing materials, rating sheets, interview notes
Payroll Records	6 years after employee end date	Timecards and employee wage records



## RESOLUTION 2017-10

### A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY DELEGATING AUTHORITY FOR DESTRUCTION OF NON- JUDICIAL PUBLIC RECORDS

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

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

**WHEREAS**, on August 18, 2016 the MCE Board approved an amended records retention policy and schedule, known as Policy No. 003: Records Retention; and

**WHEREAS**, MCE has an obligation to maintain its records in accordance with government laws and regulations and accepted records management practices; and

**WHEREAS**, there are potentially significant costs to maintaining records beyond their useful life as such records otherwise burden MCE's electronic and paper storage space and capacity; and

**WHEREAS**, the purpose of a retention schedule is to establish a pattern for the orderly maintenance and destruction of records on a continuing basis; and

**WHEREAS**, Sections 26200 *et seq.* of the Government Code provide the relevant procedures for destruction of public records; and

**WHEREAS**, pursuant to Section 26205.1(a) of the Government Code the Board may delegate to MCE staff the authority to destroy any non-judicial public record, paper, or document if the record, paper, or document is otherwise reproduced in accordance with State law, including, but not limited to, Section 12168.5 of the Government Code; and

**WHEREAS**, pursuant to Section 26205.1(b) of the Government Code the Board may delegate to MCE staff the authority to destroy any record not expressly required by law to be filed and preserved, without creating an alternate copy or the need for those records to be listed on a Board-approved records retention schedule; and

**WHEREAS**, pursuant to Section 26202 of the Government Code the Board may, by a four-fifths vote, authorize the destruction of records prepared or received pursuant to state or federal statute where those records have been maintained for the required

period of time and the Board has determined the retention of those records is no longer necessary or required for MCE purposes, except for records required by law to be maintained in perpetuity, the destruction of which records the Board may not authorize; and

**WHEREAS**, MCE's retention schedules will be reviewed regularly by the appropriate MCE operations and legal staff, and any necessary amendments will be brought before the Board.

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

1. The foregoing recitals are true and correct.
2. MCE staff is authorized to destroy or dispose of duplicate records, papers, or documents the originals or permanent photographic reproductions of which are on file with any MCE officer or director.
3. Staff is authorized to destroy any non-judicial public record, paper, or document, including those records prepared or received pursuant to state or federal law, if the record, paper, or document is otherwise reproduced in accordance with State law, including, but not limited to, Government Code section 12168.5.
4. Pursuant to Section 26205.1(b) of the Government Code the Board hereby delegates to the Director of Internal Operations and designees the authority as custodian of records to destroy any record not required by applicable law to be maintained, and/or for which any statutory retention period has expired, without creating an alternate copy or need for those records to be specifically listed on a Board-approved records retention schedule. Categories of records subject to a statutory retention period shall be identified on the Board-approved records retention schedule, to be amended as needed and submitted to the Board for approval.

**PASSED AND ADOPTED** at a regular meeting of the MCE Board of Directors on this 20th day of July, 2017, by the following vote:

	<b>AYES</b>	<b>NOES</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
Town of Corte Madera				
City of El Cerrito				
Town of Fairfax				
City of Lafayette				
City of Larkspur				
County of Marin				
City of Mill Valley				
City of Napa				
County of Napa				
City of Novato				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Walnut Creek				
Town of Yountville				

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CHAIR, MCE BOARD

**Attest:**

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SECRETARY, MCE BOARD

An overhead view of a meeting table with several people seated around it. The table is covered with a large white sheet of paper. There are four coffee cups on the table, two on each side. Two tablets are also visible. A small potted plant is on the right side of the table. The text 'MCE Name Change Board Meeting | July 20, 2017' is overlaid in the center of the white paper.

# MCE Name Change

Board Meeting | July 20, 2017

# Discussion

- History of MCE's name
- Ongoing and current challenges of the name
- Recent input from MCE Board members, elected officials, stakeholders, staff, and community representatives regarding MCE's name
- Naming exploration

# Who Is Our Audience?

- Local governments/member municipalities
- Customers (residential & commercial)
- Nonprofit community orgs & advocates
- Press
- Legislative & regulatory agencies
- Other CCAs

2009

**Marin Clean Energy & Marin Energy Authority**

Serving: Marin County and its cities

2012

Market research performed focus groups & surveys; informed "MCE" branding

2013

**Marin Clean Energy (used MCE for branding outside Marin)**

Enrolled: Richmond (CoCo)

2015

Enrolled: Uninc. Napa County; San Pablo, El Cerrito (CoCo); Benicia (Solano)

2016

**MCE (branding only; legally Marin Clean Energy)**

Enrolled: Napa Co. cities; Walnut Creek, Lafayette (CoCo)

# Name History

# Service Area Following Potential New Enrollment





# 24 Member Communities Today

12 in Marin County

12 in Napa, Solano & Contra Costa Counties:

- Richmond
- San Pablo
- Benicia
- El Cerrito
- Napa County + 5 cities
- Lafayette
- Walnut Creek



# The Problem

“Marin” does not represent MCE’s service area and excludes 12 member communities.

This has been problematic in:

- De-valuing perception of reach in regulatory & legislative arenas
- Confusion in news articles and press
- Confusion and lack of “ownership” from customers
- Lack of “inclusive” feeling with new communities

# The Current Solution



# In the Media

## EAST BAY TIMES

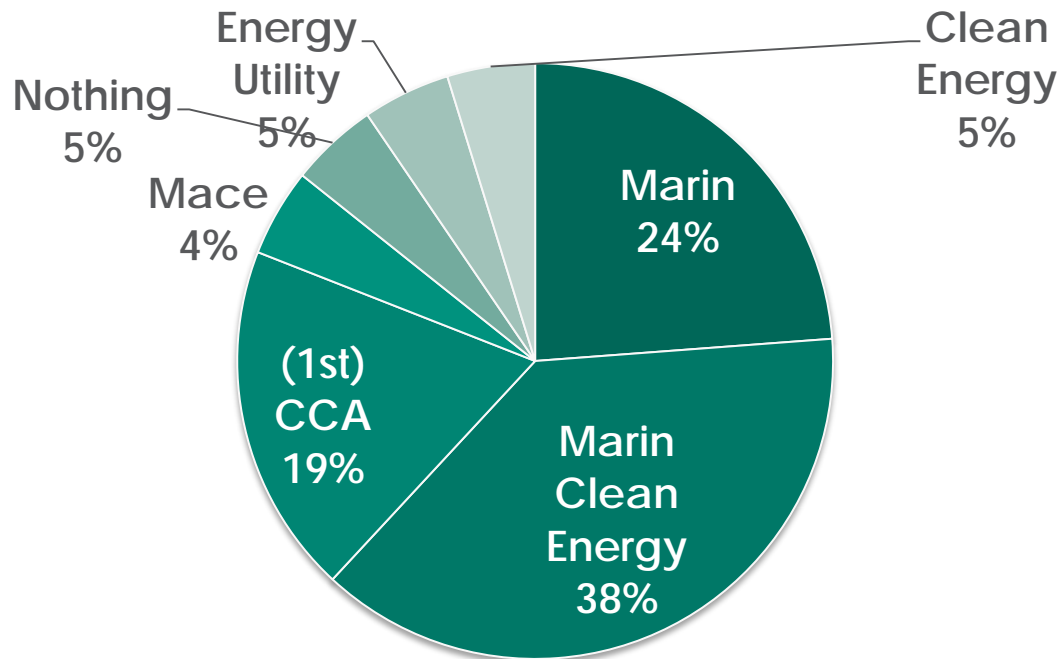
News

### Oakley moves to join Marin Clean Energy

Sampled 30 of 171 articles from April 2016-June 2017:

- 33% used "Marin Clean Energy" only
- 47% used both "Marin Clean Energy" & "MCE"
  - Press and public agencies want to spell out the first instance of "MCE"
- **20% used "MCE" only**

# Survey: What do you think of when you hear the name MCE?

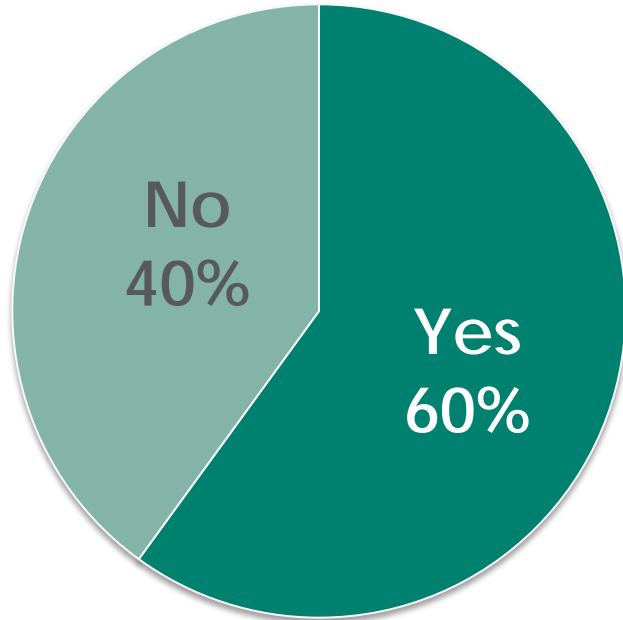


- Only one "clean energy" response

Respondents: MCE Board & electeds

Note: 1 respondent provided 2 answers → coded twice

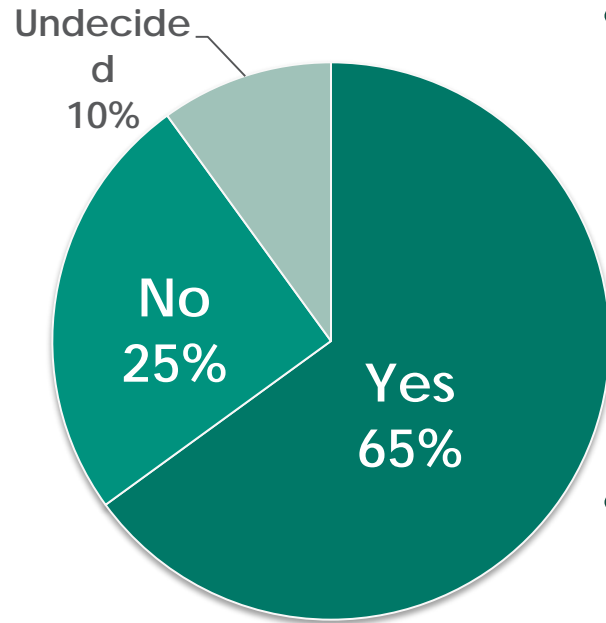
# Have you received any feedback from constituents about MCE's name?



## Summary of Responses:

- *Does it only cover Marin? Why Marin? Folks don't believe/understand MCE serves customers outside of Marin*
- *Policy people I speak to still say "Marin," "Marin Clean Energy," or "Marin CCA"*
- *CoCo residents have said they don't want to be part of a program that's just designed for Marin communities*
- *Elected officials have stated, "I don't want to join a program that has 'Marin' in its name." Other electeds have asked "Why doesn't MCE change its name to reflect all communities it serves?"*

# Do you think MCE should have a different name?

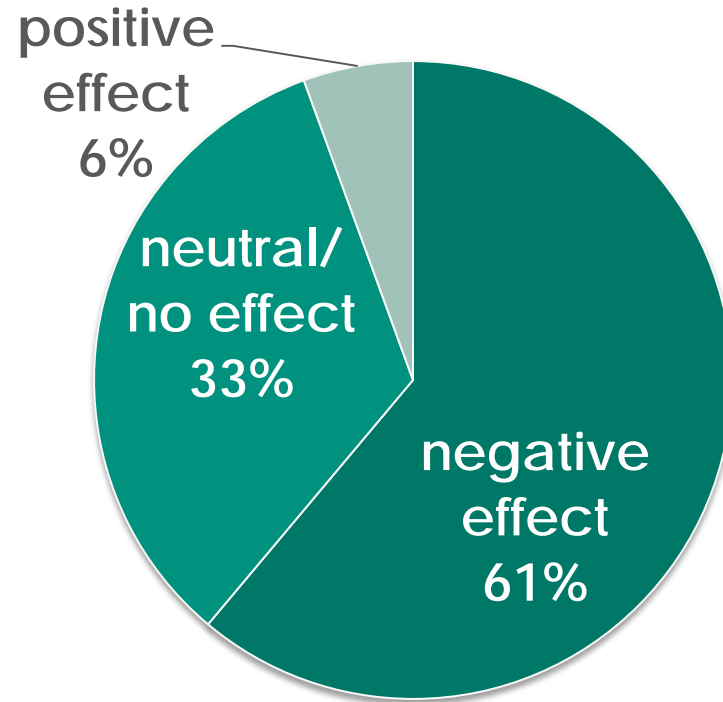


Respondents: MCE Board & electeds

## Summary of Responses:

- **YES (65%):**
  - *Name should be more inclusive; some wonder if MCE is taking advantage of their community by not truly representing them*
  - *Word "Marin" in Sacramento communicates wealth and privilege, and causes legislators focused on social justice, jobs, poverty, and diversity to not take MCE seriously*
- **No (25%):**
  - *If we change, try to use same acronym*
  - *History of the name is not necessarily negative*

# Effect of MCE's Name on Customers' & Stakeholders' Experience of the Brand



Respondents: MCE staff & community representatives



# Qualitative Responses

## Positive and Neutral



- **Brand Equity:** “In El Cerrito most people have heard of MCE and there’s definitely positive name-brand recognition.” (CoCo advocate)
- **OK Either Way:** “I am supportive of a more inclusive name change, if you decide to go that way, but it’s also fine to stick with MCE as a brand.” (CoCo advocate)

# Qualitative Responses

## Acronym Issues



- **Not Phonetic:** “MCE isn’t pronounced phonetically (like ICLEI, APEN), which begs the question of what it stands for, negating any benefit we were trying to eke out by shifting away from Marin Clean Energy.” (MCE staff)
- **No Message:** “Acronyms in general are not inspiring and have no meaning.” (MCE staff)

# Qualitative Responses

## Acronym Issues



**Weak Identity:** “Having to respond to questions about our name with ‘well, it USED to stand for Marin Clean Energy...,’ gives the impression we’re hiding from our Marin roots and disappoints Marin advocates/communities, while also raising suspicion among non-Marin advocates/communities. **Not having a name we can be straightforward with and proud of weakens our identity and our community presence.”**  
(MCE staff)

# Qualitative Responses

# Customer Confusion

AI #08: MCE Naming Considerations Update



- **Misperception About Marin's Role:** "Residents ask why we purchase energy from Marin." (CoCo advocate)
- **Under-represents Our Size and Impact:** "Since MCE is associated with just Marin, I don't think people realize how large this CCA has become." (CoCo advocate)
- **Other Naming Confusion:** "I hear 'Marine' clean energy from others a lot." (MCE staff)



# Contra Costa Communities

- **Liability During New Enrollment Outreach:** “The Marin behind MCE brands it as ‘not Walnut Creek.’ During the enrollment period last year, there was a level of ‘that group based in Marin is not like us’ in the communications I received, especially from those who were skeptical or upset about MCE.” (Walnut Creek staff)
- **Still “Marin”:** “The ‘M’ will always stand for Marin until it stands for something else.” (Richmond staff)

# Qualitative Responses

# Local Development



- **Negative Association Among Developers:** “ ‘Marin’ is a dirty word to developers and landowners because they think it is hard to build things there.” (Elected official)
- **Misinterpretations About Marin’s Power Supply:** “Workers on our Richmond projects wonder why they are building power supply for Marin and wonder if they could instead build something for their community.” (Elected official)

# Qualitative Responses

## Legislative Perceptions

AI #08: MCE Naming Considerations Update



**Obscures Our Social Justice Impacts to Sacramento:**  
“In Sacramento, legislators hear “Marin” and do not connect it with the diverse communities that we serve. **Particularly around low-income issues, our name is likely undermining our advocacy in Sacramento and somewhat at regulatory agencies.**” (MCE staff)

# Working Towards a Solution

- Held a Special Meeting of the Executive Committee (6/12) to discuss current name challenges
  - Authorized Phase 1 for Renaming Process
- Identified Catchword as naming agency
- Identified Naming Committee



# Core Naming Committee

1. Dir. Kate Sears (Marin)
2. Dir. Sloan Bailey (Marin)
3. Dir. Alan Schwartzman (Solano)
4. Dr. Tom Butt (Contra Costa)
5. Board of Supervisor Federal Glover (Contra Costa – New member)
6. Future Dir. Randy Pope, City of Oakley (Contra Costa – New member)
7. Dawn Weisz, CEO
8. Beth Kelly, General Counsel
9. Alex DiGiorgio, Deputy Director, Community Development
10. Nicole Busto, Deputy Director, Marketing Communications

# NAMING PROCESS

## Phase 1 Activities

Questionnaire

Briefing Meeting  
(7/10)

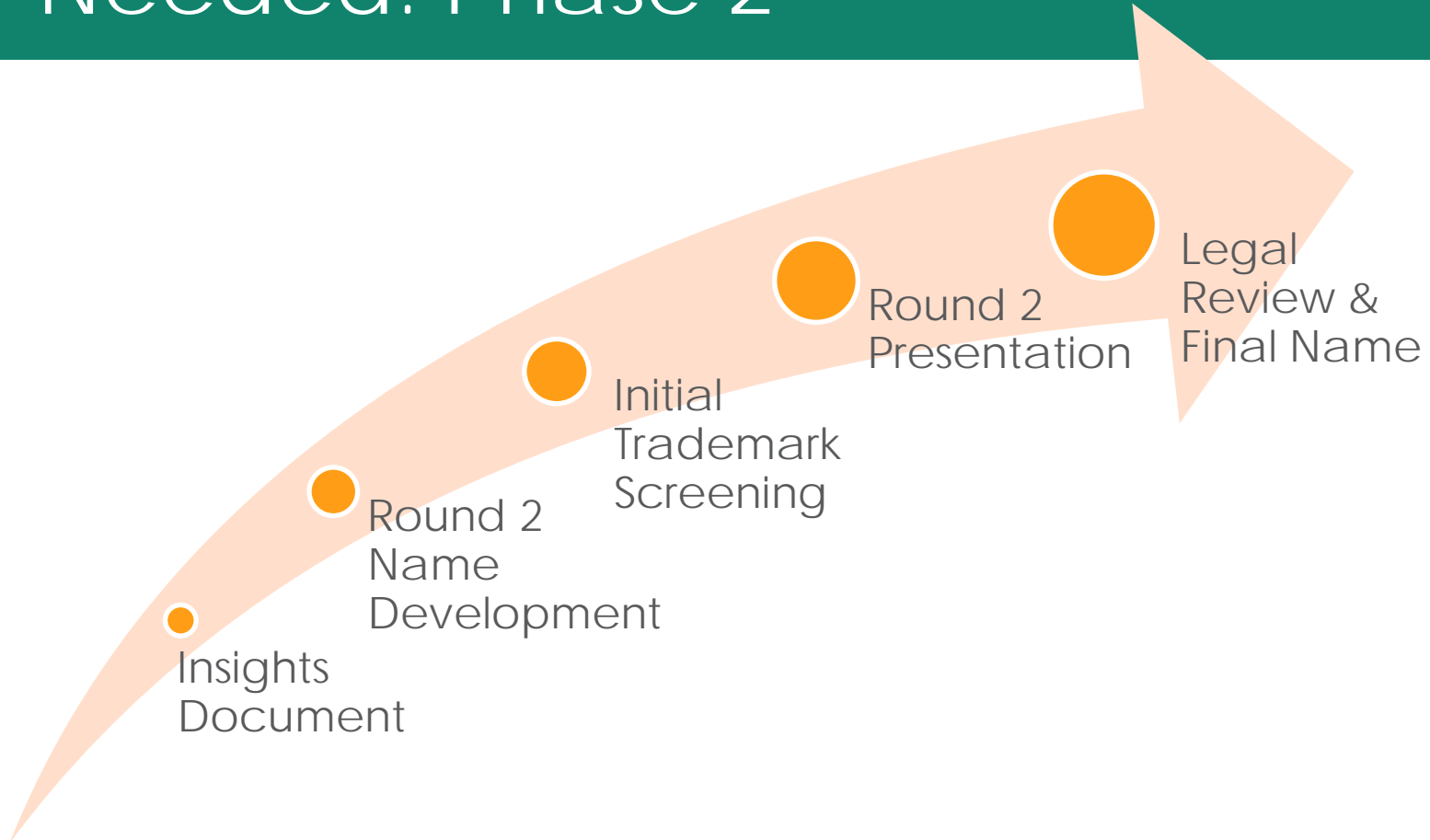
Creative Brief

Round 1  
Name  
Development

Round 1  
Presentation  
(~8/1)

# NAMING PROCESS

## If Needed: Phase 2



# Potential Name Change Cost Estimate

## **Planning (\$28,000-51,000):**

- Naming agency – \$25,000-48,000
- Legal trademark review – \$3,000

## **Implementation (\$16,500-19,000):**

- Logo design – \$6,500-9,000
- Website – \$3,500
- Interior signs (2) – \$2,700
- Business cards and metal name tags – \$1,800
- Event displays (tents & table cloths) – \$2,000

Thank You





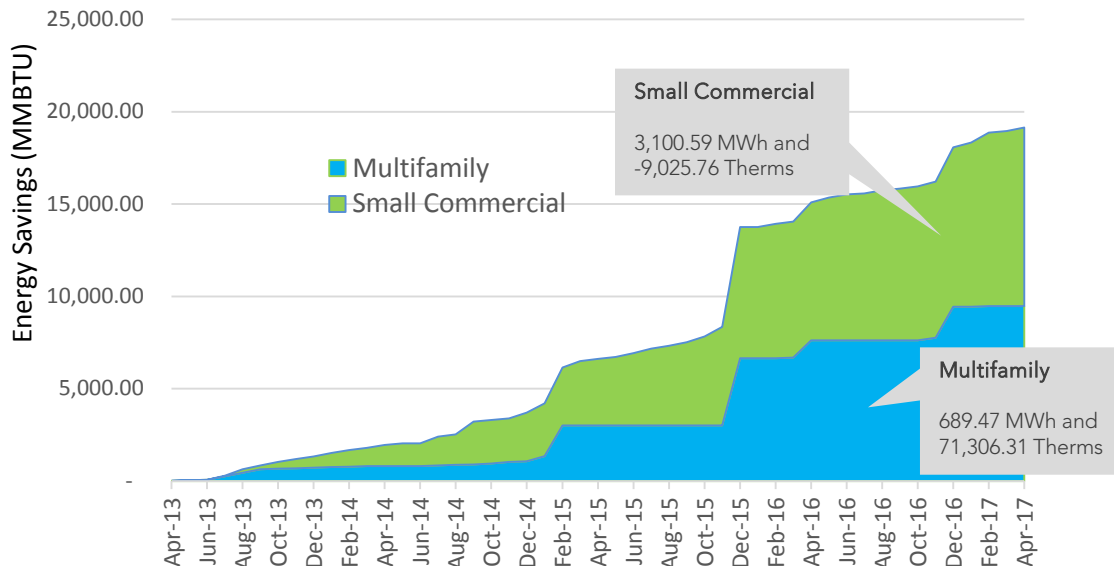
# MCE Customer Programs Quarterly Update

AI #09: Customer Programs Update

## Energy Efficiency Mission Statement

MCE's Energy Efficiency programs increase the efficiency of energy and water systems within existing and new buildings to reduce environmental impacts and improve health, comfort and safety.

The programs empower communities through local workforce development, and access to educational tools and financial incentives.



## Customer Program Achievements – January 2013 to April 2017 (most recent data)

### Small Commercial

Small Businesses Audited  
**2,418**

Total Rebates Distributed  
**\$535,403**

Number of Unique Projects Completed  
**485**

### Multifamily

Multifamily Properties Audited  
**75**

Total Rebates Distributed  
**\$522,085**

Total Units that received DI  
**1,654**

### Single Family

Solar Rebate Impacts  
63 Rebates Distributed

\$40,500 Distributed

250 kW of Solar Installed

– GRID Partnership –  
44 Rebates Distributed

~\$1,018,400 estimated bill savings

~2,304 Tons GHG eliminated

### Pilot Programs

Smart Thermostat Pilot  
Single Family Homes Enrolled  
**3,230**

SmartCharge 1.0  
Assisted **67** customers in adopting EVSE equipment

CEC Grants > \$3.1M  
ZNE: \$1,469,779  
MCE-LGC: \$1.7 M



July 20, 2017

TO: MCE Board of Directors

FROM: David McNeil, Manager of Finance

RE: FY 2016/17 Audited Financial Statements and Budget Comparisons Presentation (Agenda Item #10)

ATTACHMENTS: A. Auditors' Governance Letter  
B. MCE Financial Statements for the Years Ended March 31, 2017 & 2016 with Independent Auditors' Report  
C. FY 2016/17 Budgetary Comparison Schedules

Dear Board Members:

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**SUMMARY:**

Each year MCE publishes fiscal year-end financial statements prepared by Staff and Maher Accountancy and audited by an independent accounting firm. In March 2017 your Board created an Ad Hoc Audit Committee consisting of four Board members to engage an independent auditing firm and receive its report. As in previous years the independent audit of MCE's financial statements was undertaken by Vavrinek, Trine, Day and Company, LLP.

Staff is responsible for the preparation and fair presentation of the financial statements. The independent auditor performs tests to assure that the financial statements are free from material misstatement.

The FY 2016/17 Financial Statements consist of the following:

- Independent Auditors' Report
- Management's Discussion and Analysis
- Financial Statements - Statements of Net Position, Revenues and Expenses and Changes in Net Position, Statements of Cash Flows and Notes to the Financial Statements

**AUDITORS' REPORT:**

In the Auditors' opinion the financial statements "present fairly, in all material respects, the financial position of Marin Clean Energy as of March 31, 2017 and 2016... in accordance with accounting principles generally accepted in the United States of America."

The Auditors' Report essentially gives MCE a clean bill of health and as in previous years, the Auditor observed no material issues with MCE's reporting or controls.

**FINANCIAL HIGHLIGHTS:**

- Revenues increased 19% to \$181 million. Revenues were impacted by the partially offsetting effects of a 49% increase in customers and 9% decrease in rates. These events both occurred in September 2016.
- The annual contribution to the net position was \$15.1 million bringing the total net position to \$44.7 million.
- MCE increased its cash on hand to \$36.7 million and had an additional \$20 million available on its line of credit.
- MCE had no debt or letters of credit outstanding.

MCE is financially strong and it remains well positioned to serve its customers and deliver on its mission.

**FY 2016/17 BUDGETARY COMPARISON SCHEDULES:**

The FY 2016/17 Budgetary Comparison Schedules compare the FY 2016/17 Operating Fund, Energy Efficiency Program Fund, Local Renewable Energy Development Fund and Renewable Energy Fund Budgets to actual financial results in each of these funds for the 12 months ending March 31, 2017.

For each expenditure category, budgeted expenditures exceeded actual expenditures with the exception of the capital outlay from the Local Renewable Energy Development Fund (LRRDF). The exception is administrative in nature. The actual capital outlay from this fund exceeded the budgeted capital outlay by \$73,604 in order to absorb LRRDF funds unspent in the previous year. Actual expenditures from the LREDF and Renewable Energy Reserve Fund supported the development of MCE Solar One. Budgeted expenditures to support MCE Solar One (\$939,850) exceeded actual expenditures from these two funds (\$803,146). Staff used the unspent funds in the LRRDF to fund pre-development expenses for MCE Solar One, bringing the fund balance to \$0.00 as of March 31, 2017. The LRRDF is funded through contributions from Deep Green program revenues.

**Fiscal Impact:** None

**Recommendation:** No action needed. Informational only.





VAVRINEK, TRINE, DAY  
& COMPANY, LLP  
*Certified Public Accountants*

VALUE THE DIFFERENCE

To the Board of Directors  
Marin Clean Energy  
San Rafael, California

We have audited the financial statements of Marin Clean Energy for the year ended March 31, 2017. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our engagement letter dated April 24, 2017. Professional standards also require that we communicate to you the following information related to our audit.

### **Significant Audit Findings**

#### ***Qualitative Aspects of Accounting Practices***

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by Marin Clean Energy are described in Note 1 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the fiscal year ended March 31, 2017. We noted no transactions entered into by the governmental unit during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting Marin Clean Energy's financial statements include allowance for uncollectible accounts and estimated useful lives of the capital assets and related depreciation expense. We evaluate the key factors and assumptions used to develop the above listed estimates in determining that they are reasonable in relation to the financial statements taken as a whole.

Certain financial statement disclosures are particularly sensitive because of their significance to financial statement users. The most sensitive disclosure in Marin Clean Energy's financial statements is included in footnote 11 describing purchase commitments.

The financial statement disclosures are neutral, consistent, and clear.

#### ***Difficulties Encountered in Performing the Audit***

We encountered no significant difficulties in dealing with management in performing and completing our audit.

***Disagreements with Management***

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

***Management Representations***

We have requested certain representations from management that are included in the management representation letter dated July 12, 2017.

***Management Consultations with Other Independent Accountants***

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the governmental unit's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

***Other Audit Findings or Issues***

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

**Other Matters**

We applied certain limited procedures to Management's Discussion and Analysis, which is required supplementary information (RSI) that supplements the basic financial statements. Our procedures consisted of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We did not audit the RSI and do not express an opinion or provide and assurance on the RSI.

**Restriction on Use**

This information is intended solely for the use of the Board of Directors and management of Marin Clean Energy and is not intended to be, and should not be, used by anyone other than these specified parties.

*Varrinet, Trine, Day & Co., LLP.*

Pleasanton, California  
July 12, 2017



# FINANCIAL STATEMENTS

Years Ended March 31, 2017 & 2016  
with Report of Independent Auditors



[mceCleanEnergy.org](http://mceCleanEnergy.org)

**MARIN CLEAN ENERGY**  
**YEARS ENDED MARCH 31, 2017 AND 2016**

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VAVRINEK, TRINE, DAY  
& COMPANY, LLP  
*Certified Public Accountants*

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## INDEPENDENT AUDITORS' REPORT

Board of Directors  
Marin Clean Energy  
San Rafael, California

We have audited the accompanying financial statements of Marin Clean Energy ("MCE"), as of and for the years ended March 31, 2017 and 2016, and the related notes to the financial statements, which collectively comprise MCE's basic financial statements as listed in the table of contents.

### Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

## Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Marin Clean Energy, as of March 31, 2017 and 2016, and the changes in financial position and cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

## Other Matters

### *Required Supplementary Information*

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis, as listed in the table of contents, be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Varrinek, Trine, Day & Co., LLP.

Pleasanton, California

July 12, 2017

# MARIN CLEAN ENERGY

## MANAGEMENT'S DISCUSSION AND ANALYSIS

The Management's Discussion and Analysis provides an overview of Marin Clean Energy's (MCE) financial activities for the fiscal years ended March 31, 2017 and 2016. The information presented here should be considered in conjunction with the audited financial statements.

### Contents of this Report

This report is divided into the following sections:

- Management discussion and analysis, which provides an overview of operations.
- The Basic Financial Statements, which offer information on MCE's financial results.
  - The *Statements of Net Position* includes all of MCE's assets, liabilities, and net position using the accrual basis of accounting. The Statements of Net Position provide information about the nature and amount of resources and obligations at a specific point in time.
  - The *Statements of Revenues, Expenses, and Changes in Net Position* report all of MCE's revenue and expenses for the years shown.
  - The *Statements of Cash Flows* report the cash provided and used by operating activities, as well as other sources and payments, such as debt financing.
  - Notes to the Basic Financial Statements, which provide additional details and information pertaining to the financial statements.

### Nature of Operations

MCE is a California Joint Powers Authority founded in 2008 pursuant to the Joint Exercise of Powers Act and is a public agency separate from its members. MCE provides electric service to retail customers as a Community Choice Aggregation Program under the California Public Utilities Code Section 366.2.

MCE's mission is to address climate change by reducing energy related greenhouse gas emissions through renewable energy supply and energy efficiency at stable and competitive rates for customers while providing local economic and workforce benefits. MCE provides electric service to retail customers and has the rights and powers to set rates and charges for electricity and services it furnishes, incur indebtedness, and issue bonds or other obligations. MCE acquires electricity from commercial suppliers and delivers it through existing physical infrastructure and equipment managed by the California Independent System Operator and Pacific Gas and Electric Company. MCE's Energy Efficiency Program supports the development, coordination and implementation of residential, commercial and multi-family energy efficiency programs in and around MCE's service area.

**MARIN CLEAN ENERGY**  
**MANAGEMENT'S DISCUSSION AND ANALYSIS**  
(Continued)

The parties to MCE's Joint Powers Agreement consist of local governments whose governing bodies elect to join MCE. Pursuant to the Public Utilities Code, when new parties join MCE, all electricity customers in its jurisdiction automatically become default customers of MCE for electric generation, provided that customers are given the option to "opt out". MCE receives no financial support from the parties to its Joint Powers Agreement and relies exclusively on operating revenues to meet its financial commitments.

MCE began to deliver electricity and energy efficiency programs in May 2010 and April 2013 respectively. From time to time new communities apply and are accepted to join MCE. The number of customers served following each new community enrollment phase since 2013 appears in the following table. MCE enrolled customers from new communities in July 2013, February 2015, May 2015 and September 2016. The September 2016 enrolment resulted from the cities of American Canyon, Calistoga, Lafayette, Napa, St. Helena, Walnut Creek and the Town of Yountville joining MCE and led to a 49% increase in MCE's customer base.

**Enrolled Retail Service Accounts**  
**Phase-In Period (End of Month)**

	<u>July 2013</u>	<u>Feb 2015</u>	<u>May 2015</u>	<u>Sep 2016</u>
<b>MCE Customer Groups</b>				
Residential	106,510	120,204	149,610	224,536
Commercial & Industrial	13,098	15,316	19,147	27,402
Street Lighting & Traffic	748	1,014	1,219	1,903
Agriculture & Pump	109	1,467	1,625	1,702
Total	<u>120,465</u>	<u>138,001</u>	<u>171,601</u>	<u>255,543</u>
Customer Account Additions	32,651	17,536	33,600	83,942
% Increase in Customers Accounts	37%	15%	24%	49%



**MARIN CLEAN ENERGY**  
**MANAGEMENT'S DISCUSSION AND ANALYSIS**  
(Continued)

**Financial and Operational Highlights**

MCE's recorded change in net position of \$15.1 million in fiscal 2016/17 increasing the net position to \$44.7 million as of March 31, 2017. Net income was \$16.3 million in fiscal 2015/16. During fiscal 2016/17, MCE increased its cash and cash equivalents to \$36.7 million. Working capital (current assets minus current liabilities) increased to \$41.1 million and the current ratio (current assets divided by current liabilities) decreased from 2.81:1 to 2.73:1. For fiscal years 2016/17 and 2015/16, 78% and 79% of MCE's total liabilities consisted of accrued electricity costs which represent electricity delivered to MCE but not yet paid to the supplier. During fiscal 2015/16 MCE repaid notes payable to the bank ahead of schedule. MCE had no bank debt or letters of credit outstanding as of March 31, 2017.

The following table is a summary of MCE's assets, liabilities, and net position as of March 31:

	<u>2017</u>	<u>2016</u>	<u>2015</u>
Current assets			
Cash and cash equivalents	\$ 36,655,995	\$ 21,696,949	\$ 10,173,815
Other current assets	28,112,638	19,424,154	16,027,326
Total current assets	<u>64,768,633</u>	<u>41,121,103</u>	<u>26,201,141</u>
Noncurrent assets			
Capital assets	571,666	542,199	407,626
Other noncurrent assets	3,032,573	2,479,516	1,378,587
Total noncurrent assets	<u>3,604,239</u>	<u>3,021,715</u>	<u>1,786,213</u>
Total assets	<u>68,372,872</u>	<u>44,142,818</u>	<u>27,987,354</u>
Current liabilities			
Accrued cost of electricity	18,477,359	11,500,898	8,808,354
Other current liabilities	5,235,796	3,110,850	3,898,645
Notes payable to bank	-	-	1,035,409
Total current liabilities	<u>23,713,155</u>	<u>14,611,748</u>	<u>13,742,408</u>
Noncurrent liabilities			
Notes payable to bank	-	-	988,627
Total liabilities	<u>23,713,155</u>	<u>14,611,748</u>	<u>14,731,035</u>
Net position:			
Net investment in capital assets	571,666	542,199	407,626
Restricted	2,212,221	1,659,164	598,200
Unrestricted	41,875,830	27,329,707	12,250,493
Total net position	<u>\$ 44,659,717</u>	<u>\$ 29,531,070</u>	<u>\$ 13,256,319</u>
Working Capital:	\$ 41,055,478	\$ 26,509,355	\$ 12,458,733
Current Ratio:	2.73	2.81	1.91
Total Liabilities / Net Position:	0.53	0.49	1.11
Liquidity Detail:			
Cash and cash equivalents	\$ 36,655,995	\$ 21,696,949	\$ 10,173,815
Unutilized portion of line of credit	20,000,000	7,800,000	-
Total Liquidity	<u>\$ 56,655,995</u>	<u>\$ 29,496,949</u>	<u>\$ 10,173,815</u>

**MARIN CLEAN ENERGY**  
**MANAGEMENT'S DISCUSSION AND ANALYSIS**  
(Continued)

Consistent with its Reserve Policy, MCE is building its net position to support the working capital requirements of the Agency, to provide a reserve to manage the risk of adverse economic or regulatory events, and to improve its credit worthiness. A strong net position allows MCE to provide consistent and reliable service to the community and to contract for energy and other services at lower costs and on more favorable terms.

MCE's results of operations are summarized as follows for the fiscal year ended March 31:

	<u>2017</u>	<u>2016</u>	<u>2015</u>
Operating revenues	\$ 181,166,489	\$ 151,664,778	\$ 100,654,696
Interest income	105,271	12,179	3,716
Total income	<u>181,271,760</u>	<u>151,676,957</u>	<u>100,658,412</u>
Operating expenses	166,110,598	135,257,348	96,835,644
Interest and related expenses	32,515	144,858	124,485
Total expenses	<u>166,143,113</u>	<u>135,402,206</u>	<u>96,960,129</u>
Change in net position	15,128,647	16,274,751	3,698,283
Beginning net position	<u>29,531,070</u>	<u>13,256,319</u>	<u>9,558,036</u>
Ending net position	<u>\$ 44,659,717</u>	<u>\$ 29,531,070</u>	<u>\$ 13,256,319</u>

### Electricity Sales and Costs

Electricity revenues increased by \$30.2 million to \$179.7 million in fiscal 2016/17 as a result of the inclusion of new communities. Customer accounts grew from approximately 171,000 in March 2016 to 255,000 during the year. Increased customer load was offset by a 9% decrease in average electricity rates which went into effect in September 2016. Cost of electricity increased by \$28.2 million to \$152.2 million as MCE acquired electricity to serve the new customers. Gross surplus, defined as electricity sales less cost of electricity, increased to \$27.4 million from \$25.4 million in the prior year. Gross margin, defined as gross surplus as a percent of electricity sales, decreased from 17% in 2016 to 15.2% in 2017. Year over year changes in gross surplus and gross margin were impacted by an increase in retail load, decreased average retail electricity rates and a lower average cost of power.

MCE's gross surplus and gross margin are summarized as follows for the fiscal year ended March 31:

	<u>2017</u>	<u>2016</u>	<u>2015</u>
Electricity sales, net	\$ 179,689,662	\$ 149,486,696	\$ 98,840,861
Cost of electricity	<u>152,293,297</u>	<u>124,095,978</u>	<u>87,996,399</u>
Gross surplus	<u>\$ 27,396,365</u>	<u>\$ 25,390,718</u>	<u>\$ 10,844,462</u>
Gross margin:	15.2%	17.0%	11.0%

**MARIN CLEAN ENERGY**  
**MANAGEMENT'S DISCUSSION AND ANALYSIS**  
(Continued)

Operating Revenues and Operating Expenses less Cost of Electricity

Total operating revenue less the cost of electricity increased to \$28.9 million in fiscal 2016/17, up from \$27.6 million in the prior year. This was driven by increased gross surplus and offset by \$211,000 decrease in rate-payer funding for the Public Purpose Programs. During the fiscal years 2014/15 and 2015/16 MCE recognized other revenues relating to payments required from energy suppliers as a result of delays in energy deliveries, as well as a one-time consideration for a lease termination. These accounted for the majority of other revenues during those years. For fiscal 2016/17, these events did not occur and the result is a significant drop in other revenues. Year-over-year operating expenses, excluding cost of electricity, increased by 23.8% to \$13.8 million reflecting increased staffing, contractor, legal and general overhead costs. Operating expenses, excluding cost of electricity, as a percent of operating revenue less cost of electricity rose from 40.5% in fiscal 2015/16 to 47.9% in fiscal 2016/17.

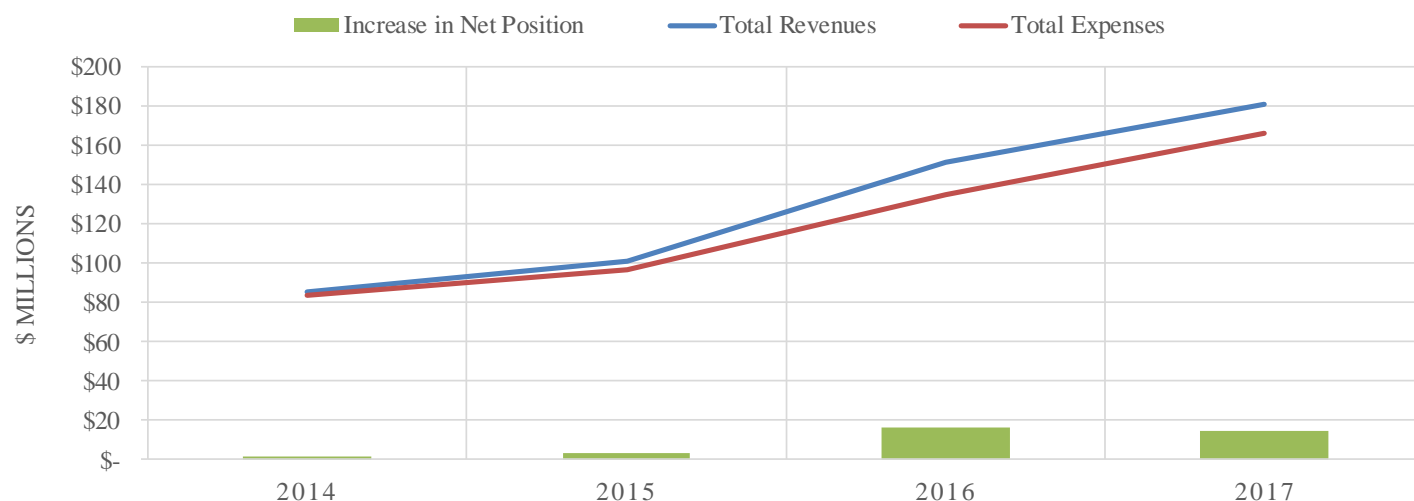
MCE's gross surplus, operating income, and various ratios are summarized as follows:

	<u>2017</u>	<u>2016</u>	<u>2015</u>
Gross surplus	\$ 27,396,365	\$ 25,390,718	\$ 10,844,462
Public purpose program revenue	1,334,519	1,545,030	1,125,344
Other revenue	142,308	633,052	688,491
Total operating revenues less cost of electricity	<u>28,873,192</u>	<u>27,568,800</u>	<u>12,658,297</u>
Operating expenses, excluding cost of electricity	<u>13,817,301</u>	<u>11,161,370</u>	<u>8,839,245</u>
Operating income	<u>\$ 15,055,891</u>	<u>\$ 16,407,430</u>	<u>\$ 3,819,052</u>
Operating expenses, excluding cost of electricity, over total operating revenues less cost of electricity:	47.9%	40.5%	69.8%
% increase in Gross surplus:	7.9%	134.1%	27.3%
% increase in operating expenses less cost of electricity:	23.8%	26.3%	15.4%
% increase in operating income:	-8.2%	329.6%	110.8%

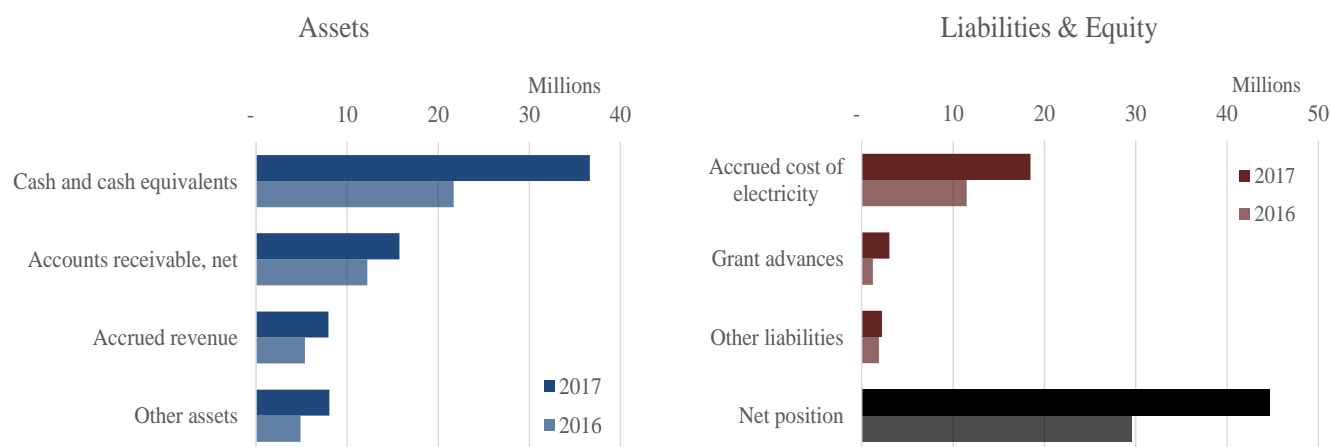
**MARIN CLEAN ENERGY  
MANAGEMENT'S DISCUSSION AND ANALYSIS  
(Continued)**

**FINANCIAL SUMMARY**

**CHANGES IN NET POSITION: FISCAL YEAR ENDED MARCH 31:**



**ASSETS, LIABILITIES, AND NET POSITION AS OF MARCH 31:**



	2017	2016
Cash and cash equivalents	\$ 36,655,995	\$ 21,696,949
Accounts receivable, net	15,740,298	12,217,586
Accrued revenue	7,938,840	5,356,608
Other assets	8,037,739	4,871,675
<b>Total Assets</b>	<b>\$ 68,372,872</b>	<b>\$ 44,142,818</b>

	2017	2016
Accrued cost of electricity	\$ 18,477,359	\$ 11,500,898
Grant advances	3,023,856	1,220,909
Other liabilities	2,211,940	1,889,941
Net position	44,659,717	29,531,070
<b>Total liabilities &amp; net position</b>	<b>\$ 68,372,872</b>	<b>\$ 44,142,818</b>

**MARIN CLEAN ENERGY**  
**MANAGEMENT'S DISCUSSION AND ANALYSIS**  
(Continued)

## **PURCHASE COMMITMENTS AND ECONOMIC OUTLOOK**

In the normal course of business, MCE enters into various agreements, including renewable energy agreements and other power purchase agreements to purchase power and electric capacity. MCE enters into power purchase agreements in order to comply with state law and voluntary targets for renewable and greenhouse gas (GHG) free products as described in its Integrated Resource Plans. California law established a Renewable Portfolio Standard (RPS) that requires load-serving entities, such as MCE, to gradually increase the amount of renewable energy they deliver to their customers. In October 2015, the California Governor signed SB 350, the Clean Energy and Pollution Reduction Act of 2015 into law. SB 350 became effective January 1, 2016, and increases the amount of renewable energy that must be delivered by most load-serving entities, including MCE, to their customers from 33% of their total annual retail sales by the end of the 2017-2020 compliance period, to 50% of their total annual retail sales by the end of the 2028-2030 compliance period, and in each three-year compliance period thereafter, unless changed by legislative action. SB 350 provides compliance flexibility and waiver mechanisms, including increased flexibility to apply excess renewable energy procurement in one compliance period to future compliance periods. Beginning January 1, 2021, at least 65 percent of the procurement a retail seller, such as MCE, counts toward the renewables portfolio standard requirement of each compliance period shall be from its contracts of 10 years or more in duration.

MCE enters into long term purchase agreements to bring new solar, wind and other renewable energy generating facilities on-line, to meet its regulatory and voluntary RPS and GHG free targets and to accomplish its mission of providing renewable energy and reducing greenhouse gas emissions while ensuring retail rate stability by managing exposure to wholesale spot market prices.

MCE manages risks associated with these commitments by aligning purchase commitments with expected demand for electricity and assuring diversity of technologies, geographical locations, and suppliers. Expected obligations under power purchase agreements totaled approximately \$1.85 billion as of March 31, 2017.

Management intends to continue its conservative use of financial resources and expects ongoing operating surpluses.

## **REQUESTS FOR INFORMATION**

This financial report is designed to provide MCE's board members, stakeholders, customers and creditors with a general overview of the MCE's finances and to demonstrate MCE's accountability for the funds under its stewardship.

Please address any questions about this report or requests for additional financial information to Finance and Project Manager, 1125 Tamalpais Avenue, San Rafael, CA 94901.

**BASIC FINANCIAL STATEMENTS**

**MARIN CLEAN ENERGY**  
**STATEMENTS OF NET POSITION**  
**MARCH 31, 2017 AND 2016**

	<b>2017</b>	<b>2016</b>
<b>ASSETS</b>		
Current assets		
Cash and cash equivalents	\$ 36,655,995	\$ 21,696,949
Accounts receivable, net of allowance	15,740,298	12,217,586
Energy settlements receivable	1,694,749	-
Other receivables	246,763	525,658
Accrued revenue	7,938,840	5,356,608
Prepaid expenses	940,342	1,261,373
Other current assets and deposits	1,551,646	62,929
Total current assets	64,768,633	41,121,103
Noncurrent assets		
Restricted cash	2,759,721	2,206,664
Capital assets, net of depreciation	571,666	542,199
Other noncurrent assets and deposits	272,852	272,852
Total noncurrent assets	3,604,239	3,021,715
Total assets	68,372,872	44,142,818
<b>LIABILITIES</b>		
Current liabilities		
Accounts payable	600,800	657,336
Accrued cost of electricity	18,477,359	11,500,898
Other accrued liabilities	546,048	305,054
Security deposits - energy suppliers	105,000	-
User taxes and energy surcharges due to other governments	960,092	927,551
Advances from public purpose programs	3,023,856	1,220,909
Total current liabilities	23,713,155	14,611,748
<b>NET POSITION</b>		
Net position		
Net investment in capital assets	571,666	542,199
Restricted for line of credit collateral	2,212,221	1,659,164
Unrestricted	41,875,830	27,329,707
Total net position	\$ 44,659,717	\$ 29,531,070

**MARIN CLEAN ENERGY****STATEMENTS OF REVENUES, EXPENSES  
AND CHANGES IN NET POSITION****FISCAL YEARS ENDED MARCH 31, 2017 AND 2016**

	<u>2017</u>	<u>2016</u>
<b>OPERATING REVENUES</b>		
Electricity sales, net	\$ 179,689,662	\$ 149,486,696
Public purpose program revenue	1,334,519	1,545,030
Other revenue	142,308	633,052
Total operating revenues	<u>181,166,489</u>	<u>151,664,778</u>
<b>OPERATING EXPENSES</b>		
Cost of electricity	152,293,297	124,095,978
Contract services	7,764,638	6,584,384
Staff compensation	4,858,587	3,405,416
General and administration	1,101,430	1,094,963
Depreciation	92,646	76,607
Total operating expenses	<u>166,110,598</u>	<u>135,257,348</u>
Operating income	<u>15,055,891</u>	<u>16,407,430</u>
<b>NONOPERATING REVENUES (EXPENSES)</b>		
Interest income	105,271	12,179
Interest and related expenses	(32,515)	(144,858)
Total nonoperating revenues (expenses)	<u>72,756</u>	<u>(132,679)</u>
<b>CHANGE IN NET POSITION</b>	15,128,647	16,274,751
Net position at beginning of period	29,531,070	13,256,319
Net position at end of period	<u>\$ 44,659,717</u>	<u>\$ 29,531,070</u>



**MARIN CLEAN ENERGY****STATEMENTS OF CASH FLOWS****FISCAL YEARS ENDED MARCH 31, 2017 AND 2016**

	<u>2017</u>	<u>2016</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Receipts from electricity sales	\$ 173,584,288	\$ 146,949,614
Public purpose program receipts	3,370,343	291,375
Tax and surcharge receipts from customers	4,209,577	4,081,848
Payments received from other revenue sources	303,770	926,607
Payments received from security deposits with energy suppliers	525,000	-
Payments to purchase electricity	(147,416,447)	(122,324,217)
Payments for contract services	(7,660,258)	(6,560,471)
Payments for staff compensation	(4,742,015)	(3,312,945)
Payments for general and administration	(1,117,386)	(1,080,328)
Tax and surcharge payments to other governments	(4,177,036)	(3,765,527)
Return of security deposits to energy suppliers	(420,000)	-
Other cash payments	-	(41,598)
Net cash provided (used) by operating activities	<u>16,459,836</u>	<u>15,164,358</u>
<b>CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES</b>		
Return of financing reserve	-	598,200
Transfer to restricted cash	(553,057)	(1,659,164)
Principal payments of notes payable to bank	-	(2,024,036)
Interest and related expenses	(32,515)	(144,858)
Net cash provided (used) by non-capital financing activities	<u>(585,572)</u>	<u>(3,229,858)</u>
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES</b>		
Acquisition of nondepreciable assets	(901,806)	-
Acquisition of capital assets	(119,824)	(421,261)
Net cash provided (used) by capital and related financing activities	<u>(1,021,630)</u>	<u>(421,261)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Interest income	<u>106,412</u>	<u>9,895</u>
Net change in cash and cash equivalents	14,959,046	11,523,134
Cash and cash equivalents at beginning of year	<u>21,696,949</u>	<u>10,173,815</u>
Cash and cash equivalents at end of period	<u>\$ 36,655,995</u>	<u>\$ 21,696,949</u>

**MARIN CLEAN ENERGY****STATEMENTS OF CASH FLOWS  
(CONTINUED)****FISCAL YEARS ENDED MARCH 31, 2017 AND 2016****RECONCILIATION OF OPERATING INCOME TO NET  
CASH PROVIDED (USED) BY OPERATING ACTIVITIES**

	<u>2017</u>	<u>2016</u>
Operating income	\$ 15,055,891	\$ 16,407,430
Adjustments to reconcile operating income to net cash provided (used) by operating activities		
Depreciation expense	92,646	76,607
Revenue reduced for uncollectible accounts	1,112,000	740,000
(Increase) decrease in net accounts receivable	(4,634,712)	(2,428,706)
(Increase) decrease in energy settlements receivable	(1,694,749)	-
(Increase) decrease in other receivables	377,754	59,811
(Increase) decrease in accrued revenue	(2,582,232)	(854,376)
(Increase) decrease in prepaid expenses	321,032	(893,221)
(Increase) decrease in other assets and deposits	(685,571)	(54,327)
Increase (decrease) in accounts payable	(60,165)	(15,240)
Increase (decrease) in accrued cost of electricity	6,976,461	2,692,544
Increase (decrease) in other accrued liabilities	240,994	105,697
Increase (decrease) in security deposits from energy suppliers	105,000	-
Increase (decrease) in user taxes due to other governments	32,541	316,321
Increase (decrease) in advances from public purpose programs	1,802,946	(988,182)
Net cash provided (used) by operating activities	<u>\$ 16,459,836</u>	<u>\$ 15,164,358</u>

**MARIN CLEAN ENERGY****NOTES TO THE FINANCIAL STATEMENTS****YEARS ENDED MARCH 31, 2017 AND 2016****1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES****REPORTING ENTITY**

Marin Clean Energy (MCE) is a California joint powers authority created on December 19, 2008. As of March 31, 2017 parties to its Joint Powers Agreement consist of the following local governments: the Counties of Marin and Napa, the cities of American Canyon, Belvedere, Benicia, Calistoga, El Cerrito, Lafayette, Larkspur, Mill Valley, Napa, Novato, Richmond, San Pablo, San Rafael, Sausalito, St. Helena, and Walnut Creek and the towns of Corte Madera, Fairfax, Ross, San Anselmo, Tiburon, and Yountville (collectively, “the Parties”). MCE is separate from and derives no financial support from its members. MCE is governed by a Board of Directors whose membership is composed of elected officials representing each of the parties.

MCE’s mission is to address climate change by reducing energy related greenhouse gas emissions through renewable energy supply and energy efficiency at stable and competitive rates for customers while providing local economic and workforce benefits. MCE provides electric service to retail customers as a Community Choice Aggregation Program under the California Public Utilities Code Section 366.2.

MCE began the delivery of electricity and energy efficiency programs in May 2010 and April, 2013 respectively. Electricity is acquired from commercial suppliers and delivered through existing physical infrastructure and equipment managed by the California Independent System Operator and Pacific Gas and Electric Company. The Energy Efficiency Program supports the development, coordination and implementation of energy efficiency programs in and around MCE’s service area. The Energy Efficiency Program is supported by rate-payer funds regulated by the California Public Utilities Commission.

**BASIS OF ACCOUNTING**

MCE’s financial statements are prepared in accordance with generally accepted accounting principles (GAAP). The Governmental Accounting Standards Board (GASB) is responsible for establishing GAAP for state and local governments through its pronouncements.

## **MARIN CLEAN ENERGY**

### **NOTES TO THE FINANCIAL STATEMENTS**

#### **YEARS ENDED MARCH 31, 2017 AND 2016**

#### **1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

MCE's operations are accounted for as a governmental enterprise fund, and are reported using the economic resources measurement focus and the accrual basis of accounting – similar to business enterprises. Accordingly, revenues are recognized when they are earned and expenses are recognized at the time liabilities are incurred. Enterprise fund type operating statements present increases (revenues) and decreases (expenses) in total net position. Reported net position is segregated into three categories – net investment in capital assets, restricted, and unrestricted.

When both restricted and unrestricted resources are available for use, it is the MCE's policy to use restricted resources first, then unrestricted resources as they are needed.

#### **CASH AND CASH EQUIVALENTS**

For purpose of the Statements of Cash Flows, MCE defines cash and cash equivalents to include cash on hand, demand deposits, and short-term investments. Amounts restricted for debt service and collateral for energy efficiency loan program are not considered cash and cash equivalents. These restricted balances are presented separately in the Statement of Net Position.

#### **CAPITAL ASSETS AND DEPRECIATION**

MCE's policy is to capitalize furniture and equipment valued over \$500 that is expected to be in service for over one year. Depreciation is computed according to the straight-line method over estimated useful lives of three years for electronic equipment and seven years for furniture. Leasehold improvements are depreciated over 10 years.

#### **OPERATING AND NON-OPERATING REVENUE**

Operating revenues consists of revenue from the sale of electricity to customers and revenue related to the Energy Efficiency Program. Other revenues primarily consist of payments from energy suppliers that result from delays in energy deliveries. Interest income is considered "non-operating revenue".

#### **REVENUE RECOGNITION**

MCE recognizes revenue on the accrual basis. This includes invoices issued to customers during the reporting period and electricity estimated to have been delivered but not yet billed. Management estimates that a portion of the billed amounts will not be collected. Accordingly, an allowance has been recorded.

## **MARIN CLEAN ENERGY**

### **NOTES TO THE FINANCIAL STATEMENTS**

#### **YEARS ENDED MARCH 31, 2017 AND 2016**

#### **1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

##### **ELECTRICAL POWER PURCHASED**

During the normal course of business MCE purchases electrical power from numerous suppliers. Electricity costs include the cost of energy and ancillary services arising from bilateral contracts with energy suppliers as well as generation credits, and load and other charges arising from MCE's participation in the California Independent System Operator's centralized market. The cost of electricity and ancillary services are recognized as "Cost of Electricity" in the Statements of Revenues, Expenses and Changes in Net Position.

To comply with the State of California's Renewable Portfolio Standards (RPS) and self-imposed benchmarks, MCE acquires RPS eligible renewable energy evidenced by Renewable Energy Certificates (Certificates) recognized by the Western Renewable Energy Generation Information System (WREGIS). MCE obtains Certificates with the intent to retire them, and does not sell or build surpluses of Certificates. An expense is recognized at the point that the cost of the RPS eligible energy is due and payable to the supplier. MCE is in compliance with external mandates and self-imposed benchmarks.

##### **STAFFING COSTS**

MCE pays employees semi-monthly and fully pays its obligation for health benefits and contributions to its defined contribution retirement plan each month. MCE is not obligated to provide post-employment healthcare or other fringe benefits and, accordingly, no related liability is recorded in these financial statements.

##### **INCOME TAXES**

MCE is a joint powers authority under the provision of the California Government Code, and is not subject to federal or state income or franchise taxes.

##### **ESTIMATES**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

##### **RECLASSIFICATIONS**

Certain amounts in the prior-year financial statements have been reclassified for comparative purposes to conform to the presentation of the current-year financial statements.

**MARIN CLEAN ENERGY****NOTES TO THE FINANCIAL STATEMENTS****YEARS ENDED MARCH 31, 2017 AND 2016****2. CASH AND CASH EQUIVALENTS**

MCE maintains its cash in both interest-bearing and non-interest-bearing demand and term deposit accounts at River City Bank of Sacramento, California. MCE's deposits with River City Bank are subject to California Government Code Section 16521 which requires that River City Bank collateralize public funds in excess of the FDIC limit of \$250,000 by 110%. MCE monitors its risk exposure to River City Bank on an ongoing basis. MCE's Investment Policy permits the investment of funds in depository accounts, certificates of deposit and the Local Agency Investment Fund (LAIF) program operated by the California State Treasury.

**3. ACCOUNTS RECEIVABLE**

Accounts receivable balances were as follows:

	<u>2017</u>	<u>2016</u>
Accounts receivable from customers	\$ 19,952,298	\$ 15,317,586
Allowance for uncollectible accounts	(4,212,000)	(3,100,000)
Net accounts receivable	<u>\$ 15,740,298</u>	<u>\$ 12,217,586</u>

The majority of account collections occur within the first few months following customer invoicing. MCE estimates that a portion of the billed accounts will not be collected. MCE continues collection efforts on accounts in excess of *de minimis* balances regardless of the age of the account. Although collection success generally decreases with the age of the receivable, MCE continues to have success collecting older accounts. The allowance for uncollectible accounts at the end of a period includes amounts billed during the current and prior fiscal years.

**4. ENERGY SETTLEMENTS RECEIVABLE**

During fiscal 2016/17 MCE entered into a contract to receive generation scheduling and other services from a registered, California Independent System Operator (CAISO) scheduling coordinator. Generation scheduling had previously been performed under a full services contract with an energy supplier and accrued settlements receivable were netted from accrued liabilities as of March 31, 2016 in accordance with the contract terms. Energy settlements due from the scheduling coordinator were \$1.7 million as of March 31, 2017.

**MARIN CLEAN ENERGY****NOTES TO THE FINANCIAL STATEMENTS****YEARS ENDED MARCH 31, 2017 AND 2016****5. OTHER CURRENT ASSETS AND DEPOSITS**

During fiscal 2016/17 MCE acquired assets to support the development of a local renewable energy project located in Richmond, California (MCE Solar One). These assets were reported in other current assets and deposits in the Statements of Net Position and in the Statements of Cash Flows as an acquisition of nondepreciable capital assets. These assets were sold to a developer in May 2017 who will build, own and operate MCE Solar One and sell power to MCE once the project achieves commercial operation. Also included in this account are security deposits paid by MCE pursuant to agreements that expire in less than twelve months.

**6. CAPITAL ASSETS**

Changes in depreciable capital assets were as follows:

	Furniture & Equipment	Leasehold Improvements	Accumulated Depreciation	Net
Balances at March 31, 2015	\$ 152,252	\$ 331,392	\$ (76,018)	\$407,626
Additions	85,591	125,589	(76,607)	134,573
Balances at March 31, 2016	237,843	456,981	(152,625)	542,199
Additions	96,983	25,130	(92,646)	29,467
Balances at March 31, 2017	<u>\$ 334,826</u>	<u>\$ 482,111</u>	<u>\$ (245,271)</u>	<u>\$571,666</u>

**7. PUBLIC PURPOSE PROGRAMS**

MCE administers ratepayer-funded energy efficiency programs regulated by the Public Utilities Commission of the State of California (CPUC). Funds received are not recognized as revenue until they are expended for designated purposes. Total funding received for this Program during the fiscal year 2017 was \$2,722,000, and \$1,066,000 was spent and earned. In fiscal year 2016, funding received was \$172,000 and \$1,213,000 was spent and earned. The Energy Efficiency Program receives additional funding under the Gas Public Purpose Program that is not received in advance. Revenue of \$268,000 and \$332,000 was recognized under the Gas Public Purpose Program in fiscal years 2017 and 2016, respectively.

**MARIN CLEAN ENERGY****NOTES TO THE FINANCIAL STATEMENTS****YEARS ENDED MARCH 31, 2017 AND 2016****8. DEBT****NOTES PAYABLE**

During the fiscal year 2015/16, MCE retired bank notes of \$2,024,036 ahead of schedule. MCE incurred no debt during fiscal 2016/17 and had no debt as of March 31, 2017.

**LINE OF CREDIT AND LETTERS OF CREDIT**

MCE entered into a non-revolving, \$15,000,000 credit agreement with River City Bank (RCB) in August 2015 that may be used for short term borrowing and to issue standby Letters of Credit used for performance security. The credit agreement was amended in May 2016 to a revolving credit agreement and the borrowing limit was increased to \$20,000,000. RCB requires collateral for the line of credit of \$2.2 million which is reported as restricted cash and restricted net position. The agreement expires on August 30, 2017. Management is currently negotiating an amendment to the credit agreement that would extend the term of the agreement and include other changes.

During fiscal 2015/16, MCE arranged to post performance security in the form of standby Letters of Credit totaling \$7,300,000 to two suppliers. As of March 31, 2016, MCE had not drawn any cash on the line of credit. During fiscal 2016/17 suppliers returned all issued and outstanding standby Letters of Credit to MCE. MCE arranged to issue no new Letters of Credit in fiscal 2016/17 and has no standby Letters of Credit or amounts outstanding under its credit agreement as of March 31, 2017.

Fees related to opening and renewal of the line of credit and posting the letters of credit are reported as interest and related expenses.

**9. DEFINED CONTRIBUTION RETIREMENT PLAN**

The Marin Clean Energy Plan (Plan) is a defined contribution retirement plan established by MCE to provide benefits at retirement to its employees. The Plan is administered by Nationwide Retirement Solutions. As of March 31, 2017, there were 43 plan members. MCE is required to contribute 10% of annual covered payroll to the Plan and contributed \$394,000 and \$257,000 during the years ended March 31, 2017 and 2016, respectively. The Plan includes vesting provisions intended to encourage employee retention. Plan provisions and contribution requirements are established and may be amended by the Board of Directors.



## **MARIN CLEAN ENERGY**

### **NOTES TO THE FINANCIAL STATEMENTS**

#### **YEARS ENDED MARCH 31, 2017 AND 2016**

#### **10. RISK MANAGEMENT**

MCE is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; and errors and omissions. During the year, MCE purchased insurance policies from investment grade commercial carriers to mitigate risks that include those associated with earthquakes, theft, general liability, errors and omissions, and property damage.

MCE maintains risk management guidelines, procedures and systems that help mitigate credit, liquidity, market, operating, regulatory and other risks that arise from participation in the California energy market.

Credit guidelines include a preference for transacting with investment grade counterparties, evaluating counterparties' financial condition and assigning credit limits as applicable. These credit limits are established based on risk and return considerations under terms customarily available in the industry. In addition, MCE enters into netting arrangements whenever possible and where appropriate obtains collateral and other performance assurances from counter parties.

#### **11. PURCHASE COMMITMENTS**

##### **POWER AND ELECTRIC CAPACITY**

In the ordinary course of business, MCE enters into various power purchase agreements in order to acquire renewable and other energy and electric capacity. The price and volume of purchased power may be fixed or variable. Variable pricing is generally based on the market price of either natural gas or electricity at the date of delivery. Variable volume is generally associated with contracts to purchase energy from as-available resources such as solar, wind and hydro-electric facilities.

MCE enters into power purchase agreements in order to comply with state law and voluntary targets for renewable and greenhouse gas (GHG) free products and to ensure stable and competitive electric rates for its customers.

**MARIN CLEAN ENERGY****NOTES TO THE FINANCIAL STATEMENTS****YEARS ENDED MARCH 31, 2017 AND 2016****11. PURCHASE COMMITMENTS (continued)**

The following table represents the expected, undiscounted, contractual obligations outstanding as of March 31, 2017:

Year ended March 31,	
2018	\$ 146,200,000
2019	126,800,000
2020	114,300,000
2021	97,000,000
2022	98,500,000
2023-42	1,263,100,000
	<u>\$ 1,845,900,000</u>

As of March 31, 2017, MCE had contractual commitments to professional service providers through April 30, 2019 for services yet to be performed. Fees associated with these contracts are based on volumetric activity and are expected to be \$7.6 million.

**12. OPERATING LEASE**

Rental expense for MCE's office space was \$321,000 and \$179,000 for the years ended March 31, 2017 and 2016, respectively. On March 9, 2015, MCE entered into a ten-year non-cancelable lease for its office premise. The rental agreement includes an option to renew the lease for five additional years.

Future minimum lease payments under the lease are as follows:

Year ended March 31,	
2018	\$ 417,000
2019	430,000
2020	443,000
2021	460,000
2022	479,000
2023-25	1,554,000
	<u>\$ 3,783,000</u>

**MARIN CLEAN ENERGY  
BUDGETARY COMPARISON SCHEDULES**

From April 1, 2016 through March 31, 2017

**OPERATING FUND**

	Actual	Budget (Amended)	Budget Variance (Under) Over (\$)	Budget Variance (Under) Over (%)
	FY 2016/17	FY 2016/17	FY 2016/17	
<b>ENERGY REVENUE</b>				
Revenue - Electricity (net of allowance)	\$ 179,689,663	\$ 181,351,000	\$ (1,661,337)	-1%
Other revenue	142,308		142,308	
<b>GROSS ENERGY REVENUE</b>	<b>179,831,971</b>	<b>181,351,000</b>	<b>(1,519,029)</b>	<b>1%</b>
<b>ENERGY EXPENSES</b>				
Cost of energy	152,293,297	159,033,000	(6,739,703)	-4%
<b>NET ENERGY REVENUE</b>	<b>27,538,674</b>	<b>22,318,000</b>	<b>5,220,674</b>	<b>23%</b>
<b>OPERATING EXPENSES</b>				
Personnel	4,591,576	5,251,000	(659,424)	-13%
Data manager	3,322,405	3,674,000	(351,595)	-10%
Technical and scheduling services	592,779	762,000	(169,221)	-22%
Service fees- PG&E	1,144,243	1,255,000	(110,757)	-9%
Legal counsel	639,505	817,000	(177,495)	-22%
Communications services and related expenses	940,062	986,000	(45,938)	-5%
Other services	341,317	469,000	(127,683)	-27%
General and administration	389,461	443,000	(53,539)	-12%
Occupancy	385,795	403,000	(17,205)	-4%
Integrated demand-side pilot programs	15,189	50,000	(34,811)	-70%
Marin County green business program	10,000	10,000	-	0%
Low income solar programs	17,800	35,000	(17,200)	-49%
<b>TOTAL OPERATING EXPENSES</b>	<b>12,390,132</b>	<b>14,155,000</b>	<b>(1,764,868)</b>	<b>-12%</b>
<b>OPERATING INCOME</b>	<b>15,148,542</b>	<b>8,163,000</b>	<b>6,985,542</b>	<b>86%</b>
<b>NONOPERATING REVENUES</b>				
Grant Income		75,000	(75,000)	
Interest income	105,271	50,000	55,271	111%
<b>TOTAL NONOPERATING REVENUES</b>	<b>105,271</b>	<b>125,000</b>	<b>(19,729)</b>	<b>-16%</b>
<b>NONOPERATING EXPENSES</b>				
Interest expense and financing costs	32,515	383,000	(350,485)	-92%
Depreciation	92,646	100,000	(7,354)	-7%
<b>TOTAL NONOPERATING EXPENSES</b>	<b>125,161</b>	<b>483,000</b>	<b>(357,839)</b>	<b>-74%</b>
<b>TOTAL NONOPERATING INCOME (EXPENSES)</b>	<b>(19,890)</b>	<b>(358,000)</b>	<b>338,110</b>	<b>-94%</b>
<b>CHANGE IN NET POSITION</b>	<b>15,128,652</b>	<b>7,805,000</b>	<b>7,323,652</b>	<b>94%</b>
<b>CAPITAL EXPENDITURES, INTERFUND TRANSFERS &amp; OTHER</b>				
Capital outlay	122,114	383,000	(260,886)	-68%
Depreciation (supplemental)	(92,646)	(100,000)	7,354	-7%
Repayment of loan principal, interest	-	-	-	
Transfer to Renewable Energy Reserve	-	-	-	
Transfer to Local Renewable Development Fund	173,263	173,263	-	0%
<b>TOTAL CAPITAL EXPENDITURES, INTERFUND TRANSFERS &amp; OTHER</b>	<b>202,731</b>	<b>456,263</b>	<b>(253,532)</b>	<b>-56%</b>
Net increase (decrease) in available fund balance	\$ 14,925,921	\$ 7,348,737	\$ 7,577,184	103%

<b>MARIN CLEAN ENERGY</b>				
<b>BUDGETARY COMPARISON SCHEDULES</b>				
<b>From April 1, 2016 through March 31, 2017</b>				
<b>ENERGY EFFICIENCY PROGRAM FUND</b>				
	<b>Actual</b>	<b>Budget (Amended)</b>	<b>Budget Variance (Under) Over (\$)</b>	<b>Budget Variance (Under) Over (%)</b>
	<b>FY 2016/17</b>	<b>2016/17</b>	<b>2016/17</b>	
<b>REVENUE AND OTHER SOURCES:</b>				
Public purpose energy efficiency program	\$ 1,334,519	1,586,357	(251,838)	-16%
<b>EXPENDITURES AND OTHER USES:</b>				
Public purpose energy efficiency program	1,334,519	1,586,357	(251,838)	-16%
Net increase (decrease) in fund balance	-	-	-	-
<b>LOCAL RENEWABLE ENERGY DEVELOPMENT FUND</b>				
	<b>Actual</b>	<b>Budget</b>	<b>Budget Variance (Under) Over</b>	<b>% Over (Under) Budget</b>
	<b>FY 2016/17</b>	<b>2016/17</b>	<b>2016/17</b>	
<b>REVENUE AND OTHER SOURCES:</b>				
Transfer from Operating Fund	\$ 173,263	173,263	-	
<b>EXPENDITURES AND OTHER USES:</b>				
Capital Outlay and related	246,867	173,263	73,604	42%
Net increase (decrease) in fund balance	(73,604)	-		
Fund balance at beginning of period	73,604			
Fund balance at end of period	-			
<b>RENEWABLE ENERGY RESERVE FUND</b>				
	<b>Actual</b>	<b>Budget (Amended)</b>	<b>Budget Variance (Under) Over</b>	<b>% Over (Under) Budget</b>
	<b>FY 2016/17</b>	<b>2016/17</b>	<b>2016/17</b>	
<b>REVENUE AND OTHER SOURCES:</b>				
Other proceeds	\$ -	761,350	(761,350)	
Transfer from Operating Fund	-	-	-	
Total revenue and other sources	-	761,350	(761,350)	
<b>EXPENDITURES AND OTHER USES:</b>				
Net increase (decrease) in fund balance	(556,279)	(178,500)	377,779	-212%
Fund balance at beginning of period	1,000,000			
Fund balance at end of period	443,721			



July 20, 2017

TO: MCE Board of Directors

FROM: Sarah Estes-Smith, Director of Internal Operations

RE: MCE Contra Costa Office (Agenda Item #11)

ATTACHMENTS: A. MCE Contra Costa Office Data  
B. MCE Contra Costa Office Presentation

Dear Board Members:

**SUMMARY:**

MCE's service area and staff size have grown considerably over the past several years. In order to meet current and future office space needs, and with the possible inclusion of additional Contra Costa communities, staff have begun the process of researching options for a second office location.

**BACKGROUND:**

At its inception, MCE served cities and towns in Marin County and chose San Rafael as the ideal location for its office headquarters. Between 2013 and 2015, MCE welcomed the City of Richmond, unincorporated Napa County, the western Contra Costa Cities of San Pablo and El Cerrito, and Solano County's City of Benicia to its service area. During this time, your Board as well as the Executive Committee periodically discussed the possibility of opening an East Bay office, should the need develop. Also during this time, MCE's staff size grew and the decision was made to relocate to a larger office building in downtown San Rafael. In 2016, the remaining cities within Napa County and the central Contra Costa Cities of Walnut Creek and Lafayette joined MCE. With the current consideration of nine additional Contra Costa communities, staff are actively researching opportunities for a second location in the East Bay.

There are several factors contributing to MCE's need for a second office, most of which suggest that Contra Costa County would be the ideal location:

1. MCE is currently exceeding the capacity of its San Rafael office. Three open positions are in the process of being filled and there is a need for additional full-time and temporary hires during the remainder of FY 2017/18;
2. Customers, local elected officials and government staff, advocates, and others outside of Marin County have expressed a desire for MCE to have a greater, more permanent physical presence in their community;

3. MCE's mission is to reduce greenhouse gas (GHG) emissions, including our own. Staff members who commute by car between their homes, the San Rafael office, community meetings, and events would experience significantly shorter drive distances and/or times. This is also true for Board members who live and/or work outside of Marin County and drive to regular MCE Board and Committee meetings in San Rafael.
4. The outreach work of MCE's Community Development Team would be more efficient if conducted from strategically located offices, especially during the pending Contra Costa enrollment period but also during normal course of business (e.g. Deep Green campaigns, Community Power Coalition coordination, etc.);
5. There are new partnership opportunities in Contra Costa County for energy efficiency, local renewables, and workforce development that would benefit from a local office;

In anticipation of MCE's continued growth, staff have vetted potential locations for a second office, including sites in Concord, Martinez, and Pittsburg. An ideal location has been identified in downtown Concord and staff are in communication with the property agent to discuss space availability.

**Fiscal Impact:** Costs related to the opening of a second office location would be incorporated into the Proposed FY 2017/18 Budget Amendment for consideration at the September 2017 Board Retreat.

**Recommendation:** No action, discussion only.

## MCE Contra Costa Office Data

<b>Available Locations Meeting Our Criteria</b>	<b>2</b>
<b>Available Locations That Did Not Meet Criteria</b>	<b>3</b>
<b>Price Range in Cost per Square Foot per Month</b>	<b>4</b>
<b>GHG and Cost Reduction Calculations for Potential Concord Office</b>	<b>5</b>
<b>Average One-Way Public Transit Time in Minutes</b>	<b>7</b>
<b>Transit Options for Contra Costa Office</b>	<b>8</b>
<b>Average One-Way Driving Distance in Miles</b>	<b>9</b>
<b>Average One-Way Driving Time in Minutes</b>	<b>10</b>
<b>Walk Scores for Contra Costa Locations</b>	<b>11</b>

<b>Available Locations Meeting Our Criteria</b>				
<b>Address</b>	<b>1800 Sutter St, Concord</b>	<b>2151 Salvio St, 3rd Floor Concord</b>	<b>2151 Salvio St, 1st Floor Concord</b>	<b>2300 Clayton Rd, Concord</b>
<b>Building type</b>	Office high-rise	Mid-sized multi-tenant	Mid-sized multi-tenant	Office high-rise
<b>Proximity to BART</b>	0.5 miles 3 blocks	0.5 miles 3 blocks	0.5 miles 3 blocks	0.1 mile across street
<b>Square Footage</b>	4530 - 4934	6000-8000	6000	4397-5181
<b>On-site free parking</b>	Yes	Free Downtown Garages	Free Downtown Garages	3 spaces/1000sqft free, anything above that amount is \$50/stall/month
<b>Property management - maintenance, cleaning</b>	On-site building management, basic janitorial. 5 days/week	On-site building management, basic janitorial. 5 days/week	On-site building management, basic janitorial. 5 days/week	On-site building management, full-service janitorial 5 day/week
<b>EV chargers</b>	No	Two city spots in free garages	Two city spots in free garages	3 e/v stalls
<b>Accessible to customers - building access, ADA, prox. to public transit</b>	Yes	Yes	Yes	Yes
<b>Security system</b>	24-hour on-site security	Evening security	Evening security	24-hour on-site security
<b>Rent</b>	2.45/sqft	2.15 - 2.25/sqft	2.15 - 2.25/sqft	2.85 - 2.95/sqft
<b>Utilities</b>	Included, cannot separately meter	Included, cannot separately meter	Utilities are at an additional cost	Included, cannot separately meter
<b>Storefront</b>	No	No	Yes	No



### Available Locations That Did Not Meet Criteria

<b>Address</b>	<b>2120 Mt Diablo St, Concord</b>	<b>2304 Willow Pass Rd, Concord</b>	<b>626 Main St, Martinez</b>	<b>415 Railroad Ave, Pittsburg</b>
<b>Building type</b>	Single tenant	Single tenant	Single tenant	Small multi-tenant
<b>Proximity to BART</b>	0.6 miles 6 blocks	0.5 miles 4 blocks	7.5 miles/ Car dependent	4.9 miles/ Car dependent
<b>Square Footage</b>	6000	4656	5613	4000
<b>On-site free parking</b>	Free Downtown Garages	Free Downtown Garages	12 spaces	Unknown
<b>Property management - maintenance, cleaning</b>	Negotiable	Unknown	Exterior landscaping/ maintenance	Unknown
<b>EV chargers</b>	Two city spots in free garages	Two city spots in free garages	Can install own	No
<b>Accessible to customers - building access, ADA, prox. to public transit</b>	Can meet needs as part of renovation	Unknown	Can meet needs as part of renovation	Unknown
<b>Security system</b>	Tenant responsibility	Unknown	Tenant responsibility	Unknown
<b>Rent</b>	1.75/sqft	Negotiable	1.50/sqft	Negotiable
<b>Utilities</b>	Negotiable	Unknown	0.35/sqft	Negotiable
<b>Storefront</b>	Yes	Yes	Yes	No
<b>Reason for Ruling it Out</b>	This building is completely gutted and bare bones. 6 months for renovation. 1st floor is a storage/warehouse space.	Unresponsive building owner/landlord	Minimum 6 months for renovation.	Unresponsive broker

<b>Price Range in Cost per Square Foot per Month</b>		
	<b>Low</b>	<b>High</b>
<b>Concord</b>	\$1.31	\$2.95
<b>Martinez</b>	\$1.15	\$1.65
<b>Pittsburg</b>	\$1.05	\$1.30

**Notes**

- The high end of the range for Concord is skewed high due to multiple high-rise, class A office parks
- These figures can vary based on whether or not utilities are included or excluded in the price
- Martinez and Pittsburg had limited options to meet our square footage requirements

## GHG and Cost Reduction Calculations for Potential Concord Office

	<b>Est. Annual Vehicle Miles Traveled (VMT)</b>	<b>Avg MPG</b>	<b>Est. Gallons of Gasoline Saved</b>	<b>Est. Gallons of Gasoline Saved with Staff Projections</b>
Berkeley	6720	25	268.8	537.6
Lafayette	12249.6	25	489.984	489.984
Oakland	8332.8	25	333.312	1333.248
Richmond	4531.2	25	181.248	0
Walnut Creek	13286.4	25	531.456	531.456
San Francisco	6873.6	25	274.944	0

	<b>Current Staff Projected to Transfer</b>
Berkeley	2
Lafayette	1
Oakland	4
Walnut Creek	1
<b>Total cars off the road</b>	8
<b>Total gasoline saved</b>	2892 gallons annually
<b>GHG Reduction</b>	<b>25.7 metric tons carbon dioxide annually</b>

	<b>Est. Annual Cost Savings</b>	<b>Annual Bridge Toll</b>	<b>Est. Annual BART Cost</b>	<b>Net Savings</b>	<b>Net Savings with Staff Projected</b>
Berkeley	\$806.40	\$960.00	\$1,129.10	\$637.30	\$1,274.59
Lafayette	\$1,469.95	\$960.00	\$356.98	\$2,072.98	\$2,072.98
Oakland	\$999.94	\$960.00	\$1,110.72	\$849.22	\$3,396.86
Richmond	\$543.74	\$960.00	\$1,349.71	\$154.03	0
Walnut Creek	\$1,594.37	\$960.00	\$356.98	\$2,197.39	\$2,197.39
San Francisco	\$824.83	\$1,248.00	\$1,772.54	\$300.29	0
					<b>\$8,941.82</b>

## Notes

- Due to ease of transit and MCE's commuter benefits program, it can be assumed that employees in Berkeley, Lafayette, Oakland, and Walnut Creek would opt to take public transit
- While it may be beneficial for employees from Richmond and San Francisco to commute to Contra Costa, they are not currently planned to work in the 2nd office location, so they were omitted from these calculations
- This calculation does not take into account future staffing levels, which predict more employees in the Contra Costa Location
- These estimates exclude two employees projected to work in Contra Costa due to them driving E/Vs, so no change in gasoline saved

## Methodology

- These calculations assume one work remote day per week
- $VMT = \text{roundtrip driving distance} * 4 \text{ days/week} * 48 \text{ weeks/year}$
- $\text{Est. gallons saved} = VMT * \text{avg. MPG}$
- $\text{Est. annual cost savings} = \text{est. gallons saved} * \$3/\text{gallon}$
- Bridge toll = \$5 for Richmond, \$6.50 for Golden Gate
- $\text{Net savings} = \text{annual cost savings} + \text{annual bridge toll} - \text{BART}$
- BART costs include 6.25% discount offered through Clipper
- BART costs account for \$60/month transit benefit per our Commute Alternatives Program

## BART Stations

Berkeley	Downtown Berkeley Station
Lafayette	Lafayette Station
Oakland	MacArthur Station
Richmond	Richmond Station
Walnut Creek	Walnut Creek Station
San Francisco	Embarcadero Station

<b>Average One-Way Public Transit Time in Minutes</b>				
	<b>Destinations</b>			
<b>Origins</b>	<b>San Rafael</b>	<b>Concord</b>	<b>Martinez</b>	<b>Pittsburg</b>
<b>Contra Costa County</b>	<b>79.6</b>	<b>53.6</b>	<b>54.6</b>	<b>84.2</b>
El Sobrante	83.0	85.0	85.0	120.0
Hercules	83.0	81.0	55.0	95.0
Lafayette	68.0	22.0	57.0	56.0
Richmond	80.0	63.0	36.0	98.0
Walnut Creek	84.0	17.0	40.0	52.0
<b>Alameda County</b>	<b>74.7</b>	<b>50.0</b>	<b>69.0</b>	<b>87.0</b>
Alameda	98.0	61.0	107.0	102.0
Berkeley	63.0	50.0	44.0	85.0
Oakland	63.0	39.0	56.0	74.0
<b>San Francisco County</b>	<b>60.0</b>	<b>51.0</b>	<b>66.0</b>	<b>86.0</b>
<b>Napa County</b>	<b>189.0</b>	<b>126.0</b>	<b>79.0</b>	<b>186.0</b>

### Destinations

San Rafael 1125 Tamalpais Ave  
 Concord 2151 Salvio St  
 Martinez 525 Henrietta St  
 Pittsburg 65 Civic Ave

### Origins

- These are the home locations of staff most likely to populate Contra Costa office
- Assumes city center based on Google Maps predictive analytics
- County figures are averages based the cities and towns where MCE staff currently live

### Additional Notes

- Data obtained using 511.org projected transit times
- Data assumes arrival at the office location by 9am

## Transit Options for Contra Costa Office

### **Concord**

Concord is serviced by two BART stations, with the business district located off the Downtown Concord station. The BART is accessible without transfer for Lafayette, San Francisco, Walnut Creek, and some Oakland stations, and accessible with one transfer for Berkeley, Richmond, and the remaining Oakland stations.

Staff located in Hercules and El Sobrante have transit access via WestCAT and County Connection Buses

### **Martinez**

Due to the Amtrak Station, Downtown Martinez provides easy transit options from Berkeley and Richmond, via the Capitol Corridor and California Zephyr lines. There is also service from Napa to Martinez using the Amtrak Thruway Connecting service.

Transit from Lafayette, Oakland, and Walnut Creek involves transferring from a BART station to a County Connection bus and adds significant transit time.

### **Pittsburg**

Pittsburg's business district, Old Town, is currently only accessible by a Tri-Delta Transit bus after a transfer from the Pittsburg/Bay Point station. This can add significant transit time.

There is an eBart station planned to open in Pittsburg Center in 2018. This would entail transferring at the Pittsburg/Bay Point station. The eBart station is being constructed at Railroad Ave and SR 4, which is a mile walk from Old Town.

#### **A note on Clipper benefits:**

BART, County Connection, Tri-Delta Transit, and WestCAT all accept Clipper cards and staff using these transit options are able to use our current employee commuter benefits.

Amtrak does not accept Clipper and staff using this option would be unable to use our employee commuter benefits.

<b>Average One-Way Driving Distance in Miles</b>				
	<b>Destinations</b>			
<b>Origins</b>	<b>San Rafael</b>	<b>Concord</b>	<b>Martinez</b>	<b>Pittsburg</b>
<b>Contra Costa County</b>	<b>24.5</b>	<b>15.9</b>	<b>14.5</b>	<b>24.2</b>
El Sobrante	21.0	19.7	14.0	27.2
Hercules	23.2	17.5	11.8	24.9
Lafayette	31.9	10.9	16.0	20.6
Richmond	11.8	24.7	19.1	32.2
Walnut Creek	34.6	6.6	11.7	16.3
<b>Alameda County</b>	<b>21.7</b>	<b>23.8</b>	<b>27.9</b>	<b>33.5</b>
Alameda	25.8	26.6	31.7	36.3
Berkeley	17.5	22.3	24.4	32.0
Oakland	21.7	22.6	27.7	32.3
<b>San Francisco County</b>	<b>17.9</b>	<b>31.5</b>	<b>34.6</b>	<b>41.2</b>
<b>Napa County</b>	<b>34.2</b>	<b>33.6</b>	<b>29.5</b>	<b>42.0</b>

### Destinations

San Rafael 1125 Tamalpais Ave  
 Concord 2151 Salvio St  
 Martinez 525 Henrietta St  
 Pittsburg 65 Civic Ave

### Origins

- These are the home locations of staff most likely to populate Contra Costa office
- Assumes city center based on Google Maps predictive analytics
- County figures are averages based the cities and towns where MCE staff currently live

### Additional Notes

- Data obtained using Google Maps predictive analytics
- Data assumes arrival at the office location by 9am

<b>Average One-Way Driving Time in Minutes</b>				
	<b>Destinations</b>			
<b>Origins</b>	<b>San Rafael</b>	<b>Concord</b>	<b>Martinez</b>	<b>Pittsburg</b>
<b>Contra Costa County</b>	<b>57.0</b>	<b>24.4</b>	<b>21.9</b>	<b>31.6</b>
El Sobrante	52.5	28.5	22.0	34.0
Hercules	70.0	25.0	19.0	33.0
Lafayette	60.0	18.0	23.0	28.5
Richmond	30.0	34.0	28.5	42.5
Walnut Creek	72.5	16.5	17.0	20.0
<b>Alameda County</b>	<b>43.8</b>	<b>35.3</b>	<b>37.8</b>	<b>44.2</b>
Alameda	50.0	40.0	45.0	50.0
Berkeley	39.0	36.5	34.5	45.0
Oakland	42.5	29.5	34.0	37.5
<b>San Francisco County</b>	<b>42.5</b>	<b>42.5</b>	<b>45.0</b>	<b>50.0</b>
<b>Napa County</b>	<b>62.5</b>	<b>50.0</b>	<b>45.0</b>	<b>57.5</b>

### Destinations

San Rafael 1125 Tamalpais Ave  
 Concord 2151 Salvio St  
 Martinez 525 Henrietta St  
 Pittsburg 65 Civic Ave

### Origins

- These are the home locations of staff most likely to populate Contra Costa office
- Assumes city center based on Google Maps predictive analytics
- County figures are averages based the cities and towns where MCE staff currently live

### Additional Notes

- Data obtained using Google Maps predictive analytics
- Data assumes arrival at the office location by 9am
- Drive time calculated by taking the average of the range
- Ex: 40-60 minutes calculated as  $(40+60)/2 = 50$  minutes



<b>Walk Scores for Contra Costa Locations</b>	
	<b>Walk Score</b>
<b>Concord</b>	94
<b>Martinez</b>	87
<b>Pittsburg</b>	44

### Locations

Concord	2151 Salvio St
Martinez	525 Henrietta St
Pittsburg	65 Civic Ave

### Methodology

Data obtained from [walkscore.com](http://walkscore.com)

Walk Score measures the walkability of any address using a patented system. For each address, Walk Score analyzes hundreds of walking routes to nearby amenities. Points are awarded based on the distance to amenities in each category. Amenities within a 5 minute walk (.25 miles) are given maximum points. A decay function is used to give points to more distant amenities, with no points given after a 30 minute walk.

Walk Score also measures pedestrian friendliness by analyzing population density and road metrics such as block length and intersection density. Data sources include Google, Education.com, Open Street Map, the U.S. Census, Localeze, and places added by the Walk Score user community.

<b>Walk Score</b>	
90–100	<b>Walker's Paradise</b> Daily errands do not require a car.
70–89	<b>Very Walkable</b> Most errands can be accomplished on foot.
50–69	<b>Somewhat Walkable</b> Some errands can be accomplished on foot.
25–49	<b>Car-Dependent</b> Most errands require a car.
0–24	<b>Car-Dependent</b> Almost all errands require a car.

# MCE Contra Costa Office



2013

San Rafael chosen as MCE headquarters

2013-2015

Richmond, Napa County, Benicia, El Cerrito, San Pablo join MCE

2016

Napa cities, Walnut Creek, Lafayette join MCE

2017

9 Contra Costa jurisdictions request MCE membership

# Why open an office location in Contra Costa?

AI #11\_Att. B: MCE Contra Costa Office Presentation

- Exceeding capacity at San Rafael location
- Customer accessibility and community investment
- New partnerships in Contra Costa communities
- Opportunities to reduce GHG emissions and ease commute for East Bay employees and Board members

# Criteria

- Central/strategic location
- Cost per square foot
- Services/amenities included in lease
- Move-in ready
- Public transit access
- Scalable

# Potential Location - Concord

Concord is centrally located, with a bustling downtown that is a hub of activity in the county.

- Several office locations that meet our parameters
- Accessible by two BART stations and County Connection buses
- Average price per square foot \$1.31 – 2.95
  - San Rafael office: approx. \$3.25/sqft

# Potential Location - Martinez

Martinez is the county seat, located along the Northern Waterfront with easy access to Solano County.

- Accessible by Amtrak & County Connection
- Closer to San Rafael office
- Average price per square foot is \$1.15 – 1.65
  - San Rafael office: approx. \$3.25/sqft

# Pittsburg

Pittsburg is located along the Northern Waterfront, where there are redevelopment needs.

- Accessible by Tri-Delta Transit with a transfer from BART
- eBART extension opening in 2018
- Average price per square foot is \$1.05 – 1.30
  - San Rafael office: approx. \$3.25/sqft



# What about other locations in the County?

- **West Contra Costa County** considered too close to San Rafael office to be strategic
- **Lafayette** and **Walnut Creek** were considered due to BART stations downtown, but had higher prices for commercial office space
- **Oakley, Danville, and San Ramon** were considered, but locations not central and have less access to public transit

# Concord Benefits – For Communities

- “Boots on the ground”
  - Outreach at events and community meetings
  - Energy efficiency services for low-income customers, multifamily housing, rural communities, and local businesses in Contra Costa and Solano
- Improved access for customers, community members
- Partnering to create renewable energy jobs
- Central location for remote Board meetings
  - Shorter commute; better public access

# Concord Benefits – For GHG Reduction

2,892

gallons of gas



8

cars off the road



24.3

acres of forest



25.7 metric tons of CO<sub>2</sub>  
saved annually

# Concord Benefits – For Employees

- **Annual** commute savings per employee
  - \$850 for Oakland residents
  - \$2,125 for Lafayette/Walnut Creek residents
- Average drive time saved **per day**
  - 20 minutes for Alameda/Napa residents
  - 65 minutes for Contra Costa residents
- Near affordable housing

# Logistics

- Initial versus projected capacity
  - “Boots on the ground”
  - Opportunity to expand
- Communication and coordination between offices
  - Planning for success
  - Planning for change
  - Phased opening

# Financial Impacts

- Lower cost per square foot
- Full service lease
- Minor tenant improvements
- Staffing
  - Furniture
  - Technology
- Mileage reimbursement

# Next Steps

**July 20** – Board reviews membership analysis & considers addition of new communities

**July 21 – August 25** – Lease drafting & negotiation

**September 1** – Present draft lease to Executive Committee for review & consideration

**December 1** – Phase I of “Second MCE Office” begins (soft launch)

# Thank You!

Sarah Estes-Smith  
Director of Internal Operations  
[sestes-smith@mcecleanenergy.org](mailto:sestes-smith@mcecleanenergy.org)







July 20, 2017

TO: MCE Board of Directors

FROM: Shalini Swaroop, Deputy General Counsel

RE: Policy Update on Regulatory and Legislative Items - Information Only (Agenda item #12)

**SUMMARY:**

**I. MCE Regulatory Activities**

The California Public Utilities Commission (CPUC) recently voted to initiate a rulemaking proceeding to address issues with the Power Charge Indifference Adjustment (PCIA). This was a result of a three-year process led by MCE and Sonoma Clean Power to address deficiencies with the PCIA. As part of this rulemaking, the Commission also voted to dismiss without prejudice the utilities' application for the Portfolio Allocation Mechanism (PAM). The PAM, as proposed by the joint utilities, would result in increasing departing load charges in excess of the current PCIA. The utilities are likely to raise their PAM proposal again in the context of the new rulemaking.

For the new rulemaking, the Commission emphasized that its aims are:

- Improving transparency of the existing PCIA process;
- Revising the current PCIA methodology to increase stability and certainty;
- Reviewing specific issues related to inputs and calculations for the current PCIA methodology;
- Considering alternatives to the PCIA;
- Addressing Senate Bill 350 (2015); and
- Examining PCIA charges for customers using California Alternative Rates for Energy (CARE) and Medical Baseline rates.

Overall, this is the most positive movement on the PCIA that CCAs have seen since their inception. A number of advocacy organizations have praised the Commission for its action. MCE and CalCCA are going to be extremely involved in this rulemaking and will likely call upon their board members to aid in policy advocacy.

## **II. MCE Legislative Activities**

Bills have gone through their house of origin and are now being heard in policy committees in their second house. The last day for bills to be heard in policy committees is July 21<sup>st</sup>, when the summer recess begins. The Legislature will reconvene from August 21 – September 15, with the Governor signing or vetoing bills by October 15, 2017.

### **1) SB 100 (De León) – Increasing the Renewable Portfolio Standard (RPS)**

This is California's most visible commitment to combating climate change since the President announced the United States was withdrawing from the Paris Climate Agreement. California State Senate President pro Tempore De León has proposed increasing current RPS standards from 50% in 2030 to 60% in 2030. Additionally, the bill proposes that all electricity sold at retail in 2045 should be from zero-carbon resources.

With CalCCA, MCE is extremely supportive of increasing renewable energy on California's grid—indeed, it is central to MCE's mission. With CalCCA, MCE is in negotiations with the author's office to ensure that current RPS compliance standards remain in effect throughout the increase to 60% renewable energy.

CalCCA and MCE are in the process of determining their position on this bill.

### **2) SB 618 (Bradford) – Integrated Resource Plans**

Due to early advocacy from CCA Legislative Champions, including Senator McGuire, Senator Wiener, Senator Hill, Senator Skinner, and Senator Stern, the bill's negative impacts on CCAs were largely addressed.

CalCCA and MCE are neutral on this bill.

### **3) AB 79 (Levine) – Greenhouse Gas Emissions Tracking**

CalCCA successfully negotiated with Assemblymember Levine's office to ensure greenhouse gas emissions reporting accurately reflects any coal on the grid while being realistic about the detail that can be attained.

CalCCA and MCE are neutral on this bill.

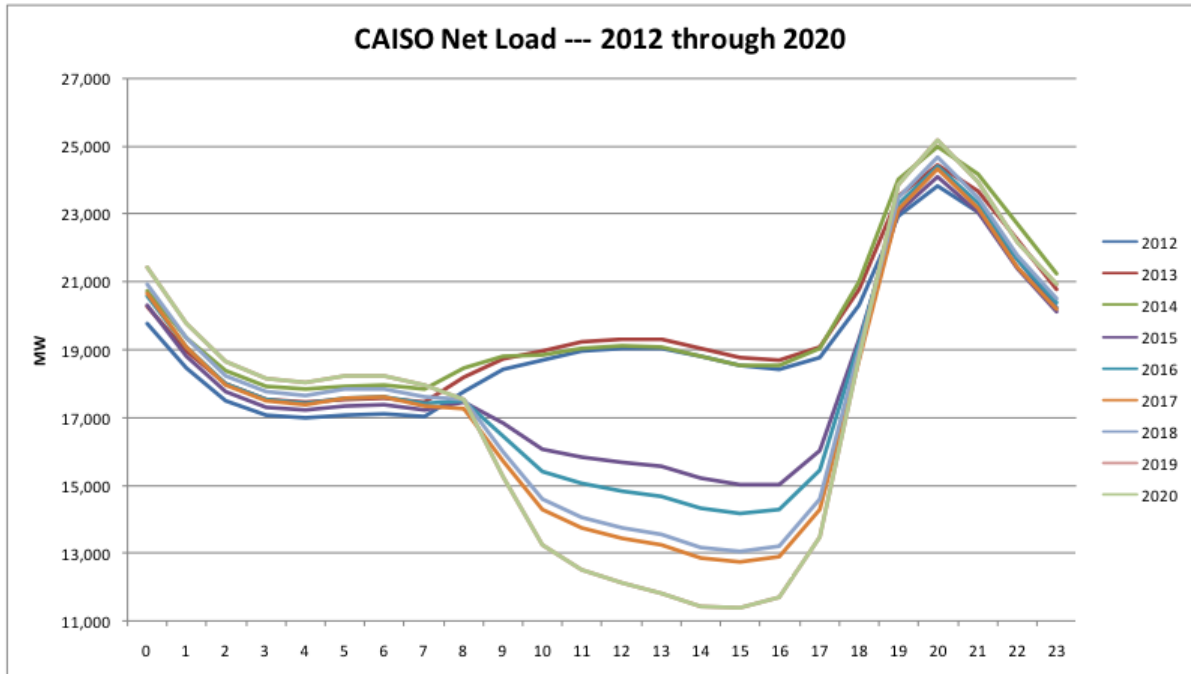
### **4) AB 920 (Aguiar-Curry) – Increasing Baseload Renewables**

This bill aims to encourage more baseload renewables on the grid, such as geothermal, hydroelectric, biogas, or biomass. A compromise with other stakeholders on the bill resulted in provisions that could affect CCA local governance. The author's office was extremely receptive to concerns, and MCE and CalCCA have negotiated amendments that addressed CCA issues.

CalCCA and MCE are neutral on this bill.

### 5) SB 338/AB 1405 (Skinner/Mullin) – Net-Load Peak Energy

These companion bills aim to address the same issue, namely, to address the so-called “duck curve.”



As more solar generation comes online, the net load dips dramatically in the middle of the day, creating a bigger “belly on the duck.” As solar resources go offline due to the setting sun and energy usage increases with people coming home from work, the energy demand ramps relatively high, creating a very steep “neck of the duck.” The concern is that to address a steep “neck,” there must be very fast-acting and flexible resources that can be put online in a short time frame. Traditional resources, such as a gas turbine, require much more time to ramp up to full output.

These bills encourage the California Public Utilities Commission to consider the role of clean energy technologies, demand response, and energy efficiency activities in order to reduce the steep ramp of the duck’s neck. CalCCA and MCE worked with the authors’ offices to ensure language encouraging technological solutions to the duck curve issue still protect local governance and decision-making for CCAs.

CalCCA and MCE are currently determining their position on this bill.

### 6) SB 242 (Skinner) – Consumer Protections for the Property Assessed Clean Energy (PACE) Program

PACE is a program that offers financing for energy efficiency and other energy upgrades to an individual’s property through a lien on the property. As an administrator for PACE in Marin County, MCE has been very concerned with reports of predatory lending through the program. MCE supports this bill to ensure more consumer protections for customers participating in the PACE program.

**7) AB 1088 (Eggman) – Increasing Energy Efficiency Programs for Multifamily Properties**

This bill aims to develop strategies to streamline and coordinate distributed energy resource, water, and fuel substation programs for multifamily residential properties. MCE is supportive of this bill and will likely take an official support position pending information gathering with the author's office.