



**Marin Clean Energy
Board of Directors Meeting
Thursday, April 16, 2015
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

Barbara Coler
Town of Fairfax

Greg Lyman
City of El Cerrito

Kevin Haroff
City of Larkspur

Garry Lion
City of Mill Valley

Brad Wagenknecht
County of Napa

Denise Athas
City of Novato

Carla Small
Town of Ross

Ford Greene
Town of San Anselmo

Genoveva Calloway
City of San Pablo

Andrew McCullough
City of San Rafael

Ray Withy
City of Sausalito

Emmett O'Donnell
Town of Tiburon

1 (888) 632-3674
mceCleanEnergy.org
781 Lincoln Ave., #320
San Rafael, CA 94901

**San Rafael Corporate Center, Tamalpais Room
750 Lindero Street, San Rafael, CA 94901**

Agenda Page 1 of 2

1. Board Announcements (Discussion)
2. Public Open Time (Discussion)
3. Report from Chief Executive Officer (Discussion)
4. Consent Calendar (Discussion/Action)
 - C.1 3.5.15 Meeting Minutes
 - C.2 Approved Contracts Update
 - C.3 MCE Staff Position Adjustment
 - C.4 Second Addendum to First Agreement with North Bay Office Furniture, LLC
5. Monthly Budget Report (Discussion)
6. Repayment of Loans with River City Bank and Related Budget Adjustment for FY 15/16 (Discussion/Action)
7. Feed-in-Tariff Program Review (Discussion/Action)



Agenda material can be inspected in the Marin County Sheriff's lobby, located at 3501 Civic Center Drive, San Rafael, CA 94903. The meeting facilities are in accessible locations. If you are a person with a disability and require this document in an alternate format (example: Braille, Large Print, Audiotape, CD-ROM), you may request it by using the contact information below. If you require accommodation (example: ASL Interpreter, reader, note taker) to participate in any MCE program, service or activity, you may request an accommodation by calling (415) 464-6032 (voice) or 711 for the California Relay Service or by e-mail at djackson@mceCleanEnergy.org not less than **four work days** in advance of the event.



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Agenda Page 2 of 2

8. Greenhouse Gas Emissions Analysis for Calendar Year 2013
(Discussion/Action)
9. Second Amendment to Lease Agreement with 700 Fifth
Avenue, LLC (Discussion/Action)
10. Communications Update (Discussion)
11. Board Member & Staff Matters (Discussion)
12. Adjourn



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FOR IMMEDIATE RELEASE

March 23, 2015

Jamie Tuckey | Communications Director
415.464.6024 | jtuckey@mceCleanEnergy.org

MARIN CLEAN ENERGY NAMED GREEN BUSINESS OF THE YEAR BY SAN RAFAEL CHAMBER OF COMMERCE

San Rafael, CA – The San Rafael Chamber of Commerce named Marin Clean Energy (MCE) the 2015 Joe Garbarino Green Business of the Year at the annual “State of the City” dinner event held on March 19.

The mission of MCE, California’s first Community Choice program, is to reduce greenhouse gas emissions by providing renewable energy at stable and affordable rates, paired with energy efficiency programs, as an alternative to Pacific Gas and Electric. MCE, based in downtown San Rafael, offers 50-100% renewable power at lower rates and saved customers a combined \$6 million in 2014. Since its service start in 2010, MCE customers have reduced greenhouse gas emissions by 59,421 tons, the equivalent of eliminating the carbon emissions from 12,500 cars for one year.

The Joe Garbarino Green Business of the Year Award highlights a Green Chamber member who has demonstrated extraordinary efforts to embed sustainability principles into their business operations, mission and values. This award is presented at the State of the City dinner with approximately 500 attendees, where large and small businesses of the year are also recognized.

Dawn Weisz, CEO of MCE thanked the San Rafael Chamber of Commerce saying, “We’re honored to accept this award and our strong achievements wouldn’t be possible without the support of our community and partnerships with local businesses like the San Rafael Airport, Strategic Energy Innovations, and hundreds of businesses who choose Deep Green 100% renewable energy.”

MCE is esteemed to be in the company of its fellow nominees, recognized for their exceptional environmental practices, which include: Agricultural Institute of Marin, Batteries Plus Bulbs, City of San Rafael, EO Products, Green River Financial Services, Lotus Cuisine of India, The Marin Center/Marin County Fair, Smart Receivables, SolEd Benefit Corp., and St. Vincent de Paul Society. MCE thanks all of the community partners and supports their work in protecting the environment.

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About MCE: MCE is a not-for-profit, community-based electricity provider that gives customers the choice of having 50% to 100% of their electricity supplied from clean, renewable sources such as solar, wind, bioenergy, geothermal and hydroelectric at competitive rates. By choosing MCE, customers help support new in-state and local renewable energy generation. For more information about MCE, visit www.mceCleanEnergy.org or call 1 (888) 632-3674.

DRAFT - PACE Program Comparative Matrix – Updated 3/25/15

Program Name	CaliforniaFIRST	California HERO (Home Energy Renovation Opportunity)	Ygrene Works	Figtree Energy Resources	Open PACE¹ (currently includes AllianceNRG & CAFEirst)
Program Status in Marin	County and 9 cities/towns have passed resolutions authorizing CaliforniaFIRST.	Under consideration	Under consideration	Under consideration	Under consideration
Government Sponsor	California Statewide Communities Development Authority (CSCDA)	Western River Council of Governments (WRCOG)	Golden State Finance Authority (formerly known as CA Home Finance Authority)	California Enterprise Development Authority (CEDA)	California Statewide Communities Development Authority (CSCDA)
Program Website	www.californiafirst.org	www.heroprogram.com	www.ygreneworks.com	www.figtreefinancing.com	https://www.alliancenrg.com/retail/
Projects Financed (as of Dec. 2014)	\$37 million in active applications. 65 Marin applications received and 3 projects funded	Approved projects: 23,000 for over \$435 million	\$140 million of approved projects	\$30 million of approved projects	None at this time. Estimated launch May/June 2015
Cost to Participating Governments	None	None	None	None	None
Local Validation Action Required	Complete - The County was part of a multi-jurisdiction judicial validation granted by the Court in April 2014.	Court validation required. Upon filing of Resolution, validation process takes ~ 6 months. Currently, no statewide validation.	Court validation required. Upon filing of Resolution, validation process takes ~ 90-120 days. Currently, implementing a statewide validation.	None - Statewide validation obtained on July 16, 2013	CSCDA is completing a statewide validation now for Open PACE. Completion expected May 2015.
Commercial/Residential?	Both commercial and residential financing available	Both commercial and residential financing available	Both commercial and residential financing available	Currently, commercial only. Residential program launching in March 2015.	Both commercial and residential financing available
Example Participating Jurisdictions	Nearly 200 CA jurisdictions including 10 Marin jurisdictions, Alameda County, San Jose, San Mateo County, Sonoma County	238 communities including San Francisco, Sonoma County, Napa County, Riverside County, San Bernardino County, LA County	6 counties and 40 cities in CA including Sacramento County, Riverside County, Yolo County	Nearly 200 CA jurisdictions including San Mateo County, City of San Jose, Alameda County, San Diego County, Butte County	San Francisco (commercial currently)

¹ CSCDA developed qualification criteria to select PACE Program Administrators to be included in the CSCDA OPEN PACE platform. At this time, the program administrators include CaliforniaFIRST and Alliance NRG but more may be added in the future. While each program administrator will have their own financing rules/guidelines regarding financing amounts and terms, the current AllianceNRG guidelines are included here.

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Program Name	CaliforniaFIRST	California HERO <i>(Home Energy Renovation Opportunity)</i>	Ygrene Works	Figtree Energy Resources	Open PACE¹ <i>(currently includes AllianceNRG & CAFirst)</i>
Termination Process	Pass resolution opting out at any time. Does not impact completed or in process financings but future financings would not be processed.	Program “opt-out” available with 30 days’ notice. Does not impact completed or in process financings but future financings would not be processed.	Pass resolution opting out at any time. Does not impact completed or in process financings, but future financings would not be processed	Pass resolution opting out at any time. Does not impact completed or in process financings, but future financings would not be processed	Pass resolution opting out at any time. Does not impact completed or in process financings, but future financings would not be processed
Minimum Financing	\$ 5,000 – Residential \$50,000 – Commercial	\$ 5,000 – Residential \$ 5,000 – Commercial	\$ 2,500 – Residential \$ 2,500 – Commercial	\$ 2,500 - Residential \$ 5,000 - Commercial	TBD
Maximum Financing	Residential: The lessor of \$200,000 or 15% of the value of the property. ² The Assessment amount plus the mortgage-related debt must not exceed 100% of the value of the Property. ³ Commercial: Current outstanding debt plus CaliforniaFIRST financing amount must be less than the property value plus the value of the financed projects.	Residential: Mortgage-Related debt plus the financing amount may not exceed 100% of the value of the property and proposed improvements must not exceed 10% of property value. Commercial: Mortgage-Related debt plus the financing amount may not exceed 90% of the value of the property and proposed improvements must not exceed 20% of property value.	No maximum amount for either residential or commercial projects.	Residential: Not to exceed 10% of the Total Property Value Commercial: Not to exceed 20% of the Total Property Value	TBD

² 15% of Property Value is only available for first \$700,000 of property value, then 10% is applied.

³ Program Administrator approval is required for any Assessment Contracts over \$75,000.

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Program Name	CaliforniaFIRST	California HERO (Home Energy Renovation Opportunity)	Ygrene Works	Figtree Energy Resources	Open PACE¹ (currently includes AllianceNRG & CAFirst)
Interest Rate	Residential: 6.75% - 8.39% Commercial: Depends on source of capital property owner elects to work with. Prevailing market rate is currently 6.9% or less fixed for 20 years.	Residential: 5.95% - 8.95% Commercial: TBD	5.99% - 7.75%	Residential: 4.63% - 6.99% Commercial: 4.94% - 6.10%	Residential: 5.95% - 8.50% Commercial: 5.50% - 7.50%
Loan Term (Length)	5, 10, 15, 20 or 25 years	5 - 20 years 25 year terms available for commercial properties	10 - 20 years; some projects might be eligible for 30 year term	5, 10, 15 or 20 years 25 year terms available for residential properties	5, 10, 15, 20, 25 or 30 years
Property Owner Fees/Costs⁴	Residential: No application fee; Closing fee not to exceed 6.4% of assessed amount. One-time recording fee not to exceed \$100 One time reserve fund charges of 0.5% of assessed amount. Annual admin fee: \$30 (varies) Commercial: No application fee; Closing fees dependent on source of capital. Fees generally range from 2.5%-4% of the project cost. Annual County Collection Fee	Residential: No application fee; Closing/Admin fees: 6.95% of principal amount plus \$95 recording fee to be added to assessment amount. Annual County Collection Fee Commercial: Application fee may be required and will not exceed the greater of \$250 or 1% of financing amount; Closing/Admin fees: 5% of principal amount plus title and recording fees. Annual County Collection Fee	Residential: \$700 per completed project (includes \$50 for initial application) Commercial: Fees start at \$700 with additional fees applicable based on overall size of the project plus additional title, escrow and other legal fees, as applicable	Residential: No application fee; Cost of issuance fee: 5.95% of principal amount Annual fees: \$35 Commercial: Application fee of \$395; Cost of issuance fee: 4% of principal amount Annual fees: 3%	TBD
Prepayment Penalty	Yes, in years 1-5	No	Yes, but may be waived at the time of signing the financing agreement	Yes, in years 1 - 10	TBD

⁴ Exact amounts vary based on project, and not all costs will apply to a particular project. Actual amount will vary with time and jurisdiction. Data is provided as example.

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Program Name	CaliforniaFIRST	California HERO <i>(Home Energy Renovation Opportunity)</i>	Ygrene Works	Figtree Energy Resources	Open PACE¹ <i>(currently includes AllianceNRG & CAFirst)</i>
Mortgage Lender Consent	Residential: None Commercial: Lender consent or “affirmative acknowledgement” required	Residential: None Commercial: Lender consent or “affirmative acknowledgement” required	Residential: None Commercial: Affirmative Acknowledgement Required; Written Consent where required by law or existing contract	Residential: None Commercial: Written consent Required	Residential: None Commercial: Recommend that property owners notify lenders but not required.
Energy Audit	Residential: Recommended but not required Commercial: Required	Residential: Recommended but not required Commercial: Recommended but not required	Residential: Not required Commercial: Required	Residential: Not required Commercial: Not Required ⁵	TBD
Selection of Contractor	Residential: Property owner selects licensed contractor from list of CaliforniaFIRST participating contractors. Commercial: Property owner selects licensed contractor. Not required to be registered with program.	Residential & Commercial: Property owner selects licensed contractor from list of local HERO participating contractors.	Residential & Commercial: Property owner selects contractor from list of local contractors certified by Ygrene Energy Fund	Residential & Commercial: Contractor must be registered with program. Payment to contractor directly made from program.	Residential & Commercial: Property owner selects licensed contractor from list of local Alliance participating contractors.

⁵ Figtree recommends audits for all projects, in order to track energy savings (e.g., to support Community Climate Action Plans)

AGREEMENT FOR COLLABORATIVE SERVICES

FOR PROPERTY ASSESSED CLEAN ENERGY FINANCING MARKETPLACE

This agreement ("Agreement"), dated as of _____, 2015 ("Effective Date") is by and between the County of Marin, a political subdivision of the State of California (hereinafter "County"), and _____, (hereinafter "Marketplace Member"), as an entity participating in the Financing Marketplace delivering Property Assessed Clean Energy (PACE) financing utilizing either the California Assembly Bill 811 and/or California Senate Bill 555 model. *[Insert marketplace member description here]*

RECITALS

WHEREAS, the County is committed to mitigating and adapting to the causes and impacts of climate change and supporting energy independence from fossil fuels to safeguard the environment, human health and the economy; and

WHEREAS, during Earth Week 2002, the Board of Supervisors adopted a resolution that recognizes both the gravity of global warming and the responsibility for local action; and

WHEREAS, Marin Clean Energy has passed a Resolution 2015-03 stating its support and partnership in implementing and marketing the PACE programs in Marin County; and

WHEREAS, the Community Development Agency's Sustainability Team in partnership with Marin Clean Energy (the "Team") offers programs, technical resources and education for energy upgrades and retrofits to minimize customer confusion, provide access to education and information to assist with making informed decisions, rebates and incentives, tools and testing equipment, contractor programs, and financing options to help property owners save energy, save money, and live comfortably; and

WHEREAS, the Marketplace Member will meet or exceed the collaboration requirements of the Financing Marketplace as detailed below; and

WHEREAS, the Marketplace Member is willing to participate to support community climate goals and minimize consumer and contractor confusion; and

WHEREAS, the Marketplace Member will provide support and resources to through Marin Clean Energy for aligning activities including but not limited to education, outreach and development of the energy upgrade industry and trades; and

WHEREAS, the Marketplace Member will support, align and integrate its efforts with the County-wide goals for job creation, resource demand reduction, and renewable energy generation; and

WHEREAS, the Marketplace Member will establish its own interest rates, payback terms, and fees as the market defines and allows; and

WHEREAS, the Marketplace Member will share project information and data in an accessible electronic format with the Team on a monthly basis and upon request; and

WHEREAS, the Marketplace Member will arrange for the collection of Property Assessed Clean Energy Financing liens it has financed directly with the County Tax Collector's Office; and

WHEREAS, this Agreement does not include any financial arrangements between the Marketplace Member and the County, nor does it preclude any separate contracts for services or support; and

WHEREAS, the purpose of this Agreement is to set forth the mutual understandings, terms and conditions related to Marketplace Members participating in the PACE Financing Marketplace in the County of Marin and participating cities/towns.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1 Definitions.

- 1.1 **"Eligible improvement"** is a technology, product or tool officially approved by the financing provider. The improvements may include distributed generation renewable energy sources, energy and water efficiency improvements, seismic strengthening improvements and electric vehicle charging infrastructure improvements that will be permanently fixed to real property.
- 1.2 **"Financing Marketplace"** is the Marin County model for providing multiple financing options to property owners interested in retrofit and renewable energy improvements to their buildings.

- 1.3 **“Local Contractor”** is defined as the licensed contractor of record with a business address within Marin County or an adjacent county.
- 1.4 **“Marin Clean Energy Office”** is the physical storefront location provided for Marin County and will be used as the central location for marketing and outreach efforts.
- 1.5 **“Marketplace Member”** is an entity participating in the Financing Marketplace as a provider delivering Property Assessed Clean Energy (PACE) financing within Marin County.
- 1.6 **“Participating Cities /Towns”** in Marin County are potentially Belvedere, Corte Madera, Fairfax, Larkspur, Mill Valley, Novato, Ross, San Anselmo, San Rafael, Sausalito and Tiburon.
- 1.7 **“Participating Contractor”** is any contractor performing work funded by a Marketplace Member and who has agreed to, and abides, by the terms and conditions of the Marketplace Members’ contractor standards.
- 1.8 **“Property Assessed Clean Energy (PACE) Financing”** is a means of financing distributed generation renewable energy sources, energy and water efficiency improvements, seismic strengthening improvements and electric vehicle charging infrastructure improvements that will be permanently fixed to real property which are repaid through contractual assessments, utilizing either California Assembly Bill 811 (Levine, 2008) (“AB 811”), which amended §§5898.10-5899.3 of the California Streets and Highways Code; or California Senate Bill 555 (Hancock, 2011) (“SB 555”), which amended certain portions of §§53311-53368.3 of the California Government Code.
- 1.9 **“Team”** is made up of staff from the County of Marin and Marin Clean Energy
- 1.10 **“Work”** as defined throughout this Agreement is the collaborative, non-competitive, effort between the Marketplace Member and the County to deliver the financing marketplace and support the citizens of Marin County in completing water and energy efficiency upgrades and the installation of renewable energy.

2 Scope of Work / Collaboration.

- 2.1 **Marketplace Member's Specified Services.** The Marketplace Member will offer and provide Property Assessed Clean Energy Financing under the requirements of AB 811 and/or SB 555 in collaboration with the Team.

- 2.2 Cooperation with County and Marin Clean Energy. Marketplace Member shall cooperate with County, Marin Clean Energy and staff in the performance of all work hereunder.
- 2.3 Performance Standard. Marketplace Member shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by an organization providing Property Assessed Clean Energy financing pursuant to California Assembly Bill 811 and/or California Senate Bill 555. County has relied upon the professional ability and expertise of Marketplace Member as a material inducement to enter into this Agreement. Marketplace Member hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Marketplace Member's work by County shall not operate as a waiver or release. If County determines that any of Marketplace Member's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Marketplace Member to discuss with County to review the quality of the work and resolve matters of concern; (b) terminate this Agreement pursuant to the provisions of Section 5, Termination; or (c) pursue any and all other remedies at law or in equity.
- 2.4 Financing Provision Requirements.
The Marketplace Member will:
- 2.4.1 Advocate for efficiency measures before generation installation
 - 2.4.2 Advocate for energy analysis and a whole building approach to energy efficiency, water conservation, and renewable generation projects
 - 2.4.3 Include a process to receive acknowledgement and confirmation of satisfaction with work completed from the applicant before project payment is disbursed and have a published dispute resolution process available for customers.
 - 2.4.4 Provide Truth in Lending Act Disclosure details to the applicant specific to the requested amount of the financing
 - 2.4.5 For residential properties, require applicant acknowledgment of the Federal Housing Finance Authority position on PACE on a separate signature acknowledgement page. Residential Disclosure Signature Form must be substantially similar to Attachment 1.

- 2.4.6 For non-residential properties, require written lender affirmative acknowledgement
- 2.4.7 Advocate and promote the use of local contractors, as defined Section 1, Definitions, with all applications for financing, results of which will be reported under Section 2.6.2.i.
- 2.4.8 Require that available rebates (for all utility and generation types) are optimized, including and not limited to city rebate programs, PG&E programs, the Marin County Energy Watch program, and Marin Clean Energy programs
- 2.4.9 Require that building permits are obtained for all improvements
- 2.4.10 Verify that property owners are current on all property taxes
- 2.4.11 Ensure all marketing materials and calculation methodologies conforms to all applicable tax laws. Do not represent that full assessment payment is tax deductible. Recommend that property owners consult with a tax professional prior to claiming any tax deductions associated with the project.

2.5 Financial Policies.

The Marketplace Member will:

- 2.5.1 Be an active participant in the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) PACE Loan Loss Reserve Program or comparable loan loss reserve program which includes at minimum parameters outlined in Attachment 2.
- 2.5.2 Notify the County six months in advance if funding capacity available from the Marketplace Member to County property owners will fall below the amount dispersed in the previous six months of operation
- 2.5.3 Notify the County of any involuntary legal action regarding any property with a PACE assessment placed in the County

2.6 Documents, Data, and Information Policies.

The Marketplace Member will:

- 2.6.1 Provide electronic access to the name, business name, and California State Contractors license number of participating contractors of the Marketplace Member's product; and the contractors' agreement to abide by the terms and conditions of the contractors' standards as outlined in Section 2.8, Participating Contractor Standards.

- 2.6.2 Retain completed Residential Disclosure Signature forms (hardcopy or electronic) on file for duration of assessment. Furnish to County upon request.
- 2.6.3 Provide either direct real time access to data or monthly reports in an open electronic file format (such as Microsoft Excel) for data sharing of the following information for each assessment (alphabetical list):
 - a. Amount of rebate or incentive dollars associated with the project (not financed)
 - b. Assessor's Parcel Number (APN) of the property
 - c. Building size in square feet
 - d. Dollar amount financed (the amount of the assessment)
 - e. How the customer heard about PACE financing
 - f. Listing of all energy efficiency and water conservation eligible improvements installed by virtue of the financing, including the unit of measure for the improvement and the quantity installed
 - g. Listing of all generation improvements installed and the solar STC-DC rating in watts or kilowatts
 - h. Residential or Commercial property type designation
 - i. Whether the project was completed by a Local Contractor as defined in Section 1, Definitions (yes/no)
 - j. Why the customer selected PACE over other financing instruments available
 - k. Why the customer selected their final PACE Marketplace Member over the other members
 - l. Year of construction of the building

The Marketplace Member will:

- 2.6.4 Provide the documents required for participation in the Marketplace Members' PACE Financing product to the County and Participating City and Town officials.
- 2.6.5 Provide support to County and Participating City and Town staff to facilitate adoption of required participation documents.

The County will:

- 2.6.6 Offer staff resources and support to Participating City and Town staff to bring forward to their councils the documents provided by the Marketplace Member required for participation in the Marketplace Member's PACE financing product.

2.7 Branding / Marketing Requirements.

Both Parties will:

- 2.7.1 Collaborate on any regional efforts that may impact PACE financing participation to achieve the best possible outcome for property owners
- 2.7.2 Represent the role of the County and Marin Clean Energy as the local neutral third party, not-for-profit, public service agencies supporting the public through the upgrade process, with the following message to consumers: Among the financing products in the marketplace, competition is encouraged to the benefit of the consumer, with the common goal of successful completion of projects
- 2.7.3 Recognize the Marin Clean Energy offices as the physical storefront (office) location for PACE activity in Marin County

The Marketplace Member will:

- 2.7.4 Provide assistance to the Team for: (1) coordinating and implementing the integration of the Marketplace Member into the Financing Marketplace; (2) support of storefront contractor training; (3) support the continuation of the free building performance testing tool lending library resource; and (4) continuing storefront support to property owners using their PACE financing product
- 2.7.5 Provide specific training for contractors engaged with local PACE assessments using the marketplace member's financing product, materials, collateral, tools, and associated software, through training offered either directly from the marketplace member or subcontracted to the Team
- 2.7.6 Provide professional services, template documents, and other services necessary to staff for integrating the Marketplace Members financing option into the County's and Marin Clean Energy's websites
- 2.7.7 Provide training and resources to the Team as needed to build understanding and support for use of the financing product

The Team will:

- 2.7.8 Present the financing products of the Marketplace Members in all venues with impartiality to the public.
- 2.7.9 Present marketing collateral of all financing products with impartiality in education and outreach materials and events

- 2.7.10 Design and deliver a financing product comparison chart on the County's Sustainability Team and MCE Clean Energy's websites for all marketplace members

2.8 Participating Contractor Standards.

Participating Contractors must agree to and abide by the terms and conditions of the contractors' standards outlined in items 2.8.1 through 2.8.11 below.

Both Parties will:

- 2.8.1 Require that contractors have the appropriate California State License Board license
- 2.8.2 Require that contractors' bonding is in good standing
- 2.8.3 Require that contractors have appropriate Workers' Compensation coverage
- 2.8.4 Require that contractors have a minimum of \$1M of commercial general liability insurance
- 2.8.5 Require that contractors shall make true claims about performance and or savings associated with projects
- 2.8.6 NOT endorse, recommend, or refer any specific contractor
- 2.8.7 NOT make any representation or warranty regarding the qualifications, licensing, products, or workmanship of any contractor
- 2.8.8 NOT make any warranty regarding the contractor's work or products purchased from contractors provided
- 2.8.9 NOT accept any liability that may be alleged to arise from the work of any listed contractor on a customer project or from any reliance on any claims, statements, or other descriptions regarding a contractor's certifications, licenses, qualifications or products
- 2.8.10 NOT imply through discussions or calculations that the full assessment payment amount is tax deductible but rather only the interest.

Marketplace Member will:

- 2.8.11 Ensure contractors and its representatives, employees, and agents do not represent themselves as agents, representatives, contractors, subcontractors, or employees of the County, or Marin Clean Energy, or claim association or affiliation with the County, or Marin Clean Energy

2.9 Interaction with Tax Collector Processes.

Marketplace Member will: Independently engage the County of Marin Tax Collector for administration of property tax assessments placed through its financing product.

3 **Payment.** This Agreement does not include any financial arrangements between the Marketplace Member and the County, nor does it preclude any separate contracts for services or support.

4 **Term of Agreement.** The term of this Agreement shall be from the Effective Date until termination in accordance with the provisions of Section 5, Termination below.

5 **Termination.**

5.1 Termination without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, County or Marketplace Member shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to the other Party of this Agreement.

5.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should the Marketplace Member fail to uphold any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Marketplace Member written notice of such termination, stating the reason for termination.

5.3 Delivery of Data and Information upon Termination. In the event of termination, Marketplace Member, within 14 days following the date of termination, shall deliver to County all raw data and information in an editable electronic format as outlined in Section 2.6, Document, Data, and Information Policies.

5.4 Authority to Terminate. The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Community Development Agency Director, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

6 **Indemnification and Liability.** Marketplace Member agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Marketplace Member, that

arise out of, pertain to, or relate to Marketplace Member's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Marketplace Member agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Marketplace Member's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Marketplace Member's obligations under this Section apply whether or not there is concurrent negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at Marketplace Member's expense, subject to Marketplace Member's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Marketplace Member or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

7 Prosecution of Work. The execution of this Agreement shall constitute Marketplace Member's authority to proceed immediately with the performance of this Agreement.

8 Representations of Marketplace Member.

8.1 Standard of Care. County has relied upon the professional ability and training of Marketplace Member as a material inducement to enter into this Agreement. Marketplace Member hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Marketplace Member's work by County shall not operate as a waiver or release.

8.2 Status of Marketplace Member. The parties intend that Marketplace Member, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Marketplace Member is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, employment protection, or similar benefits County provides its employees.

8.3 Conflict of Interest. Marketplace Member covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that

represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Marketplace Member further covenants that in the performance of this Agreement no person having any such interests shall be employed.

- 8.4 Statutory Compliance. Marketplace Member agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement.
- 8.5 Nondiscrimination. Without limiting any other provision hereunder, Marketplace Member shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, gender identity, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.
- 8.6 Assignment of Rights. For the avoidance of doubt, the provisions of this Section 8.6 apply only to copyrights, trademarks, patents and rights to ideas developed solely in connection with this Agreement and do not relate to such property that a Marketplace Member, including without limitation, any of its agents, has developed or may develop for general use within and beyond the Financing Marketplace. Marketplace Member assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Marketplace Member in connection with this Agreement. Marketplace Member agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Marketplace Member's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.
- 8.7 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Marketplace Member.

9 Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, conduct, or service does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Section 5, Termination.

10 Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

11 Method and Place of Giving Notice. All notices shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices shall be addressed as follows:

TO: COUNTY:

Community Development Agency Director
County of Marin
3501 Civic Center Drive, Rm 308
San Rafael, CA 94903
Facsimile: 415-473-7880
Email address (opt): _____

TO: MARKETPLACE MEMBER: _____

Facsimile: () - _____

Email address (opt): _____

When a notice is given by a generally recognized overnight courier service, the notice shall be deemed received on the next business day. When a copy of a notice is sent by facsimile or email, the notice shall be deemed received upon transmission as long as (1) the original copy of the notice is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email, (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

12 Miscellaneous Provisions.

- 12.1 **No Waiver of Breach.** The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 12.2 **Construction.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Marketplace Member and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Marketplace Member and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 12.3 **Consent.** Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

- 12.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 12.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in San Rafael or the forum nearest to the city of San Rafael, in the County of Marin.
- 12.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 12.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 12.8 Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 12.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

Continued on next page:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

MARKETPLACE MEMBER:

COUNTY: COUNTY OF MARIN

CERTIFICATES OF INSURANCE ON
FILE WITH AND APPROVED AS TO
SUBSTANCE FOR COUNTY:

By: _____

By: _____
Department Head

Name: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM FOR COUNTY:

By: _____
County Counsel

Date: _____

By: _____
Chair
Board of Supervisors

Date: _____

ATTEST:

Clerk of the Board of Supervisors

ATTACHMENT 1

ALERT: Fannie Mae/Freddie Mac Instructions for Lenders

SINGLE FAMILY HOME OWNERS: In May, 2010, Fannie Mae and Freddie Mac, government sponsored enterprises that purchase a large segment of conforming single family home mortgages, issued new instructions to lending institutions on how to treat properties with assessments under Property Assessed Clean Energy (PACE) programs **such as _____**. These letters, and additional statements issued by the Federal Housing Finance Agency, the agency that regulates single family home lenders, instruct lenders to treat energy assessments as “loans” instead of “assessments.”

On August 31, 2010, the agencies issued additional instructions to lenders that Fannie Mae and Freddie Mac “will not purchase mortgage loans secured by properties with an outstanding PACE obligation.” (*Links to this history of correspondence are included on the back of this sheet; hard copies are also available at the County Building Department or at MCE’s offices*).

These letters and statements may lead lenders to conclude the PACE assessment should be paid off before a property transfers or is refinanced. In addition, it may lead some lenders to conclude that participating in PACE program is a violation of typical mortgage terms prohibiting prior liens without lender consent. If you are selling your property, a buyer’s lender may refuse to finance a loan unless the assessment is paid off. We urge you to carefully read the disclosure information in the Program application, review your mortgage documents, evaluate the risks of proceeding with an application at this time, and contact your lender if you have any concerns or for information regarding any other financing options that may be available to you.

I/We have read the above statement. All property owners on title must initial below:

_____	_____	_____	_____
<i>Initials</i>	<i>Date</i>	<i>Initials</i>	<i>Date</i>
_____	_____	_____	_____
<i>Initials</i>	<i>Date</i>	<i>Initials</i>	<i>Date</i>

Continued on next page:

ATTACHMENT 1

Electronic links to the copies of letters from the Federal Financing Housing Authority re: PACE programs:

- <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/II1006.pdf>
- <http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/iltr050510.pdf>
- <http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx>
- <http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Acting-Director-Edward-J-DeMarco-on-PACE-Programs.aspx>
- <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/sel1012.pdf>
- <http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bl11020.pdf>

Hard copies of these letters are also available at the County of Marin Community Development Agency or at MCE Clean Energy and on the respective websites:

Marin County Community Development Agency
3501 Civic Center Drive, Suite 308
Environmental Health Services - Suite 236
San Rafael, CA 94903
www.marincounty.org/energyupgrade

MCE Clean Energy
1125 Tamalpais Avenue
San Rafael, CA 94901
www.mcecleanenergy.org

ATTACHMENT 2

LOAN LOSS RESERVE GUIDELINES

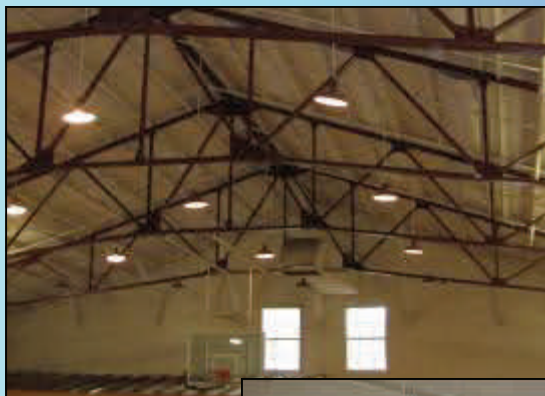
The PACE Loss Reserve should exist to make first mortgage lenders whole for any direct losses incurred due to the existence of a PACE lien on a property during a foreclosure or forced sale. The Reserve should cover the following losses:

1. PACE payments paid while a first mortgage lender is in possession of a foreclosed home that is subject to a PACE lien
2. Any losses to the first mortgage lender up to the amount of the outstanding PACE assessments in a forced sale for unpaid taxes or special assessments.

MINIMUM FUNDING LEVELS

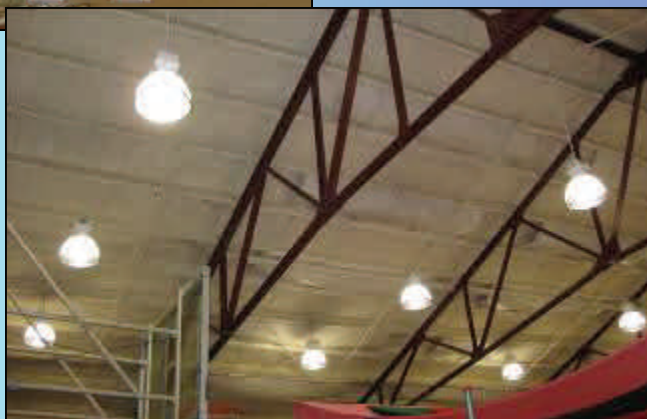
The provider shall create a loan loss reserve account and ensure that the reserve account maintains a minimum balance no less than 10% the value of all outstanding PACE Financings. Provider shall be prepared to furnish documents confirming reserve levels upon request.

Before: 30 lamps at 300 watts each — 9 kW total



Fairfax Pavilion Lighting Retrofit

After: 30 lamps at
84 watts each
— 2.5 kW total



MarinEMT is a part of the Marin County Energy Watch, a joint project of Pacific Gas and Electric Company and the County of Marin. MarinEMT is funded by California utility ratepayers and administered by Pacific Gas and Electric Company under the auspices of the California Public Utilities Commission.

For more information

Contact MarinEMT at

415-473-3292

darmanino@marincounty.org

www.marinenergywatch.org



Marin Public Facilities

Energy Management Team



MarinEMT is a part of the Marin County Energy Watch, a joint project of Pacific Gas and Electric Company and the County of Marin.

MARIN COUNTY
energy
watch

MarinEMT Works for you



Acting As Your Energy Manager

The MarinEMT was conceived in the idea that energy management services could be more cost effectively provided to small public sector institutions if their needs could be served in aggregate, as a collaboration.

MarinEMT staff act as energy management for you: the local governments, school districts and special districts in Marin County. We act as an extension of your staff, helping to reduce and manage your energy use, improve the comfort and productivity of your staff and students and save scarce dollars.

We sit on your side of the table, helping you to understand how much energy your facilities use, to evaluate how they can be more efficient and to finance and implement energy-efficiency projects.

We also help you find products, contractors, engineering and other public or utility-sponsored programs.

Providing Technical Support

The MarinEMT provides a one-stop resource to help you reduce and manage energy use. We will survey your existing facilities, review plans for capital improvements, benchmark your historical energy use, and track your on-going energy use and cost.

We recommend energy-efficiency improvements and provide the technical and financial information you need to make informed decisions. We provide bid packages, specifications, board/council presentations, or consultation. We also provide financial incentives (rebates) and assist with financing as needed.

Many other state, utility and private energy-efficiency programs and resources are available as well—we track and leverage these ever-changing resources so that you don't have to. We also customize the services to address your specific needs and assist you at any level of decision-making from facilities staff to elected officials.

Building Information Networks

We also help you access another important resource—your peers. Through peer networking lunches and workshops, you can find out what has and has not worked for similar organizations in Marin County. These lunch-time meetings have been successful in providing a forum for Marin facilities managers to exchange information, get to know each other and to be inspired.

Workshops can be helpful, but your time is limited and valuable, so we bring experts to Marin to conduct workshops that are convenient and useful.

We also maintain historical records for energy use, energy cost, past audits and measures implemented at each of your facilities. All materials and data can be provide at your request.

Marin E M T

Conserving energy and saving money in Marin's public facilities

Who Are We?

Since 2004, the Marin Energy Management Team (MarinEMT) has been providing free energy management services to Marin's public agencies including local government, schools and special districts.

MarinEMT is made up of local organizations with

extensive experience in energy efficiency auditing, engineering, training, financing and project management. Our services also include financial incentives for your efficiency projects, and we are partnered with Marin's water districts and the County to help you investigate water-efficiency measures, solar and green building projects.

MARIN CLEAN ENERGY

BOARD MEETING MINUTES

Thursday, March 5, 2015

7:00 P.M.

**SAN RAFAEL CORPORATE CENTER, TAMALPAIS ROOM
750 LINDARO STREET, SAN RAFAEL, CA 94901**

Roll Call: Chair Sears called the regular Board meeting to order at 7:00 p.m. An established quorum was met.

Present: Denise Athas, City of Novato
Sloan Bailey, Town of Corte Madera
Tom Butt, Vice Chair, City of Richmond
Genoveva Calloway, City of San Pablo
Barbara Coler, Town of Fairfax
Ford Greene, Town of San Anselmo
Larry Chu (Alternate to Kevin Haroff), City of Larkspur
Garry Lion, City of Mill Valley
Greg Lyman, City of El Cerrito
Bob McCaskill, City of Belvedere
Andrew McCullough, City of San Rafael
Emmett O'Donnell, Town of Tiburon
Alan Schwartzman, City of Benicia
Carla Small, Town of Ross
Keith Caldwell (Alternate to Brad Wagenknecht), County of Napa
Ray Withy, City of Sausalito
Kate Sears, Chair, County of Marin

Absent: None

Staff: Dawn Weisz, Executive Officer
Elizabeth Kelly, Legal Director
Beckie Menten, Director of Energy Efficiency
Greg Brehm, Director of Power Resources
John Dalessi, Technical Consultant
Meaghan Doran, Energy Efficiency Specialist
Emily Goodwin, Director of Internal Operations
Darlene Jackson, Clerk

1. Swearing in of New MCE Board Member

Ms. Weisz gave the Oath of Office to new MCE Board Member Greg Lyman, City of El Cerrito.

2. Board Announcements (Discussion):

There were no Board member announcements.

3. Public Open Time (Discussion):

Sam Sparrow spoke about an FBI investigation and a video relating to the PG&E electrical industry, corruption and hidden PG&E charges.

4. Report from Executive Officer (Discussion)

Dawn Weisz, Executive Officer, gave the following report:

- She presented media announcements regarding the City of El Cerrito's membership, an announcement from the Pt. Reyes Light in West Marin, and Main Street Moms;
- Discussed pre-enrollment activities in El Cerrito and San Pablo which are going smoothly and with significant outreach over the last month;
- There is tremendous interest in the MCE Deep Green Program and the City of El Cerrito has the highest number of signups;
- On March 24th, staff will make a presentation at the El Cerrito City Hall at 6:30 p.m. On April 15th a presentation is planned at the El Cerrito Community Center, and events are planned for Benicia and San Pablo as well as follow-up events in unincorporated Napa. Information can be found on the MCE website;
- Many items on the Consent Calendar are contract renewals. March is the time of year MCE renews annual contracts which expire at the end of the fiscal year. The new fiscal year begins on April 1st and staff is seeking renewal with many vendors with existing agreements.

Ms. Weisz introduced Greg Brehm, Director of Power Resources, who discussed the results of their Open Season process which was completed on Monday:

- Mr. Brehm reported receiving a total of 24 proposals. Of these, there were 12 solar proposals ranging from 10 MW to 65 MW. There were 3 proposals for in-state wind ranging from 42 MW to 151 MW, one geothermal proposal for a capacity of 3-200 MW, had 3 offers for carbon free energy in-state and a couple of out-of-state. They had 2 Product Content Category 2 proposals for out of state wind, and overall they have more than enough resources to cover their open positions under all categories. Generally speaking, the overall energy market is down 24% from last year, solar prices are down 20% from last year's market, wind prices were up slightly, and geothermal was down about 13%. Bucket 2 prices came in at about 50% higher than paid for in previous years;
- This week MCE signed their first confirmation for specific purchase of natural gas. While not high on MCE's priority list at the beginning of their growth, this came in at a good price that fits well with their portfolio and it comes with a lower carbon emission factor than the California system power mix, which is a good next step for the agency;

- MCE is in the process of preparing for the office move sometime next week. As a result, the next Board meeting will likely be held in the new location. However, in case furniture does not arrive, staff will notify Board Members as to whether or not they will need to meet in the San Rafael Corporate Center one more time.

5. Consent Calendar (Discussion/Action):

- C.1 2.5.15 Meeting Minutes
 - Chair Sears referred to page 4 and said her comments regarding the fact that “MCE also has a line of credit in addition to reserves” is correct, however, it should be noted that MCE does not have a current line of credit.
 - Board Member Coler referred to page 2 and asked that the vote be corrected to reflect her abstention.
- C.2 Approved Contracts Update
- C.3 First Amendment to Lease Agreement with 700 Fifth Avenue, LLC
- C.4 Seventh Agreement with Maher Accountancy
- C.5 Fourth Agreement with Jay Marshall
- C.6 Third Agreement with Braun Blaising McLaughlin & Smith
- C.7 Fifth Agreement with Niemela Pappas & Associates (formerly Lehman, Levi, Pappas & Sadler)
 - Board Member Coler cited no hourly rate on services, and she confirmed with Ms. Weisz that the vendor is paid on a monthly retainer.
- C.8 Sixth Agreement with Richards Watson & Gershon
 - Board Member Coler commented that the Town of Fairfax’s hourly rate is lower than the rate reflected in the agreement and she suggested staff consider negotiating for lower rates in the future.
- C.9 Third Agreement with Troutman Sanders
- C.10 Sixth Agreement with Green Ideals
 - Board Member Coler commented that on the agenda is a designer position and she asked if the contract would phase out services given the addition of a staff member. Ms. Weisz stated the full-time recommended staff position will allow the contractor to reduce the amount of service hours in the contract.
- C.11 Second Amendment to Power Purchase Agreement with Cottonwood Solar, LLC
- C.12 Second Amended and Restated Attorney-Client Fee Agreement with Morris Polich & Purdy LLP
 - Board Member Coler asked if MCE has a travel expense policy. Ms. Weisz stated MCE has a policy covering employee travel, but vendors have their own guidelines they follow. MCE screens invoices for any charges that seem out of line.
- C.13 First Agreement with North Bay Office Furniture LLC

ACTION: It was M/S/C (Butt/McCaskill) to approve the Consent Calendar consisting of Items C.1 through C.13. Motion carried by unanimous roll call vote: 17-0 (Abstained on Item C.1: Lyman, Coler, Chu and Greene).

6. Monthly Budget Report (Discussion)

John Dalessi, Technical Consultant, presented the year-to-date budget for 10 months ending January 21, 2015. At the last meeting, the Board adopted amendments to the budget. Revenue and cost of energy continue at levels that are slightly below what was budgeted which is primarily due to slightly lower sales of about 2 1/2%. As compared to financials last year, there has been significant growth and benefit. Revenues are up \$11.7 million relative to this time last year and the surplus to the Fund Balance is up by \$3.3 million.

A Board Member questioned costs for a communications consultant given the level of staffing in the Communications Division. Ms. Weisz explained this is the first year MCE will be offering service for new communities. MCE strives to ensure staff conducts outreach through print media, radio media, development of content for their website, visiting and presenting to communities, noticing to customers and creating literature for events. Moving forward, the budget will remain stable and she noted that the budget amount for this coming fiscal year is the same amount spent in the last fiscal year.

A Board Member referred to the first page of the staff report which states the energy budget is funded through a portion of the Deep Green service provided to customers. She asked why it is funded through a portion of this program, given they have 100% renewable solar program. Mr. Dalessi explained that the rates that were designed for 100% solar are essentially a direct pass through of costs and those monies are directly funding specific projects. What this relates to are the Deep Green customers, and half of those revenues are being earmarked for additional local projects.

7. MCE Rates for FY 2015/2016 (Discussion/Action)

John Dalessi, Technical Consultant, noted that the proposed rates were discussed in detail at last month's meeting and he presented a brief PowerPoint and discussed the 9 customer rate groups, terminology used for different types of customers, cost service analysis and competitor analysis, rate changes by rate group, an overall savings of \$10.6 million by MCE customers over PG&E service customers despite rate increase, adjustments, and band charges to reflect cost and capacity MCE needs to procure. He recommended the Board approve the rates for FY 2015/2016 which becomes effective April 1, 2015.

The following questions and comments ensued:

- A Board Member asked about the adjustment of the Com-6 rate. Mr. Dalessi said this rate is well below PG&E across the board and they are trying to increase the on-peak to off-peak price differential to be more comparable or in alignment with the rate from PG&E.
- A Board Member asked if greater economic benefit will be given to customers in the future, given rate increases. Mr. Dalessi said looking forward, they have a good handle on what MCE's costs should be over the next few years and they do not anticipate the

need to push for large rate increases. Regarding how hard they should push to keep rates as low as possible versus MCE's quest for more renewable energy, they want to look at rates to fund new energy sources, which is a policy discussion that took place this year and which can be evaluated as to what the appropriate balance should be.

- A Board Member commented that MCE is substantially below PG&E's rates, but the PCIA makes up for much of the difference. Board Members voiced interest to discuss PCIA in future meetings.
- A Board Member asked if PG&E has flexibility to take advantage of lower costs now and therefore have a lower cost mix into their portfolio. Mr. Dalessi said his experience in evaluating and monitoring PG&E rates is that they are volatile and PG&E does not release any details about procurement other than to regulators, so this is difficult to answer.

Chair Sears called for public comment.

Sam Sparrow referred to the article on Former CPUC President Peevey and the PCIA and asked if MCE can further discuss the relationship between PG&E and the PCIA.

A Board Member referred to MCE's mission and suggested debate on how to balance short term needs with long term goals so current customers can enjoy the best rates possible. Chair Sears agreed and said she thinks the proposed rate setting this year was thoughtful. She supported the policy debate as an item to be covered in September.

ACTION: It was M/S/C (Bailey/O'Donnell) to approve the MCE Rates for FY 2015/2016. Motion carried by unanimous roll call vote: 17-0.

8. MCE Board Committee Membership (Discussion/Action)

Ms. Weisz presented the MCE Board Offices and Committees list. MCE now has a Board of 17 members and there is space for one (1) Board Member to participate on the Technical Committee and space for three (3) Board Members to participate on the Proposed Ad Hoc Contracts Committee for 2015 Open Season. The Technical Committee meets once a month at 5:00 p.m. on Mondays (subject to change), with the focus on technical issues. The Ad Hoc Contracts Committee focuses on open season responses and agreements in the open season. The Committees have not yet been formalized and those identified on the list volunteered.

Board Member Lyman volunteered to serve on the Technical Committee. Board Members Lyman, Schwartzman, Lion, Bailey, Greene, Haroff and Calloway individually volunteered to serve on the Ad Hoc Contracts Committee.

ACTION: It was M/S/C (Bailey/O'Donnell) to add Board Member Lyman to the Technical Committee and Board Members Lyman, Schwartzman, Lion, Bailey, Greene, Haroff and Calloway to the Ad Hoc Contracts Committee. Motion carried by unanimous roll call vote: 17-0.

9. Power Purchase Agreement with Stion Corporation (Discussion/Action)

Greg Brehm, Director of Power Resources, gave the staff report, stating this is the first project MCE will end up owning. They negotiated with Stion Corporation to do the development and they will finance and operate the system for the first 7 years, with MCE having an option to buy the system at Year 7.

A Board Member noted that the CPUC changed the Green Attributes definition in the summer and Mr. Brehm agreed to follow-up and revise as needed. In response to a question regarding environmental impacts in the design of the solar farm, Mr. Brehm confirmed that the environmental assessment will address any and all impacts.

A Board Member asked what guarantee does the developer provide for the project to be completed on time before the federal tax credit expires. Mr. Brehm said the developer will post securities and they will have most of the agreements in place in a timely manner. He added that they have located all potential environmental impacts outside of the development envelope so it should be a straight-forward process.

In response to a question regarding the pre-payment option, Mr. Brehm said once they break ground, MCE is prefunding part of the development because they have a much lower construction cost which helps in bringing the rate and debt down, and the different options for consideration will be brought to the Ad Hoc Contracts Committee.

Chair Sears called for public comment.

Sam Sparrow said the IRS has changed some of the definitions for tax incentives and opportunities in the solar industry renewables and has made it possible that some of the larger solar arrays are now traded on Wall Street as 5 different types of yield codes. They have the same tax benefits as the oil industry because it has been proven they work, are guaranteed and they estimate a trillion dollars will go towards renewable energy, much of it towards solar.

In response to a Board Member question regarding the Board's initial concern about penetrating the envelope within which there is substantial contamination, Mr. Brehm referred to the PowerPoint presentation of the tracking array which is closest to the road on the 20-acre parcel, as well as the array on the landfill site and said there is no penetration and they are free from contamination risk.

ACTION: It was M/S/C (Butt/Athas) to approve power purchase agreement with Stion Corporation for local renewable energy supply. Motion carried by unanimous roll call vote: 17-0.

10. New MCE Staff Positions (Discussion/Action)

Ms. Weisz introduced the item on behalf of Katie Gaier, Human Resources Coordinator. Four new positions are being presented, two of which fall under the Public Affairs Division of the agency. Given their growth of the organization, staffing is needed. She described the two positions in Public Affairs which include 1) a Manager of Business and Community Development and 2) a Creative Content Designer. The third position relates to a position the Board approved last fall for a Power Supply Contracts Manager Tier I, which has not been filled. During the recruitment, they came across higher level candidates that would fit into a Tier II range, and this will provide MCE with more flexibility. The last position is an Administrative Assistant position, given more communities and growth and the position would provide more support towards assisting the Administrative team. Ms. Weisz said she was available to answer questions relating to compensation and job descriptions for each position.

Board Members questioned and confirmed that MCE complies with all personnel laws, that the positions were included in the approved budget, and the total MCE staff will be 25 with the added positions.

Chair Sears called for public comment, and there were no speakers.

ACTION: It was M/S/C (Athas/Greene) to approve the proposed four new positions: 1) Manager of Business and Community Development; 2) Creative Content Designer; 3) Power Supply Contracts Manager Tier II, and 4) Administrative Assistant. Motion carried by unanimous roll call vote: 17-0.

11. MCE New Board Meeting Time and Location (Discussion/Action)

Ms. Weisz said because of the needs of some existing Board Members, the regular Board meeting date will be changed from the first Thursday of the month to the third Thursday of the month, effective April 16th. The second change relates to the relocation of offices and board room in downtown San Rafael to 500 Fifth Avenue. The actual entrance from the street and address will be changed to 1125 Tamalpais Avenue, San Rafael.

ACTION: It was M/S/C (Lion/McCaskill) to adopt Resolution 2015-02 establishing the date, time and location of the MCE Board Meetings. Motion carried by unanimous roll call vote: 17-0.

12. Energy Efficiency Update (Discussion)

Beckie Menten, Director of Energy Efficiency, gave the MCE Energy Efficiency Programs Monthly Update as follows:

- The CPUC in November approved a decision which extends funding for MCE existing programs through 2025;
- They have made some revisions to their energy efficiency savings goals to be more achievable while maintaining their cost effectiveness;

- They are setting internal quarterly goals to track progress on program performance metrics in addition to energy savings goals. An example is staff's follow-up on high quality referrals from contractors;
- She presented a sample of their revised monthly update for each program which is now more user-friendly and graphical, and she presented a sample residential water nexus project which they work and coordinate with MMWD.

Board Members questioned MCE's attempt to work with Novato's Water District and confirmed the ability for commercial and local government water nexus projects where cities must work with Marin County and PG&E.

- Ms. Menten continued and discussed the small commercial program and their successful contractor sales training;
- Single Family Program – staff mails out home utility reports to compare energy costs with other homes of similar size. They are undergoing a review of the program to ensure high quality performance;
- User Experience Update or UX Update – User suggestions for redesigning and making the web portal flow better;
- Added two new features to the web tool; 1) the Financing market place which links to a matrix of financing options and matching programs; and 2) Equipment market place which provides information about energy savings and replacement of refrigerators and other equipment;
- Planning and update of their CCAC operational programs to a ten-year rolling portfolio cycle. They expect to file their first new application in May 2015 and get their new programs authorized in July;
- Staff is working on a new low income program which is funded separately from energy efficiency programs, and they are doing a pilot program to leverage more funding. They are looking to focus on hidden or segregated communities where people are not willing to do income verification to capture more populations;
- They are taking the web app and putting it on a local platform in order to provide access, energy alerts and information to those without computers.

Board Members posed the following questions and responses given:

- Competitiveness in energy efficiency has increased over the last six months. Staff continues to work with PG&E on specific cases involving partnership and relationship issues.
- A Board Member asked that staff continue presenting case studies, noting that they are very helpful. Ms. Menten confirmed and then described a rebate program for a huge project in a 100-unit neighborhood facility.
- A Board Member suggested staff approach some of the organizations that manage certain housing programs and Ms. Menten said existing low income policy requires staff to go to every door to get verification from all tenants, which is a barrier, and they are

suggesting the use of proxies and are also reaching out and working with Housing Authorities and EAH.

- A Board Member referred to the 2014 annual goal and asked what the actuals were for 2014. Ms. Menten said she believes they ended up with 10% to 15% of their actuals for 2014. They transfer figures into MW hours and will post the consolidated version on their website which will have these figures.

Chair Sears called for public comment, and there were no speakers.

13. Regulatory and Legislative Update (Discussion)

Elizabeth Kelly, Legal Director, gave an overview of MCE's role with the California Public Utilities Commission which is the regulatory agency MCE is most engaged with. Three core issues they address and work with the CPUC includes:

1. Jurisdictional issues, such as PG&E which is fully regulated by the CPUC. MCE is partially regulated, but resource planning is determined by the Board;
2. Cost shifting where they often see PG&E wanting to move generational costs into the distribution rate and utilities wanting to shift costs from third generation customers to our generation customers through the PCIA; and
3. Competitive issues and whether there is a fair playing field for energy efficiency.

Ms. Kelly stated energy is broken into two parts—electricity and capacity. PG&E can pass on electricity costs to MCE customers through Power Charge Indifference Adjustment (PCIA) and pass through capacity costs through the Cost Allocation Mechanism (CAM). These are two areas MCE has been very involved with for a long time. With regards to the PCIA, historically, PG&E has not assumed that any customers would part their service and this year they have made assumptions about future CCAs departing. Since the PCIA is based on unavoidable electricity costs and if they assume customers will depart, this will reduce the unavoidable costs borne by CCA customers since PG&E will not have procured for that departing load.

Another area MCE has worked on relates to methodology for PCIA "vintaging" for MCE customers. A customer's "vintage" is the date when a customer is assumed to have departed from PG&E service. If a house is built which is entering and using MCE service from day one, that customer is considered a customer departed from PG&E even though they never have been served by PG&E. Therefore, the PCIA is applying to customers it should not and MCE has succeeded in getting a venue at the CPUC to discuss these issues.

They seek to add a significant issue which is that in PG&E's service territory, PG&E imposes the PCIA on CARE customers. In SCE and SDG&E territory, those CARE customers do not pay the PCIA, which is significant because the charges are impacting their most vulnerable customers. It should also be noted that medical baseline customers are exempted from the PCIA in all service territories. She reported that MCE will be filing a motion tomorrow in the proceeding called the

Energy Resource Recovery Account to have this brought within the scope to be corrected, as CARE customers have paid over \$1.5 million in PCIA fees to PG&E since MCE launched.

Board Members and Mr. Dalessi discussed reasons that the PCIA charge on a per kilowatt hour basis is significantly higher for residential customers than it is for commercial and industrial customers. Mr. Dalessi noted that it is a rate design methodology issue. It reflects a monopoly attitude because its operating assumption is that all accounts belong to PG&E and therefore must pay whether or not such accounts ever actually happen. Also, Ms. Kelly said when fees were put in place many years ago the CPUC was thinking about the direct access market and large commercial customers. At the time, the CPUC assumed that exit fees would be as close to zero as possible. MCE is working on getting traction on projection differences, the vintage issue and the CARE issue.

While not a core CCA issue, an issue which raises a significant number of competitive issues is that the three major utilities in California have put in applications asking for hundreds of millions of dollars each to implement EV charging infrastructure, which Ms. Kelly briefly discussed. SDG&E and PG&E are asking to not only build out to stub but also own the charging infrastructure which will have negative impacts on EV charging. PG&E has asked for over \$600 million to implement this and MCE will be involved to ensure there are not added budget impacts in the EV market and that it is fair for ratepayers.

Senate Bill 350 introduced in the legislature would implement the Governor's "50-50-50" benchmarks by raising California's renewable portfolio standard from 33% to 50%, striving for a 50% reduction in petroleum use and increasing energy efficiency in buildings by 50% by the year 2030. MCE is working to get the pass-through of Capacity costs of renewable projects stricken from the bill but in general they are supportive of the Governor's bills.

Ms. Kelly also reported that MCE presented to the Senate Energy Committee this last month, they are ramping up to bring renewable energy local, and bringing cost savings to school districts, cities and many agencies. They also highlight the significant interest and growth of CCA and the impact it will have in the future. Ms. Weisz commented that after the hearing many people were inquisitive about PCIA and she noted that the level of dialogue has deepened since last year. She stated they hold annual update meetings with each of the Commissioners to update them on MCE's growth and new projects, and at the CPUC, ex parte communications are permitted and they utilize this as a tool to explain their position, as well. She confirmed they also clarify inaccurate information, such as disseminating facts about SB 2145.

14. Board Member & Staff Matters (Discussion) - None

15. Adjournment:

The Board of Directors adjourned the meeting at 9:00 p.m. to the next regular Board meeting on April 16, 2015.

Kate Sears, Chair

Attest:

Dawn Weisz, Secretary



April 16, 2015

TO: Marin Clean Energy Board

FROM: Sarah Estes-Smith, Internal Operations Coordinator

RE: Report on Approved Contracts (Agenda Item #4 – C.2)

Dear Board Members:

SUMMARY:

In March 2013 your Board adopted Resolution 2013-04 which authorized the Chief Executive Officer to enter into and execute agreements for an amount not to exceed \$25,000 within a fiscal year consistent with the Board approved budget, the Joint Powers Agreement, and the Operating Rules and Regulations.

In November 2012 your Board approved the MCE Integrated Resource Plan authorizing the Chief Executive Officer to enter into and execute short term power purchase agreements for energy, capacity and renewable energy for less than or equal to 12 months, as well as medium-term contracts for energy, capacity and renewable energy for terms of greater than 12 months and less than or equal to 5 years in conjunction with the MCE Board Chair. Short and medium term power purchase agreements must be pursuant to a MCE Board approved Integrated Resource Plan. A committee of the MCE Board is consulted prior to execution of any medium-term contract by the Chief Executive Officer and MCE Board Chair.

The following chart summarizes agreements of this nature which have been entered into during the previous month:

Month	Purpose	Contractor	Maximum Annual Contract Amount	Term of Contract
February	Renewal: Transcription and minute-taking services for MCE Board meetings	Lisa's Word Processing	\$5,000	12 months
February	Renewal: Legal and regulatory services	Ellison Schneider & Harris, LLP	\$20,000	12 months
February	Renewal: Technical support, design and implementation for the MCE website	Kames Cox-Geraghty	\$5,000	12 months
February	Energy Efficiency program delivery for schools in Marin and Richmond	Strategic Energy Innovations	\$9,105	12 months
February	Addendum increasing not-to-exceed amount and widening scope of consulting services	Rincon Consultants, Inc.	\$25,000	5 months

	pertaining to proposed solar project at Chevron Refinery			
March	CEQA services for MCE 10.5-MW Chevron Refinery Solar Project	Rincon Consultants, Inc.	\$25,000	12 months
March	Security device installation at new MCE office	Low Voltage Security, Inc.	\$25,000	13 months
March	Addendum extending contract end date to 12/31/15 for energy efficiency technical consulting services	WSP USA Corp.	n/a	13 months
March	MCE's annual Green-e product audit	Abbott, Stringham & Lynch	\$12,000	12 months
March	Addendum extending contract termination date and increasing not-to-exceed amount for construction consulting services	Precision GCC, Inc.	\$16,000	9 months
March	Renewal: Latino outreach and Spanish translation services	Elena Velez	\$15,000	12 months
March	MCE office relocation services	Earl Farnsworth Express	\$19,514.50	1 month
March	Environmental Impact Report management services for MCE 10.5-MW Chevron Refinery Solar Project	Barnett Environmental	\$14,384	13 months
March	588,015 MWh natural gas energy power purchase 2015-2017	Calpine	\$21.9M	33 months
March	Addendum extending contract termination date to 6/30/15 for Board table and cubicle order and installation	North Bay Office Furniture LLC	\$31,086	4 months
April	Standing desk order and installation	North Bay Office Furniture LLC	\$24,941.78	12 months
April	Janitorial services at new MCE office	MCC Building Maintenance	\$12,600	12 months
April	Renewal: General consulting services	Eclipse Consulting Group	\$25,000	12 months
April	Business plan development for MCE's energy efficiency portfolio	Potrero Group	\$25,000	12 months
April	34 MW of June 2015 system resource adequacy	CalPeak Power, LLC	\$25,500	1 month

Recommendation: Information only. No action required.



April 16, 2015

TO: Marin Clean Energy Board of Directors

FROM: Katie Gaier, Human Resources Coordinator

RE: Director of Power Resources Salary Study (Agenda Item #04 – C.3)

Dear Board Members:

SUMMARY:

During the recruitment and selection process for the position of Power Supply Contracts Manager, it came to the attention of management staff that the salary for that position was lower than the market, because it had been set internally. Your Board at the March 5, 2015 meeting approved the Executive Committee's recommendation to create a Power Supply Contracts Manager Tier II with a top step salary of \$96,657.

The research for the addition of a Power Supply Contracts Manager Tier II led to a conclusion that the Director of Power Resources was falling behind in its relevant labor market. A market study was done to determine an appropriate salary for the latter position, in line with its duties, span of authority and level within the organization. At its March 18, 2015 meeting, the Executive Committee reviewed the compensation analysis, determined that the salary be set above the median and recommended approval by the Board of Directors.

RECOMMENDATION:

Based upon a review of the relevant labor market, it is recommended that your Board approve a salary range of \$106,000 - \$162,258 for the Director of Power Resources with exact compensation for the incumbent to be determined by the Chief Executive Officer within the Board approved budget for fiscal year 2015-2016.



April 16, 2015

TO: Marin Clean Energy Board of Directors

FROM: Sarah Estes-Smith, Internal Operations Coordinator

RE: Second Addendum to First Agreement with North Bay Office Furniture LLC (Agenda Item #04 – C.4)

ATTACHMENTS:

- A. First Agreement with North Bay Office Furniture LLC
- B. First Addendum to First Agreement with North Bay Office Furniture LLC
- C. Second Addendum to First Agreement with North Bay Office Furniture LLC

Dear Board Members:

SUMMARY:

On March 5, 2015, MCE entered into the First Agreement with North Bay Office Furniture LLC (“Agreement”) to purchase and install Board Room furniture and cubicles at the new MCE office. The Agreement stated that the maximum cost to MCE would be \$31,086. On March 30, 2015 MCE entered into the First Addendum, which extended the contract termination date to June 30, 2015 to allow for later delivery and installation of the Board Room furniture and cubicles.

MCE staff requests approval of the present Second Addendum, which would reflect a contract maximum increase of \$1,653.77 for a total amount not to exceed \$32,739.77. The increase would allow MCE’s new Board Room tables to be equipped with electrical outlets, thereby improving accessibility for electronic device charging for Board Members and other guests.

Recommendation: Approve Second Addendum to First Agreement with North Bay Office Furniture LLC.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**FIRST AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND NORTH BAY OFFICE FURNITURE LLC**

THIS FIRST AGREEMENT ("Agreement") is made and entered into this day **March 5, 2015** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and NORTH BAY OFFICE FURNITURE LLC, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: ordering and installation of MCE Board Room furniture and cubicles;

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 invoice 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 **\$31,086**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **March 5, 2015**, and shall terminate on **March 31, 2015**. 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:

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

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same.

9. ASSIGNMENT:

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

10. RETENTION OF RECORDS AND AUDIT PROVISION:

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

11. WORK PRODUCT:

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

12. TERMINATION:

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

13. AMENDMENT:

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

14. ASSIGNMENT OF PERSONNEL:

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

15. JURISDICTION AND VENUE:

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

16. INDEMNIFICATION:

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

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

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

18. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all 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 Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement. Copies of any of the above-referenced local laws and resolutions may be secured from MCE's contact person referenced in paragraph 19. NOTICES below.

19. NOTICES

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted and approved by this Agreement Manager and all notices shall be given to MCE at the following location:

Contract Manager:	Sarah Estes-Smith
MCE Address:	700 Fifth Avenue
	San Rafael, CA 94901
Email Address:	invoices@mcecleanenergy.org
Telephone No.:	(415) 464-6028

Notices shall be given to Contractor at the following address:

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

20. ACKNOWLEDGEMENT OF EXHIBITS

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

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

APPROVED BY

Marin Clean Energy:

By: [Signature]
CEO

Date: 3-5-15

By: [Signature]
Chairperson

Date: 3-5-15

CONTRACTOR:

By: [Signature]

Name: ROBERT RAMIREZ

Date: 3-7-2015

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

REASON(S) REVIEW:

- ☐ Standard Short Form Content Has Been Modified
- ☐ Optional Review by MCE Counsel at Marin Clean Energy's Request

MCE Counsel: _____

Date: _____

EXHIBIT A
SCOPE OF SERVICES (required)

Contractor will order and install the following MCE Board Room furniture and cubicles as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

Board Room

22 Side Chairs	\$5,918.00
20 Board Chairs	\$5,900.00
Installation – Chairs	\$280.00
Tables	\$5,600
Installation – Tables	\$350.00
<i>Total</i>	<i>\$19,717.44</i>

Cubicles

(4) 8'x6' cubes	
(1) 12'6" manager station	\$7,448.00
Installation	\$2,958.00
<i>Total</i>	<i>\$11,368.56</i>

Grand Total **\$31,086.00**

EXHIBIT B
FEES AND PAYMENT SCHEDULE

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

Deposit due upon execution of this agreement	\$23,314.50
Balance due upon completion of installation (net 10 days)	\$7,771.50

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$31,086** for the term of the agreement.

EXHIBIT C
INSURANCE REDUCTION/WAIVER (if applicable)

CONTRACTOR: North Bay Office Furniture LLC

CONTRACT TITLE: First Agreement By and Between Marin Clean Energy and North Bay Office Furniture LLC

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

	Check Where Applicable	Requested Limit Amount	MCE Use Only
General Liability Insurance	<input type="checkbox"/>	\$	
Automobile Liability Insurance	<input type="checkbox"/>	\$	
Workers' Compensation Insurance	<input type="checkbox"/>		
Professional Liability Deductible	<input checked="" type="checkbox"/>	\$	

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

Professional Liability – not applicable for limited scope of services.

General Liability, Automobile Liability, Worker's Compensation – required for CPI (installation crew). Contractor to

Provide CPI insurance forms to MCE.

Contract Manager Signature: _____

John Smith

Date: _____

3/25/15

Telephone: _____

415-464-6028

Approved by: _____

Don Wiley

Date: _____

3-25-15

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

(707) 888-1857
Robert Ramirez

Date: 3/2/2015
Proposal #24417

Customer: Marin Clean Energy 700 5 th Street San Rafael, CA
--

Qty	Model	Description	Sell	Sell
			Unit Price	Extended Price
1	Cubicles	Friant "System 2" panel system. (4) 8'x6' cubes, (1) 12'x6' manager station 53"H panels with glass at top section, 14"H Surfaces, electrical included (1) BBF pedestal included / station Fabric: Passages "Wing" #PF601-3 Panel Trim: #LG Lite Grey Panel Base: #MT Medium Tone Laminate: #M1 Lite Maple Laminate Edge: #LG Lite Grey		\$7,448.00
1	Installation	Freight & Installation, cubicles Regular Business hour: M-F, 8am-5pm Weekends are additional.		\$2,958.00
			Sub Total:	\$10,406.00
			Sales Tax 9.25%	\$962.56
			Total:	\$11,368.56

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

(707) 888-1857
Robert Ramirez

Date: 3/2/2015

Proposal #24418

Customer: Marin Clean Energy 700 5 th Street San Rafael, CA
--

Board Room, tables & chairs

Qty	Model	Description	Sell	Sell
			Unit Price	Extended Price
22	Side Chair	Hon "Nucleus" with arms & casters back and base: Black Seat Fabric: Black Vinyl	\$269.00	\$5,918.00
20	Board Chair	Friant "Madison" mid back chair Leather : BLACK Base: Aluminum	\$295.00	\$5,900.00
1	Freight	Freight included.		nc
1	Installation	Installation, (44) chairs		\$280.00
10	Tables	Hon "Huddle" flip-top table with metal base. Size: 60"Wide x 30"Deep Laminate top: TBD Base: Black metal	\$560.00	\$5,600.00
1	Installation	Installation, (1) tables		\$350.00

Sub Total: \$18,048.00
Sales Tax 9.25% \$1,669.44

Total: \$19,717.44

**FIRST ADDENDUM TO FIRST AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND NORTH BAY OFFICE FURNITURE LLC**

This FIRST ADDENDUM is made and entered into on March 30, 2015, by and between MARIN CLEAN ENERGY, (hereinafter referred to as "MCE") and NORTH BAY OFFICE FURNITURE LLC (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and the Contractor entered into an agreement to order and install MCE Board Room furniture and cubicles as directed by MCE staff dated March 5, 2015 ("Agreement"); and

WHEREAS, Section 5 of the agreement listed a termination date of March 31, 2015; and

WHEREAS the parties desire to amend the agreement termination date to June 30, 2015.

NOW, THEREFORE, the parties agree to modify the Agreement as set forth below.

AGREEMENT

1. The first sentence of Section 5 is hereby amended to read as follows:

This Agreement shall commence on **March 5, 2015**, and shall terminate on **June 30, 2015**.

2. Except as otherwise provided herein all terms and conditions of the agreement shall remain in full force and effect.

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

CONTRACTOR:

By: 

Date: 4-30-2015

MARIN CLEAN ENERGY:

By: 

Date: 3-30-15

**SECOND ADDENDUM TO FIRST AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND NORTH BAY OFFICE FURNITURE LLC**

This SECOND ADDENDUM is made and entered into on April 16, 2015, by and between MARIN CLEAN ENERGY, (hereinafter referred to as "MCE") and NORTH BAY OFFICE FURNITURE LLC (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and the Contractor entered into an agreement to order and install MCE Board Room furniture and cubicles as directed by MCE staff dated March 5, 2015 ("Agreement"); and

WHEREAS, Section 4 and Exhibit B to the agreement obligated Contractor to be compensated an amount not to exceed \$31,086 for the services described within the scope therein; and

WHEREAS, the parties seek to revise the scope of the Agreement in Exhibit A to reduce the number of Board Chairs and add the purchase and installation of an Electrical System for the Board Tables; and

WHEREAS the parties desire to amend the agreement to increase the contract amount by \$1,653.77 for a total not to exceed \$32,739.77.

NOW, THEREFORE, the parties agree to modify Section 4 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 **\$32,739.77**.

2. Exhibit A is hereby replaced in its entirety to read as follows:

Contractor will order and install the following MCE Board Room furniture and cubicles as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

Board Room

22 Side Chairs	\$5,918.00
17 Board Chairs	\$5,015.00
Installation – Chairs	\$280.00
Tables	\$5,600.00
Electrical System	\$2,288.75

Installation – Tables	\$460.00
Sales Tax (9.25%)	\$1,809.46
<i>Total</i>	<i>\$21,371.21</i>

Cubicles

(4) 8'x6' cubes	
(1) 12'x6' manager station	\$7,448.00
Installation	\$2,958.00
Sales Tax (9.25%)	\$962.56
<i>Total</i>	<i>\$11,368.56</i>

Grand Total **\$32,739.77**

3. Exhibit B is hereby replaced in its entirety to read as follows:

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

Deposit due upon execution of this agreement	\$23,314.50
Balance due upon completion of installation (net 10 days)	\$9,425.27

In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of \$32,739.77 for the term of the agreement.

4. Except as otherwise provided herein all terms and conditions of the agreement shall remain in full force and effect.

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

CONTRACTOR:

By: _____

Date: _____

MARIN CLEAN ENERGY:

By: _____

Date: _____

MARIN CLEAN ENERGY:

By: _____

Date: _____



April 16, 2015

TO: Marin Clean Energy Board
FROM: John Dalessi
RE: Monthly FY 14/15 Budget Report (Agenda Item #05)
ATTACHMENT: MCE Budget Reports 2015-02 (Unaudited)

Dear Board Members:

SUMMARY:

The attached budget update compares the FY 2014/15 budget to the unaudited revenue and expenses of MCE for the month ending February 2015. Note that the budget amendments approved in February 2015 are incorporated in these reports.

OPERATING BUDGET:

Year-to-date revenues and cost of energy continue at levels slightly under budget, with the driving factor being lower volume than expected. Operating expenditures are pushing beyond anticipated year-to-date levels, but much of this will be smoothed as the year continues.

Overall, MCE continues to spend near projections, as reflected in year-to-date figures.

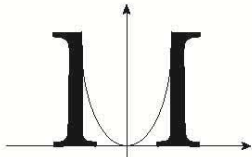
ENERGY EFFICIENCY PROGRAM BUDGET:

The Energy Efficiency Program is entirely funded by the California Public Utilities Commission. For financial reporting purposes, MCE treats funds received from this program as a reimbursable grant. The result is that program expenses are completely offset by revenue. A deferred asset is recorded for funds received by the CPUC that have yet to be expended by MCE.

LOCAL DEVELOPMENT RENEWABLE ENERGY BUDGET:

This program is funded through a portion of the Deep Green service provided to customers. To date, expenses primarily relate to legal costs associated with establishing a local renewable energy project.

Recommendation: No action needed. Informational only.



MAHER ACCOUNTANCY

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

Financial Plumline

ACCOUNTANTS' COMPILATION REPORT

Board of Directors
Marin Clean Energy

We have compiled the accompanying budgetary comparison schedules of Marin Clean Energy (a California Joint Powers Authority) for the period ended February 28, 2015. We have not audited or reviewed the accompanying financial statement and, accordingly, do not express an opinion or provide any assurance about whether the financial statement is in accordance with accounting principles generally accepted in the United States of America.

Management is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statements.

Our responsibility is to conduct the compilation in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The objective of a compilation is to assist management in presenting financial information in the form of financial statements with undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statement.

Certain accounting functions provided by Maher Accountancy are considered management functions by the American Institute of Certified Public Accountants. Accordingly, we are not independent with respect to Marin Clean Energy.

Maher Accountancy

March 18, 2015

TEL 415.459.1249
FAX 415.459.5406
WEB www.mahercpa.com



MARIN CLEAN ENERGY
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2014 through February 28, 2015

	2013/14 YTD Actual	2014/15 YTD Amended Budget	2014/15 YTD Actual	2014/15 YTD Budget Variance (Under) Over	2014/15 YTD Actual/Budget %	2014/15 Annual Amended Budget	2014/15 Budget Remaining
REVENUE AND OTHER SOURCES:							
Revenue - Electricity (net of allowance)	\$ 78,047,946	92,579,991	\$ 91,022,052	\$ (1,557,938.83)	98.32%	\$ 99,126,394	\$ 8,104,342
Revenue - Consideration from lease termination	-	-	-	-	-	400,000	400,000
Total sources	<u>78,047,946</u>	<u>92,579,991</u>	<u>91,022,052</u>	<u>(1,557,939)</u>	<u>91.46%</u>	<u>99,526,394</u>	<u>8,504,342</u>
EXPENDITURES AND OTHER USES:							
CURRENT EXPENDITURES							
Cost of energy	69,737,796	80,396,644	79,503,066	(893,578)	98.89%	87,900,551	8,397,485
Staffing	1,384,886	1,874,375	1,861,480	(12,895)	99.31%	2,140,000	278,520
Technical consultants	497,947	510,683	471,268	(39,415)	92.28%	545,000	73,732
Legal counsel	142,350	344,410	270,981	(73,429)	78.68%	405,000	134,019
Communications consultants and related expenses	647,533	671,875	537,851	(134,024)	80.05%	750,000	212,149
Data manager	2,282,936	2,387,500	2,340,096	(47,404)	98.01%	2,550,000	209,904
Service fees- PG&E	532,316	631,667	618,548	(13,119)	97.92%	705,000	86,452
Other services	235,715	302,000	304,878	2,878	100.95%	354,000	49,122
General and administration	293,669	330,833	319,721	(11,112)	96.64%	370,000	50,279
Marin County green business program	15,000	15,000	15,000	-	0.00%	15,000	-
Solar rebates	500	20,000	-	(20,000)	0.00%	25,000	25,000
Total current expenditures	<u>75,770,648</u>	<u>87,484,986</u>	<u>86,242,889</u>	<u>(1,242,097)</u>	<u>98.58%</u>	<u>95,759,551</u>	<u>9,516,662</u>
CAPITAL OUTLAY	11,013	218,333	111,982	(106,351)	51.29%	420,000	308,018
DEBT SERVICE	1,052,898	1,095,417	1,003,356	(92,061)	91.60%	1,195,000	191,644
INTERFUND TRANSFER TO:							
Local Renewable Energy Development Fund	51,536	109,994	109,994	-	100.00%	109,994	-
Total expenditures	<u>76,886,095</u>	<u>88,908,730</u>	<u>87,468,221</u>	<u>\$ (1,440,509)</u>	<u>98.38%</u>	<u>97,484,545</u>	<u>\$ 10,016,324</u>
Net increase (decrease) in available fund balance	<u>\$ 1,161,851</u>	<u>\$ 3,671,260</u>	<u>\$ 3,553,831</u>	<u>\$ (117,429)</u>		<u>\$ 2,041,849</u>	<u>\$ (1,511,982)</u>

**MARIN CLEAN ENERGY
ENERGY EFFICIENCY PROGRAM FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2014 through February 28, 2015**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Public purpose energy efficiency program	\$ 1,505,702	\$ 1,015,751	\$ 489,951	67.46%
EXPENDITURES AND OTHER USES:				
CURRENT EXPENDITURES				
Public purpose energy efficiency program	<u>1,505,702</u>	<u>1,015,751</u>	<u>489,951</u>	<u>67.46%</u>
Net increase (decrease) in fund balance	<u>\$ -</u>	<u>\$ -</u>		

* Transfer of \$547,500 for security of On Bill Repayment program not recognized as expenditure.

**LOCAL RENEWABLE ENERGY DEVELOPMENT FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2014 through February 28, 2015**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Transfer from Operating Fund	\$ 109,994	\$ 109,994	\$ -	100.00%
EXPENDITURES AND OTHER USES:				
Capital Outlay	<u>109,994</u>	<u>96,709</u>	<u>13,285</u>	<u>87.92%</u>
Net increase (decrease) in fund balance	<u>\$ -</u>	<u>\$ 13,285</u>		

**MARIN CLEAN ENERGY
BUDGETARY SUPPLEMENTAL SCHEDULE
April 1, 2014 through February 28, 2015**

	<u>Actual</u>
Other services	
Audit	\$ 34,500
Accounting	111,650
IT Consulting	27,531
Human resources & payroll fees	5,354
Legislative consulting	82,760
Miscellaneous professional fees	43,083
	<hr/>
Other services	\$ 304,878
	<hr/>
General and administration	
Cell phones	\$ 805
Data and telephone service	28,368
Insurance	7,171
Office and meeting rentals	100,594
Office equipment lease	4,674
Dues and subscriptions	92,025
Conferences and professional education	6,818
Travel	16,547
Business meals	5,990
Interest and late fees	15,836
Miscellaneous administration	57
Office supplies and postage	40,836
	<hr/>
General and administration	\$ 319,721
	<hr/>



April 16, 2015

TO: Marin Clean Energy Board

FROM: Mike Maher, Maher Accountancy
Jennifer Dowdell, Eclipse Consulting

RE: Early Repayment of River City Bank Term Loans and Related
Budget Adjustment for FY15/16 (Agenda Item #06).

Attachment: Proposed Budget Adjustment for FY 15/16

Dear Board Members:

SUMMARY:

In 2011 and 2012 respectively, MCE entered into two separate five-year term loans with River City Bank. Both loans, one at 5.25% and the other at 4.5%, are at interest rates in excess of MCE's current cost of capital for both short and long-term funds. MCE could repay these loans to achieve savings in interest over their remaining life. In addition, MCE has negotiated a 50% discount on the contractual prepayment penalty.

The table below summarizes MCE's outstanding term loans:

Term Loan Summary	Loan # XXXXXX-7233	Loan # XXXXXX-7536	Loan Totals
Term	5 years	5 years	
Interest Rate-%	5.25%	4.5%	
Original Amount-\$	\$2,300,000.00	\$3,000,000.00	
Payment Frequency	Monthly	Monthly	
Outstanding Balance (as of Mar. 2015)	\$469,416.85	\$1,645,996.87	\$2,115,413.72
Origination Date	January 6, 2011	February 3, 2012	
Maturity Date	January 30, 2016	October 31, 2017	
Prepayment Penalty per original loan agreement- %	1%	3%	
Prepayment Penalty per original loan agreement -\$	\$4,694.17	\$49,379.91	\$54,074.08
Negotiated Prepayment Amount -\$	\$2,347.09	\$24,689.95	\$27,037.04

MCE recommends pay off of both term loans on April 17, 2015 prior to the payment due in May. This will result in a savings of approximately \$110,000 of interest expense over the remaining life of the loans. With the reduced prepayment penalty negotiated by MCE, net savings is approximately \$84,000.

The prepayment penalty will be adjusted at payoff to reflect the amounts outstanding after MCE's April payment and a 50% discount from this amount. River City Bank estimates the final payoff amount ¹ as of April 17, 2015 at \$2,055,707.

MCE has determined that with the early retirement of both term loans the remaining available cash and projected cash flow will be sufficient to provide for the operational needs of the organization.

A proposed amendment to MCE's current fiscal year budget is recommended at this time to account for this early retirement, as detailed in the attachment.

Recommendation: Authorize full repayment of both River City Bank Term Loans and approve proposed budget adjustment for the fiscal year ending March 31, 2016.

¹ River City Bank cannot provide the final payoff amount until after MCE's April payment is received because although this amount is scheduled, it has not been applied.

MARIN CLEAN ENERGY

OPERATING FUND Proposed Budget Amendment Fiscal Year 2015/16

	<u>2015/16 Budget</u>	<u>Proposed Amendment</u>	<u>2015/16 Proposed Amended Budget</u>
REVENUE AND OTHER SOURCES:			
Revenue - Electricity (net of allowance)	\$ 145,933,097		\$ 145,933,097
Total sources	<u>145,933,097</u>	<u>-</u>	<u>145,933,097</u>
EXPENDITURES AND OTHER USES:			
CURRENT EXPENDITURES			
Cost of energy	129,522,715		129,522,715
Personnel	2,964,000		2,964,000
Technical consultants	629,000		629,000
Legal counsel	360,000		360,000
Communications consultants and related expenses	751,000		751,000
Data manager	2,862,000		2,862,000
Service fees - PG&E	921,000		921,000
Other services	418,000		418,000
General and administration	329,000		329,000
Occupancy	260,000		260,000
Integrated demand side pilot programs	50,000		50,000
Marin County green business program	10,000		10,000
Low income solar programs	35,000		35,000
Total current expenditures	<u>139,111,715</u>	<u>-</u>	<u>139,111,715</u>
CAPITAL OUTLAY	150,000		150,000
DEBT SERVICE	1,020,000	\$ 1,060,000	2,080,000
INTERFUND TRANSFER TO:			
Renewable Energy Reserve Fund	1,000,000		1,000,000
Local Renewable Energy Development Fund	151,383		151,383
Total interfund transfers	<u>1,151,383</u>	<u>-</u>	<u>1,151,383</u>
Total expenditures	<u>141,433,098</u>	<u>1,060,000</u>	<u>142,493,098</u>
Net increase (decrease) in available fund balance	<u>\$ 4,500,000</u>	<u>\$ (1,060,000)</u>	<u>\$ 3,440,000</u>

NOTES/COMMENTS

Debt Service - This budget amendment accounts for the accelerated principal payments and prepayment penalty associated with the early retirement of MCE's two outstanding loans. The loans have scheduled maturity dates of January 30, 2016 and October 31, 2017.



April 16, 2015

TO: Marin Clean Energy Board

FROM: Rafael Silberblatt, MCE Program Specialist

RE: Feed-In Tariff Amendments (Agenda Item #07)

Dear Board Members:

SUMMARY:

On December 2, 2010, the MCE Board approved the implementation of a Feed-In Tariff ("FIT") for locally situated, smaller-scale renewable energy projects (up to 1 MW each). The initial Feed-In Tariff was established as a pilot program and capped at 2 MW in consideration of MCE's relatively small customer base and annual energy requirements. In November of 2012 MCE reevaluated the FIT program as part of an integrated resource planning effort that was intended to maximize FIT opportunities throughout MCE's expanding service territory while maintaining a reliable and cost effective supply portfolio for MCE customers.

Through the development of MCE's Integrated Resource Plan, three changes were recommended and approved to MCE's FIT including:

- An increase in the aggregate FIT program cap from 2 MW to 10 MW;
- An expansion of the eligible service territory to include all member jurisdictions, which included Marin County and the City of Richmond; and
- An update to the existing pricing schedule.

In June 2014, the Feed-In Tariff was further amended to incorporate MCE's Local Sol program. At that time, MCE Staff noted its intention to conduct periodic reviews of the FIT program to ensure that pricing and other participatory terms remain competitive with similar contracting options (in particular, PG&E's FIT tariff or Renewable Market Adjusting Tariff, "ReMAT," as it's now termed). Based on Staff's most recent review and related discussions with the Technical Committee (at their March 9, 2015 meeting), the following changes were recommended to MCE's FIT:

- An increase in the aggregate FIT participatory cap from 10 MW to 15 MW;
- An update to the existing pricing schedule to accommodate expanded FIT participation while ensuring that MCE's FIT remains competitive with PG&E's ReMAT program; and

- An amendment to MCE's FIT power purchase agreement, which would provide MCE with an opportunity to purchase FIT generators, subject to mutual agreement of the contracting parties (otherwise known as a "buyout option").

Given MCE's recent expansion and the current remaining FIT capacity (57% of the current FIT cap is currently under contract or reserved in the queue), expanding the FIT cap was deemed a reasonable means of ensuring that there are opportunities for additional FIT projects within MCE's new member communities. As this incremental renewable energy production can easily be integrated in MCE's supply portfolio, it will not impose undue financial burdens on MCE.

In consideration of market pricing and in order to accommodate the participatory cap increase and remain competitive with PG&E's ReMAT program, the following pricing was proposed:

Price Condition (MW)	Peak (\$/MWh)	Base (\$/MWh)	Intermittent (\$/MWh)
Condition 1 (\approx 2MW)	\$137.66	\$116.49	\$100.57
Condition 2 (\approx 4MW)	\$120.00	\$105.00	\$95.00
Condition 3* (\approx 6MW)	\$115.00	\$100.00	\$90.00
Condition 4 (\approx 8MW)	\$110.00	\$95.00	\$90.00
Condition 5 (\approx 10MW)	\$105.00	\$95.00	\$90.00
Condition 6 (\approx 12MW)	\$95.00	\$95.00	\$90.00
Condition 7 (\approx 12-15 MW)	\$90.00	\$90.00	\$90.00

*Current Condition

In order to provide MCE with additional opportunities to own renewable generating projects and to bring MCE's FIT PPA in alignment with MCE's Standard PPA, Staff recommends adding standard language to the FIT PPA addressing the option for project buyout where both parties are amenable.

Recommendation: Approve proposed amendments to MCE's Feed-In Tariff and direct Staff to make changes to the Feed-In Tariff Power Purchase Agreement accordingly.



MCE Feed-In Tariff: Annual Program Review

MCE Board Meeting – April 16, 2015



MCE Feed-In Tariff (“FIT”): Annual Review

Purpose – determine whether or not any adjustments may be necessary to MCE’s FIT program in consideration of:

- Actual and projected financial impacts to MCE
- Current FIT subscribership (relative to existing participatory cap)
- Actual and anticipated load/customer growth
- Pricing trends within renewable energy markets
- Competing programs (namely, PG&E’s FIT program: ReMAT)
- Legislation and/or regulations
- Other considerations affecting FIT interest/participation/development

Process – in light of these considerations, key elements of MCE’s FIT program are reviewed to determine potential/proposed updates:

- Staff identify prospective changes
- Technical Committee discussion occurs (w/recommendation to Board)
- MCE Board discusses and approves certain changes to FIT

MCE FIT Program – Overview

FIT purpose: promote development of locally-situated, smaller-scale renewable generating projects

- FIT energy production offsets/supplements use of other energy sources
- 1 MW size limit for individual generating projects
- Projects must be located within MCE's service territory
- Pricing incentives are reflected in tariff (local development costs and competitive differentiation)

Current FIT status:

- 972 kW in commercial operation – San Rafael Airport (solar; produces $\approx 1,800$ MWh/year or $\approx 0.1\%$ of MCE's total energy requirements following expansion)
- Additional 990 kW under contract (will support MCE's Local Sol program)
- Additional 4.7 MW in project development queue (multiple projects)

Key FIT considerations as MCE moves forward

- MCE service territory has expanded/will expand to new communities in 2015
- Annual energy sales will grow by $\approx 50\%$ following expansion

MCE FIT Program – Key Areas Under Review

Participatory cap: how many megawatts/projects can MCE's FIT support?

Pricing: are adjustments needed to ensure the FIT program will continue to promote local renewable project development without imposing undue financial burdens on MCE?

Project buyout: should MCE consider including standard terms (in its FIT power purchase agreement) to address the optional buyout/purchase of FIT projects?

Other items that may undergo further evaluation in future annual reviews:

- Accommodation of energy storage projects
- Incremental price incentives for desirable project attributes: previously developed/disturbed lands, labor, ease of interconnection, etc.

Adapting FIT to Accommodate MCE Growth

FIT participatory cap:

- Currently set at 10 MW
- 57% of current participatory cap is under contract or reserved in queue
- New FIT opportunities are likely available within MCE's expanded service territory
- MCE's retail electricity sales will increase by $\approx 50\%$ following 2015 expansion activities ($\approx 1,200$ MWh/year to $\approx 1,800$ MWh/year)

Key considerations regarding expanding participatory cap to 15 MW:

- Projected financial impact $\approx \$900,000/\text{year}$ (total); $\approx \$300,000/\text{year}$ (premium relative to other utility-scale renewable purchase options); project development will likely occur over a multi-year period, so financial impacts will phase in over time
- Promote FIT development opportunities on an ongoing basis
- Administrative impact (development status monitoring, invoice processing, REC management, etc.)

MCE FIT: Existing Price Schedule

Currently applicable price schedule was originally developed in consideration of renewable energy delivered under the MCE/SENA agreement.

Regressive pricing “steps” were set in consideration of FIT subscribership, reflecting technological and supply-side improvements that were assumed to occur over time.

Rate Component	Peak (\$/MWh)	Base (\$/MWh)	Intermittent (\$/MWh)
Condition 1 (≈ 2MW)	\$137.66	\$116.49	\$100.57
Condition 2 (≈ 4MW)	\$120.00	\$105.00	\$95.00
Condition 3* (≈ 6MW)	\$115.00	\$100.00	\$90.00
Condition 4 (≈ 8MW)	\$110.00	\$95.00	\$85.00
Condition 5 (≈ 10 MW)	\$105.00	\$90.00	\$80.00

*Currently effective FIT price, based on existing contracts and completed applications.

MCE FIT: Amended Price Schedule

MCE's peak FIT price is now substantially higher than PG&E's peak ReMAT price of \$57.23+/MWh

- \$89.23/MWh for non-peak and baseload
- All PG&E ReMAT prices subject to time of delivery adjustments

In consideration of market pricing and to remain competitive with PG&E, MCE should consider price adjustments:

Price Condition (all MW)	Peak (\$/MWh)	Base (\$/MWh)	Intermittent (\$/MWh)
Condition 1 (\approx 2MW)	\$137.66	\$116.49	\$100.57
Condition 2 (\approx 4MW)	\$120.00	\$105.00	\$95.00
Condition 3* (\approx 6MW)	\$115.00	\$100.00	\$90.00
Condition 4 (\approx 8MW)	\$110.00	\$95.00	\$90.00
Condition 5 (\approx 10MW)	\$105.00	\$95.00	\$90.00
Condition 6 (\approx 12MW)	\$95.00	\$95.00	\$90.00
Condition 7 (\approx 12-15 MW)	\$90.00	\$90.00	\$90.00

MCE FIT: Impacts of Amended Prices

Current long-term market pricing for utility-scale (larger) renewable projects ranges from ~\$50-80/MWh, depending on location, term and generating technology

Key considerations regarding updating MCE FIT price schedule:

- Financial impact ~ \$900,000/year (total); ~ \$300,000/year (premium relative to other utility-scale renewable purchase options)
- Comparability to other wholesale renewable procurement alternatives
- Relationship to PG&E's ReMAT price schedule
- Sufficiency of price incentive to promote ongoing renewable project development within MCE's service territory

MCE FIT: Buyout Option

MCE typically includes a buyout provision as part of its long-term Power Purchase Agreements – project buyout is optional

MCE's FIT Power Purchase Agreement does not currently include language addressing project buyout

Discussion topic: is it desirable to include such language in MCE's FIT PPA, creating an option for MCE to purchase local FIT projects?

Key considerations:

- Interest in owning small-scale, locally situated renewable energy project(s)
- Financial impacts
- Willingness to operate and maintain such projects (or contract for such services with third-party vendors)
- Administrative impact
- Inclusion of language would establish purchase option, not obligation
- Owner's willingness to sell project

MCE FIT: Summary of Recommendations

Increase participatory cap from 10 MW to 15 MW

- Reasonable in consideration of MCE's recent and anticipated growth
- Will not impose undue financial burdens on MCE
- Incremental renewable energy production can be easily integrated in MCE's supply portfolio

Amend pricing schedule

- Necessary to address expansion of the participatory cap
- Contains overall cost impact to MCE through price regression
- Competitively superior relative to PG&E's ReMAT program
- Intended to maintain local development incentives while acknowledging ongoing price reductions within California's renewable energy market

Include standard PPA language addressing project buyout option

- Will establish standard terms/conditions for instances in which both parties are amenable to discussing project buyout
- Project buyout would remain an option, not an obligation – MCE and seller would need to reach mutual agreement, subject to standard terms/conditions reflected in FIT PPA

Questions & Discussion

2 MW

4 MW

6 MW

8 MW

10 MW

Condition One - \$137.66

Condition Two - \$120.00

Condition Three - \$115.00

Condition Four - \$110.00

Condition Five - \$105.00

San Rafael Airport - 972 kW	Cooley Quarry Two - 450 kW	Cost Plus - 260 kW	NWC Goodrick - 998 kW	Richmond Parkway - 998 kW	Binford Rd Storage - 990 kW	Giant Rd - 999 kW
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- Color denotes price
- The position of FIT projects (in the lower bar) indicates their position in the FIT queue and capacity in each condition



April 16, 2015

TO: Marin Clean Energy Board

FROM: Kirby Dusel, Technical Consultant

RE: MCE Greenhouse Gas Emissions Analysis & Reporting (Agenda Item #08)

ATTACHMENTS: A. Understanding MCE's GHG Emission Factors
B. MCE Emission Factor Certification Template, as provided by The Climate Registry

Dear Board Members:

Background

A key tenet of MCE's mission, and a charter objective of the agency, is to reduce energy-related greenhouse gas emissions (GHGs) through the development and use of various clean energy resources. As such, MCE has committed to assembling a power supply portfolio that not only exceeds the renewable energy content offered by the incumbent utility (PG&E) but also provides customers with a "cleaner" energy alternative, as measured by a comparison of the attributed portfolio GHG emission rate (or emission factor) published by each organization. This comparison will be performed on an annual basis in consideration of each utility's (MCE and PG&E) most recently published emission factor.

Due to typical timelines affecting the availability of such information, the current comparison (focused on the 2013 calendar year) will generally reference PG&E data that relates to utility operations occurring 12 to 24 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 audit before releasing such information to the public. For example, PG&E's 2013 emission factor was recently published in late January 2015 – this is the most current available emission factor for PG&E. Going forward, the timeline associated with PG&E emission factor availability is not expected to change. However, MCE may choose to release subsequent annual emission statistics (for calendar year 2014 and beyond) as information becomes available, which may precede PG&E's timeline – following PG&E's publication of annual emission statistics,

MCE will complete an emission rate comparison. For purposes of this document, the aforementioned attributed emission factor comparison will focus on the 2013 calendar year.

In each calendar year, MCE will endeavor to procure GHG-free energy supplies in sufficient quantities to ensure that MCE provides its customers with an electric energy supply that generates fewer attributed GHG emissions per megawatt hour than the incumbent utility.¹ The noted future purchases of GHG-free energy supplies will be based on reasonable projections of PG&E's emission rate, which will take into consideration planned increases in Renewables Portfolio Standard procurement obligations and other publicly available discussion of PG&E's planned procurement activities and/or projections.

About Emission Rates

Portfolio emission rates are based on the attributed emission impacts associated with the use of specific fuel sources, which are consumed/combusted when generating electric power. An attributed emission rate reflects the proportionate use of various fuel sources and resource types within a utility's supply portfolio. To the extent that procured/delivered energy supplies are produced by generating resources that are known to emit GHGs during production of electric energy, such resources will increase the utility's attributed portfolio emission factor. Conversely, the inclusion of resources that do not emit GHGs (or emit relatively small GHG quantities during power production) will reduce the utility's portfolio emission factor. In general, renewable energy resources, which use fuel sources like wind and sunlight (solar), have been identified as non-polluting or GHG-free.² Similarly, hydroelectric and nuclear generators, which do not involve GHG-emitting combustion processes, are also considered to be non-polluting or carbon-neutral (i.e., the net emissions impact associated with electric power production is less than or equal to the status quo). Consistent with its adopted Integrated Resource Plan, MCE does not engage in procurement transactions with nuclear generating facilities and, at this point in time, will rely exclusively on renewable energy resources and hydroelectricity to ensure delivery of a comparatively cleaner energy supply.³

Because of widely varying opinions and computations focused on the environmental impacts associated with specific generating technologies, it is important to identify an industry-accepted standard when determining the emission impacts attributable to generating facilities included within a utility's supply portfolio. To avoid the potential for perpetual policy and accounting changes that could result from the use of ad hoc (and potentially inaccurate) emission calculations for certain generating resources, MCE incorporates statistics prepared by the California Air Resources Board's (CARB) when determining emissions associated with its energy supply portfolio. In particular, CARB's published emission rate for unspecified sources, or "system power", provides an unbiased, publicly available reference that can be incorporated in instances where

¹ MCE will complete such purchases to the extent that available GHG-free energy products will not necessitate out-of-cycle rate adjustments or impose material budgetary impacts. If such consequences would result from the incremental procurement of GHG-free energy products, MCE will seek Board approval prior to engaging in related transactions.

² Certain fuel sources, including landfill gas, are reflected as having zero GHG emissions due to the positive environmental impacts achieved through the conversion of methane to carbon dioxide (during energy production).

³ Conversely (and according to its 2013 Power Content Label bill insert), PG&E's power mix included 22% nuclear generation.

specific generating sources cannot be identified. Application of standards such as this will facilitate an “apples to apples” comparison of emission factors associated with unknown energy sources, including those procured by MCE, PG&E and other electric utilities.

MCE has also joined The Climate Registry, “a nonprofit collaboration among North American states, provinces, territories and Native Sovereign Nations that sets consistent and transparent standards to calculate, verify and publicly report greenhouse gas emissions into a single registry.” Through its membership, MCE has access to the policies, procedures and GHG accounting guidelines endorsed by this organization and can incorporate such guidelines when determining its attributed portfolio emissions factors. Furthermore, for certain MCE customers that are also members of The Climate Registry, MCE has prepared the attached Emission Factor Certification template, which can be used by these customers when completing voluntary reporting efforts to The Climate Registry. Looking ahead, MCE will continue to update (and post on its website) this certification template so that it can be readily accessed and used by MCE customers.

It is also noteworthy that the topics of emission accounting, emission calculation methodologies, and attributed emission rates continue to be a focal point during discussions involving PG&E, the legislature, regulators and other stakeholders. At this point in time, there is not a single applicable methodology for determining GHG emission rates that must be followed within the electric utility industry. As previously noted, MCE has referenced protocols endorsed by The Climate Registry as well as guidance provided by the U.S. Environmental Protection Agency (U.S. EPA) and the Center for Resource Solutions (“CRS,” which administers the Green-e Energy program) when determining its attributed portfolio emission rates; other organizations have independently developed alternative methodologies, which borrow from multiple protocols, some of which may not be aligned with The Climate Registry, U.S. EPA and/or CRS. As your Board could reasonably suspect, certain differences between such methodologies have contributed to confusion and consternation during emission rate comparisons, and it is becoming increasingly apparent that a uniform methodology may be helpful in alleviating such issues. Robust discussion and debate regarding this subject continues to unfold, and it appears as though the California Public Utilities Commission will soon host a workshop focused on the development of a universally applicable standard/methodology.⁴ MCE staff will look forward to participating in such discussions and will report back to your Board regarding substantive progress in this regard.

Determination of MCE’s Total Portfolio Emission Factor

For the 2013 calendar year, MCE’s supply portfolio was heavily weighted towards non-carbon emitting resources. In fact, over 61% of MCE’s energy supply was attributable to various renewable energy and hydroelectric purchases, which do not emit GHGs. The following table summarizes MCE’s aggregate energy purchases, including both Light Green and Deep Green sales volumes, for the 2013 calendar year. It is important to note that all “zero carbon” energy volumes are attributable to hydroelectric generating sources located within California and throughout the Western U.S.

⁴ Unless the development of a universally applicable standard considers input from stakeholders located outside of California, particularly nationally and internationally focused stakeholders, there will be inevitable, continued inconsistencies when comparing GHG statistics across broadly defined geographic regions.

2013	MWh Purchased	% Total
Total Renewable Energy¹	572,428	51.6%
RPS – Eligible Renewable	318,332	28.7%
Non-RPS Eligible Renewable	254,096	22.9%
Zero Carbon	110,000	9.9%
System Power	428,059	38.6%
Total	1,110,487	100%

¹Includes both bundled and unbundled renewable energy sources.

When determining MCE's aggregate attributed portfolio emission factor, the aforementioned CARB emission rate for unspecified sources, which equals 0.428 metric tons CO₂e/MWh, was applied to MCE's system power purchases – 428,059 MWh during the 2013 calendar year. Due to the emission characteristics attributable to MCE's other power sources, all other energy volumes were assigned an emission factor of zero. As such, MCE's portfolio emissions for the 2013 calendar year totaled 183,209 metric tons or approximately 404 million pounds of carbon dioxide equivalent. These emission totals were divided by MCE's aggregate retail energy deliveries of 1,110,487 MWhs, resulting in an MCE portfolio emissions rate of 0.165 metric tons CO₂e/MWh, or 364 lbs/MWh, for the 2013 calendar year. The following table provides additional detail regarding these emissions computations for MCE's 2013 supply portfolio.

2013 Calendar Year	MWh Purchased	% Total	Emission Rate (metric tonnes CO ₂ e/MWh)	Total Emissions (metric tonnes)	Emission Rate (lbs CO ₂ e/MWh)	Total Emissions (lbs)
Total Renewable Energy	572,428	51.6%	0.000	0	0	0
RPS – Eligible	318,332	28.7%	0.000	0	0	0
Non-RPS Eligible Renewable	254,096	22.9%	0.000	0	0	0
Zero Carbon	110,000	9.9%	0.000	0	0	0
System Power	428,059	38.6%	0.428	183,209	944	403,906,423
Totals	1,110,487	100%	0.165	183,209	364	403,906,423

Based on these calculations, it has been determined that MCE's 2013 aggregate portfolio emission factor was approximately 17% lower than PG&E's reported 2013 emission factor of 427 lbs/MWh.⁵

As previously noted, MCE will continue to update subsequent attributed annual emissions factors based on currently available data, including actual energy purchases and CARB's then-effective emission rate for unspecified sources.

Recommendation: Approve the use, distribution and web posting of: 1) MCE's Emission Factor Certification Template, as provided by The Climate Registry; and 2) the related "Understanding MCE's GHG Emission Factors" document.

⁵ PG&E's final 2013 emission factor, as reported at <http://www.pgecurrents.com/2015/01/30/pge-cuts-carbon-emissions-with-clean-energy/>.

Understanding MCE's GHG Emission Factors – Calendar Year 2013

Summary

A key environmental metric for the MCE program is the attributed greenhouse gas (GHG) emissions profile associated with retail electric energy deliveries to MCE customers. This paper describes the methodology used to calculate such GHG emissions rates for the MCE program. Based on this methodology, the calendar year (CY) 2013 GHG emissions rates attributed to MCE's retail electric energy deliveries are as follows:

Light Green Service (minimum 50% Renewable):	371 lbs CO ₂ e/MWh (CY 2012 = 380 lbs CO ₂ e/MWh)
Deep Green Service (100% Renewable):	0 lbs CO ₂ e/MWh (CY 2012 = 0 lbs CO ₂ e/MWh)
Total MCE CY 2013 Portfolio:	364 lbs CO ₂ e/MWh (CY 2012 = 373 lbs CO ₂ e/MWh)

Background

A key tenet of MCE's mission, and a charter objective of the agency, is to reduce energy-related greenhouse gas emissions (GHGs) through the development and use of various clean energy resources. As such, MCE has committed to assembling a power supply portfolio that not only exceeds the renewable energy content offered by the incumbent utility (PG&E) but also provides customers with a "cleaner" energy alternative, as measured by a comparison of the attributed portfolio GHG emission rate (or emission factor) published by each organization. This comparison will be performed on an annual basis in consideration of each utility's (MCE and PG&E) most recently published emission factor. Due to typical timelines affecting the availability of such information, the current comparison (focused on the 2013 calendar year) will generally reference PG&E data that relates to utility operations occurring 12 to 24 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 audit before releasing such information to the public. For example, PG&E's 2013 emission factor was recently published in late January 2015 – this is the most current available emission factor for PG&E. Going forward, the timeline associated with PG&E emission factor availability is not expected to change. However, MCE may choose to release subsequent annual emission statistics (for calendar year 2014 and beyond) as information becomes available, which may precede PG&E's timeline – following PG&E's publication of annual emission statistics, MCE will complete an emission rate comparison. For purposes of this document, the aforementioned attributed emission factor comparison will focus on the 2013 calendar year.

In each calendar year, MCE will endeavor to procure GHG-free energy supplies in sufficient quantities to ensure that MCE provides its customers with an electric energy supply that generates fewer attributed GHG emissions per megawatt hour than the incumbent utility.¹ The noted future purchases of GHG-free energy supplies will be based on reasonable projections of PG&E's emission rate, which will take into consideration planned increases in Renewables Portfolio Standard procurement obligations and other publicly available discussions of PG&E's planned procurement activities and/or projections.

¹ MCE will complete such purchases to the extent that available GHG-free energy products will not necessitate out-of-cycle rate adjustments or impose material budgetary impacts. If such consequences would result from the incremental procurement of GHG-free energy products, MCE will seek Board approval prior to engaging in related transactions.

About Emission Rates

Portfolio emission rates are based on the attributed emission impacts associated with the use of specific fuel sources, which are consumed/combusted when generating electric power. An attributed emission rate reflects the proportionate use of various fuel sources and resource types within a utility's supply portfolio. To the extent that procured/delivered energy supplies are produced by generating resources that are known to emit GHGs during production of electric energy, such resources will increase the utility's attributed portfolio emission factor. Conversely, the inclusion of resources that do not emit GHGs (or emit relatively small GHG quantities during power production) will reduce the utility's portfolio emission factor. In general, renewable energy resources, which use fuel sources like wind and sunlight (solar), have been identified as non-polluting or GHG-free.² Similarly, hydroelectric and nuclear generators, which do not involve GHG-emitting combustion processes, are also considered to be non-polluting or carbon-neutral (i.e., the net emissions impact associated with electric power production is less than or equal to the status quo). Consistent with its adopted Integrated Resource Plan, MCE does not engage in procurement transactions with nuclear generating facilities and, at this point in time, will rely exclusively on renewable energy resources and hydroelectricity to ensure delivery of a comparatively cleaner energy supply.³

Because of widely varying opinions and computations focused on the environmental impacts associated with specific generating technologies, it is important to identify an industry-accepted standard when determining the emission impacts attributable to generating facilities included within a utility's supply portfolio. To avoid the potential for perpetual policy and accounting changes that could result from the use of ad hoc (and potentially inaccurate) emission calculations for certain generating resources, MCE incorporates statistics prepared by the California Air Resources Board's (CARB) when determining emissions associated with its energy supply portfolio. In particular, CARB's published emission rate for unspecified sources, or "system power", provides an unbiased, publicly available reference that can be incorporated in instances where specific generating sources cannot be identified. Application of standards such as this will facilitate an "apples to apples" comparison of emission factors associated with unknown energy sources, including those procured by MCE, PG&E and other electric utilities.

MCE has also joined The Climate Registry, "a nonprofit collaboration among North American states, provinces, territories and Native Sovereign Nations that sets consistent and transparent standards to calculate, verify and publicly report greenhouse gas emissions into a single registry." Through its membership, MCE has access to the policies, procedures and GHG accounting guidelines endorsed by this organization and can incorporate such guidelines when determining its attributed portfolio emissions factors. Furthermore, for certain MCE customers that are also members of The Climate Registry, MCE has prepared the attached Emission Factor Certification template, which can be used by these customers when completing voluntary reporting efforts to The Climate Registry. Looking ahead, MCE will continue to update (and post on its website) this certification template so that it can be readily accessed and used by MCE customers.

It is also noteworthy that the topics of emission accounting, emission calculation methodologies, and attributed emission rates continue to be a focal point during discussions involving PG&E, the legislature, regulators and other stakeholders. At this point in time, there is not a single applicable methodology for determining GHG emission rates that must be followed within the electric utility industry. As previously noted, MCE has referenced protocols endorsed by The Climate Registry as well as guidance provided by the U.S. Environmental Protection Agency (U.S.

² Certain fuel sources, including landfill gas, are reflected as having zero GHG emissions due to the positive environmental impacts achieved through the conversion of methane to carbon dioxide (during energy production).

³ Conversely (and according to its 2013 Power Content Label bill insert), PG&E's power mix included 22% nuclear generation.

EPA) and the Center for Resource Solutions (“CRS,” which administers the Green-e Energy program) when determining its attributed portfolio emission rates; other organizations have independently developed alternative methodologies, which borrow from multiple protocols, some of which may not be aligned with The Climate Registry, U.S. EPA and/or CRS. As your Board could reasonably suspect, certain differences between such methodologies have contributed to confusion and consternation during emission rate comparisons, and it is becoming increasingly apparent that a uniform methodology may be helpful in alleviating such issues. Robust discussion and debate regarding this subject continues to unfold, and it appears as though the California Public Utilities Commission will soon host a workshop focused on the development of a universally applicable standard/methodology.⁴ MCE staff will look forward to participating in such discussions and will report back to your Board regarding substantive progress in this regard.

Calculating GHG Emissions Associated with Unspecified Sources

Not all electric energy purchases are associated with specific generating facilities. Many industry contracts identify the use of “system power,” a term of art that is regularly used in the utility industry to define electric energy that is produced and delivered to the grid by various generating resources not under contract with particular buyers. Such delivery arrangements provide increased flexibility for energy sellers which often results in reduced energy prices for buyers. While there are certain economic and operational efficiencies that may relate to the use of system power, there are also complications that can surface when attempting to quantify GHG emissions attributable to energy volumes associated with unspecified generating sources. Because many load-serving entities (LSEs) within California rely heavily on the use of system power to fulfill their respective service obligations (for example, PG&E’s 2013 Power Content Label indicated the delivery of 18% of total supply from unspecified, or market, sources; MCE sourced 38.6% of its retail deliveries from unspecified power), it is important to identify an emission factor for such deliveries that can be referenced by LSEs when compiling emission statistics. As previously noted, CARB has established an emission factor for unspecified generating sources to facilitate GHG calculations and reporting associated with the use of system power and power purchases from generation “portfolios,” which do not create direct relationships between specific electric generators and energy buyers. The CARB emission rate for unspecified power purchases is currently set at 0.428 metric tonnes CO₂e/MWh, or 943.58 lbs CO₂e/MWh. This emission rate is publicly available and can be referenced in section 95111(b)(1) of CARB’s February 2015 update to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions: <http://www.arb.ca.gov/cc/reporting/ghg-rep/regulation/mrr-2014-unofficial-02042015.pdf>. MCE staff previously engaged CARB in discussions and email exchanges to confirm the appropriate use of this emission rate for all unspecified/system power purchases; CARB advised MCE to use this published emission factor when determining GHG emissions associated with such purchases. Based on MCE’s review, CARB has not recently updated the aforementioned emission factor, but staff will continue to monitor this item and will update its future emission factor calculations in consideration of any adjustments that may be made by CARB to this statistic.

Identification of a credible, publicly available system power emission factor is particularly relevant for MCE, which relies on the use of system power to meet some of its customers’ non-renewable energy requirements. CARB’s emission factor for unspecified sources has been applied by MCE when determining total emissions associated with system power purchases. It is also noteworthy that PG&E appears to have applied a similar factor when calculating emissions associated with unspecified generating sources.

⁴ Unless the development of a universally applicable standard considers input from stakeholders located outside of California, particularly nationally and internationally focused stakeholders, there will be inevitable, continued inconsistencies when comparing GHG statistics across broadly defined geographic regions.

Determination of MCE's Total Portfolio Emission Factor

For the 2013 calendar year, MCE's supply portfolio was heavily weighted towards non-carbon emitting/carbon-neutral resources. In fact, over 61% of MCE's energy supply was attributable to various renewable energy and hydroelectric purchases, which are considered to be non-GHG producing resources for purposes of MCE's emissions calculations. The following table summarizes MCE's aggregate energy purchases, which includes both Light Green and Deep Green sales volumes, for the 2013 calendar year. It is important to note that all "zero carbon" energy volumes are attributable to hydroelectric generating sources located within the Western U.S.

2013	MWh Purchased	% Total
Total Renewable Energy¹	572,428	51.6%
RPS – Eligible Renewable	318,332	28.7%
Non-RPS Eligible Renewable	254,096	22.9%
Zero Carbon	110,000	9.9%
System Power	428,059	38.6%
Total	1,110,487	100%

¹Includes both bundled and unbundled renewable energy sources.

When determining MCE's aggregate attributed portfolio emission factor, the aforementioned CARB emission rate for unspecified sources, which equals 0.428 metric tons CO₂e/MWh, was applied to MCE's system power purchases – 428,059 MWh during the 2013 calendar year. Due to the emission characteristics attributable to MCE's other power sources, all other energy volumes were assigned an emission factor of zero. As such, MCE's portfolio emissions for the 2013 calendar year totaled 183,209 metric tons or approximately 404 million pounds of carbon dioxide equivalent. These emission totals were divided by MCE's aggregate retail energy deliveries of 1,110,487 MWhs, resulting in an MCE portfolio emissions rate of 0.165 metric tons CO₂e/MWh, or 364 lbs/MWh, for the 2013 calendar year. The following table provides additional detail regarding these emissions computations for MCE's 2013 supply portfolio.

2013 Calendar Year	MWh Purchased	% Total	Emission Rate (metric tonnes CO ₂ e/MWh)	Total Emissions (metric tonnes)	Emission Rate (lbs CO ₂ e/MWh)	Total Emissions (lbs)
Total Renewable Energy	572,428	51.6%	0.000	0	0	0
RPS – Eligible	318,332	28.7%	0.000	0	0	0
Non-RPS Eligible Renewable	254,096	22.9%	0.000	0	0	0
Zero Carbon	110,000	9.9%	0.000	0	0	0
System Power	428,059	38.6%	0.428	183,209	944	403,906,423
Totals	1,110,487	100%	0.165	183,209	364	403,906,423

Based on these calculations, it has been determined that MCE's 2013 aggregate portfolio emission factor (of 364 lbs/MWh) was approximately 17% lower than PG&E's reported 2013 emission factor of 427 lbs/MWh.⁵

Determination of MCE's Light Green and Deep Green Emission Factors

While certain stakeholders may be interested in MCE's previously discussed aggregate emission factor, there is also an interest in clearly understanding the specific emission factors attributable to MCE's retail supply options, which were available during the 2013 calendar year: Light Green (minimum 50% renewable energy content) and Deep Green (100% renewable energy content). As such, MCE has calculated product-specific emission factors, which may be useful to certain customers who want to better understand the direct environmental impacts attributable to energy consumption within their respective households and/or businesses. It is important to note

⁵ PG&E's final 2013 emission factor, as reported at <http://www.pgecurrents.com/2015/01/30/pge-cuts-carbon-emissions-with-clean-energy/>.

that any MCE customer may choose to “zero out” attributed energy-related emissions by voluntarily selecting the Green-e certified Deep Green 100% renewable energy option. For more information regarding Deep Green enrollment, customers are encouraged to visit: <http://www.mcecleanenergy.org/100-renewable/>.

Light Green: MCE diligently plans and procures electricity to ensure the cleanest possible power supply for Light Green customers. During the 2013 calendar year, MCE delivered a total of 1,087,369 MWh to Light Green customers of which 313,708 MWh (28.9% of total) were supplied from qualifying, California Renewables Portfolio Standard (“RPS”) eligible sources, including biomass, landfill gas, small hydroelectric, solar and wind – these RPS-eligible renewable energy volumes were used to demonstrate compliance with California’s RPS and were retired through the Western Renewable Energy Generation Information System (WREGIS) consistent with applicable regulatory guidelines. An additional 235,602 MWh (21.7% of total) were supplied from other renewable resources, particularly Green-e Energy eligible renewable resources – these renewable energy volumes were also retired through the WREGIS system. MCE also delivered 110,000 MWh (10.1% of total) from non-polluting hydroelectric generators. The aforementioned resources, which comprised 60.6% of MCE’s total Light Green supply portfolio, were all determined to be carbon-free or carbon-neutral based on specified fuel sources. The balance of Light Green resource requirements were supplied from unspecified sources, or “system power.” This CARB emission rate of 943.58 lbs CO₂e/MWh was multiplied by total system power deliveries (428,059 MWh, or 39.4% of total), resulting in total Light Green portfolio emissions of approximately 404 million pounds of CO₂ equivalent. As this total represented the entirety of emissions associated with MCE’s Light Green power supply portfolio, the amount of 404 million pounds of CO₂ equivalent was divided by the total delivered Light Green electricity volume of 1,087,369 MWh, resulting in a 2013 Light Green emission factor of 371 lbs CO₂e/MWh.

Deep Green: A voluntary, 100% renewable energy supply option that is available to all customers within the MCE service territory. During the 2013 calendar year, MCE supplied a total of 23,118 MWh to Deep Green customers. A total of 4,624 MWh (20% of total) were supplied from qualifying, California RPS-eligible wind sources – these RPS-eligible renewable energy volumes were used to demonstrate compliance with California’s RPS and were retired through the WREGIS consistent with applicable regulatory guidelines. An additional 18,494 MWh (80.0% of total) were supplied from other wind resources, which meet Green-e Energy eligibility requirements – “Green-e is the nation's leading independent certification and verification program for renewable energy and greenhouse gas emission reductions in the retail market,” which is administered/monitored by the San Francisco-based Center for Resource Solutions; these renewable energy volumes were also retired through the WREGIS system.⁶ As a result of the 100% renewable energy supply that was delivered to Deep Green customers, the emission factor was determined to be zero lbs CO₂e/MWh.

As previously noted, MCE will continue to update subsequent annual emissions factors based on currently available data, including actual energy purchases and CARB’s then-effective emission rate for unspecified sources. Any questions regarding this information should be forwarded to info@mceCleanEnergy.org. Additional information regarding MCE’s emission factors can be located at www.mcecleanenergy.org.

⁶ Information as posted on the Green-e website: <http://www.green-e.org/about.shtml>.

MCE Emission Factor Certification Template, as provided by The Climate Registry:

April 16, 2015

[Member] may use the Marin Clean Energy's (MCE) 2013 emission factor in their voluntary greenhouse gas report submitted to The Climate Registry. Please note that during the 2013 calendar year MCE, the first operating Community Choice Aggregation program in California, offered two distinct retail supply options: 1) Light Green, which is the default retail supply option (MCE has committed to delivering Light Green customers a minimum 50% renewable energy supply); and 2) Deep Green, a voluntary retail supply option that procures 100% renewable energy for participating MCE customers.

With respect to the Light Green retail supply option, the 2013 emission factor attributed to this service option was determined to be 371 pounds of carbon dioxide equivalent per megawatt hour (lbs CO²e/MWh). For the Deep Green retail supply option, the 2013 emission factor attributed to this service option was determined to be zero lbs CO²e/MWh, as a result of MCE delivering 100% renewable energy to participating customers. When considered in aggregate, the emission factor attributed to MCE's total portfolio, which reflects the procurement of resources sufficient to supply all MCE customers (both Light Green and Deep Green), was determined to be 364 lbs CO²e/MWh for the 2013 calendar year – this statistic has been calculated for informational purposes only. In reporting to The Climate Registry, [Member] has selected the appropriate emissions factor corresponding with the retail supply option(s) under which [Member] received electric service during the 2013 calendar year.

MCE has calculated its 2013 emission factor of 371 lbs CO²e/MWh for the Light Green product and zero lbs CO²e/MWh for the Deep Green product based on the following independently developed methodology:

1. Light Green retail electricity product: Marin Clean Energy diligently plans and procures electricity to ensure the cleanest possible power supply for Light Green customers. During the 2013 calendar year, MCE delivered a total of 1,087,369 MWh to Light Green customers of which 313,708 MWh (28.9% of total) were supplied from California Renewables Portfolio Standard (RPS) eligible sources, including biomass, landfill gas, small hydroelectric, solar and wind – these RPS-eligible renewable energy volumes were used to demonstrate compliance with California's RPS and were retired through the Western Renewable Energy Generation Information System (WREGIS) consistent with applicable regulatory guidelines. An additional 235,602 MWh (21.7% of total) were supplied from other renewable resources, particularly Green-e Energy eligible renewable resources – these renewable energy volumes were also retired through the WREGIS system. MCE also delivered 110,000 MWh (10.1% of total) from non-polluting hydroelectric generators. The aforementioned resources, which comprised 60.6% of MCE's Light Green supply portfolio, were all determined to be carbon-free or carbon-neutral based on specified fuel sources. The balance of Light Green resource requirements were supplied from unspecified sources, or "system power", for which the California Air Resources Board (CARB) has assigned an emission rate of 0.428 metric tonnes CO²e/MWh, or 943.58 lbs CO²e/MWh. This emission rate is publicly available and can be referenced in section 95111(b)(1) of CARB's February 2015 update to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions: <http://www.arb.ca.gov/cc/reporting/ghg-rep/regulation/mrr-2014-unofficial-02042015.pdf>. MCE staff previously engaged CARB in discussions and email exchanges to confirm the appropriate use of this emission rate for all unspecified/system power purchases; CARB advised MCE to use

this published emission factor when determining GHG emissions associated with such purchases. For purposes of determining MCE's Light Green emission factor for the 2013 calendar year, the aforementioned CARB emission rate of 943.58 lbs CO²e/MWh was multiplied by total system power deliveries (428,059 MWh, or 39.4% of total), resulting in attributed Light Green portfolio emissions approximating 404 million pounds of CO² equivalent. As this total represented the entirety of emissions attributed to MCE's Light Green power supply portfolio, the amount of 404 million pounds of CO² equivalent was divided by the total delivered Light Green electricity volume of 1,087,369 MWh, resulting in a 2013 Light Green emission factor of 371 lbs CO²e/MWh.

2. Deep Green retail electricity product: Marin Clean Energy offers the Deep Green, 100% renewable energy retail supply option on a voluntary basis. During the 2013 calendar year, MCE supplied a total of 23,118 MWh to Deep Green customers. A total of 4,624 MWhs (20% of total) were supplied from California RPS-eligible wind sources – these RPS-eligible renewable energy volumes were used to demonstrate compliance with California's RPS and were retired through the WREGIS consistent with applicable regulatory guidelines. An additional 18,494 MWh (80.0% of total) were supplied from Green-e Energy eligible wind resources – these renewable energy volumes were also retired through the WREGIS system. As a result of the 100% renewable energy supply that was delivered to Deep Green customers, the attributed emission factor was determined to be zero lbs CO²e/MWh.

To determine MCE's total attributed portfolio emission factor for the 2013 calendar year, which reflects the procurement of resources sufficient to supply both Light Green and Deep Green customers, MCE's total portfolio emissions of 404 million pounds of CO² equivalent were divided by total retail sales to all MCE customers (both Light Green and Deep Green), which equaled 1,110,487 MWhs.¹ The resultant attributed emission factor for MCE's total supply portfolio was determined to be 364 lbs CO²e/MWh.

With respect to the noted renewable energy and hydroelectric purchases included within MCE's Light Green and Deep Green energy supply portfolios, MCE has retained all pertinent transaction records, including applicable renewable energy certificates received through WREGIS, to substantiate its procurement activities and emission factor calculations. When determining the aforementioned attributed emission factors, MCE has only reflected the impacts of renewable and carbon-neutral/carbon-free resources for which it owns and possesses applicable renewable energy certificates and/or transaction records. All applicable renewable energy certificates are held in MCE's WREGIS account until such time that certain certificates must be "retired" to demonstrate mandatory and/or voluntary compliance. Any questions regarding the previously noted emission factors and/or related calculations should be directed to the following point of contact:

Kirby Dusel
kirby@pacificea.com
Marin Clean Energy
1125 Tamalpais Avenue
San Rafael, California 94901
1 (888) 632-3674

¹ The sum of MCE's Light Green and Deep Green energy sales may not equal total reported MCE retail sales due to numeric rounding.



April 16, 2015

TO: Marin Clean Energy Executive Committee

FROM: Dawn Weisz, Chief Executive Officer

RE: Second Amendment to Lease Agreement with 700 Fifth Avenue, LLC
(Agenda Item #09)

ATTACHMENTS:

- A. Fully Executed 9.08.14 AIR Lease Agreement with 700 Fifth Avenue, LLC
- B. Draft Second Amendment to Lease Agreement with 700 Fifth Avenue, LLC

Dear Board Members:

SUMMARY:

On September 4, 2014 your Board entered into the AIR Lease Agreement with 700 Fifth Avenue, LLC. This Lease Agreement is for a ten year lease for a 10,710 square foot commercial space in downtown San Rafael located at 1125 Tamalpais Ave. (formerly 700 Fifth Avenue). Your Board's approval of the Lease Agreement included substantial owner and tenant improvements with an associated target completion date of March 9, 2015.

Improvements included:

- 1. Structural building upgrades for code and safety compliance
- 2. Expanding Board room
- 3. Carpet, paint, and cabinets
- 4. New fire sprinkler system
- 5. American's with Disability Act-compliant (ADA) accessibility throughout the building including a new elevator

Although completion of all building upgrades fell behind schedule, the Interior building improvements have now been substantially completed and the adjusted occupancy date of April 1, 2015 is recommended. Because Lessor was able to accommodate some of MCE's interim work needs prior to formal occupancy, the proposed liquidated damages payments for late occupancy could be reduced or waived if remaining punch list items are completed by April 17. Liquidated damages will not be waived at this time for any delay in completion of the elevator or other non-occupancy related improvements.

Occupancy of the new office space will allowed MCE to provide sufficient space to support expected growth of the agency and associated accommodations needed for public meeting space. The improvements on site also reflect MCE's core values at its new headquarters by ensuring a professional, secure, energy efficient, working environment which incorporates the use of sustainable and environmentally friendly building materials. The improvements will remain in place to benefit both staff and visitors throughout the ten year lease term.

Recommendation: Authorize approval of the Second Amendment to Lease Agreement with 700 Fifth Avenue, LLC.



AIR COMMERCIAL REAL ESTATE ASSOCIATION STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE – GROSS (DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. Basic Provisions ("Basic Provisions").

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only September 8, 2014,
is made by and between 700 FIFTH AVENUE, LLC, a California limited liability company ("Lessor")
and MARIN CLEAN ENERGY, a not for profit governmental agency/joint powers authority ("Lessee"),
(collectively the "Parties," or individually a "Party").

1.2 **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease,
and commonly known as 700 Fifth Avenue, San Rafael
located in the County of Marin, State of California
and generally described as (describe briefly the nature of the property and, if applicable, the "Project", if the property is located within a Project)
a two-story building consisting of approximately 10,710 rentable square feet and adjoining parking lot currently containing approximately 35 parking spaces

1.3 **Term:** ten (10) years and no months ("Original Term") commencing March 9, 2015 ("Premises"). (See also Paragraph 2)
("Commencement Date") and ending March 8, 2025 ("Expiration Date").
(See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing
n/a ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$19,890.00 per month ("Base Rent"), payable on the first
day of each month commencing fourth month after the Commencement Date (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 50.

1.6 Base Rent and Other Monies Paid Upon Execution:

(a) **Base Rent:** \$19,890.00 for the period fourth month of the Original Term

(b) **Security Deposit:** \$44,877.00 ("Security Deposit"). (See also Paragraph 5)

(c) **Association Fees:** \$ _____ for the period _____

(d) **Other:** \$ _____ for _____

(e) **Total Due Upon Execution of this Lease:** \$64,767.00

1.7 **Agreed Use:** General office for the conduct of Lessee's business, including public assembly for meetings and storage (See also Paragraph 6)

1.8 **Insuring Party:** Lessor is the "Insuring Party". The annual estimated "Base Premium" is \$19,500.00 (See also Paragraph 8) and 54.

1.9 Real Estate Brokers: (See also Paragraph 15 and 25)

(a) **Representation:** The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

☒ Cassidy Turley Commercial represents Lessor exclusively ("Lessor's Broker");

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☒ Cornish & Carey Commercial

represents Lessee exclusively ("Lessee's Broker"); or

☐ _____ represents both Lessor and Lessee ("Dual Agency").

(b) **Payment to Brokers:** ~~Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers for the brokerage services rendered by the Brokers the fee agreed to in the attached separate written agreement or if no such agreement is attached, the sum of _____ or _____% of the total Base Rent payable for the Original Term, the sum of _____ or _____ of the total Base Rent payable during any period of time that the Lessee occupies the Premises subsequent to the Original Term, and/or the sum of _____ or _____% of the purchase price in the event that the Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises.~~

See Paragraph 60.

1.10 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by none

("Guarantor"). (See also Paragraph 37)

1.11 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:☒ an Addendum consisting of Paragraphs 50 through 62 ;☒ a plot plan depicting the Premises (Exhibit A and A-1);☐ a current set of the Rules and Regulations;☒ a Work Letter (Exhibits B, B-1 and C);☐ other (specify): _____**2. Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **Note:** Lessee is advised to verify the actual size prior to executing this Lease.

2.2 **Condition.** Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date and that the surface and structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the "Building") shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with said warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Building. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense, except for the roof, foundations, and bearing walls which are handled as provided in paragraph 7.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and an amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay

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its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not, however, have any right to terminate this Lease.

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Real Property Taxes and Insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 Delay In Possession. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the originally scheduled Commencement Date of March 9, 2015. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the originally scheduled Commencement Date of March 9, 2015, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the originally scheduled Commencement Date of March 9, 2015, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 Lessee Compliance. Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. Rent.

4.1 Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future payments to be made by Lessee to be by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent, Insurance and Real Property Taxes, and any remaining amount to any other outstanding charges or costs.

4.3 Association Fees. In addition to the Base Rent, Lessee shall pay to Lessor each month an amount equal to any owner's association or condominium fees levied or assessed against the Premises. Said monies shall be paid at the same time and in the same manner as the Base Rent.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security

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Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the Initial Security Deposit bore to the Initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. Use.

6.1 Use. Lessee shall use and occupy the Premises only for the Agreed Use, ~~or any other legal use which is reasonably comparable thereto~~, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable

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Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 Lessee's Compliance with Applicable Requirements. Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the such Requirements, without regard to whether such Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 Inspection; Compliance. Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of a written request therefor.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

7.1 Lessee's Obligations.

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee is also responsible for keeping the roof and roof drainage clean and free of debris. Lessor shall keep the surface and structural elements of the roof, foundations, and bearing walls in good repair (see paragraph 7.2). Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

~~(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, and (v) elevators. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof. See Paragraph 53.~~

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's Indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time.

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee, except for the surface and structural elements of the roof, foundations and bearing walls, the repair of which shall be the responsibility of Lessor upon receipt of written notice that such a repair is necessary. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels,

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electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 Payment of Premium Increases.

(a) Lessee shall pay to Lessor any insurance cost increase ("Insurance Cost Increase") occurring during the term of this Lease. Insurance Cost Increase is defined as any increase in the actual cost of the insurance required under Paragraph 8.2(b), 8.3(a) and 8.3(b) ("Required Insurance"), over and above the Base Premium as hereinafter defined calculated on an annual basis. Insurance Cost Increase shall include but not be limited to increases resulting from the nature of Lessee's occupancy, any act or omission of Lessee, requirements of the holder of mortgage or deed of trust covering the Premises, increased valuation of the Premises and/or a premium rate increase. The parties are encouraged to fill in the Base Premium in paragraph 1.8 with a reasonable premium for the Required Insurance based on the Agreed Use of the Premises. If the parties fail to insert a dollar amount in Paragraph 1.8, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the commencement of the Original Term for the Agreed Use of the Premises. In no event, however, shall Lessee be responsible for any portion of the increase in the premium cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b) in excess of \$2,000,000 per occurrence.

(b) Lessee shall pay any such Insurance Cost Increase to Lessor within 30 days after receipt by Lessee of a copy of the premium statement or other reasonable evidence of the amount due. If the Insurance policies maintained hereunder cover other property besides the Premises, Lessor shall also deliver to Lessee a statement of the amount of such Insurance Cost Increase attributable only to the Premises showing in reasonable detail the manner in which such amount was computed. Premiums for policy periods commencing prior to, or extending beyond the term of this Lease, shall be prorated to correspond to the term of this Lease.

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as

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an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender or included in the Base Premium), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an Insured Loss.

(b) **Rental Value.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value Insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period. Lessee shall be liable for any deductible amount in the event of such loss.

(c) **Adjacent Premises.** If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain

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pursuant to the provisions of paragraph 8.

8.9 Failure to Provide Insurance. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/ costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. Damage or Destruction.

9.1 Definitions.

(a) "**Premises Partial Damage**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total. Notwithstanding the foregoing, Premises Partial Damage shall not include damage to windows, doors, and/or other similar items which Lessee has the responsibility to repair or replace pursuant to the provisions of Paragraph 7.1.

(b) "**Premises Total Destruction**" shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "**Insured Loss**" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) "**Replacement Cost**" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) "**Hazardous Substance Condition**" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage - Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for

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which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 Termination; Advance Payments. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. Real Property Taxes.

10.1 Definition. As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises or the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises are located. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

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(a) **Payment of Taxes.** Lessor shall pay the Real Property Taxes applicable to the Premises provided, however, that Lessee shall pay to Lessor the amount, if any, by which Real Property Taxes applicable to the Premises increase over the fiscal tax year during which the Commencement Date Occurs (2014-2015) ("Tax Increase"). Payment of any such Tax Increase shall be made by Lessee to Lessor within 30 days after receipt of Lessor's written statement setting forth the amount due and computation thereof. If any such taxes shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such taxes shall be prorated to cover only that portion of the tax bill applicable to the period that this Lease is in effect. In the event Lessee incurs a late charge on any Rent payment, Lessor may estimate the current Real Property Taxes, and require that the Tax Increase be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payment shall be an amount equal to the amount of the estimated installment of the Tax Increase divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable Tax Increase is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable Tax Increase. If the amount collected by Lessor is insufficient to pay the Tax Increase when due, Lessee shall pay Lessor, upon demand, such additional sums as are necessary to pay such obligations. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.

(b) **Additional Improvements.** Notwithstanding anything to the contrary in this Paragraph 10.2, Lessee shall pay to Lessor upon demand therefor the entirety of any increase in Real Property Taxes assessed by reason of Alterations or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.3 Joint Assessment. If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Tax Increase for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

10.4 Personal Property Taxes. Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities and Services. Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered or billed. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. Assignment and Subletting.

12.1 Lessor's Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a

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noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to atton to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default; Breach; Remedies.

13.1 Default; Breach. A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

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(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

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13.6 Breach by Lessor.

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees.

15.1 **Additional Commission.** ~~If a separate brokerage fee agreement is attached then in addition to the payments owed pursuant to Paragraph 1.0 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires any rights to the Premises or other premises owned by Lessor and located within the same Project, if any, within which the Premises is located, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule attached to such brokerage fee agreement.~~

~~15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.0, 15.1, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. Estoppel Certificates.

(a) Each Party (as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability

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of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. Waivers.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

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26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.
27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.
29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.
30. **Subordination; Attornment; Non-Disturbance.**
- 30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.
- 30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.
- 30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.
- 30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.
31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).
32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect to Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.
33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.
34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "for sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent. All signs must comply with all Applicable Requirements.
35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.
36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an

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acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor.

37.1 Execution. The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

37.2 Default. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options. If Lessee is granted an Option, as defined below, then the following provisions shall apply:

39.1 Definition. "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 Options Personal To Original Lessee. Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 Multiple Options. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. Multiple Buildings. If the Premises are a part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by and conform to all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessee also agrees to pay its fair share of common expenses incurred in connection with such rules and regulations.

41. Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. Reservations. Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

44. Authority; Multiple Parties; Execution.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

45. Conflict. Any conflict between the printed provisions of this Lease and typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. Offer. Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

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48. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

49. **Arbitration of Disputes.** An Addendum requiring the Arbitration of disputes between the Parties and/or Brokers arising out of this Lease ☐ is ☒ is not attached to this Lease.

50. **Americans with Disabilities Act.** Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: Franklin, IN
 On: September 11, 2014
 By LESSOR:
700 FIFTH AVENUE, LLC.

Executed at: 781 Lincoln Avenue, Suite 320, San Rafael CA 94901
 On: September 10, 2014
 By LESSEE:
MARIN CLEAN ENERGY

By: Ted B. Shuel
 Name Printed: Ted B. Shuel
 Title: Manager

By: Dawn Weisz
 Name Printed: Dawn Weisz
 Title: Executive Officer

By: _____
 Name Printed: _____
 Title: _____
 Address: PO Box 573
FRANKLIN, IN 46131
 Telephone: (415) 516-0726
 Facsimile: () _____
 Email: TED.SHUEL@GMAIL.COM
 Email: TSHUEL1@COMCAST.NET
 Federal ID No. 20-1147806

By: Damon Connolly
 Name Printed: Damon Connolly
 Title: Chairman of the Board
 Address: 781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
 Telephone: (415) 464-6010
 Facsimile: (415) 459-8095
 Email: dweisz@mccleanenergy.org
 Email: damon@damonconnollylaw.com
 Federal ID No. 26-4300997

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BROKER:

Cassidy Turley Commercial

BROKER:

Cornish & Carey Commercial

Att: STEVE LEONARD
Title: VICE PRESIDENT
Address: 181 LINCOLN AVE SUITE 100
SAN RAFAEL, CA 94901
Telephone: (415) 922-1080
Facsimile: (415) 925-2128
Email: SLEONARD@CBT.COM
Federal ID No. _____
Broker/Agent DRE License #: 00909604

Att: Kevin Delehanty
Title: Senior Vice President
Address: One Bush Street
San Francisco, CA 94104
Telephone: (415) 445-5132
Facsimile: (415) 445-8886
Email: kdelehanty@newmarkccarey.com
Federal ID No. _____
Broker/Agent DRE License #: 00843404

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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ADDENDUM TO LEASE

The following paragraphs shall constitute a part of the Standard Industrial/Commercial Single-Tenant Lease – Gross dated as of September 8, 2014, being entered into concurrently between 700 FIFTH AVENUE, LLC, a California limited liability company, as Lessor, and MARIN CLEAN ENERGY, a not for profit governmental agency, joint powers authority, as Lessee, covering certain premises located at 700 Fifth Avenue, San Rafael, California. The provisions of this Addendum shall modify any inconsistent provisions in the Lease.

50. **Base Rent.** The monthly Base Rent payable by Lessee to Lessor shall be as follows:

Months 1 through 3	\$0
Months 4 through 12	\$19,890
Months 13 through 24	\$26,790
Months 25 through 36	\$34,768
Months 37 through 48	\$35,812
Months 49 through 60	\$36,886
Months 61 through 72	\$38,361
Months 73 through 84	\$39,896
Months 85 through 96	\$41,492
Months 97 through 108	\$43,151
Months 109 through 120	\$44,877

51. **Commencement Date Adjustment.** The Commencement Date shall be (and Lessee agrees to occupy the Premises) on the date that Lessor substantially completes the Tenant Improvements and Additional Tenant Improvements (collectively, "Lessor's Work") and delivers the Premises to Lessee. In the event Lessor is unable to substantially complete Lessor's Work and the Additional Tenant Improvements and deliver the Premises to Lessee by the scheduled Commencement Date of March 9, 2015, the following provisions shall apply, notwithstanding anything to the contrary in the Lease:

(a) Lessee agrees to take occupancy of the Premises prior to completion of the following improvements:

(i) the Marin Municipal Water District main being installed and operational in order to connect to the fire sprinklers;

(ii) the new exterior Building elevator to be installed under Section 9.a. of the Work Letter Agreement being installed and operational; and

(iii) the new fence, parking lot repairs and landscaping as permitted by paragraph 9 of the Work Letter Agreement to accommodate installation of the Building elevator or connection to the new water main for the sprinklers.

(b) Subject to Paragraph 51 (a) above, should Lessor not deliver possession of the Premises to Lessee by March 9, 2015, Lessor shall pay to Lessee the sum of \$775 per calendar day for each day after March 9, 2015 until possession of the Premises is delivered to Lessee. Lessee's failure to timely approve the preliminary Construction Drawings in accordance with paragraph 2 of the Work Letter Agreement or Lessee's failure to approve the final Construction Drawings by the fifty-second (52nd) day after execution of this Lease shall be added on a day for day basis to the March 9, 2015 delivery date and shall not be subject to a late delivery charge.

(c) Should Lessor not deliver possession of the Premises to Lessee by March 9, 2015 due to unavoidable delays in obtaining permits for Lessor's Work (a "Permit Delay"), Lessor shall pay Lessee the sum of \$387.50 per calendar day for each day after March 9, 2015 until possession of the Premises is delivered to Lessee. For purposes of this Paragraph 51 (c) a "Permit Delay" can only occur if it is solely due to an unreasonable delay despite Lessor's diligent prosecution of best commercially reasonable efforts in attaining the permits required to perform Lessor's Work. The permits Lessor will be required to apply for are: (i) basic building permit for Lessor's Work, (ii) fire department permit, (iii) State of California permit to operate the new exterior elevator, (iv) Planning Department approval for exterior work on the Building, and (v) application to the Marin Municipal Water District to install a dedicated fire sprinkler service to connect to the fire sprinklers in the Premises. The actions or conduct of the Lessor or its contractors and/or a lack of timely response to requests from a public agency by the Lessor or its contractors shall not constitute a Permit Delay. To qualify as a Permit Delay, evidence of the reason for the Permit Delay must be provided in writing or by email by Lessor to Lessee within two (2) business days after Lessor becomes aware of a circumstance which Lessor reasonably and in good faith believes constitutes a Permit Delay.

(d) The amounts to be paid by Lessor to Lessee under this Paragraph 51, are in the opinions of Lessor and Lessee reasonable sums considering all of the circumstances existing on the Effective Date, including the relationships of the respective sums to the harm that Lessee could reasonably anticipate if possession of the Premises is not delivered to Lessee by March 9, 2015 and the anticipation that proof of actual damages would be costly or inconvenient. By placing their initials below, Lessor and Lessee specifically confirm the accuracy of the statements made in this subparagraph 51(d) and the fact that Lessor and Lessee were each represented by counsel who explained the consequences of this liquidated damages provision at the time this Lease was made.

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Lessee's Initials

(e) In the event that the Building or Premises are damaged by a "major casualty" prior to the Commencement Date, which would require longer than sixty (60) days to repair, either Landlord or Tenant may terminate this Lease by notice to the other within ten (10) days from the date Landlord notifies Tenant (which notice shall be given within ten (10) business days from the date of the "major casualty") of the estimated time to repair the damage from the "major casualty" and both parties shall be released from any further liability hereunder..

In the event the Commencement Date is delayed, the Expiration Date shall be adjusted accordingly. Promptly after the Original Term commences, Lessor and Lessee shall execute a further addendum to this Lease setting forth the actual Commencement Date and Expiration Date.

52. Option to Extend.

(a) Lessor hereby grants to Lessee one (1) option (the "Extension Option") to extend the Original Term of the Lease for an additional period of five (5) years each (the "Option Term") on the same terms, covenants and conditions as provided for in the Lease during the Original Term, except for Base Rent which shall be the greater of (i) 104% of the Base Rent payable by Lessee during the last year of the then current Term, or (b) the "fair market rental rate" for the Premises at the commencement of the Option Term as defined and determined in accordance with the provisions of subparagraphs (d) and (e), below, except that Lessor shall not be required to make any tenant improvements in connection with the Option Term.

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(b) The Extension Option must be exercised, if at all, by written notice ("Extension Notice") delivered by Lessee to Lessor no earlier than nine (9) months, and no later than six (6) months, prior to expiration of Original Term of the Lease. The Extension Option shall, at Lessor's sole option, not be deemed to be properly exercised if, at the time such Extension Option is exercised or on the scheduled commencement date for the Option Term, Lessee has (i) committed a Breach of the Lease which has not been cured, (ii) assigned all or any portion of the Lease or its interest therein, or (iii) sublet more than 4,200 square feet of the Premises. Provided that Lessee has properly and timely exercised the Extension Option, the Term of the Lease shall be extended by the Option Term and all terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect, except that the Base Rent shall be as set forth herein.

(c) Lessee's Extension Option is personal to the original Lessee executing this Lease and may not be exercised or assigned, voluntarily or involuntarily, by or to any person or entity other than the original Lessee.

(d) Within sixty (60) days after receipt of Lessee's Extension Notice, Lessor shall notify Lessee of its determination of the Base Rent for the Option Term ("Lessor's Notice"). If Lessor determines that the Base Rent for the Option Term shall be the 104% of the Base Rent payable by Lessee during the last year of the then current Term, such determination shall be conclusive on the parties and the market rental rate shall not apply. If, however, Lessor determines that the Base Rent for the applicable Option Term shall be the fair market rental rate, then the parties shall endeavor by good faith negotiations to agree upon the Base Rent for the Option Term within thirty (30) days after Lessor's Notice. In the event the parties cannot agree on the Base Rent in the thirty-day period, the Base Rent shall be determined as follows:

(i) Within fifteen (15) days after expiration of the thirty-day negotiation period, each party, at its own cost and by giving notice to the other party, shall appoint a real estate appraiser, with a membership in the American Institute of Estate Appraisers or the Society of Real Estate Appraisers and at least five (5) years full-time commercial appraisal experience in the San Francisco Bay Area, to appraise and determine the Base Rent. If in the time provided only one party shall give notice of appointment of an appraiser, the single appraiser appointed shall determine the Base Rent. If two (2) appraisers are appointed by the parties, the two (2) appraisers shall independently, and without consultation prepare an appraisal of the Base Rent within 15 days. Each appraiser shall seal its respective appraisal after completion. After both appraisals are completed, the resulting estimates of the Base Rent shall be opened and compared. If the values of the appraisals differ by no more than ten percent (10%) of the value of the higher appraisal, then the Base Rent shall be the average of the two (2) appraisals.

(ii) If the values of the appraisals differ by more than ten percent (10%) of the value of the higher appraisal, the two (2) appraisers shall designate a third appraiser meeting the qualifications set forth in subparagraph (i), above. If the two (2) appraisers have not agreed on a third appraiser after ten (10) days, either Lessee or Lessor, by giving ten (10) days notice to the other party, may apply to the then Presiding Judge of the Superior Court for the county in which the Premises are located for the selection of a third appraiser who meets the qualifications set forth in subparagraph (i), above. The third appraiser, however, selected, shall be a person who has not previously acted in any capacity for either party. The third appraiser shall make an appraisal of the Base Rent within fifteen (15) days after selection and without consultation with the first two (2) appraisers. The three (3) appraisals shall then be added together and their total divided by three (3), and the resulting quotient shall be the Base Rent. If, however, the low appraisal and/or the high appraisal are/is more than 15% lower and/or higher than the middle appraisal, the low appraisal and/or the high appraisal shall be disregarded. If one (1) appraisal is disregarded, the remaining two (2) appraisals shall be added together and their

total divided by two (2), and the resulting quotient shall be the Base Rent. If both the low appraisal and the high appraisal are disregarded as provided in this subparagraph, the middle appraisal shall be the Base Rent.

If the determination of the Base Rent is delayed beyond the commencement of the applicable Option Term, Lessee shall continue to pay the Base Rent due during the last month of Original Term. On the first day of the month following the determination of the Base Rent, there shall be an adjustment made to the Base Rent payment then due for the difference between the amount of Base Rent Lessee has paid to Lessor since the applicable Option Term commencement and the amount that Lessee would have paid if the Base Rent as adjusted pursuant to this subparagraph had been in effect as of the applicable Option Term commencement.

Each party shall pay the fees and expenses of their own appraiser, and 50% of the fees and expenses of the third appraiser.

(e) The appraisers shall determine the fair market rental rate using the "market comparison approach" with the relevant market being that for Class "A" office buildings in the downtown San Rafael area as of the Option Term commencement, taking into consideration location, condition and improvements to the space, and assuming that the relevant comparison office building leases are so-called "full-service" leases, including janitorial services. Once the fair market rental rate is determined, there shall be deducted from the rate so determined the sum of \$0.20 times 10,710 (which the parties agree is the square footage of the Premises) to allow for the fact that Lessee is providing some of its own services. For example, if the appraisal process determines that the monthly fair market rental rate for full-service, Class "A" office buildings in the downtown San Rafael Area is \$3.00 per square foot (or \$32,130 per month for the Premises), then the monthly Base Rent for the first year of the Option Term would be \$29,988 (\$32,130 less \$2,142 (\$0.20 times 10,710 square feet).

(f) On the first anniversary of the Option Term, and annually thereafter, the Base Rent shall be increased by one hundred four percent (104%) of the previous year's Base Rent.

53. Repairs and Maintenance. Sections 7.1 and 7.2 of the Lease are modified in the following respects only: Unless the need for maintenance or repair is caused by the negligence or willful act of Lessee, its agents or contractors, Lessor shall perform the following maintenance and repair obligations (in addition to maintaining the surface and structural elements of the roof, foundations and bearing walls):

(i) Lessor shall maintain the Building's skylights and exterior windows in watertight condition (Lessee shall remain responsible for cleaning the exterior windows and skylights);

(ii) Lessor shall maintain the exterior of the Building, including painting when necessary;

(iii) Lessor shall be responsible for resurfacing the parking lot when necessary (Lessee shall remain responsible for keeping the parking lot in a clean condition and shall be responsible for restriping the parking lot as needed); and

(iv) Lessor shall maintain in good condition and repair the electrical, gas and plumbing systems installed by Lessor in the Building (Lessee shall maintain all such systems installed by Lessee).

Lessee at its sole cost and expense shall provide for janitorial services and supplies (including light bulbs) to the Premises and shall pay for all utilities supplied to the Premises, including water, electricity, gas, telephone, trash removal, and security maintenance and services, and will reimburse Lessor quarterly for maintenance service contracts obtained by Lessor on the HVAC systems in

the Building. Lessee will maintain service contracts covering (a) the landscaping and irrigation systems, (b) the fire extinguishing systems and fire sprinklers (if installed), and (c) the security and fire alarm system. Lessor shall have the right to approve Lessee's service contracts, which approval will not be unreasonably withheld or delayed.

54. **Increased Insurance Premium Expenses.** As provided in Section 8.1 of the Lease, Lessee shall pay to Lessor any Insurance Cost Increase over the Base Premium. Insurance Premium Expenses shall include the premiums for Lessor's fire, casualty, liability and earthquake insurance on the Premises. The current annual premiums for the foregoing insurance are \$17,385 and Lessor estimates that the annual estimated Base Premium will be approximately \$19,500.

55. **Increased Building Expenses.** In addition to paying any Insurance Cost Increase (Section 8.1) and Tax Increase (Section 10.2), Lessee shall pay to Lessor all increased costs incurred by Lessor in connection with its maintenance and repair of the roof, foundations, bearing walls, skylights, exterior window, parking lot and those service and maintenance items provided by Lessor under Paragraph 53, above, to the extent those costs exceed the sums expended for those items during the first year of the Original Term. Lessee shall pay any such increased costs within thirty (30) days after receipt by Lessee of reasonably detailed statement prepared by Lessor showing the amount of the increase. During the first year of the Original Term, Lessor shall perform all required maintenance and repairs and not defer required maintenance and repairs.

Lessor shall keep accurate books and records in accordance with generally-accepted accounting principles applied on a basis consistent with prior years reflecting Building Expenses, Real Property Taxes and Insurance Cost Increase. Lessee shall have the right, at any time by written notice to Lessor within six (6) months after Lessee's receipt of the applicable bill from Lessor, during normal business hours upon reasonable advance notice to Lessor, to use a certified public accountant selected by Lessee and subject to Lessor's reasonable right of approval to inspect and copy such books and records and/or to audit Lessor's charges for Building Expenses, Real Property Taxes and Insurance Cost Increase, and other similar charges for which Lessor has billed Lessee during the preceding year. Lessee agrees that Lessee will not employ, in connection with any dispute under this Lease, any person or entity who is to be compensated, in whole or in part, on a contingent fee basis. If such audit discloses any overcharge to Lessee, it shall be credited against the next payment of rent due from Lessee to Lessor or refunded to Lessee within twenty (20) days if at the end of the term. Unless Lessee gives the foregoing notice to Lessor within the six-month period after Lessee's receipt of the applicable bill from Lessor, the bill shall be considered as final and accepted by Lessee.

56. **Parking.** Reference is made to the Agreement regarding parking dated as of January 22, 2003, between Lessor and the owner of the real property located at 704 Mission Street in San Rafael, California. During the term of this Lease, Lessor shall be deemed to have assigned to Lessee all of its parking rights under the Agreement relating to parking and Lessee agrees to abide by all of the terms and conditions of said Agreement, including the obligation to permit the other party to the Agreement to use the parking lot on the Premises for parking by its customers. The termination of the Agreement shall not affect this Lease or Lessee's obligations hereunder.

57. **Assignment and Subletting.** In connection with any assignment of this Lease or subletting of the Premises, Lessee shall abide by the requirements of Paragraph 12 of the Lease and Lessor agrees that it will not unreasonably withhold, condition or delay its approval of any assignment or subletting. Any assignment or subletting shall be deemed approved if Lessor fails to respond within fourteen (14) days to a written request (and email sent to Lessor's email address) from Lessee to approve an assignment or subletting provided such request is accompanied by financial and other information regarding the assignee or subtenant as Lessor may reasonably request.

Any rent or other consideration realized by Lessee in excess of the Base Rent payable hereunder in connection with any sublease, license or similar arrangement collectively covering less than

4,200 square feet of the Premises, after amortization of Lessee's reasonable subletting and assignment costs, shall be divided and paid fifty percent (50%) to Lessor and fifty percent (50%) to Lessee. Any rent or other consideration realized by Lessee in excess of the Base Rent payable hereunder in connection with any assignment of this Lease or any sublease, license or similar arrangement covering 4,200 square feet or more of the Premises, after amortization of Lessee's reasonable costs of assignment, subletting, licensing or similar arrangement, shall be paid one-hundred percent (100%) to Lessor.

58. Signage. Lessee shall have the right to place its name (signage) on the front door of the Building and on the exterior of the Building and at both exterior street-fronting corners of the Premises (Mission Avenue and Fifth Avenue). All signage is subject to Lessor's prior written approval, which shall not be unreasonably withheld, conditioned or delayed, and to the review and approval of all governmental requirements and restrictions of the City of San Rafael. All signage shall be at Tenant's sole cost and expense. Upon lease termination Lessee shall remove its signage and restore the building and all exterior monuments to their condition prior to commencement of the Original Term.

59. Disability Access Requirements.

(a) Pursuant to California Civil Code Section 1938, Lessor has advised Lessee that neither the Premises nor the Building have been inspected by a Certified Access Specialist.

(b) Except as otherwise provided in (c), below, Lessor shall be responsible for making and paying for all required disability access improvements on the exterior and in the common areas of the Building.

(c) Lessee shall be responsible for making and paying for all required disability access improvements within the Premises and for all required disability access improvements on the exterior and in the common areas of the Building that are triggered by Lessee's Alterations.

60. Brokers' Commission. Lessor agrees to pay to the Brokers the following fees upon occurrence of the following events: (i) The sum of \$50,735 to Lessee's Broker and \$22,700.50 to Lessor's Broker upon full execution of this Lease, and (ii) The sum of \$50,735 to Lessee's Broker and \$22,700.50 to Lessor's Broker upon Lessor's receipt of the first payment of Base Rent (scheduled for June 9, 2015).

61. Condition of Premises. Lessor represents and warrants to Lessee that Lessor has not received any notice of any violation of building codes or the Americans with Disabilities Act with respect to the Premises.

62. No Recourse Against Constituent Members of Lessee. Lessee 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. Lessee shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Lease. No contractor shall have any rights and shall not make any claims, take any actions or assert any remedies against any of Lessee's constituent members in connection with this Lease.

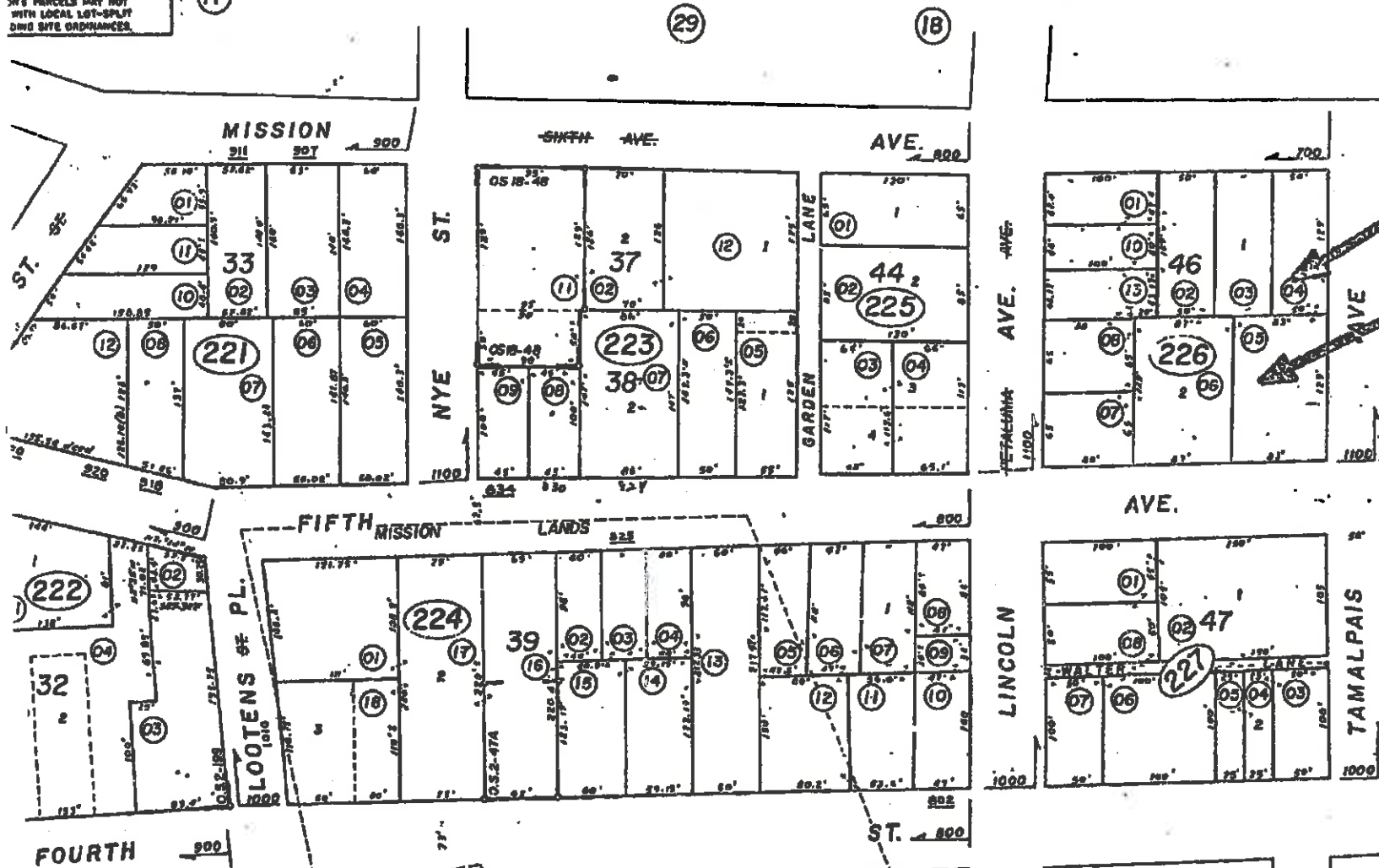
EXHIBIT A

DIAGRAM OF PREMISES SHOWING THE BUILDING AND ADJOINING PARKING LOT

MAP
 WAS PREPARED FOR
 VENT PURPOSES ONLY.
 CITY IS ASSUMED FOR
 URACY OF THE DATA SHOWN.
 NO PARCELS MAY NOT
 WITH LOCAL LOT-SPLIT
 AND SITE ORDINANCES.

10X 1016 1100
 8-023

11-22



Building Lot
Parking Lot
 Subject Property

Bk. 14
 08

FILED
11-22

This plat is for your aid in locating your land with references to streets and other parcels. It is not a survey. While this plat is believed to be correct, the company assumes no liability for any loss occurring by reason of reliance thereon.

CALIFORNIA LAND TITLE COMPANY

700 IRWIN STREET at SECOND
 SAN RAFAEL, CALIFORNIA 94901

NOTE—Assessor's Block Numbers Shown in Ellipses.
 Assessor's Parcel Numbers Shown in Circles.

CITY OF SAN RAFAEL
 Assessor's Map Bk. 11 -Pg. 22
 County of Marin, Calif.

Johnette of San Rafael, Rack 1 Pull 4

EXHIBIT A-1

**DIAGRAM SHOWING CURRENT LAYOUT OF PARKING SPACES
IN LESSOR'S PARKING LOT**

Current Parking Scheme at 700 Fifth Ave San Rafael, CA 94901 - Office Building August 25 2014

Space # 8	Space # 7	Space # 6	Space # 5	Space # 4	Space # 3	Space # 2	Space # 1 Handicap	
Space # 17	Space # 16	Space # 15	Space # 14	Space # 13	Space # 12	Space # 11	Space # 10	Space # 9
Space # 26	Space # 25	Space # 24	Space # 23	Space # 22	Space # 21	Space # 20	Space # 19	Space # 18
Space # 35	Space # 34	Space # 33	Space # 32	Space # 31	Space # 30	Space # 29	Space # 28	Space # 27

EXHIBIT A-1

TDS

EXHIBIT B

WORK LETTER AGREEMENT

THIS WORK LETTER AGREEMENT supplements that certain Standard Industrial/Commercial Single-Tenant Lease dated September 8, 2014 ("Lease"), executed by 700 Fifth Avenue, LLC, as Lessor, and Marin Clean Energy, a not for profit governmental agency, joint powers authority, as Lessee. All capitalized terms not otherwise defined herein shall have the same meaning as those capitalized terms contained in the Lease.

1. Lessor shall be responsible for diligently constructing within the Building the tenant improvements ("Tenant Improvements") described in the preliminary space plan attached hereto as Exhibit B-1 ("Preliminary Space Plan"). The Tenant Improvements for the Premises will be more particularly described in the plans and construction drawings ("Construction Drawings") as approved below. Any additional work in the Building shall be at Lessee's sole cost and expense.

2. Using best commercially reasonable efforts, and in no event more than fifty-two (52) days after execution of the Lease, Lessor shall provide Lessee with the final Construction Drawings and Specifications showing the details of the Tenant Improvements. The final Construction Drawings shall be prepared by Lessor's architect, WK Design Group, and shall be in conformity with the Preliminary Space Plan. The Construction Drawings shall include full energy calculations as required by the State of California and the city agencies. In no event more than forty-seven (47) days after execution of the Lease, Lessor shall provide Lessee with preliminary Construction Drawings which are approximately ninety percent (90%) complete, with the exception of mechanical, electrical and plumbing drawings. Within five (5) days after receipt of the preliminary Construction Drawings, Lessee shall approve the drawings and/or request changes or modifications thereto. Any such request for changes or modifications shall be subject to Lessor's reasonable approval. Lessor shall not be required to approve any change in Construction Drawings which is inconsistent with the Preliminary Space Plan.

The final Construction Drawings must be completed and approved by Lessee no more than fifty-two (52) days after execution of this Lease. In the event Lessee has not approved the final Construction Drawings by that date, the March 9, 2015 scheduled Commencement Date shall be extended on a day for day basis and shall not be subject to a late delivery charge.

3. Lessee acknowledges that the Construction Drawings are subject to the approval of the appropriate government authorities. It shall be Lessee's responsibility to ensure that the design and function of the Tenant Improvements are suitable for Lessee's business and needs. It shall be Lessor's responsibility to construct the Tenant Improvements in accordance with current building standards, laws, regulations, ordinances and codes. Except as provided in paragraph 9, below, Lessor shall not be required to install any Tenant Improvements which do not conform to the Construction Drawings.

3.a. Lessor agrees to cause its general contractor to obtain at least three (3) bids from every subcontractor where the total cost of the subcontract is expected to exceed Twenty-Five Thousand Dollars (\$25,000.00). The contractor shall be required to accept the lowest bid for the portion of the work covered by the particular subcontract unless Lessor agrees to be responsible for any amount in excess of the lowest bid.

3.b. Lessor shall cause Lessor's contractor or architect to keep Lessee fully advised in writing or by email of the status of each application for permits to perform Lessor's Work and notify Lessee if any delays in obtaining permits are anticipated to cause a delay in Lessor's Work such that

Lessor will not be able to deliver possession of the Premises to Lessee by March 9, 2015, or that the completion of items 9.a. or 9.e. of this Work Letter would be delayed. The purpose of this provision is so that Lessee will be able to independently determine if there is a legitimate permit delay.

4. The total cost of the Tenant Improvements to be paid by Lessor shall not exceed Four Hundred Thirty Thousand Three Hundred Ninety-Seven Dollars (\$430,397.00). The total "cost" includes the following:

- (a) All construction costs and expenses associated with the Tenant Improvements;
- (b) The reasonable costs of the Preliminary Space Plan (including one revision thereto) and final Construction Drawings and engineering costs associated with completion of the State of California energy utilization calculations under Title 24 legislation and any engineering fees associated with the project; and
- (c) The reasonable costs of obtaining building permits and other necessary authorizations from the city, county and the State of California.

The cost allocation between Lessor and Lessee for Building improvements is detailed in Exhibit C attached as the "Improvement Budget". Any total costs associated with the Tenant Improvements in excess of \$430,397.00 shall be paid by Lessee within thirty (30) days after billing by Lessor; however, Lessee shall not be responsible for any costs not shown in Exhibit C if they are solely due to elevator installation, fire sprinkler installation, or are required to bring the Building into code compliance.

5. The Commencement Date of the Lease shall be determined in accordance with Paragraph 51 of the Lease.

6. Lessee may, with Lessor's written consent which consent shall not be unreasonably withheld, enter the Premises prior to the Commencement Date solely for the purpose of installing its Personal Property as long as such entry will not interfere with the orderly construction and completion of the Tenant Improvements by Lessor's contractor. Lessee shall notify Lessor of its desired time(s) of entry and shall submit for Lessor's written approval the scope of the Tenant's Work to be performed and the name(s) of the contractor(s) who will perform such work. Lessee agrees to indemnify, defend and hold harmless Lessor from and against any and all claims, actions, losses, liabilities, damages, costs or expenses (including, without limitation, reasonable attorneys' fees and claims for worker's compensation) of any nature whatsoever, arising out of or in connection with the Tenant's Work (including, without limitation, claims for breach of warranty, bodily injury or property damage).

7. The Premises shall be deemed "substantially completed" as of the date that all of the following conditions are satisfied ("Substantial Completion"):

- (a) Except as otherwise provided in Paragraph 51.a., the Tenant Improvements have been substantially completed in accordance with the approved Construction Drawings (except for minor punch list items); and
- (b) A temporary certificate of occupancy and/or a signed building permit, except for the items listed in Paragraph 9.a. (new exterior elevator) and 9.e. (fire sprinklers) of this Work Letter, has been issued for the Premises.

8. Pursuant to Paragraph 2 of the Lease, Lessee shall immediately prior to occupancy inspect the Premises and compile and furnish Lessor with an initial punch list of any missing or deficient Tenant Improvements. Within the first thirty (30) days after occupancy of the Premises, Lessee shall make a final punch list and submit this list to Lessor. Lessor shall diligently prosecute and use its best commercially reasonable efforts to complete the corrective work in a prompt, good and workman-like manner. Punch list corrections not corrected to the reasonable satisfaction of Lessee promptly following Lessor's receipt of the final punch list shall not be grounds for a delay or reduction in any rent payments due Lessor unless such corrections materially interfere with the use by Lessee of the Premises, in which case rent shall be abated as to the portion of the Premises rendered unusable on a day for day basis.

9. In addition to the Tenant Improvements, Lessor shall provide the following Additional Tenant Improvements at Lessor's sole cost and expense:

a. Installation of a new elevator on the outside of the Building from the parking lot to provide elevator access to the first and second floors, as well as exterior work which is affected by the installation of the elevator, such as replacement of the current fence (as described in Paragraph 9.b. below) and replacement of the current landscaping (as described in Paragraph 9.b. below). This work must be completed within ninety (90) days of the date possession of the Premises is delivered to Lessee or Lessor shall pay to Lessee the sum of \$4,000 per month prorated for each day of delay in completing this item of the Additional Tenant Improvements. The parties agree that the provisions of Paragraph 51 (d) regarding liquidated damages shall also apply to this Paragraph 9.a.

b. Replace the current fence in the parking lot;

c. Mill the current asphalt in the parking lot, repair the surface as needed, apply a new topcoat, and restripe (the configuration and number of parking spaces in the parking lot may change based on requirements of existing laws, ordinances and rules);

d. Replace the current landscaping per Lessor's design; and

e. Install Fire Sprinklers if required by the San Rafael Building Department. This work must be completed within ninety (90) days of the date possession of the Premises is delivered to Lessee or Lessor shall pay to Lessee the sum of \$4,000 per month prorated for each day of delay in completing this item of the Additional Tenant Improvements, provided, however, Lessor must have had a period of at least thirty (30) days after the Marin Municipal Water District has completed the installation of the new water main in order to perform the work to connect the fire sprinklers to the new water main, before Lessor shall be liable for any payment to Lessee under this Paragraph 9.e. The parties agree that the provisions of Paragraph 51 (d) regarding liquidated damages shall also apply to this Paragraph 9.e. In connection with securing the written consent of the City of San Rafael Fire Marshall to permit the Premises to be occupied by Lessee prior to the fire sprinklers being connected to a water source and being in operating condition, Lessor and Lessee each agrees to execute an agreement to indemnify, defend, protect and hold harmless the City of San Rafael and the San Rafael Fire Department from any claims or causes of action related to the fire sprinklers not being operational when the Premises are delivered.

The Additional Tenant Improvements described in b. (new fence), c. (parking lot repairs) and d. (landscaping), above, may be deferred by Lessor if Lessor reasonably determines that some or all of those Additional Tenant Improvements should not be installed until after installation of the Building elevator

and water main for the sprinkler system connection.. The design and materials used to construct the foregoing Additional Tenant Improvements shall be at Lessor's sole discretion.

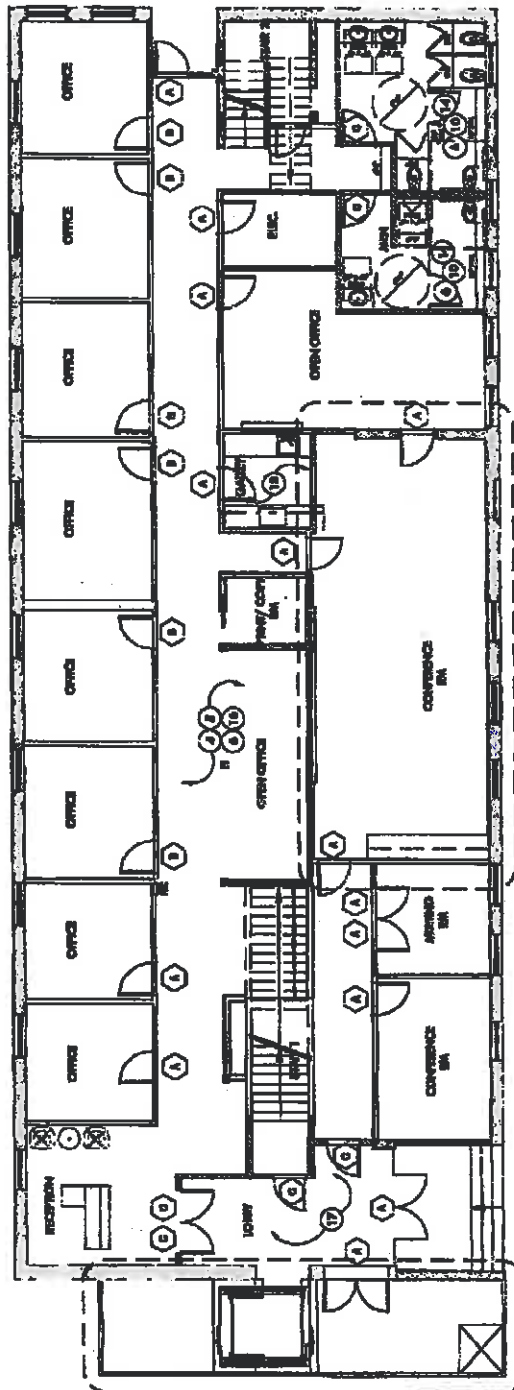
EXHIBIT B-1

PRELIMINARY SPACE PLAN

ATTACH HERE PRICING PLAN PAGES PP1.1 AND PP1.2

PREPARED BY WESKE KARR DESIGN GROUP ISSUED FOR REVIEW 08.28.14

2



THE ELEVATOR DOOR AND CHAIR WERE
NOTED. ALL WORK IN THE AREA
SUBJECT TO FUTURE DESIGN
RECOMMENDING AND PLANNING.
ENDING. WE DON'T HAVE

ENTERED SERVICE CONTRACT,
CARRY 3 PRESENT INTRINSIC, ADD 2, ALLOW \$750 EACH



FIRST FLOOR CONSTRUCTION PLAN

$$\frac{1}{16''} = 1'-0''$$

PARTIAL IMAGE OF SHEET: PP1.1

TBS

MARIN CLEAN ENERGY
700 5TH AVENUE
SAN RAFAEL, CA 94901



Weeks

3471 Williams Dr. Suite 300 San Francisco, CA 94104
Phone 415.327-2490 Fax 415.327-2509

2

NTS

[illegible]

1

$$1/16'' = 1'-0''$$

PARTIAL IMAGE OF SHEET: PP1.1



MARIN CLEAN ENERGY
700 5TH AVENUE
SAN RAFAEL, CA 94901



KEY NOTES		DOOR NOTES	
1	2	A	IN ROOM TO EXTER.
3	4	B	IN HALLWAY CLAM DOOR TO MATCH IN CH. EXTERIOR ROOM, AND IN HALLWAY DOOR TO MATCH IN HALLWAY EXTERIOR ROOM, AND IN HALLWAY EXTERIOR ROOM.
5	6	C	IN HALLWAY CLAM DOOR TO MATCH IN CH. EXTERIOR ROOM, AND IN HALLWAY DOOR TO MATCH IN HALLWAY EXTERIOR ROOM, AND IN HALLWAY EXTERIOR ROOM.
7	8		DOOR: HALLWAY DOOR FROM HALL TO HALL WHITE FINISH.
9	10		FINISH NOTES
11	12	1	PAINT: EXTERIOR PAINT: TALL.
13	14	2	PAINT: ACCENT PAINT: TALL.
15	16	3	PAINT: ACCENT PAINT: TALL.
17	18	4	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
19	20	5	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
21	22	6	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
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41	42	16	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
43	44	17	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
45	46	18	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
47	48	19	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
49	50	20	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
51	52	21	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
53	54	22	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
55	56	23	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
57	58	24	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
59	60	25	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
61	62	26	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
63	64	27	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
65	66	28	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
67	68	29	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
69	70	30	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
71	72	31	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
73	74	32	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
75	76	33	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
77	78	34	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
79	80	35	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
81	82	36	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
83	84	37	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
85	86	38	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
87	88	39	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
89	90	40	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
91	92	41	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
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97	98	44	CHART: BENT CURVE TALL, ALLOW 10% FOR 10% IN HALLWAY.
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FIRST FLOOR KEY NOTES & LEGENDS

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PARTIAL IMAGE OF SHEET: PP1.1

EXHIBIT B-1
Page 3 of 6

TBS

Weeks

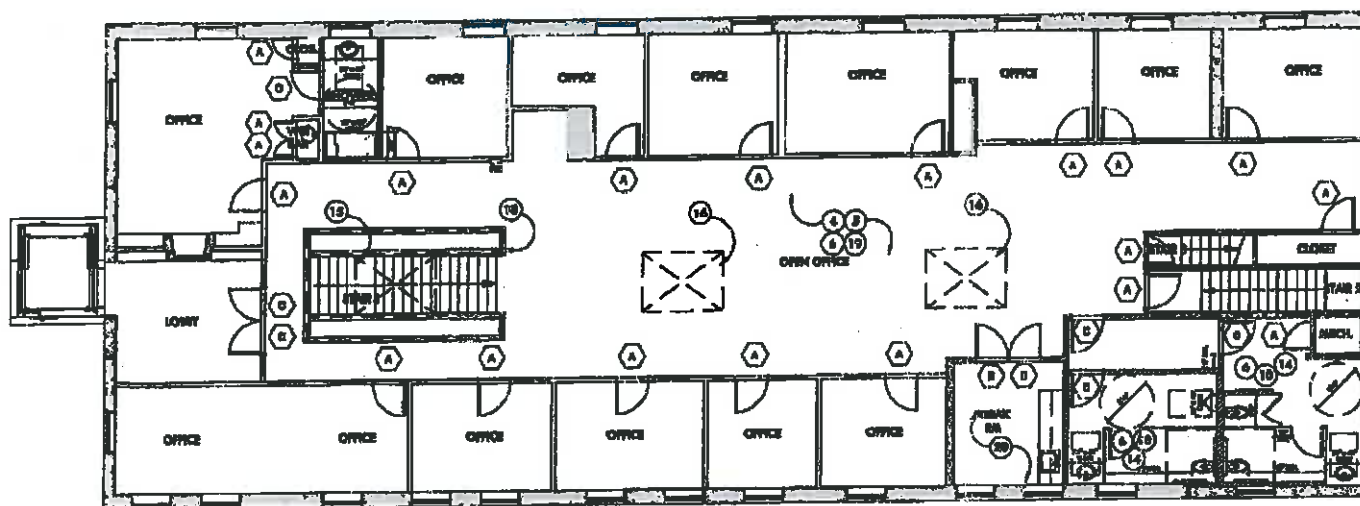
3671 colleges & universities
800-441-3373 ext. 3000
Fax 415-933-4309

MARIN CLEAN ENERGY
700 5TH AVENUE
SAN RAFAEL, CA 94501



2

NT\$



1

$$1/16'' = 1'-0''$$

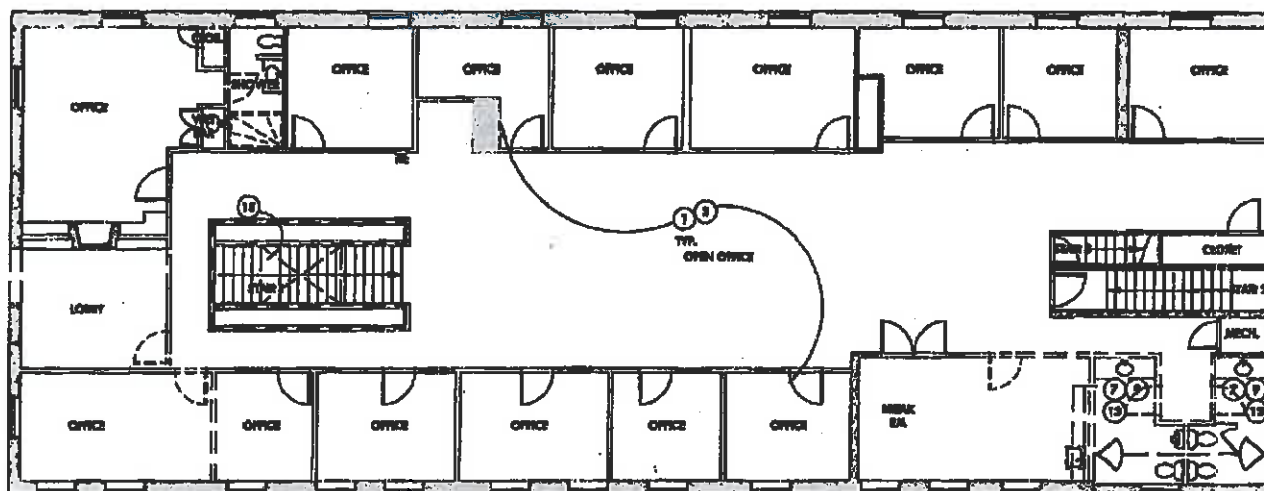
PARTIAL IMAGE OF SHEET: PP1.2

MARIN CLEAN ENERGY
700 5TH AVENUE
SAN RAFAEL, CA 94901



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$$1/16'' = 1'-0''$$

PARTIAL IMAGE OF SHEET: PP1.2



MARIN CLEAN ENERGY
700 5TH AVENUE
SAN RAFAEL, CA 94901



KEY NOTES	ALLOWANCES
<p>1 DEMO IN FLOOR THROUGHOUT AND REEF FOR NEW.</p> <p>2 NOT USED.</p> <p>3 DEMO IN CEILING AND LIGHTING.</p> <p>4 MATERIAL IN CEILING & LIGHTING THROUGHOUT DEMO.</p> <p>5 CEILING GRID, PENDANT LIGHTS, AND SECOND FLOOR CLING WHEN ACCORDING TO THE DEMO. DEMO IN CEILING & LIGHTING ON DEMO.</p> <p>6 FLOOR, CEILING, WALL, AND PART ENTIRE BLUE.</p> <p>7 FLOOR, CEILING, WALL, AND PART ENTIRE BLUE.</p> <p>8 FLOOR, CEILING, WALL, AND PART ENTIRE BLUE.</p> <p>9 FLOOR, CEILING, WALL, AND PART ENTIRE BLUE.</p> <p>10 FLOOR, CEILING, WALL, AND PART ENTIRE BLUE.</p> <p>11 FLOOR, CEILING, WALL, AND PART ENTIRE BLUE.</p> <p>12 FLOOR, CEILING, WALL, AND PART ENTIRE BLUE.</p> <p>13 FLOOR, CEILING, WALL, AND PART ENTIRE BLUE.</p> <p>14 FLOOR, CEILING, WALL, AND PART ENTIRE BLUE.</p> <p>15 FLOOR, CEILING, WALL, AND PART ENTIRE BLUE.</p> <p>16 FLOOR, CEILING, WALL, AND PART ENTIRE BLUE.</p> <p>17 FLOOR, CEILING, WALL, AND PART ENTIRE BLUE.</p> <p>18 FLOOR, CEILING, WALL, AND PART ENTIRE BLUE.</p> <p>19 FLOOR, CEILING, WALL, AND PART ENTIRE BLUE.</p> <p>20 FLOOR, CEILING, WALL, AND PART ENTIRE BLUE.</p> <p>21 FLOOR, CEILING, WALL, AND PART ENTIRE BLUE.</p> <p>22 FLOOR, CEILING, WALL, AND PART ENTIRE BLUE.</p> <p>23 FLOOR, CEILING, WALL, AND PART ENTIRE 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1 SECOND FLOOR KEY NOTES & LEGENDS

PARTIAL IMAGE OF SHEET: PP1.2



MARIN CLEAN ENERGY
700 5TH AVENUE
SAN RAFAEL, CA 94901

10/1/14
Week 1
301 Middlefield St. Suite 200 San Francisco, CA 94134
Phone: 415.507.7400 Fax: 415.507.4200

TBS

EXHIBIT C

IMPROVEMENT BUDGET

		<u>Lessee's scope</u>	<u>Lessor's scope</u>	
Basic Scope				
06/26/14	Budget Items 1-19 Basic Scope	430,397.00	430,397.00	
08/12/14	Budget Items 1-20 Basic Scope	493,196.00		
Difference between 06/26/14 budget and 08/12/budget		62,799.00		
Alternates				
Aits. from 08/12/14 Budget				
alt. 1	stairway relocate	n/a		
alt. 2	Elev.			
	Elevator		70,000.00	Will be affected by Planning Dept.impositions on Parking. May be limited to recapture of 2 or less stalls.
	Structural @ shaft		75,000.00	
	ADA contingency @ lobbies*	20,000.00 *		
alt. 3	Exterior Improvements			
	Fencing		9,000.00	
	ADA access		13,000.00	
	Deck	4,000.00		Will be affected by Planning Dept.impositions on Parking, appearance, etc. May be limited to recapture of only 2 stalls.
alt. 4	Asphalt/Paving		15,000.00	
alt. 5	Landscape		10,000.00	
alt. 6	All new doors	n/a		
alt. 7	Fire sprinklers		150,000.00	Includes allowance of \$45,000.00 for City Hook up. Allow 12 - 14 weeks
alt. 8	Restroom expansion and upgrades*	53,100.00 *		
alt. 9	Exterior Window upgrade	** n/a		City has not said that this is a title 24 requirement. Budget is \$112,000.00
	Est. Const. Subtotal	139,899.00	772,397.00	
	Est. Total Const.		912,296.00	
Soft Costs				
Allocation of Soft Costs				
	A&E Fees	65,000.00		allowance
	Bldg. Dept	25,000.00		allowance (quoted by the City)
	Planning Dept.	5,000.00		allowance
	Architect's reimbursables	3,000.00		allowance
	Total Soft Costs est. (10.7% of Const. est.)		98,000.00	
	Soft Costs Allocated by scope			
	Tenant basic scope	62,799.00 @10.7	6,719.49	
	Tenant aits.	77,100.00 @10.7	8,249.70	
	Basic Scope	430,397.00 @10.7	10,702.60	35,350.48
	Landlord basic aits.	342,000.00 @10.7		36,594.00
	Est. Total by scope	165,570.19	844,341.48	TOTAL 1,009,911.67

NOTE: BUDGET ESTIMATES:
Any Budget or Budgeting Assistance offered by WK design group for the project, or for a component of the project, is for estimating Rough Order of Magnitude (ROM) only, based on available information and industry standards. Budgets are not a guaranteed maximum, and the final project cost may vary based on a variety of factors. WK design group assumes no liability for any variation in final project cost.

*Up to reference for ADA contingency at lobbies and alt. 8 restroom expansion and upgrades assumes that these are not to exceed amounts.

785

SECOND AMENDMENT TO LEASE

SECOND AMENDMENT TO LEASE ("Second Amendment") dated April____, 2015, between **700 FIFTH AVENUE, LLC**, a California limited liability company ("Lessor"), and **MARIN CLEAN ENERGY**, a not-for-profit governmental agency/joint powers authority (collectively, "Lessee").

Recitals

A. Lessor and Lessee are parties to an AIR Commercial Real Estate Association Standard Industrial/Commercial Single-Tenant Lease dated as of September 8, 2014, as amended by First Amendment thereto dated March 5, 2015 (collectively, the "Lease"). The Lease covers a building and adjoining parking lot located at 700 Fifth Avenue in San Rafael, California (the "Premises"), all as more particularly described in the Lease.

B. The parties now desire to amend the Lease to revise the Commencement Date and Expiration Date of the Original Term as provided in this Second Amendment, and to otherwise amend the Lease as provided below.

NOW THEREFORE, in consideration of the foregoing and the covenants hereinafter set forth, the parties hereby agree as follows:

Agreement

1. Defined Terms. Capitalized terms used herein and not otherwise defined herein shall have, unless the context indicates otherwise, the same meanings as set forth in the Lease.

2. Amendment of Paragraph 1.3 of the Lease. Notwithstanding anything to the contrary in the Lease, the Commencement Date of the Original Term in Paragraph 1.3 of the Lease is hereby amended to read "April 1, 2015" and the Expiration Date in Paragraph 1.3 of the Lease is hereby amended to read "March 31, 2025".

3. Waiver of Claims for Liquidated Damages. Except as reserved in the third sentence of this paragraph, Lessee hereby waives any claims it may have against Lessor for liquidated damages for late delivery of occupancy of the Premises to Lessee under Paragraphs 51(b) and 51(c) of the Lease, provided that all "punch list" work is completed by April 15, 2015. A list of punch list work is attached hereto as Exhibit A. Notwithstanding anything to the contrary in the first sentence of this paragraph, Lessee expressly reserves any claims it may have against Lessor under Paragraph 51(c) of the Lease and Paragraph 9(a) of the Work Letter Agreement attached as Exhibit B to the Lease, to the extent such claims pertain to Lessor's failure to use best commercially reasonable efforts to obtain permits from the State of California to operate the new exterior elevator and/or Lessor's completion of all work

described or referenced in Paragraph 9(a) of the Work Letter within the time period specified in Paragraph 9(a) of the Work Letter.

4. Consent for Lessee to Have Pet Dogs in the Premises. Notwithstanding anything to the contrary in Paragraph 6.1 of the Lease, Lessor hereby consents to the presence of pet dogs in the Premises, with the express understanding that Lessee shall be liable for any damage to the Premises caused by the presence of pet dogs in the Premises.

5. Change of Address for the Premises and Lessee's Address for Notices. Notwithstanding anything to the contrary in the Lease, effective immediately, the address of the Premises in Paragraph 1.2 of the Lease is hereby changed to read: 1125 Tamalpais Avenue, San Rafael, CA 94901, and Lessee's address for notices under the Lease is hereby also changed to read: 1125 Tamalpais Avenue, San Rafael, CA 94901.

6. Counterparts and Facsimile Signatures. This Amendment may be executed in counterparts which when taken together shall constitute one fully executed original. Facsimile and PDF signatures via e-mail on this Amendment shall be treated and have the same effect as original signatures.

7. Ratification. Lessor and Lessee hereby ratify and confirm all of the terms and provisions of the Lease as modified by paragraphs 1 through 6 above.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Second Amendment to AIR Commercial Real Estate Association Standard Industrial/Commercial Single-Tenant Lease-Gross as of the date first above written.

LESSOR:

700 Fifth Avenue, LLC

By: _____
Ted B. Shuel, Manager

LESSEE:

Marin Clean Energy

By: _____
Dawn Weisz, Chief Executive Officer



March 5, 2015

TO: Marin Clean Energy Board
FROM: Jeremy Waen, Senior Regulatory Analyst
RE: Regulatory Update for March 2015

Dear Board Members:

Executive Summary of Regulatory Affairs for April 2015

Below is a summary of the key activities at the California Public Utilities Commission (CPUC) for February 2015 impacting community choice aggregation and MCE.

Matters before the CPUC:

Energy Efficiency and Rolling Portfolios (R.13-11-005)

MCE has been working constructively with the IOUs, RENs, and other stakeholders over the past two years to develop a joint proposal for the next era of energy efficiency programs. The proposal aims to create more certainty in the market, more opportunity for stakeholders to get involved, and more meaningful review of programs by the CPUC. On February 25, the judge in the energy efficiency and rolling portfolios proceeding issued a scoping memo requesting a presentation of the proposal. The proposal was presented to the CPUC during a two-day workshop in March. The Commission expressed great appreciation for the proposal noting it would serve as the scaffolding for program design. CPUC staff will also prepare a whitepaper on the proposal.

PG&E, SCE & SDG&E's Proposals to Build-Out Electric Vehicle (EV) Charging Infrastructure and Charging Stations (R.13-11-007, A.14-04-014, A.14-10-014 & A15-02-009)

On March 2nd filed a Motion for Consolidation across the three IOU EV infrastructure application proposals. MCE cited therein the need to address certain policy matters uniformly across all three IOUs' proposals and the need to streamline the review process so that parties do not have to make the same arguments in triplicate across three separate proceedings. Parties filed responses to MCE's Motion on March 25, many of which were supportive of this request. Also on March 25 MCE staff coordinated a meeting with representatives of 12 different intervening parties to discuss commonalities across parties' concerns and to attempt to build a coalition of parties to support

across parties' concerns and to attempt to build a coalition of parties to support streamlining of the procedural process for reviewing these IOU EV infrastructure applications. MCE is awaiting a response from the Commission on this motion.

Additionally on March 13th MCE filed a formal protest to PG&E's EV infrastructure proposal citing concerns regarding how it could be leveraged in an anti-competitive manner that by (i) excluding EV infrastructure and charging station build-out in communities either currently served by CCAs or considering being served by CCAs, (ii) using the promise of future EV infrastructure and charging station build-out as a deterrent for communities to consider taking CCA service, (iii) prohibiting CCAs from supplying electricity to the charging stations built as a result of PG&E's proposal, and (iv) leveraging EV infrastructure, funded by all ratepayers, to benefit only bundled customers through participation in Demand Response programs and California Independent System Operator markets. MCE also has concerns with PG&E's request to use ratepayer funds to conduct broad EV-related marketing that would certainly bolster PG&E's brand image.

PG&E 2015 Energy Resource Recovery Account (ERRA) – Phase 2 (A.14-05-024)

On March 12 MCE staff presented alongside PG&E's staff at a work convened by the Commission to consider revisions to how customers are assigned vintages under the Power Charge Indifference Adjustment (PCIA). David Rubin, on PG&E's behalf, defended its current methodology that ties customer vintages to service point locations, while Jeremy Waen, on MCE's behalf, highlighted how PG&E's present approach subjects departing load customers to never-ending cost recovery under the PCIA as they move to new addresses and their customer vintages reset. MCE instead advocated for customer vintages to be based on phase-in dates for the launch of CCA service to the specific communities in which the customers live.

On March 6 MCE filed a Motion to Amend the Scope in Phase 2 of the ERRA proceeding so that the matter of whether or not California Alternate Rates for Energy (CARE) -eligible customers should be subjected to stranded cost recovery under the PCIA. Presently PG&E is the only IOU out of the three to recover PCIA from CARE-eligible customers. MCE is awaiting a response from the Commission on this motion.

Successor to Existing Net-Energy Metering (NEM) Tariffs – (R.14-07-002)

On March 16 MCE comments in response to an Administrative Law Judge (ALJ) ruling regarding policy issues associated with development of the NEM successor standard contract or tariff. Specifically MCE provided comments regarding how disadvantaged communities are underserved by the structure of the current NEM tariff, and made suggestions regarding how these communities could be better served by appropriating funds to support development of Community Solar programs within disadvantaged communities.



April 16, 2015

TO: Marin Clean Energy Board
FROM: Shalini Swaroop, Regulatory and Legislative Counsel
RE: MCE Legislative Executive Summary

Dear Board Members:

I. MCE Legislative Priorities

1) SB 350 (de León and Leno) – Implementing the Governor's 50-50-50 Benchmarks

SB 350 Implements the Governor's "50-50-50" benchmarks by raising California's renewable portfolio standard from 33% to 50%, striving for a 50% reduction in petroleum use, and increasing energy efficiency in buildings by 50% by the year 2030.

Renewables Portfolio Standard (RPS):

The 50% renewable energy standard will be implemented by the CA Public Utilities Commission for the private utilities and by the CA Energy Commission for municipal utilities, as per current law. Unlike previous law, there will be no rulemaking at the CPUC to determine how CCAs should comply. Rather, CCAs are mandated to comply and are subject to the same terms and conditions as the IOUs. The CPUC and the CEC are responsible for tracking RECs in the system to ensure no double-counting. And the RPS standard will be modified as follows: 33% in 2020, 40% in 2024, 45% in 2027, and 50% in 2030.

Importantly, the bill as currently written applies the Cost Allocation Mechanism (CAM) to net capacity costs of renewable resources. This would result in higher fees for CCA customers for redundant procurement mechanisms administered by IOUs.

Vehicles:

The 50% reduction in petroleum use also will be implemented using existing laws and financial resources. Under current law, the state air board must reduce pollution in order to achieve state and federal ambient air standards. Current law (Health and

Safety Code Section 42013) requires the board to adopt standards for vehicles and fuels to achieve clean air.

MCE is currently taking an active role in electric vehicle proceedings at the California Public Utilities Commission.

Energy Efficiency (EE):

Finally, the 50% increase in energy efficiency in buildings will be done through the use of existing energy efficiency retrofit funding and regulatory tools already available to state energy agencies under existing law. The measure mandates on or before January 1, 2017 (and every three years thereafter), the CPUC shall update the EE program to double the deficiency of buildings. This implicates a three year cycle within the rolling portfolio proceeding currently underway at the CPUC (R.13-11-005).

MCE is engaging on this bill to ensure protection of CCA ratepayers and to ensure fair treatment of CCAs in the adjustment to RPS and EE standards. MCE is also engaging to ensure CCAs have access to energy efficiency funding.

2) AB 1330 (Bloom) – Setting Energy Efficiency Resource Standards

AB 1330 sets EE goals for investor-owned utilities (IOUs) and municipal utilities. The bill sets EE goals of 1.5% of total system consumption by 2020 and at least 2% by 2025. The bill also sets demand response goals for the three IOUs at 7% by 2020 and 10% by 2025. Gas savings targets are set at .75% by 2020 and at least 1% by 2025. At least 25% of these energy savings are to come from disadvantaged communities. An annual energy savings report is also to be filed with the California Energy Commission.

MCE will engage with the author's office in order to increase consideration of CCA EE program administrators.

3) AB 793 (Quirk) – Increasing EE Opportunities for Low-Income Customers

Low-income weatherization programs are already administered by the utilities at the direction of the California Public Utilities Commission. This bill would require these weatherization programs to include home energy management technology.

Allowing the use of home energy management systems for low-income customers would potentially increase the use of energy efficiency measures in low-income housing. Additionally, MCE's proposed low-income EE pilot already proposes to use home energy management systems for this population. Therefore, the legislation is aligned with MCE program design and provides more opportunities to reduce greenhouse gas emissions. MCE will likely support this bill.