



**Marin Clean Energy
Board of Directors Meeting
Thursday, September 4, 2014
7:00 P.M.**

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

Dawn Weisz
Executive Officer

Damon Connolly
Chair
City of San Rafael

Kathrin Sears
Vice Chair
County of Marin

Bob McCaskill
City of Belvedere

Sloan C. Bailey
Town of Corte Madera

Larry Bragman
Town of Fairfax

Kevin Haroff
City of Larkspur

Garry Lion
City of Mill Valley

Denise Athas
City of Novato

Tom Butt
City of Richmond

Carla Small
Town of Ross

Ford Greene
Town of San Anselmo

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

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1. Board Announcements (Discussion)
2. Public Open Time (Discussion)
3. Report from Executive Officer (Discussion)
4. Consent Calendar (Discussion/Action)
 - C.1 7.3.14 Board Minutes
 - C.2 Monthly Budget Report
 - C.3 Monthly Contracts Update
 - C.4 First Addendum to Second Agreement with Braun, Blaising, McLaughlin & Smith PC
5. MCE Audited Financials 2014 & 2013 (Discussion)
6. Land Option and Lease Agreements with Chevron Products Company (Discussion/Action)
7. Power Purchase Agreement with EDP (Discussion/Action)



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8. Lease Agreement for MCE Office Space (Discussion/Action)
9. MCE Sustainable Workforce Policy (Discussion/Action)
10. Amendment 8 to MCE JPA Agreement Adding the County of Napa and City of San Pablo and Updating Voting Shares (Discussion/Action)
11. Request from the City of El Cerrito for Membership Analysis and Consideration as a Member of MCE (Discussion/Action)
12. Communications Update (Discussion)
13. MCE Legislative Policy (Discussion/Action)
14. Regulatory and Legislative Update (Discussion)



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15. Board Member & Staff Matters (Discussion)

16. Adjourn



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MCE and North Bay Pre-Apprenticeship Program Concept

Overview

The Marin County Building and Construction Trades Council (MCBCTC) is launching a multi-trade pre-apprenticeship program that develops the capacity of all trades in the North Bay. It is an on-ramp program designed to get the long-term unemployed, veterans, and underserved populations primed for **careers** in the trades.

Program Partners

The following are potential program partners and a brief description of their roles:

- MCBCTC – Program Manager
- Workforce Investment Board (WIB) – Funding, Outreach
- Marin Clean Energy (MCE) – Funding, Outreach, Job Creation, and Metrics Tracking
- LiUNA Local 261 – Funding and Training
- IBEW 2145 – Funding and Training
- Marin City Community Development Corporation (MCCDC) – Participant Recruitment, Soft Skills Training, and Metrics Tracking
- Canal Alliance (or other Canal based organization) – Participant Recruitment
- TAM Adult School – Venue/Training Space

Pilot Program Description

The Pilot would be designed as follows:

- 6-week program to launch Spring 2015 (1 Saturday or 2 nights a week)
- Class size of 10-15 trainees (primarily from Canal and Marin City communities)
- Guaranteed 6 Apprenticeship spots for program graduates
- Instructor (will be primary expense)

Pilot Program Training Components

The curriculum would follow the lines of the following:

- OSHA – 10 Hour
- CPR and First Aid
- General Trades Requirements
- 2-week Training focused on Energy Efficiency/Renewables (taught by Laborers/IBEW and based on interest participant skillsets)



Federal Housing Finance Agency

Constitution Center
400 7th Street, S.W.
Washington, D.C. 20024
Telephone: (202) 649-3800
Facsimile: (202) 649-1071
www.fhfa.gov

August 20, 2014

Orry P. Korb
County Counsel
Office of County Counsel for County of Santa Clara
70 West Hedding Street,
East Wing, 9th Floor
San Jose, CA 95110-1770

RE: PACE Lending

Dear Mr. Korb:

The Federal Housing Finance Agency has been advised that a number of communities in California, including yours, recently announced plans to move forward with programs to approve Property Assessed Clean Energy (PACE) loans with a first lien on residential properties. Consequently, I am writing to remind you that Fannie Mae and Freddie Mac do not purchase mortgages for either home sales or re-financings that are encumbered with first lien PACE (or similar program) loans. This policy has been in place since 2010 and was reaffirmed by FHFA in 2014. The Federal Home Loan Banks, which also are regulated by FHFA, have been directed to protect their interests in the collateral they accept for advances, which could become subject to PACE encumbrances.

FHFA urges your community to inform potential borrowers of the policies of Fannie Mae and Freddie Mac and to provide them the web addresses that homeowners can utilize to determine whether their loan is currently held or guaranteed by one of the Enterprises. These websites are <https://knowyouroptions.com/loanlookup> for Fannie Mae and for Freddie Mac <https://ww3.freddiemac.com/loanlookup/?intcmp=LLT-HPstep1>.

Thank you for your attention in this matter. If you have any questions, you may contact me directly at 202 649 3050.

With all best wishes, I am

Sincerely,

Alfred M. Pollard
General Counsel

**MARIN CLEAN ENERGY
BOARD MEETING
THURSDAY, July 3, 2014
7:00 P.M.
SAN RAFAEL CORPORATE CENTER, TAMALPAIS ROOM
750 LINDARO STREET, SAN RAFAEL, CA 94901**

Roll Call

Present: Damon Connolly, City of San Rafael, Chair
Kate Sears, County of Marin
Bob McCaskill, City of Belvedere
Sloan Bailey, Town of Corte Madera
Larry Bragman, Town of Fairfax
Kevin Haroff, City of Larkspur
Garry Lion, City of Mill Valley
Denise Athas, City of Novato
Carla Small, Town of Ross
Ford Greene, Town of San Anselmo
Ray Withy, City of Sausalito
Emmett O'Donnell, Town of Tiburon

Absent: Tom Butt, City of Richmond

Staff: Dawn Weisz, Executive Officer
Jeremy Waen, Regulatory Analyst
Jamie Tuckey, Communications Director
Greg Brehm, Director of Power Resources
Greg Morse, Business Analyst
Meaghan Doran, Energy Efficiency Program Specialist
John Dalessi, Technical Consultant
Greg Stepanicich, General Counsel
Emily Goodwin, Director of Internal Operations
Darlene Jackson, Clerk

Public Session: 7:04 PM

Agenda Item #1- Board Announcements (Discussion)

None

Agenda Item #2 – Public Open Time (Discussion)

None

Agenda Item #3 – Report from Executive Officer (Discussion)

Executive Officer Dawn Weisz first thanked everyone for attending tonight's meeting in light of the long weekend ahead. She reiterated there would be no August Board meeting but we would be back to a full schedule in September which includes a full day with MCE at the Board retreat.

Ms. Weisz announced that she wanted to highlight three exciting things related to MCE's primary goals: 1) MCE has had 5 Feed-in-Tariff ("FIT") applications come in within the last two weeks and there has been significant momentum on the FIT front. More information will be shared about the applications as they work their way through the application review process; 2) the Novato Cooley Quarry project was approved by the San Rafael Planning Commission last week. This project will likely be filling the needs of MCE's SolShares project to provide MCE customers with a third energy product option. The SolShares product offering has seen over 30 customers sign up so far, it caps out at 200 so, MCE is well on its way to getting that subscribed.

She announced that Emily Goodwin had some Board-related events to announce.

Ms. Goodwin announced 1) in August MCE will be hosting the California Energy Choice Workshop which is a "nuts and bolts" kind of how to start and operate a CCA. We are looking to invite folks state-wide and are looking for several guest speakers to facilitate the workshop. Some of the persons who have volunteered are John Dalessi, Sonoma Clean Power, LEAN President, Shawn Marshall, the Sierra Club, and the CPUC. Additional information on this event will follow via email but she wanted to provide a heads up of what to expect at the workshop and, 2) on October 23, 2014 and even more exciting event will take place, MCE will host a field trip to CalPine which will likely be a day-long trip. MCE will rent a bus and lunch will be provided. More details are to come and she is hopeful that the Board can carve out some time to join us on this exciting field trip. It is an excellent way to see one of MCE's local resources.

Director Athas wanted to confirm that Ms. Weisz would be presenting to the League of California Cities. Ms. Weisz confirmed that she would in fact be presenting to the League on July 24th, invited all to attend and indicated she would electronically forward additional information to the Board. Ms. Weisz indicated the topic would surround CCAs in general and it would be nice to have a few Board members there to speak about their experience with the CCA community. Chair Connolly indicated he would be present at the event.

There were no questions from the Board or the public.

Agenda Item #4 – Consent Calendar (Discussion/Action)

- C.1 6.5.14 Board Minutes
- C.2 Monthly Budget Report
- C.3 Second Addendum to Second Agreement with Tosdal Law Firm

Director Greene expressed his appreciation for the detailed minutes and indicated the transparency provided is welcomed.

M/s Greene /O'Donnell (passed 12-0-0) approved all items on the consent calendar. Director Butt was absent.

Agenda Item #5 Resolution No. 2014-04 Approving the City of San Pablo as a Member of MCE and Authorization of Implementation Plan Changes (Discussion/Action)

Dawn Weisz, Executive Officer presented this item.

Ms. Weisz provided background on the City of San Pablo. Back in March 2014, staff received a letter from the City of San Pablo expressing interest in MCE membership. She reminded the Board that San Pablo is bordered on four sides by the City of Richmond and seems to be a good fit for a new member community within MCE. She shared that MCE undertook a membership analysis which has been completed; the overall positive results have been presented to MCE's Executive Committee.

Technical Consultant John Dalessi explained the New Membership policy established by the Board requires a quantitative study of any new application for MCE membership which is a core part of the evaluative process. He shared the primary focus of the quantitative study is looking at the expected net impacts to existing MCE customers, whether the additional load would be likely to allow for an overall reduction in MCE's rates and the environmental impacts in terms of reducing or accelerating Green House Gas ("GHG") emissions. He reminded the Board of the recent briefing on the same issues presented for the County of Napa.

Mr. Dalessi provided geographic data for the City of San Pablo and talked about MCE's customer base. He shared the projected 2014 key statistics for MCE's current customer base:

- Currently serves approximately 125,000 customers
- Sells about 1.3 million MWh of energy on an annual basis
- Peak demand approximately 250 MW
- RPS eligible procurement: 27% +
- Total renewable procurement: 50% +
- Carbon-free procurement: 60% +
- Portfolio emission rate: 370 lbs CO₂e/MWh (one of the lowest in the industry)

Mr. Dalessi reiterated the chronology of events from March 2014 – June 2014 and indicated the analytical findings as being favorable. The City of San Pablo is a relatively small city but he anticipates about a 1% rate reduction for all existing and prospective MCE customers if the City of San Pablo was to the MCE service territory. He also shared the prospective addition of San Pablo would result in an increase in use of renewable energy and a reduction in GHG emissions.

In relation to the City of San Pablo customer base, Mr. Dalessi shared 1) there are potentially 10,000 new customers which all are current PG&E bundled customers, 2) there have been no adjustment to these figures for anticipated participation or potential opt outs of the program, 3) the potential sales would be about 90,000 MWh/year, 4) the aggregate peak demand increase would be 15 MW, 5) there would be a higher proportion of residential accounts relative to MCE; a lower proportion of small commercial accounts in San Pablo, 6) San Pablo residential customer use approximately 28% less energy per account than MCE's current residential customer base and, 7) the average monthly usage across all accounts is 18% lower than MCE's current customer base.

Mr. Dalessi explained in comparing MCE's Hourly Load Profile with the City of San Pablo's, there is no significant difference. There would be some diversity of benefits but not as pronounced as Napa.

He also explained that the terms have included a few key assumptions used in the study for purposes of simplicity; it is assumed that the customer enrollments would occur at the start of the next fiscal year April 15, where the

actual enrollment date might be advanced or delayed a couple of months. For the purpose of the analysis, it is started at the beginning of the 2015 fiscal year with the assumption being:

- 85% participation rate
- Participatory rate translates to a retail sales increase of 76,000 MWh, or approximately 6%
- Small projected revenue surplus
- Revenue surplus was assumed to offset a share of MCE's fixed costs which would marginally reduce MCE's overall rates
- Incremental cost analysis accounts for: additional power supply, customer billing, call center support, PG&E service fees
- Overall rate reduction approximating 1% - there is a relatively small surplus due to fixed cost of the agency which translates into potential rate reduction

The incremental revenue from customers in San Pablo is estimated to be around \$6M in the next fiscal year.

Director O'Donnell asked as MCE grows will it be able to maintain a percentage of renewable content up at the 50% level or will it naturally slide down with growth? Mr. Dalessi said he does not see any problem keeping the renewal content up at that level, as we have plenty of renewal opportunities to choose from.

Director Lion asked if there is a higher percent of renters how do we expect that to affect the opt-out rate and are the tenants more likely to opt out than homeowners? Mr. Dalessi responded that as far as he knows, we do not compile any data at that level of opt out rates from various categories or sub-categories of the residential sector. He doesn't know why it would be different but what he has seen is a pretty consistent opt-out rate even across different types of customers.

Director Bragman asked if there were any costs that would be incurred due to expansion, 1) will MCE incur any staff cost increase and, 2) we're required to have power reserve to serve the load so as the load expands do we have to purchase additional reserves and what are the costs associated with that purchase? Mr. Dalessi responded to the questions in reverse order.

In terms of the reserves, we have capacity reserves which is the initial cost factored into our supply cost line item. We also have financial reserves that we target in our rate structure at about a 3% annual contribution to reserves so that is factored in as well to the 1% increase. We've assumed that these customers also have to support that 3% reserve level and the additional reserve beyond that would go toward rate reductions.

Mr. Dalessi responded to question #1 by sharing there will be costs associated with the implementation, power procurement, communicating to customers and marketing. There was an analysis of what was spent for Richmond and it was quantified at about \$450,000 for those types of costs. He expects that it will not exceed that amount because this is a significantly smaller community. Some of those costs are staff that are now onboard and, to some extent, could be repurposed. He indicated if this expansion could be completed at the same time as the County of Napa, some activities and costs surrounding expansion could be shared.

Director O'Donnell asked about the portion of Mr. Dalessi's presentation where there seems to be a couple of large commercial customers who use a lot of power. Does the agency believe they will be able to capture those customers? Mr. Dalessi's response was MCE historically has had success with large commercial customers. The rates MCE offers to those customers is competitive and actually will result in lower costs to those customers at this time. Frequently, those customers are the most price sensitive and go straight to the bottom-line of their business expense. He believes the rate competitiveness will help in attracting and retaining those customers. It's not that

we really need those customers for the expansion to be beneficial, because the fact is even though they are large users and great customers to have, the rate is also relatively low for those types of customers per kW basis.

Mr. Dalessi and Ms. Weisz responded to questions from the Board.

M/s Lions/Sears (12-0-0 passed) approved Resolution 2014-04 Approving the City of San Pablo as a Member of MCE and Authorization of Implementation Plan Changes. Director Butt was absent.

Chair Connolly asked about next steps and Ms. Weisz provided that information as being 1) to revise Implementation Plan to include the City of San Pablo along with the County of Napa before submitting to CPUC for approval, and 2) a final action that needs to be taken by the City of San Pablo to approve the Ordinance authorizing a CCA in their community and that reading is scheduled for the 22nd of July. Ms. Weisz will make sure the Board receives a clean, final version of the Implementation Plan.

Agenda Item #6 – Request for MCE Membership from City of Benicia (Discussion/Action)

Executive Officer Dawn Weisz presented this item.

Ms. Weisz shared the City of Benicia has been interested in the possibility of exploring a relationship with MCE for some of the reasons we saw in San Pablo of interest among their community members having a choice in their energy supply. Solano County is sandwiched between Napa County and Contra Costa County where Richmond and San Pablo are located. They've heard a lot about the program and are interested in the possibility of having a choice for their customers.

They also are very aligned as far as environmental objectives and interested in ways to reduce GHG emissions. They do have a large refinery in their community, Valero. We've seen similar sentiments in the community around clean energy solutions and creating a real awareness of energy generation within the community, as we did with Richmond. They are a small enough community that their size doesn't lend itself to creation of their own CCA program.

The City of Benicia's population of 27,000, representing approximately 10,700 households, is a bit smaller than Napa. It is also worth noting that in 2007 Benicia joined ICLEI-Local Governments for Sustainability's Cities for Climate Protection Campaign with a goal to reduce GHG emissions to 2005 levels by 2010 and reduce GHG emissions to 10% below 2000 levels by 2020. They recently adopted a GHG Inventory Update Report that outlined strategies to meet their 2020 reduction targets. This project is a top priority in a range of projects which the City of Benicia is looking to implement in the next few months regarding GHG reduction. In their meeting last month where Ms. Weisz was a participant, she noted they've done a comprehensive evaluation of about 30 different programs in the community that would help them to enable GHG reductions. They placed MCE at the top of the list with strong recommendations to their City Council about participation in MCE's program. The City Council subsequently voted to fund the membership study.

Ms. Weisz noted there is a very strong interest from the City of Benicia. Also Greg Brehm, Director of Resource Power has pointed out that Benicia is a great place for renewable resources and believes it is a good fit for MCE.

Ms. Weisz shared that several East Bay communities who have expressed interest in joining MCE but have put their efforts on hold watching to see what happens with Alameda County CCA effort. Last month the Alameda County Board voted unanimously to allocate \$1.3M towards a CCA study. It is very exciting that Alameda County has taken

that type leadership role in moving forward with a CCA. It creates an opportunity for some of the East Bay communities who are not close to MCE existing territory to join a CCA program. .

Chair Connolly asked if there was anything else on the horizon other than the City of Benicia and the City of San Pablo; Ms. Weisz confirmed there is nothing currently pending beyond those two requests.

Director Bailey asked since this would be a fourth county is approval of the City of Benicia necessary before January 1st or would the “grandfathering” language of AB 2145 apply? Ms. Weisz responded, yes, it would be necessary for the approval of the enabling ordinance to take place before January 1, 2015. Director Bailey asked if that would then open up any municipality within the Solano County to be considered for membership. Ms. Weisz responded yes, that is correct based on the current AB 2145 language.

Director Haroff asked about the communities who have placed their CCA interests on hold because of what Alameda County is doing and wondered if there any implications for MCE pursuing some East Bay opportunities as a result of the legislation that is now getting keyed up if Alameda County doesn’t move forward with CCA plans? Ms. Weisz responded that if the legislation of AB 2145 goes forward in its current form and if it is ultimately approved by the Governor, we would be limited to only providing service in the counties who have passed an ordinance to join MCE by the end of the calendar year.

Director Haroff asked for confirmation: Unless the ordinance is passed somewhere in Alameda County and all those other communities come into play, then that puts a cap on our ability to serve the entire county. Ms. Weisz confirmed that as being correct.

Director Lion asked if MCE is restricted to three contiguous counties is Contra Costa contiguous? Ms. Weisz responded that there is grandfathering language in the bill as it currently exists and that would apply to MCE. The trigger is if an ordinance has been passed in a community of any county by the end of the calendar year then MCE would have the ability to serve the customers within those counties anytime in the future. The current language in the bill states that such would be allowed but if we received a request from a new county after January 1, 2015, we would not be able to serve that county.

Chair Connolly asked, as always, even moving forward with this approval step, Benicia’s request for membership is contingent upon a positive membership study. Ms. Weisz responded that that is an important clarification to make. The action tonight would be to approve membership subject to the positive outcome of the membership study. If we were to complete the membership study and determine there would be a negative impact on our budget or on our rates we would not be able to move forward.

Ms. Weisz responded to questions from the Board.

M/s Sears/Bragman (12-0-0 passed) approved Request for MCE Membership from City of Benicia. Director Butt was absent.

Agenda Item #7 - Land Option and Lease Agreements with Chevron Products Company (Discussion/Action)

Greg Brehm presented this item.

As a result of MCE’s ongoing search for new places to build solar facilities in our jurisdiction, Chevron offered us approximately 60 acres of land on their Richmond Refinery site, adjacent to Richmond Parkway and West Hensley Drive which is very visible and public site. There will be an opportunity to host a kiosk for public

engagement/museum/ technology demonstration facility with public access to obtain current information on programs and activities. The lease will be basically no cost, a \$1 per year lease and there would be a \$100,000.00 security deposit required per the contract. The site would be very easy to permit because it is in an M3 zoning which allows for major utility usage by right. With the help of Director Butt and the Richmond City Council passed a Resolution that permits any solar facility in any zoning district Subject only to a ministerial approval and no CEQA review.

MCE staff is talking to some folks about a “Utility Prepay Financing Package” which should get the rates down very competitive to current market prices. It is a very positive site with high visibility and he has received great feedback from folks at the City of Richmond.

Mr. Brehm shared the site does have some environmental concerns as there is a brownfield site landfill site and will require structures mounted on top of the ground so there won't be any disturbance of landfill contents or penetration of the landfill cap. Approximately 20 acres of the site is leveled filled fertilizer ponds that we can penetrate so it will allow ground penetration. Overall it is a very good site with few issues.

It will sponsor a minimum of 2MW and a maximum of 12 MW. We would probably develop in multiple phases over a 5-year period. He is certain the permitting and development will be done fairly easily.

Director Greene asked Mr. Brehm to talk about the actual plan for construction, who will do it and how it will be paid for. Mr. Brehm responded by saying we would basically do the design work for the facility itself and have an RFP for the construction labor and possibly financing. The agreement includes language supporting the appropriate City of Richmond's local hire policy. Part of the lease agreement states MCE is required to own the facility as soon as possible after tax equity investor has captured all available tax benefits.

Director Sears asked Mr. Brehm to talk about the bond financing that would be required for this. Mr. Brehm said it could be bond financing or it could be a loan. The decision has not been made as to which option is best. Roughly, we would have to prepay approximately 40-50% of the costs up front with the balance to be paid over the term of the contract.

Director Haroff asked what the benefits would be to Chevron. Mr. Brehm responded the benefits would be public relations for the most part but they are required under their Modernization Project's environmental impact report to host at least a 2MW solar project. Our Agreement is not contingent on the environmental impact report but we cannot exercise the option until after their EIR is approved under conditions acceptable to Chevron.

Mr. Dalessi shared it is important to note this is step one of many and approving this option is not saying that MCE is obligated to build or finance the project, project it merely gives MCE the right to perform due diligence. The Lease will not be exercised until MCE is satisfied that project is feasible.

Ms. Weisz shared that the option also gives us the ability to apply for interconnection with PG&E which could take approximately six months so this step allows us to get the process started.

Director Lion – It was mentioned this site once was a waste management landfill so by owning it, are there any risks involved to us if later it turns out there is toxicity associated with it? Mr. Brehm responded there is certain mutual hold harmless and indemnification language approved by external counsel. Ms. Weisz reminded the Board that we are not looking to own the land but lease it. We will own the solar equipment but the land remains Chevron's.

Director Bailey offered a word of caution and he is hopeful that MCE does a thorough study to determine what risks MCE may be subject to because of the site's preexisting contamination so that we don't assume any responsibility. In reviewing the contract language negotiating who's responsible for the contamination. The reciprocal indemnity might be an after the fact recovery but does not stop us from being the first stop in the event they later say pollution was released on the land. It means that we may have some recovery but initially we would be obliged to clean up costs.

General Counsel Greg Stepanicich shared that SHUTE, MIHALY & WEINBERGER LLP was the firm that reviewed the lease option and lease. Director Bailey's questions are valid and need to be looked at carefully before any decisions are made in exercising the option.

Director Bailey clarified that he was not expressing any disagreement with the content of the contract but based on his experience with these type situations he wanted to ensure potential liability surrounding contamination issues are covered.

Director Connolly asked for clarification. Director Bailey shared his interpretation is if you control and/or own the site and pollution is discovered on it, then under most State and Federal regulations, you can immediately be held responsible for the cleanup. You might subsequently have some right to pass off some contribution or allocation as to who is the true wrongdoer but in the first instance, if you're on it, you're responsible.

Director Sears indicated perhaps SHUTE, MIHALY could provide input as to the meaning of control in this matter.

Mr. Stepanicich shared if we would become owner of the land we could be held responsible but not as lessee.

Director O'Donnell shared he thinks using brownfield property for solar projects is a brilliant idea. It is a great policy for California and the Bay Area who have industrial sites that are ideal for this type application as long as all liability issues are closely looked at. He also said another reason to take a further look at the contract is if you move forward to develop the site and you bond the plans required by the lender to phase 1, phase 2, environmental studies will be part of your financing package.

Greg Brehm stated the because the site was a properly closed landfill with an existing maintenance plan, all existing condition on the site have been documented

Director Bragman commented the lease has language indemnifying Chevron but he did not see cross-indemnification. The Memorandum of Understanding talks about prior and subsequent acts and he believes the lease should call for that cross-indemnification distinction. He would like to discuss the project labor agreement mentioned to include some sort of prevailing wage condition. Is that one of the conditions we are imposing on subcontractors or our contractors? Ms. Weisz responded yes, it is to comply with the requirements of the City of Richmond. They have some very clear parameters that any developer needs to comply with when working in the City. We will be incorporating those provisions and City requirements. Per Mr. Brehm we are not subject to any existing Chevron labor agreements.

Chair Connolly asked timing wise, are we looking to get the analysis before taking next step of approving the option? The Board was in agreement that would be the best move. Chair Connolly directed Ms. Weisz to bring a legal analysis from SHUTE, MIHALY that is specific to MCE's potential liability and how to minimize any liability back to the full Board.

Director Greene suggested when the analysis is complete, have someone from SHUTE, MIHALY come in and answer any questions the Board might have concerning the analysis.

Ms. Weisz responded to questions from the Board.

This Item did not pass but the Executive Officer was instructed to bring analysis back to full Board for discussion with environmental attorneys available to answer questions.

Agenda Item #8 – MCE Prevailing Wage Policies (Discussion)

Dawn Weisz presented this item. She indicated that the discussion surrounding this item originated with Director Bragman who thought it would be helpful for us to start talking about the prevailing wage and labor practices that we have in house and essentially developing a policy. This is a discussion item to garner input and then bring it back to our Executive Committee to discuss in more depth.

Director Bragman had a conversation with the North Bay Labor Council around the time AB 2145 was heating up because it seemed like the impetus for legislation was obviously coming from I.B.E.W. so he figured he would get ahold of a friendly labor representative with whom he has had a relationship with for a number of years. He thought it would be a pretty decent sell and, not so. He got Jack Buckhorn who was immediately put in the conversation who Director Bragman found out was an I.B.E.W. officer. Mr. Buckhorn was very hostile to CCAs in general and repeated misinformation about CCAs not providing clean energy and the false story PG&E and other IOUs were putting out about MCE. They got into a fairly long email correspondence and Director Bragman kept reassuring Mr. Buckhorn that he (Bragman) would continue advocating for this because MCE is a public agency and should be held to the same standards as any other public agency and, to avoid the appearance that we are in some sense outsourcing union labor and green washing ourselves.

Director Bragman continued by saying if MCE has a policy and it is practical, we need to adopt it because we could eliminate that hostility from organized labor to CCAs. He thinks ultimately we need that kind of fusion of interests to make this organization grow, to nurture other municipalities to consider CCA's and provide living wages for the community.

He believes all MCE jurisdictions have prevailing wage policies, we're all obligated to follow prevailing wage policies and, it sounds like we're trying to promote prevailing wage policies with the new projects. At the end of the day if we move in that direction we may bring in more support from other unions and not face the kind of legislative tangles that we are now. That was the reason he requested this item be placed on the agenda.

Whatever policy that is developed needs to be studied it to ensure that it is practical but in the long run for our political wellbeing and realistically lasting in terms of benefits for the community; it is something we should be formalizing and adopting sooner rather than later.

Director Sears believes in this context that even the statement made by Director Bragman that "the appearance that we are outsourcing" to non-union workers is objectionable. She thinks it is important to this conversation to have a discussion so that everyone is informed that the union jobs are being created through everything we are doing so it is absolutely clear that we are not doing that. In fact there is a lot of misinformation floating around that does not change the reality that MCE is an existing operation. She wants to be clear while having this conversation she does not have a problem with prevailing wage. They have a living wage ordinance at the County

of Marin so that is not the issue, but this is not being driven by some sense that we are currently doing something that is at all inappropriate or has a negative impact on the union work force. If people need more information on this topic this would be the time to say so.

Ms. Weisz reminded the Board that what is in the staff report is nothing new that is being proposed but what is already in place. MCE's approach to union and organized labor has been supportive and she believes MCE has gone out of its way to ensure that we are utilizing local businesses, and local job training programs for energy efficiency and local solar projects. We also create a lot of jobs through our purchases through the market in the generation realm. Of all the false claims against MCE and its impact on union jobs, we have not caused diminishing of any union jobs. No one has been able to point to a single union job that has been lost because of MCE.

In addition to the confusion and misinformation there is a real misunderstanding of how CCAs operate even within the I.B.E.W., for example, 90% of their members are linemen that work on the Transmission and Distribution infrastructure which doesn't change in any way when CCAs begin service. I.B.E.W. members aren't being told this, they are being told to be afraid of CCAs and CCAs will jeopardize union jobs. It's a very basic level of information that is not true.

Ms. Weisz shared that she, at one time, was a labor organizer in Los Angeles before moving to Northern California and from a pretty deep level, understands and supports the importance of collective bargaining and fair compensation and all the things unions should stand for. She believes that MCE should and does stand for those things as well but what had been disheartening to see were the types of tactics that are being used in this campaign against MCE which are nothing less than extortion and based on nothing less than misinformation. They do not reflect the values of the original folks working in the labor movement and it almost makes a mockery of that movement.

Director Bragman shared he does not know what will happen with AB 2145 and he doesn't know what it will end up looking like by the time it reaches the Governor's desk but, if it gets there, he believes it will give the governor more pause if MCE has prevailing wage policy in place. He believes it inoculates MCE from an attack, false as it may be.

Director Bragman also shared another strand of the conversation between him and Jack Buckhorn was he (Director Bragman) told Mr. Buckhorn that the development of CCAs will increase linesman work because of the interconnection work that is going to be needed to be done in order to facilitate distributed power and the whole improvement of the infrastructure required to do that. MCE could actually be creating new prevailing wage jobs. We did pretty well in the senate with AB 2145 with what this bill will look like but it is difficult to predict what happens in Sacramento in terms of legislation. He believes this is a good way to protect our agency from that kind of attack as we go forward. If MCE can adopt a policy to do that, he strongly urges us to do that.

Director Small shared she knows this has been extremely stressful on the MCE staff and a tremendous amount of work but the good and the bad is because MCE has been so successful she believes that is what's brought this attack about. If MCE were not as successful, we wouldn't be experiencing this. For a lot of reasons they've chosen these types of PR tactics to come after this group and they are trying to limit what we can do in the future. She thinks whether it is more completeness or adopting something in a more formal way that we already do, anything we can do to help diminish the tactics they are going to continue to use, is beneficial and can only improve our situation.

Director Lion asked where the actual proposed policy verbiage came from. Ms. Weisz responded that it is a compilation of language that MCE staff had drafted last fall when we were working on what we wanted to have for our open season documents that went out in February 2014. This language is what was included in the open season distribution documents. Some of it was taken from what other utilities in the State use. We also looked at local hiring policies from the City of Richmond and pulled some language there as well as surveying various sectors and looking at best practices.

Director Lion asked if this has any legal requirements associated with it consistent with labor/employment laws. Ms. Weisz responded yes, it has gone through internal legal review but not in great depth. The plan is to do more of that as we get more input from the Board.

Chair Connolly wanted to clarify, that our current practice that is reflected in the discussion document is to ask for information from potential contractors about their labor practices and he thinks what is being proposed here is a little bit more than what the CPUC requires. He wondered if we should require prevailing wages, which would make the policy it slightly different. Ms. Weisz agreed that this is language that is rather open-ended and could be more prescriptive.

Chair Connolly shared that he agrees with Ms. Weisz about the misinformation that is being perpetrated against MCE and from a political standpoint we have to take a stand. As a matter of policy, there are some important issues as we develop policy to pay prevailing wage, notwithstanding the politics of it. It is important for the Board to know that we would be leaning in a different direction by requiring that rather than just asking for current information about it from prospective developers

Director McCaskill asked for clarity on one point. He believes it would be most beneficial if we had something formally in place before the Governor is asked to sign AB 2145. But he noted that it may not be practical to expect the policy to be signed by that time since we do not have an August Board meeting.

Greg Stepanicich explained that the bill would likely go to the Governor towards the end of September for signing.

Director Greene asked what would be the downside if the policy was adopted tonight. Greg Stepanicich explained that because this is a discussion only agenda item we are unable to take action. He also noted that, when things are constructed State law requires us to evaluate our own construction project. He cautioned us to make sure the prevailing wage language is right before adopting as the State will conduct a thorough legal review.

Chair Connolly directed MCE to work on the wording and bring the proposed document back to the Executive Committee in August.

Ms. Weisz shared that MCE does have a multiple examples of PLAs that are in place for development projects MCE has contracted for. The EDF solar facility project in Kings County will employ union locals that signed that PLA, and who initially wrote a letter of opposition to the bill. There were also a few other labor organizations that came in at the very end just before the Energy Committee Hearing in the Senate with letters of opposition to the bill that were not in the I.B.E.W. or energy sector. SEIU with 52,000 members in their local, the California Nurses Association with a letter of opposition, the International Longshoremen and a couple others were represented. We saw when we were able to have dialogue with organizations that weren't already being told to take a certain position, there was a lot of understanding of the issue and a strong interest in opposition; that is another interesting chain of events that will be important for the Governor to know.

Chair Connolly indicated putting that aside, as a policy matter the Board should decide whether it makes sense to have a prevailing wage aspect.

Director Sears indicated she does not have a problem with that but she does think we need more legal analysis and we want to think about project labor agreement piece of it. There may be projects in which a project labor agreement is not necessarily a benefit; encouraging project labor agreements but perhaps not requiring them allows more flexibility on each independent projects and relevant economics. It would be helpful for a little more thought and analysis to be put into 1) where it would be helpful for all parties to have a little flexibility and, 2) where is it necessary to absolutely have a requirement.

Ms. Weisz indicated it is worth noting that the IOUs do not have any union labor provisions in the PPAs with their vendors and developers. They do have prevailing wage and “best efforts” language. We will certainly look at prevailing wage provision language but what we’ve found is that it is not an industry practice to require prevailing wage of developers.

Director Bragman indicated a lot of sellers are not captive but we are the principal investor in a lot of these projects so it is not quite as small of an impact as it appears. He believes it goes along with the maturity of the agency; we’re getting a little bigger, more revenue is coming in, our territory is expanding and he believes along with that comes a responsibility to step up and build in a little flexibility.

Chair Connolly indicated there is an interest in going forward with the prevailing wage policy. He directed Ms. Weisz to put together an analysis to present to Executive Committee. He said there are some ancillary benefits to getting something together quickly.

NOTE: DIRECTOR BAILEY LEFT MEETING AT THE END OF THIS DISCUSSION.

Agenda Item #9 – MCE Office Space Proposal (Discussion/Action)

Emily Goodwin, Director of Internal Operations presented this item.

Ms. Goodwin acknowledged and thanked Directors Sears, Connolly and Athas for assisting with this project by viewing sites and offering input and feedback. Ms. Goodwin provided brief history as to why MCE is looking to relocate. She informed the Board that Biomarin has purchased the San Rafael Corporate Center and is in the process of taking over the entire campus. The initial phase of construction has begun and they are looking vacate the 781 Lincoln Avenue building of all tenants as soon as possible. MCE has a lease that is in place until 2019 which includes a relocation clause within that lease. MCE has been working with the lead contact at Biomarin who plans to exercise the relocation clause unless MCE determines it is better for us to move out.

With the considerations made that this is happening fairly quickly and started in February, staff has spent the last couple of months looking at comparable commercial office space primarily in central San Rafael being the best fit. Criteria which makes this location a good fit include that we are close to public transportation, there is ease for the public to attend meetings, it is convenient for staff to commute to work, from a variety of communities in and near our service territory, and several other reasons. We have refined our search to two potential locations, 1) to relocate in the 750 Lindero building on the 3rd floor and gain a bit more square footage or, 2) relocate to 700 5th Avenue.

MCE does not at this time have a finalized lease for the Board to review and adopt. However, we believe that, after looking at the spreadsheet and other material provided, the Board could get a sense of the progress on this

project and what our best options are. We also ask that the Board consider delegating authority to sign the finalized lease to the July Executive Committee. That would allow additional time to fine tune the remaining details still outstanding.

Ms. Weisz shared that at this time because we have two options on the table we are looking for the counterparties on both sides to provide us with a compelling lease agreement. We do not yet have anything that is close enough to present to the Board tonight. We discussed this at the June Executive Committee meeting, talked about the different options and it was suggested that we might be able to finalize a lease agreement in time for the July Executive Committee meeting. She believes it is fair to say there could be a recommendation to go to either location but the counterparties for the 5th Avenue location have not moved quickly in providing us with the materials needed in order to move forward so because of that, it is looking like relocation to the Lindaro space may be the most logical step. Biomarin asked MCE to make a decision within the next 4-6 weeks.

Chair Connolly asked if it could be a month-to-month lease at Lindaro. Ms. Goodwin said that could potentially be an option whenever we find a location and are ready to leave. She also commented on the fact that this currently is not a renter's market and there are not a lot of lease opportunities out there to fit our needs especially in light of the mass evacuation from this campus. Maybe in a couple of years that might change and the market will flatten enough to provide other opportunities for us to get the deal that we want for the price we want with all the amenities included. So, she is not certain about the month-to-month option but she is sure Biomarin would be happy to see us leave. Cost-wise undertaking another move within a calendar year would not be a good decision and it is unlikely that the market would reflect any significant changes within that time frame.

Ms. Weisz stated that is a reason the 5th Avenue location is of interest to us. Biomarin wants to take over the entire campus and if we get to a place where we could expect to stay indefinitely it would be attractive, but we need it to be the right place.

Director Sears asked for clarification on the spreadsheet which shows 3 options: one states 750 Lindaro with a 5-year lease not saying we have to be out in 2 or 3 years, and then there is the A Street option which is not being discussed as an option here so she asked if we could start from the beginning. Ms. Goodwin shared that in looking at multiple Central Marin locations the 5th Avenue space has clearly been identified as the best fit and is what MCE really has had its eye on since last month. In the process, we looked all over San Rafael and 990 A Street was one of the closer contenders but requires a huge renovation project, greater than what the 5th Ave. location requires.

Director Sears asked if the spreadsheet was just a description of what we've done rather than a viable option. Ms. Goodwin indicated they all are options in the sense we've had proposals submitted and negotiation of lease language has already taken place. What we've found is while 900 A St. may not be the best option, it has allowed us to see comparative terms to understand other options. It is a huge undertaking but is far less expensive because of the space itself. We must be out of the Lincoln Avenue location by the end of the calendar year and could exercise the relocation option.

Chair Connolly asked if we could lease by the year and Ms. Goodwin said yes, we could stay up to 2019 at the Lindaro Street location with the option to extend that to 2023 because the other tenant on the 3rd floor is there until 2023. Part of BioMarin's strategy is that they are trying to vacate each floor of each building one at a time and move Biomarin staff in.

Ms. Goodwin said we will know more within the next week and extended her appreciation for the Board's input to date.

Director Haroff asked how much space we now have. He clarified that we would gain approximately 10% square footage by staying at Lindero and Ms. Goodwin responded yes, we would have more than 5,600 square feet which factors in growth for any new staff, possibly another conference room the size to allow for committee meetings and have one vacant for staff meetings as well. We were looking for a bit more space and 5,600 square feet no longer works for us.

Director Haroff asked in 10-15 years down the line with MCE being active in four different counties and expansion required of each additional jurisdiction, perhaps we should be thinking a bit further out.

Ms. Weisz added that one of the things we like about staying at the existing facility is that they've allowed flexibility in finding a space at the time we really need it. Although we don't know what our needs will be in 2-3 years at that time there will be less desire in downtown San Rafael as there won't be a lot of people leaving the Biomarin space looking for space nearby.

Ms. Goodwin added maybe Biomarin will honor our moving costs and relocation costs at our new place as they said they would do now. They are very eager for us to relocate but they are being fair and have been the best counterparty to deal with so far.

Director Haroff asked in our search has any consideration been given to locations outside of San Rafael. Ms. Goodwin said yes, we started looking outside of Central Marin but found that other locations with proximity to the Richmond Bridge had constraints including higher prices and limited commute options.

Ms. Goodwin responded to questions from the Board.

Agenda Item #10 – Energy Efficiency Update (Discussion)

Meaghan Doran, Energy Efficiency Specialist presented this item.

Ms. Doran presented updates on the following:

San Rafael Chamber Partnership – MCE Energy Efficiency team is conducting an outreach campaign with the Green Committee of the San Rafael Chamber. Program partner SmartLights, is out in San Rafael canvassing to encourage businesses to not only complete assessments but to complete energy efficiency upgrade projects. The Chamber has approximately 600 members and MCE has been targeting them for the last few weeks through eNewsletters, email blasts, event calendars, social media and other channels through the Chamber's website. The campaign will start on July 7th and will run through mid-August depending on how many commitments to assessments and projects are received.

The SmartLight team will be assessing businesses around San Rafael on Tuesdays and Wednesdays from 10:00AM – 4:00PM. Ms. Doran asked if anyone has a business in San Rafael and would like to schedule an assessment they can let the MCE Energy Efficiency Team know.

The Green Committee has volunteered to make calls to the 100 most hard to reach businesses of their membership. Those are places like lawyer offices, dentist offices, banks, and any business that does not like people coming in asking them to do things.

SmartLights has an ambitious target for its outreach campaign of converting 20% of the membership to complete an energy project. Ms. Doran announced they developed a property profile which has been made available to each of the Board. Bellam Self-Storage and Boxes in San Rafael recently completed an upgrade project and the profile tells their story as well as provides business owners with the bottom line of what the costs as well as what the savings look like.

PlanetEcosystems ("PEI") is rebuilding the MyEnergyTool User Interface basically from the ground up. It is a complete user interface redesign and will dramatically improve the ease in use of the tool as well as attract and retain more users.

Chair Connolly asked if the rebuilding of MyEnergyTool Interface is based on feedback. Ms. Doran shared last Friday PEI held a usability review with 10 people in San Francisco and Communications Director, Jamie Tuckey attended. The new user interface was very well received and additional adjustments will be made based on feedback from that review. They've gone through a lot of iterations and hired a subcontractor design firm to work with and they have worked with the MCE team extensively on getting the design right.

The new design is set for release in early Fall and as soon as that is released, PEI will also be launching a marketing campaign in order to drive people to the tool.

Ms. Doran shared MCE has developed a partnership with Populus who currently runs the home upgrade advisors service which is a phone line. They answer homeowner questions concerning energy upgrades and anything energy efficiency upgrade related that homeowners might be concerned with. Populus supports the interest in and helps facilitate energy efficiency project completion through the advanced home upgrade program. They've also been referring and making customers aware of Green Home Loan Program. MCE is very satisfied with the awareness that has been generated through their service.

Customers can actually choose if they want to receive this service through the MyEnergyTool giving Populus access to their customer information. Such as, if they are interested in completing home upgrades, if they are high energy users or other related data. Populus will obtain the data from PEI and then Populus reaches out to the customer and lets them know about available programs they would benefit from. The real intention of this partnership is for Populus to provide deeper engagement to MCE customers around the HURs or MyEnergyTool and encourage participation in and generate awareness around the Green Home Loan Program.

Ms. Doran reported on HR 4285, PACE Protection Act of 2014. As a follow up to questions raised by the Board at the June meeting, Ms. Doran provided an update. Ms. Doran reminded the Board that CaliforniaFirst is a financing tool that can be repaid directly on your property tax bill. Jurisdiction's currently offering the program are Larkspur, Novato, San Rafael and the County of Marin. The FHFA had rejected CaliforniaFirst's previous proposal which was a \$10M loan loss reserve that would mitigate any risk to lenders. HR 4285 allows PACE programs to continue by directing FHFA to rescind its earlier guidance regarding its program. This Bill requires stringent underwriting standards and ensures homeowners are able to afford the assessments before giving them the loans. This protects Fannie Mae and Freddie Mac from financial risks.

This Bill also supports local government in achieving their economic and environmental goals in their communities. Currently the Bill needs additional bipartisan support in order to get it out of Committee and get a hearing to have it voted on.

Ms. Doran and Ms. Menten recently attended En Banc at the CPUC which was convened by Commissioner Peevy in order to analyze the future of Energy Efficiency in California. Ms. Doran shared there was a lot of discussion around the 2016 Rolling Portfolio Cycle with the consensus being that the longer cycles would allow for continued improvements in the program as well as to better serve our customers.

Another focus was on creating better evaluation, measurement and verification procedures and policies. The final point worth noting is that the program should start shifting to a broader base as opposed to the deeper more comprehensive designs a lot of the energy efficiency programs currently have.

Ms. Doran shared that Commissioner let them know that he was disappointed that he had not heard any ideas for radical change in designing new programs.

Director Sears commented that she thinks the update on the multi-family pipeline report is really great. Ms. Doran added there was an additional interest this week as a result of the workshop hosted by MCE in Richmond last week around MCE's 2016 Program planning.

Director Sears noted the number of units involved and energy savings overall is extremely good news. It seems as though things are really moving now. Ms. Doran reported that in the last couple of weeks they've had 7 new applications for the program and next week she will be in the field 2 full days assessing properties.

NOTE: DIRECTOR GREENE LEFT MEETING FOLLOWING ENERGY EFFICIENCY PRESENTATION.

Agenda Item #11 – Communications Update (Discussion)

Jamie Tuckey, Communications Director.

Ms. Tuckey reported that all Deep Green customers were mailed an information packet by June 30, 2014, as is required annually for certification with Green-e Energy. Green-e is the nation's leading voluntary certification program for renewable energy. The packets included 1) Deep Green Price, Terms and conditions, 2) a product content label which tells our customers where our Deep Green energy is coming from (100% wind), and 3) a cover letter telling customers about the new Sol Shares 100% new, local solar program being offered by MCE.

MCE mailed joint cost comparison mailers with PG&E on June 9, 2014 and the Green-e mailer by June 30, 2014. MCE staff tracked account activity following these notices and found that the number of monthly Deep Green enrollments quadrupled in June compared to the typical number of monthly enrollments. The number of Light Green enrollments for accounts that were previously opted out also tripled in June compared to the typical number of monthly enrollments.

Ms. Tuckey reported that MCE also had 46 Sol Shares inquiries. They've been flooding in since the Deep Green notification to MCE customers were sent out. As of July 3, 2014, there are approximately 38 customers who are on the waiting list to get Sol Shares when it becomes available.

Ms. Tuckey indicated that a variety of customer service enhancements are underway. The first relates to the MCE call center. The call center system is being updated so that if someone has to wait on hold for 5 minutes or more, we now have technology that says "your hold time is estimated to be 5 minutes" and provides an option for the customer to be called back at a specified time or when the next representative is available. The customer would be able to choose that option and receive a call back at whatever number and time they want.

The second customer service enhancement relates to the process of opting out through our call center. When customers call the call center to opt out during office hours which is 7:00 A.M. – 7:00 P.M. Monday-Friday, and select the option to opt out they are directed to a person, which is good because it allows us to ask why a person is opting out and to answer any questions a customer might have. Currently, when the call center is closed and a customer requests to opt out they would be asked to call back during regular business hours. An automated telephone opt out system is being developed so that customers can opt out without speaking to a person when the call center is closed. Ms. Tuckey indicated that in 2013 our Call Center was open 24 hours a day, 7 days per week for 6 months to take opt out requests. That was because when we have an enrollment period for any new communities we make sure we have people available 24 hours a day, 7 days per week to take phone calls.

Ms. Tuckey talked about the new and improved MCE website. Ms. Tuckey reminded the Board of their approval of a contract with Marin Web Design a few months and the new website was released about 3 weeks ago. She shared a couple of snapshots of the new website and encouraged everyone to take a look at it at their leisure and provide candid feedback about content or user experience so that staff can continue to improve the site. MCE's short videos are also now displayed throughout the website.

With the new "Get in Touch" direct email tool on every page of the site, MCE is now being flooded with inquiries which is a great thing because direct contact with customers improves customer relationships and understanding. As a result, the Public Affairs team has been busy responding to the emails and the call center also is assisting with the response to those emails.

In addition to ongoing website maintenance and minor improvements, MCE has a few key next steps that we will be taking over the next few months. The first is to rebuild the Spanish website. Currently the Spanish site is live and being used but it hasn't been revised with a new look so we're working on completing that.

Ms. Tuckey reminded the Board that we have two different websites. We have mceCleanEnergy.org which is our customer-facing site and includes all our program information directed towards customers. We also have MarinCleanEnergy.org and which is our Board and government-facing site. It includes all of our MCE Board meeting and business materials. We plan to merge those two sites and still make information easily accessible. We are currently working on merging those two sites but before that happens everyone will be well informed so you will not have to needlessly search for things.

Another enhancement to the website will be an online chat functionality that will enable a customer to do direct chat with a representative online. The call center will handle that function but as internal staff is available they will also assist with the online direct chat feature.

Ms. Tuckey spoke about the Marin County Fair, themed this year as the "happiest fair on earth". MCE was a major sponsor of this year's fair. MCE is sponsoring the solar-powered carousel and solar-powered stage with signage on the panels indicating our sponsorship as well as signage throughout the entire fairgrounds. MCE's booth, which will be shared with the County of Marin, is at the entrance of the fairgrounds. MCE's theme at the fair is about energy efficiency and that is why we are sharing a booth with the County of Marin.

MCE will be placing advertisements in the Marin County Fair Magazine as well as having signage in a couple of places in the exhibit hall boasting the fact that the building is powered by solar energy and Deep Green 100% renewable energy.

Ms. Tuckey informed the Board that they should have recently received an email about including MCE information on their city, town, or county website. A lot of the MCE member communities already have information about MCE on their sites but some of them don't. She thinks it is a good idea if you're interested to include basic information about MCE since it is a local public program and it is being offered to your constituents because of your Council's vote and because it was a choice the Council's wanted them to have.

In relation to the Microdocumentary videos that have been aired at the last couple of meetings, MCE is negotiating a contract with Comcast to do an ad campaign with 30 second spots of those videos in the Marin County zone. The reason we are limiting it to Marin County this time around is because of the geographical constraints of television advertising. For example, if we added Richmond the commercials would also air in about 8 other East Bay cities that we don't provide service in. So, for the time being it is not financially appealing to expand beyond the Marin County zone nor is it an opportunity that is appealing to customer service since we would be advertising in communities we do not service.

Director Sears asked if MCE is negotiating particular times of the day in which those ads would be shown and Ms. Tuckey said yes, they are still working on the details of the contract but particular times of day, particular television shows as well as being strategic about targeting particular audiences.

Ms. Tuckey shared that in the next couple of months the time is ripe to do a print campaign throughout MCE's service area. We have so many amazing things to highlight and we want our customers to know about them. Some of the things to be highlighted are:

- Electric bill savings
- Sol Shares advertising
- Local solar projects
- Greenhouse gas reductions
- Energy efficiency programs

Agenda Item #12 – Regulatory and Legislative Update (Discussion)

Ms. Weisz briefly discussed the status of AB 2145. She reminded the Board that for the last several months the primary focus of this team has been AB 2145 and there has been significant movement on that Bill and significant changes to the Bill. She indicated that many are probably aware of the updates and, therefore, she will not spend a lot of time on it unless there are questions.

The Bill after making its way through the Assembly went to the Senate and its first stop was with the Energy Committee on the Senate side which had 11 members of the Senate. The date of that hearing was June 23, 2014 and leading up to that hearing was a lot of activity happening both from MCE staff and Board members as well as from a multitude of advocates and community based organizations.

This Bill has created a massive grassroots movement around CCAs across the State which has been exciting to see. Some of the efforts MCE was involved in were meetings with each of the Committee members, meetings with each of the offices multiple times (both staff and Senators), providing written material and becoming a fact sheet production house and more; we weighed heavily upon our "MCE PR Machine" who made our fact sheets look great, easy and clear to read, and we were involved in a little bit of discussion around potential amendments to the Bill that would make it less of a threat.

A few weeks leading up to the hearing we continued to get a huge number of opposing letters from various organizations around the State including the labor organizations previously mentioned. Many cities and towns and people who provide power to MCE were writing letters of opposition, overall there were over 230 organizations on the list of entities and about 30,000 individuals who signed petitions opposing the Bill. Ms. Weisz noted the Committee members were hearing loud and clear that the opt-in provision was the biggest problem and they were concerned about the opt in provision so there was a lot pressure on Committee members to get rid of that provision. On the Friday before the hearing, it was proposed that the opt-in language be taken out of the Bill. The analysis by the Committee Chair's staff included a recommendation on those lines.

On the day of the hearing the author of the Bill, Bradford, agreed to accept that amendment. Kind of a quid pro quo, while taking out the opt in provision, his team wanted to impose a geographic limitation on CCAs which didn't seem to have any logical basis, didn't seem to stem from the original concerns raised by supporters but was thrown into the Bill as language that would apply to CCAs. It was originally proposed that the limitations would be for CCAs to service in only one county. That language was being floated on Monday and most of the grassroots folks and others involved in the movement against this Bill spoke pretty strongly against the one county limitation. They were looking for a larger limitation or no limitation at all. At the hearing the focus was on that piece because the opt-in had been removed.

The big picture take away of the day is having the opt-in provision removed which was a tremendous victory for all CCAs in the State and MCE is thrilled with the outcome. Folks who work in Sacramento were surprised to see that kind of outcome considering the kind of forces MCE and CCAs were up against. We were fighting against a couple of entities who typically get what they want.

Ms. Weisz shared for those who were watching the hearing the initial votes that were passed right after the item was heard did change over a 2-hour period. She explained what can happen in these Committees is a hearing is held open until all items are closed and a vote often happens at the close of a hearing giving folks an opportunity to vote again or change their vote and that did happen in a few cases.

At the time the final vote happened, the author was proposing a 3-county restriction rather than a one county restriction and she thinks that was an effort to prevent the Bill from being killed. At the first vote there weren't enough votes to pass the Bill out of the Committee. In the end the author did get the 6 votes needed for the 3-county restriction to be added in so the Bill was not killed.

Ms. Weisz noted that yesterday morning the write up on the amendments was received and those were circulated to the Board today and because they are lengthy, she will highlight a couple of noteworthy things. First, the Committee staff did a fair job of writing out what was intended by the Committee. There is now a 3-county limitation in the amended Bill so any CCAs would be required to not go beyond a 3 county contiguous border. So, CCAs would only be able to expand in a contiguous way within a 3 county limit.

There was grandfathering language inserted stating because MCE is already in the process of helping a county (or cities within a County) become a CCA that would put us over the 3 county limit, the grandfathering language states that any city or county who has passed an ordinance to join an existing CCA program by the end of this calendar year would be grandfathered in to extend the three county limitation.

Ms. Weisz indicated there are two other provisions that remain in the Bill that were part of the initial language and have not been removed, these are provisions that we are concerned about and were concerned about from the beginning. Our concern with these two issues is: 1) a requirement that CCAs provide a 5-year rate forecast in every

piece of information that is sent out to customers to solicit their interest. What that means is a bit vague and seems to be tied to the opt-out language but could also be tied to joint cost comparison potentially. It is not a requirement of the IOUs in this legislation to provide a 5-year rate projection to customers.

It is unclear whether the rate projection would be binding and that is a concern for us as well. To make it clear why that is a problem, it is really not possible to forecast what rates will be 5 years in advance. You would not know what hydro-electric conditions would be, we purchase hydro-electric power and you don't know how much we'd be getting at that price. We do procurement throughout the year every year, we've hatched our power supply but we certainly don't know what our usage would be on a year to year basis. So it's really not possible to have an accurate rate projection. What that means is this would be a legislative mandate for us to provide the misinformation to customers and that is not going to make customers very happy if they receive information that is wrong. They will express their dissatisfaction and that dissatisfaction will be directed at the CCAs.

This provision is very problematic and she believes it should be struck or severely modified and they are working on a few scenarios but it would be better if the provision was struck. The second issue that remains in the Bill is a requirement that allows IOUs or any party to be able to file a complaint against CCAs under the expedited complaint procedure process with the CPUC that was built into a statute through SB 790 for IOUs. The expedited complaint process is something that was intended to level the playing field and ensure that if IOUs were not cooperating with CCAs in the way they should be that there could be an expedited process for the CPUC to deal with that. This is turning the idea on its head saying that a complaint can be filed against a CCA. The regulatory body for a CCA is the Board not the CPUC and our Board is a public body with public oversight. So creating this new regulatory layer of oversight isn't appropriate and is problematic.

With this issue we think there are some simple amendments that could correct the language and make it workable by limiting it to a service agreement we have in place with PG&E and have that as being the oversight could be appropriate; otherwise the language needs to be struck or not be so broad. Those are the two remaining provisions that are still a concern within the grassroots community among the cities and towns across the State regarding the 3-county limitation. The reason for concern there is it is hard to start a CCA so, creating new limitations around CCAs probably isn't a great policy for a State looking to achieve dramatic GHG reductions and more renewables. For small counties with small loads that would have more to aggregate procurement for having a 3-county limitation really could prevent them from being able to move forward on a CCA program. Ms. Weisz stated she knows that is an issue many will continue to push hard on as the Bill works its way through the Senate.

Ms. Weisz shared the next stop for this Bill the Appropriations Committee that is expected to occur sometime within the first two weeks of August but the date has not yet been set due to the legislative recess. The Bill will also need to go back to the Assembly side and then the Senate before going to the Governor's desk.

Director Haroff - it does seem that glancing through the language references are made to adopting ordinances in a county and other places references are made to an entity not being able to serve as a CCA and that language seems kind of sketchy. He realizes MCE has a view of how far the envelope can be pushed but is there some way to get clarification on the language?

Ms. Weisz responded by stating there are two scenarios about CCAs providing service in other communities and perhaps that is what he is referring to, or language that relates to a CCA itself expanding. There is also language that allows for a city or county to delegate authority to a CCA to operate a program for them. In that paragraph the grandfather language does not show up. She believes that is acceptable because it doesn't apply to MCE but maybe he is seeing something different. Language in Section 12.A and B was referenced.

Director Lion interpreted the language as saying if you are already serving a county outside of your contiguous county you may continue to serve them but it doesn't necessarily say you can go after other jurisdictions in that county or the fourth county. Ms. Weisz stated that the second sentence there might refer to a situation where a CCA is not expanding to a county but is providing service through delegated authority to CCA providing service to them. She believes that is a different situation than what is addressed at the end of the paragraph through the new language.

Technical Consultant, John Dalessi pointed out a more concerning interpretation in the beginning where it specifies the JPA has the grandfathering language which he believes is more favorable. There also are two models: the JPA can expand what we've been doing or a city could request MCE be an aggregator of that city but not join MCE. They are talked about differently in this paragraph. Ms. Weisz agreed with Mr. Dalessi and stated MCE does not want language that could be misinterpreted.

Director McCaskill asked for clarification of the how Bills progress through the State Senate versus the way they progress in Washington, DC. If this current bill without the opt-in language were to pass the Senate and goes back to the Assembly, unlike DC, a Conference Committee can't vote to put the language back in at the Assembly level. Ms. Weisz confirmed that is correct and there is no Conference Committee at the State level so the Assembly goes up or down in terms of what the Senate vote is.

Director Lion asked if PGE is still actively supporting this bill and Ms. Weisz responded MCE has not heard anything to the contrary. She also stated it has been rather quiet in the last two weeks in terms of not seeing any new letters of support or opposition coming in from either side. MCE is in wait-and-see mode waiting for this language to come out but does not expect their positions to change.

Director McCaskill asked what was the argument at Committee for the "contiguous county" provision, was it something PG&E wanted and did they make up some sort of logic as to why it should be included. Ms. Weisz said they attempted a connection and threw out some scenarios where MCE could expand to San Diego and, that was not the original intent of the law. Community choice needs to be community choice and there were some comments around protecting IOUs from CCAs becoming too big and from too much competition.

Jeremy Waen, Regulatory Analyst presented the Regulatory Update.

Ms. Waen indicated he would cover two topics on the Regulatory front:

The first is PG&E's 2014 General Rate Case Phase 1 which is the massive proceeding that happens every 3 years and where PG&E establishes their rates and revenue requirement so they can collect from their customers. Mr. Waen explained the General Rate Case (GRC) as being a 1) a 3-year cycle by which IOUs establish their overall revenue requirements and assign cost recoveries to customer groups and, 2) each IOU's GRC is evaluated on a different year with PG&E's cycle being 2014-2016. The IOU cycles are staggered which is a good reason from a Regulatory bandwidth perspective why MCE should continue serving one IOU service area.

He shared there are two separate filings Phase I and Phase 2. Phase I primarily addresses what is the overall amount of money PG&E needs to collect to from ratepayers to cover all the different types of costs they will face. Once they have this target pool of money they need to collect, Phase 2 is where PG&E determines who they are going to collect it from and how the breakdown of fund collections through rates will apply to different classes.

He also shared PG&E's GRC chronology and talked about 2 areas of concern for MCE within those proceedings. The first issue is, when PG&E decides of the revenue requirement, how much goes into the distribution, how much goes into generation, they do this by tallying how much labor they've paid for that is supporting the distribution side and how much labor they've paid for that is supporting the generation side. There are other types of labor that don't fall into either category. One example is the Public Purpose Programs labor, which among other things include Energy Efficiency Programs.

In MCE's case we have an Energy Efficiency Program and have no distribution monies to be collecting labor dollars for Energy Efficiency Programs so Energy Efficiency programs are either funded by the pot of money that the CPUC has given to us or it's funded through generation dollars we collect from our ratepayers. MCE found it was unfair for PG&E to collect labor costs from the distribution rate because in a way, our customers are paying twice for energy efficiency-related labor: once for MCE's program and once for PG&E's program. We are trying to get some traction amongst other parties to work towards a better solution.

The second issue we identified was with litigation proceeds between PG&E and the Department of Energy, which were of no small amount, relating with PG&E's nuclear facilities. It is dealing with fact that the federal government still does not have a good place to store nuclear waste so PG&E is stuck with storing all the excess waste from Diablo Canyon and other facilities that are no longer in operation. There are ongoing costs associated with having to store this radioactive material and those costs are being paid for by PG&E ratepayers and at this point we are past the point where the federal government promised they would have a nuclear waste storage facility up and running. These costs are unfairly being imposed on PG&E ratepayers and through litigation they are getting windfall back to offset these costs.

MCE's issue with the initial proposal by PG&E was allocate all of the litigation proceeds, less legal expenses, would be allocated to PG&E's generation customers, bring PG&E's generation rates down a bit. That didn't sit right since these litigation funds were intended to offset the incurred costs on all PG&E's customer for storing nuclear waste. MCE customers were paying for these nuclear waste storage costs long before there was a differentiation between PG&E and MCE customers. These concerns regarding the return of these litigation proceeds is another area where a better means of returning these monies to customers is sought so that this return would not create some competitive advantage to PG&E for subsidizing their generation rate.

In response to our testimony MCE, TURN and PG&E entered into settlement talks in an attempt to negotiate agreements on both issues and were able to determine a competitively neutral manner to return DOE litigation proceeds to all ratepayers.

Mr. Waen shared the CPUC decision, some of the settlement terms and overall savings to customers in general. He also shared the one remaining issue MCE is not thrilled about the request authorizing PG&E to recover through rates \$1.5M for Customer Retention expenses. Along with MCE, the City and County of San Francisco, the Office of Ratepayer Advocates, the Merced Irrigation District and the Modesto Irrigation District have all opposed this request which could potentially be used to discourage formation of publicly owned utilities.

The second topic is about Resource Adequacy and Flexible Capacity, where a decision was recently voted upon by the Commission that creates new procurement obligations that will impact MCE and the procurement that we will have to conduct within the next year. There is an ongoing proceeding to evaluate RA needs, Phase 3 has been exploring the need for Flexible Capacity resources and on June 26th the CPUC approved adopting Decision D.14-06-050 adopting Local Procurement and Flexible Capacity Obligations for 2015 for all Load-Serving Entities (including CCAs).

Mr. Waen shared that at the upcoming Technical Committee he and Greg Brehm would be sharing updates so that it is clear that MCE is prepared for these requirements and obligations.

Agenda Item 13 - Board Matters (Discussion)

Ms. Weisz reported that staff has been working with the Mahers and Director McCaskill on how formatting and how the MCE budget is presented to the Board. A draft of that document was left with each Board member and the item would be discussed at the August Executive Committee meeting.

Agenda Item #14 – Adjourn

9:37 PM

Damon Connolly, Chair

Attest:

Dawn Weisz, Secretary



September 4, 2014

TO: Marin Clean Energy Board
FROM: Greg Morse, Business Analyst
RE: Monthly FY 14 Budget Report (Agenda Item #04 - C.2)
ATTACHMENT: MCE Budget Reports 2014-05 (Unaudited)

Dear Board Members:

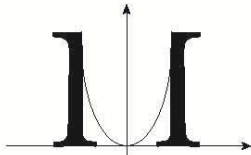
SUMMARY:

The attached budget update compares the FY 2015 budget to the unaudited revenue and expenses of MCE for the month ending July 2014.

Expenditures over the last month have been stable and have remained within budget. Electric sales and costs of energy were both slightly below projections, netting MCE a slightly lower than expected growth in available funds. Other Service fees were higher than projected due to the now complete annual audit.

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

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 July 31, 2014. 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.

We are not independent with respect to Marin Clean Energy.

Maher Accountancy

August 19, 2014



MARIN CLEAN ENERGY
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2014 through July 31, 2014

	<u>2013/14 YTD Actual</u>	<u>2014/15 YTD Budget</u>	<u>2014/15 YTD Actual</u>	<u>2014/15 YTD Budget Variance (Under) Over</u>	<u>2014/15 YTD Actual/Budget %</u>	<u>2014/15 Annual Budget</u>	<u>2014/15 Budget Remaining</u>
REVENUE AND OTHER SOURCES:							
Revenue - Electricity (net of allowance)	\$ 23,505,734	\$ 34,255,077	\$ 33,126,100	\$ (1,128,977.37)	96.70%	\$ 101,138,394	\$ 68,012,294
EXPENDITURES AND OTHER USES:							
CURRENT EXPENDITURES							
Cost of energy	21,695,211	27,129,027	26,696,911	(432,116)	98.41%	88,410,551	61,713,640
Staffing	426,963	627,250	634,620	7,370	101.17%	1,950,000	1,315,380
Technical consultants	184,311	189,669	169,477	(20,192)	89.35%	560,000	390,523
Legal counsel	50,947	130,278	104,678	(25,600)	80.35%	335,000	230,322
Communications consultants and related expenses	417,949	187,500	173,494	(14,006)	92.53%	750,000	576,506
Data manager	728,263	890,000	881,266	(8,734)	99.02%	2,670,000	1,788,734
Service fees- PG&E	164,365	223,333	231,976	8,643	103.87%	670,000	438,024
Other services	75,458	100,000	117,194	17,194	117.19%	300,000	182,806
General and administration	91,927	116,667	126,051	9,384	108.04%	350,000	223,949
Marin County green business program	-	-	-	-	0.00%	15,000	15,000
Solar rebates	-	-	-	-	0.00%	25,000	25,000
Total current expenditures	<u>23,835,394</u>	<u>29,593,724</u>	<u>29,135,667</u>	<u>(458,057)</u>	<u>98.45%</u>	<u>96,035,551</u>	<u>66,899,884</u>
CAPITAL OUTLAY	378	5,000	9,966	4,966	199.32%	20,000	10,034
DEBT SERVICE	443,175	398,333	397,960	(373)	99.91%	1,195,000	797,040
INTERFUND TRANSFER TO:							
Local Renewable Energy Development Fund	<u>51,536</u>	<u>109,994</u>	<u>109,994</u>	<u>-</u>	<u>100.00%</u>	<u>109,994</u>	<u>-</u>
Total expenditures	<u>24,330,483</u>	<u>30,107,052</u>	<u>29,653,587</u>	<u>\$ (453,465)</u>	<u>98.49%</u>	<u>97,360,545</u>	<u>\$ 67,706,958</u>
Net increase (decrease) in available fund balance	<u>\$ (824,749)</u>	<u>\$ 4,148,026</u>	<u>\$ 3,472,513</u>	<u>\$ (675,513)</u>		<u>\$ 3,777,849</u>	<u>\$ 305,336</u>

**MARIN CLEAN ENERGY
ENERGY EFFICIENCY PROGRAM FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2013 through July 31, 2014**

	<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	\$ 328,743	\$ 1,176,959	21.83%
EXPENDITURES AND OTHER USES:				
CURRENT EXPENDITURES				
Public purpose energy efficiency program	<u>1,505,702</u>	<u>328,743</u>	<u>1,176,959</u>	<u>21.83%</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 DEVELOPMENT RENEWABLE ENERGY FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2013 through July 31, 2014**

	<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>14,804</u>	<u>95,190</u>	<u>13.46%</u>
Net increase (decrease) in fund balance	<u>\$ -</u>	<u>\$ 95,190</u>		

**MARIN CLEAN ENERGY
SUPPLEMENTAL SCHEDULE
April 1, 2014 through July 31, 2014**

	<u>Actual</u>
Other services	
Recruiting	-
Audit	32,000
Accounting	40,600
IT Consulting	-
Human resources & payroll fees	2,101
Legislative consulting	30,000
Miscellaneous professional fees	12,493
Other services	<u><u>\$ 117,194</u></u>
 General and administration	
Cell phones	395
Bank service fee	-
Data and telephone service	11,448
Insurance	3,848
Office and meeting rentals	66,032
Office equipment lease	2,124
Dues and subscriptions	21,256
Conferences and professional education	459
Travel	4,125
Business meals	1,456
Interest and late fees	92
Miscellaneous administration	57
Office supplies and postage	14,759
General and administration	<u><u>\$ 126,051</u></u>



September 4, 2014

TO: Marin Clean Energy Board
FROM: Sarah Estes-Smith, Administrative Associate
RE: Report on Approved Contracts (Agenda Item #4 – C.3)

Dear Board Members:

SUMMARY:

On March 7, 2013 your Board adopted Resolution 2013-04 which authorized the Executive Officer to enter into and execute contracts 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. The MCE Integrated Resource Plan (IRP) approved in November of 2012 further authorized the Executive Officer to enter into and execute medium term power purchase agreements for Energy, Capacity and RECs with terms greater than 12 months and less than or equal to 5 years.

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

Month	Purpose	Contractor	Maximum Contract Amount	Term of Contract
August	Legal services pertaining to real estate lease negotiations.	Morris Polich & Purdy LLP	\$10,500	1 Year

Recommendation: Information only. No action required.



September 4, 2014

TO: Marin Clean Energy Board of Directors

FROM: Elizabeth Kelly, Legal Director

RE: First Addendum to Second Agreement with Braun, Blasing, McLaughlin & Smith (Agenda Item #04 – C.4)

ATTACHMENTS:

- A. Second Agreement with Braun, Blasing, McLaughlin & Smith
- B. First Addendum to Second Agreement with Braun, Blasing, McLaughlin & Smith

Dear Board Members:

SUMMARY:

On March 6, 2014, MCE entered into the Second Agreement with Braun, Blasing, McLaughlin & Smith ("Agreement") to provide regulatory services for MCE. MCE staff requests approval of the present First Addendum, which would revise the scope of the Agreement to include legal services as directed by MCE staff; update the Contract Manager for MCE; reflect an increase in contract amount to not exceed \$80,000; and revise the Contractor's rate schedule.

Braun, Blasing, McLaughlin & Smith has primarily been working on task specific regulatory services and assistance upon request from MCE's Regulatory and Legislative Team. MCE requests additional legal services for issues related to public agencies in the power sector.

Recommendation: Approve First Addendum to Second Agreement with Braun, Blasing, McLaughlin & Smith.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**SECOND AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND BRAUN, BLAISING, MCLAUGHLIN & SMITH PC**

THIS SECOND AGREEMENT ("Agreement") is made and entered into this day **March 6, 2014** by and between **MARIN CLEAN ENERGY**, hereinafter referred to as "MCE" and **Braun, Blaising, McLaughlin & Smith PC**, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: **Contractor shall provide regulatory services as needed and requested by MCE staff.**

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

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

1. SCOPE OF SERVICES:

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

2. FURNISHED SERVICES:

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

3. FEES AND PAYMENT SCHEDULE:

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 shall invoice MCE within 90 days of any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable.

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 **\$30,000**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **April 1, 2014**, 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. The final invoice must be submitted within 30 days of completion of the stated scope of services.

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 the Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to the 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 Section 16 of this Agreement to indemnify, defend and hold the 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. The 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, the 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 the 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 the 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 the 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 the 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 the MCE upon payment to Contractor for such work. The 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 the MCE's expense, provide such reports, plans, studies, documents and writings to the MCE or any party the MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for the 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, the 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 the 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 Ritter, Administrative Associate

MCE Address: 781 Lincoln Ave., Suite 320

San Rafael, CA 94901

Telephone No.: (415) 464-6028

Notices shall be given to Contractor at the following address:

Contractor:	Braun, Blaising, McLaughlin & Smith PC ATTN: Scott Blaising
Address:	915 L Street Suite #1270 Sacramento, CA 95814
Telephone No.:	(916) 682-9702 Direct Line (916) 712-3961

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	

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

APPROVED BY

Marin Clean Energy:

By: [Signature]
Executive Officer

By: [Signature]
Chairman

CONTRACTOR:

By: [Signature]
Name: SCOTT BLAISING

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 render task-specific regulatory services and assistance upon request by Marin Clean Energy, in connection with regulatory affairs.

EXHIBIT B
FEES AND PAYMENT SCHEDULE (required)

For services provided under this agreement, MCE shall pay the Contractor in accordance with the following annual rates for the following attorneys:

C. Anthony Braun (Partner):	\$375
Scott Blaising (Partner):	\$375
Bruce McLaughlin (Partner):	\$375
Kevin Smith (Partner):	\$375
Justin Wynne (Senior Associate):	\$265
Ryan Bernardo (Junior Associate):	\$215
Linda Johnson (Of Counsel):	\$305
Steve Keene (Of Counsel):	\$345
Contract Associate (As authorized):	\$235

The contractor shall bill in .25 hour increments on a monthly basis for all services rendered. In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of \$30,000 for the term of the agreement.

**FIRST ADDENDUM TO SECOND AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND BRAUN, BLAISING, MCLAUGHLIN & SMITH, P.C.**

This FIRST ADDENDUM is made and entered into on August 26, 2014, by and between MARIN CLEAN ENERGY, (hereinafter referred to as "MCE") and Braun, Blaising, McLaughlin & Smith, P.C. (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and the Contractor entered into an agreement to provide regulatory services as directed by MCE staff dated March 6, 2014 ("Agreement"); and

WHEREAS, Section 4 and Exhibit B to the agreement obligated Contractor to be compensated an amount not to exceed \$30,000 for the regulatory services described within the scope therein; and

WHEREAS, the parties seek to revise the scope of the Agreement in Exhibit A to include legal services as directed by MCE staff; and

WHEREAS, the parties desire to amend Section 4 and Exhibit B of the agreement to increase the contract amount by \$50,000 for a total not to exceed \$80,000 and to revise the rate schedule as set forth in Exhibit B; and

WHEREAS, the parties desire to update the Contract Manager for MCE.

NOW, THEREFORE, the parties agree to modify Sections 4 and 19, and Exhibits A and B as set forth below.

AGREEMENT

1. The first Recital of the Agreement is hereby replaced in its entirety to read as follows:

WHEREAS, MCE desires to retain a person or firm to provide the following services: Contractor shall provide regulatory and legal services as needed and requested by MCE staff; and

2. Section 4 of the Agreement is hereby replaced in its entirety 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 **\$80,000**.

3. Section 19 of the Agreement is hereby amended to read as follows:

MCE Contract Manager: Sarah Estes-Smith, Administrative Associate

4. Exhibit A of the Agreement is hereby amended to read as follows:

Contractor will render task-specific regulatory and legal services and assistance upon request by Marin Clean Energy.

5. Exhibit B of the Agreement is hereby replaced with the following:

For services provided under this agreement, MCE shall pay the Contractor in accordance with the following rates and rate ranges:

Partners	\$385
Senior Associates	\$285
Junior Associates	\$225
Of Counsel	\$305-\$345
Contract Associate (As Authorized):	\$250
Law Clerk and Associates	
Not Admitted to Bar:	\$150

The contractor shall bill in .10 hour increments on a monthly basis for all services rendered. In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of \$80,000 for the term of the agreement.

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

**FIRST ADDENDUM TO SECOND AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND BRAUN, BLAISING, MCLAUGHLIN & SMITH, P.C.**

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

CONTRACTOR:

MARIN CLEAN ENERGY:

By: _____

By:_____



Financial Statements

Years Ended March 31, 2014 and 2013
with Report of Independent Auditors

www.marincleanenergy.org



MARIN CLEAN ENERGY
YEARS ENDED MARCH 31, 2014 AND 2013

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VAVRINEK, TRINE, DAY
& COMPANY, LLP
Certified Public Accountants

VALUE THE DIFFERENCE

INDEPENDENT AUDITORS' REPORT

Board of Directors
Marin Clean Energy
San Rafael, California

We have audited the accompanying financial statements of Marin Clean Energy ("MCE"), as of and for the years ended March 31, 2014 and 2013, which collectively comprise MCE's basic financial statements, including the related notes to the financial statements, as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of Marin Clean Energy, as of March 31, 2014 and 2013, and the respective changes in financial position and cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis, as listed in the table of contents, be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Varrinck, Trine, Day & Co., LLP.

Pleasanton, California

July 16, 2014

MARIN CLEAN ENERGY

MANAGEMENT'S DISCUSSION AND ANALYSIS

The Management's Discussion and Analysis provides an overview of Marin Clean Energy's (MCE) financial activities for the fiscal years ended March 31, 2014 and 2013. The information presented here should be considered in conjunction with the audited financial statements.

FINANCIAL HIGHLIGHTS

MCE began providing electrical power to customers in May 2010 and continues to experience increases in its number of customers. In 2013-14, MCE expanded its coverage area to include the City of Richmond. This marked the first time residents and businesses outside of Marin County were offered services from MCE. This expansion represents a large portion of MCE's current operations, as evidenced by its significant increase in electricity sales from the prior year. Despite the growing volume of sales, MCE continues to put a priority on the efficient use of financial resources to meet the goal of providing competitive pricing to its entire customer base. During the year we were able align our costs closely with revenues. This enabled us to keep margins at reasonably low levels as demonstrated by a change in net position from the prior year of \$1,645,000, or less than 2% of revenues. This increase caused net position to climb from approximately \$7,913,000 to \$9,558,000, allowing for reserves to weather future unpredicted financial events.

OVERVIEW OF THE FINANCIAL STATEMENTS

This discussion and analysis is intended to serve as an introduction to MCE's basic financial statements. MCE's basic financial statements comprise two components: (1) government-wide financial statements and (2) notes to the financial statements.

MCE is a single-purpose entity that reports as an enterprise fund under governmental accounting standards. The financial statements are designed to provide readers with a broad overview of MCE's finances, similar to a private-sector business.

The Statement of Net Position presents information on all of MCE's assets and liabilities, with the difference between assets and liabilities reported as net position. Over time, increases or decreases in net position may serve as a useful indicator of whether the financial position of MCE is improving or deteriorating.

The Statement of Revenues, Expenses and Changes in Fund Net Position presents information showing how MCE's net position changed during the fiscal period. All changes in net position are recognized at the date the underlying event that gives rise to the change occurs, regardless of the timing of the related cash flows.

The Statement of Cash Flows presents information about MCE's cash receipts, cash payments, and net changes in cash resulting from operations, investing, and financing activities. This statement shows the sources and uses of cash, as well as the change in the cash balances during the fiscal years.

MARIN CLEAN ENERGY
MANAGEMENT'S DISCUSSION AND ANALYSIS
(Continued)

The following table is a summary of MCE's assets, liabilities, and net position.

	2014	2013	2012
Current and other assets	\$ 22,433,441	\$ 18,007,926	\$ 7,549,498
Capital assets	58,807	68,679	32,566
Total assets	<u>22,492,248</u>	<u>18,076,605</u>	<u>7,582,064</u>
Current liabilities	10,909,904	7,079,985	2,283,437
Noncurrent liabilities	2,024,308	3,083,746	1,380,702
Total liabilities	<u>12,934,212</u>	<u>10,163,731</u>	<u>3,664,139</u>
Net position:			
Net investment in capital assets	58,807	68,679	32,566
Restricted	1,145,700	598,200	263,200
Unrestricted	8,353,529	7,245,995	3,622,159
Total net position	<u><u>\$ 9,558,036</u></u>	<u><u>\$ 7,912,874</u></u>	<u><u>\$ 3,917,925</u></u>

During 2013-2014, MCE expanded its territory beyond Marin County and into the City of Richmond. The number of active customer accounts grew from approximately 90,000 to nearly 125,000 during the year. This increased customer base resulted in a growing level of accounts receivable and accrued revenue from the prior year. Related to this rise in demand for electricity from our customers, we have experienced a need to procure additional energy, resulting in the increase in trade liabilities. The decrease in capital assets from 2013 seen above is the result of depreciation expense exceeding equipment acquisitions during the year. Also decreasing is our long term debt from two business lines of credit. MCE did not have a need to increase its financing during 2013-14, and continues to pay down these obligations as scheduled.

MCE's results of operations are summarized as follows:

	2014	2013	2012
Operating revenues	\$ 85,561,759	\$ 52,579,310	\$ 22,918,843
Contributions received	-	20,000	-
Interest income	8,965	900	-
Total income	<u>85,570,724</u>	<u>52,600,210</u>	<u>22,918,843</u>
Operating expenses	83,731,036	48,429,076	19,210,349
Interest expense	194,526	176,185	109,407
Total expenses	<u>83,925,562</u>	<u>48,605,261</u>	<u>19,319,756</u>
Increase (decrease) in net position	<u><u>\$ 1,645,162</u></u>	<u><u>\$ 3,994,949</u></u>	<u><u>\$ 3,599,087</u></u>

MCE's expansion into the City of Richmond resulted in a dramatic increase in electricity sales, which was accompanied by corresponding increases in costs directly related to acquiring energy and servicing customer accounts. Despite the growing customer base, general and administrative expenses held fairly steady and led to an increase in net position.

**MARIN CLEAN ENERGY
MANAGEMENT'S DISCUSSION AND ANALYSIS
(Continued)**

DEBT AND CAPITAL ASSET ADMINISTRATION

MCE continued to make payments on its existing debt. No new debt was incurred by MCE in 2013-14. Note 6 to the financial statements provides details on debt activity. There was no significant capital asset activity.

ECONOMIC OUTLOOK

Since commencing service to customers in 2010 MCE has entered into multiple power purchase agreements with various providers to serve MCE's projected load. This process creates price certainty as MCE continues to serve customers. In addition to increasing its customer base from approximately 90,000 to 130,000 in 2013-14, MCE will be looking to enter its next phase of expansion and increase its customer base. Management intends to continue its conservative use of financial resources and expects ongoing operating profits.

REQUESTS FOR INFORMATION

This financial report is designed to provide MCE's customers and creditors with a general overview of the Organization's finances and to demonstrate MCE's accountability for the funds under its stewardship.

Please address any questions about this report or requests for additional financial information to 781 Lincoln Avenue, Suite 320, San Rafael, CA 94901.

BASIC FINANCIAL STATEMENTS

MARIN CLEAN ENERGY
STATEMENTS OF NET POSITION
AS OF MARCH 31, 2014 AND 2013

	<u>2014</u>	<u>2013</u>
ASSETS		
Current assets		
Cash and cash equivalents	\$ 8,248,488	\$ 9,817,159
Accounts receivable, net	9,096,571	4,572,796
Accrued revenue	3,778,199	2,857,212
Prepaid expenses	31,485	29,561
Total current assets	<u>21,154,743</u>	<u>17,276,728</u>
Noncurrent assets		
Capital assets	58,807	68,679
Restricted cash	1,145,700	598,200
Deposits	132,998	132,998
Total noncurrent assets	<u>1,337,505</u>	<u>799,877</u>
Total assets	<u>22,492,248</u>	<u>18,076,605</u>
LIABILITIES		
Current liabilities		
Accounts payable	1,301,607	905,401
Accrued cost of electricity	5,723,371	4,300,363
Other accrued liabilities	515,618	152,595
User taxes and energy surcharges due to other governments	566,962	4,966
Advances from grantor	1,733,221	643,566
Notes payable to bank	1,069,125	1,073,094
Total current liabilities	<u>10,909,904</u>	<u>7,079,985</u>
Noncurrent liabilities		
Notes payable to bank	2,024,308	3,083,746
Total liabilities	<u>12,934,212</u>	<u>10,163,731</u>
NET POSITION		
Net position		
Net investment in capital assets	58,807	68,679
Restricted for debt service	598,200	598,200
Unrestricted	8,901,029	7,245,995
Total net position	<u>\$ 9,558,036</u>	<u>\$ 7,912,874</u>

MARIN CLEAN ENERGY

STATEMENTS OF REVENUES, EXPENSES
AND CHANGES IN FUND NET POSITION

YEARS ENDED MARCH 31, 2014 AND 2013

	<u>2014</u>	<u>2013</u>
Operating revenues		
Electricity sales	\$ 84,643,812	\$ 52,392,025
Energy Efficiency Program revenue	917,947	187,285
	<u>85,561,759</u>	<u>52,579,310</u>
Operating expenses		
Cost of electricity	76,088,268	43,224,840
Contract services	5,533,964	3,853,447
Staff compensation	1,660,945	1,081,918
General and administration	447,859	268,871
Total operating expenses	<u>83,731,036</u>	<u>48,429,076</u>
Operating income	<u>1,830,723</u>	<u>4,150,234</u>
Nonoperating revenues (expenses)		
Contributions received	-	20,000
Interest income	8,965	900
Interest expense	(194,526)	(176,185)
Total nonoperating revenues (expenses)	<u>(185,561)</u>	<u>(155,285)</u>
Changes in net position	1,645,162	3,994,949
Net position at beginning of period	7,912,874	3,917,925
Net position at end of period	<u>\$ 9,558,036</u>	<u>\$ 7,912,874</u>

The accompanying notes are an integral part of these financial statements

MARIN CLEAN ENERGY

STATEMENTS OF CASH FLOWS

YEARS ENDED MARCH 31, 2014 AND 2013

	2014	2013
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from customers	\$ 79,542,548	\$ 48,293,982
Grant received from Energy Efficiency Program	2,007,602	830,851
Cash payments to purchase electricity	(73,734,457)	(40,114,369)
Cash payments for contract services	(5,518,343)	(3,533,789)
Cash payments for staff compensation	(1,642,623)	(1,004,190)
Cash payments for general and administration	(428,344)	(240,263)
Net cash provided by operating activities	<u>226,383</u>	<u>4,232,222</u>
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Proceeds from bank financing, net of reserve	-	2,665,000
Deposit for financing reserve	(547,500)	-
Principal payments of bank term loans	(1,063,407)	(663,851)
Interest expense	(186,097)	(176,185)
Net cash provided (used) by non-capital financing activities	<u>(1,797,004)</u>	<u>1,824,964</u>
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES		
Acquisition of capital assets	<u>(7,015)</u>	<u>(31,787)</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Investment income	<u>8,965</u>	<u>900</u>
Net change in cash and cash equivalents	(1,568,671)	6,026,299
Cash and cash equivalents at beginning of year	<u>9,817,159</u>	<u>3,790,860</u>
Cash and cash equivalents at end of year	<u><u>\$ 8,248,488</u></u>	<u><u>\$ 9,817,159</u></u>

MARIN CLEAN ENERGY**STATEMENTS OF CASH FLOWS
(CONTINUED)****YEARS ENDED MARCH 31, 2014 AND 2013**

	<u>2014</u>	<u>2013</u>
RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES		
Operating income	\$ 1,830,723	\$ 4,150,234
Adjustments to reconcile operating income to net cash provided (used) by operating activities		
Depreciation expense	16,887	15,674
(Increase) decrease in net accounts receivable	(4,523,775)	(2,392,228)
(Increase) decrease in accrued revenue	(920,987)	(1,705,815)
(Increase) decrease in prepaid expenses	(1,924)	914
Increase (decrease) in accounts payable	396,206	704,243
Increase (decrease) in accrued cost of electricity	1,423,008	2,731,849
Increase (decrease) in other accrued liabilities	354,594	78,819
Increase (decrease) in user taxes due to other governments	561,996	4,966
Increase (decrease) in advances from grantor	1,089,655	643,566
Net cash provided by operating activities	<u>\$ 226,383</u>	<u>\$ 4,232,222</u>

NONCASH CAPITAL AND RELATED FINANCING ACTIVITIES

In-kind capital assets of \$20,000 were provided through contributions in 2013.

MARIN CLEAN ENERGY
NOTES TO THE FINANCIAL STATEMENTS
YEARS ENDED MARCH 31, 2014 AND 2013

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

REPORTING ENTITY

Marin Clean Energy (MCE) is a joint powers authority created on December 19, 2008 and its members consist of the following parties: the County of Marin, the cities of Belvedere, Larkspur, Mill Valley, Novato, San Rafael, Sausalito and Richmond and the towns of Corte Madera, Fairfax, Ross, San Anselmo, and Tiburon (collectively, “the parties”). It is governed by a thirteen member Board of Directors appointed by each of the parties.

MCE was formed to study, promote, conduct, operate, and manage energy and energy-related climate change programs, and to exercise all other powers necessary and incidental to accomplishing these objectives. A core function of MCE is to provide electric service that includes the use of renewable sources under the Community Choice Aggregation Program under California Public Utilities Code Section 366.2.

MCE began its energy delivery operations in May 2010. Electricity is acquired from commercial suppliers and delivered through existing physical infrastructure and equipment managed by Pacific Gas and Electric Company.

During 2013-14, the organization changed its name to Marin Clean Energy from Marin Energy Authority.

ACCOUNTING POLICIES

MCE’s financial statements are prepared in accordance with generally accepted accounting principles (GAAP). The Governmental Accounting Standards Board (GASB) is responsible for establishing GAAP for state and local governments through its pronouncements (Statements and Interpretations).

MARIN CLEAN ENERGY
NOTES TO THE FINANCIAL STATEMENTS
YEARS ENDED MARCH 31, 2014 AND 2013

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

BASIS OF ACCOUNTING

The Organization's operations are accounted for as a governmental enterprise fund, and are reported using the economic resources measurement focus and the accrual basis of accounting – similar to business enterprises. Accordingly, revenues are recognized when they are earned and expenses are recognized at the time liabilities are incurred.

When both restricted and unrestricted resources are available for use, it is the Organization's policy to use restricted resources first, then unrestricted resources as they are needed.

CASH AND CASH EQUIVALENTS

For purpose of the statement of cash flows, MCE has defined cash and cash equivalents to include cash on hand, demand deposits, and short-term investments. Amounts restricted for debt service and collateral for energy efficiency loan program are not included. These restricted balances are presented separately in the statement of net position.

CAPITAL ASSETS AND DEPRECIATION

MCE's policy is to capitalize furniture and equipment valued over \$500 that is expected to be in service for over one year. Contributed capital assets are valued at their estimated fair value as of the date contributed. Depreciation is computed according to the straight-line method over estimated useful lives of three years for electronic equipment and seven years for furniture.

OPERATING AND NON-OPERATING REVENUE

Revenue from the sale of electricity to customers is considered "operating" revenue. Contributions received from members of the public and investment income are classified as "non-operating revenue."

REVENUE RECOGNITION

MCE recognizes revenue on the accrual basis. This includes invoices issued to customers during the period and electricity estimated to have been delivered but yet to be billed. Management estimates that a portion of the billed amounts will not be collected. Accordingly, an allowance has been recorded.

MARIN CLEAN ENERGY
NOTES TO THE FINANCIAL STATEMENTS
YEARS ENDED MARCH 31, 2014 AND 2013

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

ELECTRICAL POWER PURCHASED

Electrical power sold to customers was purchased primarily through one energy supplier, Shell Energy North America. MCE has been increasing its renewable energy purchases from other sources. The cost of power and related delivery costs have been recognized as “cost of electricity” in the statement of revenues, expenses and changes in net position. As part of the agreement with Shell Energy, MCE is required to maintain a cash balance of \$1,350,000 to ensure funds are available to purchase electrical power. This cash balance is included in cash and cash equivalents as presented in the statement of net position.

STAFFING COSTS

MCE pays employees semi-monthly and fully pays its obligation for health benefits and contributions to its defined contribution retirement plan each month. MCE is not obligated to provide post-employment healthcare or other fringe benefits and, accordingly, no related liability is recorded in these financial statements.

INCOME TAXES

MCE is a joint powers authority under the provision of the California Government Code. As such it is not subject to federal or state income or franchise taxes.

ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

2. CASH AND CASH EQUIVALENTS

MCE maintains its cash in both interest and non-interest-bearing accounts at River City Bank of Sacramento, California (RCB). MCE had no deposit or investment policy that addressed a specific type of risk that would impose additional restrictions beyond the California Government Code Section 16521. This code section requires that River City Bank collateralize amounts of public funds in excess of the FDIC limit of \$250,000 by 110%. Accordingly, the amount of risk is not disclosed. Risk will need to be monitored on an ongoing basis.

MARIN CLEAN ENERGY
NOTES TO THE FINANCIAL STATEMENTS
YEARS ENDED MARCH 31, 2014 AND 2013

3. ACCOUNTS RECEIVABLE

Changes in accounts receivable were as follows:

	<u>2014</u>	<u>2013</u>	<u>2012</u>
Accounts receivable from customers	\$ 10,126,845	\$ 5,413,646	\$ 2,367,348
Allowance for uncollectible accounts	(1,030,274)	(840,850)	(186,780)
Net accounts receivable	<u>\$ 9,096,571</u>	<u>\$ 4,572,796</u>	<u>\$ 2,180,568</u>

4. CAPITAL ASSETS

Changes in capital assets were as follows:

	<u>Furniture & Equipment</u>	<u>Leasehold Improvements</u>	<u>Accumulated Depreciation</u>	<u>Net</u>
Balances at March 31, 2012	\$ 45,841	\$ 1,654	\$ (14,929)	\$ 32,566
Additions	47,560	4,227	(15,674)	36,113
Balances at March 31, 2013	93,401	5,881	(30,603)	68,679
Additions	7,015	-	(16,887)	(9,872)
Balances at March 31, 2014	<u>\$ 100,416</u>	<u>\$ 5,881</u>	<u>\$ (47,490)</u>	<u>\$ 58,807</u>

MARIN CLEAN ENERGY**NOTES TO THE FINANCIAL STATEMENTS****YEARS ENDED MARCH 31, 2014 AND 2013****5. ADVANCES FROM GRANTOR**

MCE receives grant funding through the Public Utilities Commission of the State of California for its Energy Efficiency Program. Funds are received on a quarterly schedule and are not recognized as revenue until they are expended for its designated purpose. Total grant funding received for the fiscal year 2014 was \$2,007,603, of which \$917,947 was spent and earned.

6. DEBT**NOTES PAYABLE TO RIVER CITY BANK**

Date of note	January 2011	July 2012
Original note amount	\$ 2,300,000	\$ 3,000,000
Approximate monthly payment	44,000	56,000
Reserve requirements	263,200	335,000
Maturity date	January 2016	October 2017
Interest rate	5.25%	4.50%
Balance at March 31, 2014	916,764	2,176,669

The January 2011 note is subject to a fixed income rate of 5.25%. The July 2012 note is subject to the Federal Home Loan Bank Five Year Fixed Rate plus 1.25%. MCE has agreed to maintain revenues in excess of maintenance and operating costs of 125% of the sum of annual debt service payments.

Changes in notes payable were as follows:

	<u>Beginning</u>	<u>Additions</u>	<u>Payments</u>	<u>Ending</u>
Year ended March 31, 2013				
River City Bank	\$ 1,820,691	\$ -	\$ (439,979)	\$ 1,380,712
River City Bank	-	3,000,000	(223,872)	2,776,128
Totals	<u>\$ 1,820,691</u>	<u>\$ 3,000,000</u>	<u>\$ (663,851)</u>	<u>4,156,840</u>
Amounts due within one year				(1,073,094)
Non-current portion				<u>\$ 3,083,746</u>
Year ended March 31, 2014				
River City Bank	\$ 1,380,712	-	\$ (463,948)	\$ 916,764
River City Bank	2,776,128	-	(599,459)	2,176,669
Totals	<u>\$ 4,156,840</u>	<u>\$ -</u>	<u>\$ (1,063,407)</u>	<u>3,093,433</u>
Amounts due within one year				(1,069,125)
Non-current portion				<u>\$ 2,024,308</u>

MARIN CLEAN ENERGY

NOTES TO THE FINANCIAL STATEMENTS

YEARS ENDED MARCH 31, 2014 AND 2013

6. DEBT (continued)

Future debt service requirements are as follows:

	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
For the years ending March 31:			
2015	\$ 1,069,125	\$ 124,755	\$ 1,193,880
2016	1,032,871	70,967	1,103,838
2017	628,330	32,240	660,570
2018	363,107	5,365	368,472
Total	<u>\$ 3,093,433</u>	<u>\$ 233,327</u>	<u>\$ 3,326,760</u>

7. DEFINED CONTRIBUTION RETIREMENT PLAN

The Marin Clean Energy Plan (Plan) is a defined contribution retirement plan established by MCE to provide benefits at retirement to its employees. The Plan is administered by Nationwide Retirement Solutions. At March 31, 2014, there were 17 plan members. MCE is required to contribute 10% of annual covered payroll and contributed \$128,000 and \$80,500 during the years ended March 31, 2014 and 2013, respectively. Plan provisions and contribution requirements are established and may be amended by the Board of Directors.

8. RISK MANAGEMENT

MCE is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; and errors and omissions. During the year, MCE purchased liability and property insurance from a commercial carrier. Coverage for property general liability, errors and omissions and non-owned automobile was \$2,000,000 with a \$1,000 deductible.

MARIN CLEAN ENERGY

NOTES TO THE FINANCIAL STATEMENTS

YEARS ENDED MARCH 31, 2014 AND 2013

9. COMMITMENTS AND CONTINGENCIES

MCE had outstanding power purchase commitments of \$276.2 million contingent upon construction of solar photovoltaic generation facilities that continue for up to twenty five years from the commercial operation date of each project.

MCE had outstanding non-cancelable power purchase commitments of \$413.4 million for energy and related services that have not yet been provided under power purchase agreements that continue to December 31, 2033.

As of March 31, 2013, MCE had outstanding non-cancelable commitments of \$9.9 million to professional service providers for services yet to be performed.

10. OPERATING LEASE

Marin Clean Energy rents office space. MCE is obligated under a seven year non-cancelable lease for its office premises until December 31, 2019. Rental expense was \$186,000 and \$130,000 for the years ended March 31, 2014 and 2013, respectively. The rental agreement includes an option to renew the lease for five additional years.

Future minimum lease payments under the lease are as follows:

Year ended March 31,		
2015	\$	196,679
2016		202,773
2017		208,854
2018		215,118
2019		221,574
2020		169,893
	\$	<u>1,214,891</u>



September 4, 2014

TO: Marin Clean Energy Board

FROM: Greg Brehm, Director of Power Resources

RE: Land Option and Lease Agreements with Chevron Products Company
(Agenda Item #06)

ATTACHMENTS: A. Land Option Agreement
B. Solar Energy Facility Site Lease

Dear Board Members:

Overview:

As a result of MCE's ongoing search for Local Renewable Energy development sites MCE received an offer from Chevron Products Company (CPC) to lease a 60 acre brownfield site at its Richmond Refinery. The initial evaluation of this site by staff yielded no significant development, permitting, or interconnection concerns. As a result, staff initiated negotiations with CPC for the purpose of developing a mutually agreeable land option and lease agreement. Under the terms of the land option and lease agreement, the subject property would host a minimum 2 MW solar project and a maximum of 12 MWs of future renewable energy development to serve MCE customers.

The Land Option and Lease Agreements were presented to your Board on July 3, 2014, and some Board members requested additional legal review to insure indemnification for any existing contamination on site. Additional legal review has now been completed and additional language in this regard has been incorporated into the current drafts. In addition, some revised commercial terms have been incorporated to facilitate project financing.

Land Option additions:

Chevron hereby provides its consent for the testing set forth on Exhibit E. MCE must provide Chevron with twenty-four (24) hours' notice prior to entering the Property to conduct Feasibility Studies.

Exhibit F- Description of Anticipated Environmental Testing

1. Soil and soil gas sampling investigations that do not include penetration of the landfill cap or drainage system.
2. Geotechnical investigations that do not include penetration of the landfill cap or drainage system.

The Land Option grants MCE a license to enter, cross, and use the property to investigate the feasibility of developing and operating a photovoltaic solar energy-generation project on the three parcels (the "Project") and an exclusive option and right to enter into a long-term solar energy facility site lease for the property. This due diligence will include interconnection applications, site engineering, and environmental review of the suitability of the site to serve the

energy needs of MCE customers at a competitive rate. The requisite Land Option and Lease documents including pertinent commercial terms addressing the various responsibilities of the parties, are attached. These agreements accurately reflect the intended terms and conditions of this proposed transaction, which would facilitate MCE's local renewable energy development program.

Solar Energy Facility Site Lease additions:

6.2 Lessor shall, at its sole cost and expense, keep in good and safe condition, order and repair Lessor's facilities, in, on or under the Property, including without limitation, a landfill cap and drainage system and various groundwater control systems and other remedial systems installed to address Prior Covered Contamination or Lessor Covered Contamination (**as defined in Section 10.2** [of the attached lease])

8.3.2 Lessor shall indemnify, protect, defend and hold harmless Lessee and its directors, officers, employees, and agents (collectively, "**Lessee Indemnitees**") from and against any and all claims, damages, losses, proceedings, causes of action, costs, expense or liability (including attorneys' fees and costs), including any personal injury, death or property damage, now or hereafter arising from any occurrence in or about the Property, or from the Solar Project or the Solar Operations, or from any breach or default by Lessor in the performance of any obligation on the part of Lessor to be performed under the terms of this Lease, caused by the active negligence, gross negligence or willful misconduct of Lessor or its directors, officers, employees, and agents, or from Prior Covered Contamination or Lessor Covered Contamination (**as defined in Section 10.2** [of the attached lease])

Location & Project Viability:

The Project area includes three parcels bordered by the Richmond Parkway on the east side and totaling approximately 60 Acres. The site is located in the City of Richmond and is zoned M-3, Heavy Industrial District, upon which Public Utilities, both major and minor, are permitted uses. Subsequent to initiating negotiations with CPC, the City of Richmond passed a resolution that all solar energy systems shall be allowed in any zoning district or General Plan designated area within the city, and that such systems shall be permitted ministerially, and not subject to CEQA review.



Portfolio Fit:

MCE's development of the Project will benefit the public by allowing MCE to provide electricity from local renewable resources to customers in alignment with MCE's role as a California Joint Powers Authority. MCE's status as a California Joint Powers Authority and the public benefit that will result from these Agreements and MCE's involvement in the Project are key factors in CPC's decision to lease the property to MCE on the terms of this Agreement.

Counterparty Strength:**Chevron Products Company (CPC)**

- Chevron Products Company, ("CPC") is a division of Chevron U.S.A. Inc., a Pennsylvania corporation.
- CPC has owned and operated the site for more than 100 years.

**Contract Terms:**

The Lease will be \$1.00 per year, so long as MCE or another governmental entity remains the sole off taker for the energy generated onsite. CPC has agreed to pay all current property tax assessments, and MCE will be responsible for any supplemental assessments triggered by the solar project development. The lease will run for 25 years with one 5 year extension option.

The property is the site of a former fertilizer plant's product ponds and a waste management landfill site with groundwater control systems (including hydraulic control trenches, barrier walls and membrane caps). The Property is bordered by a creek and wetlands. The Land Lease allows MCE to sublet all or a portion of the property to a third party developer for the purposes of developing the solar project with CPC's prior written consent, as long as MCE remains the power off-taker, and the term of the sublease is no longer than necessary for the developer to realize the full benefit of any federal, state or local tax benefits associated with the construction or operation of the solar project. It is anticipated that MCE will ultimately own the project after approximately seven years.

The PPA rate for the project is expected to be at or significantly below market rates for similar resources through partnering with tax equity investors and or a "utility prepay" financing

mechanism. In the prepay structure, MCE would fund approximately 40% to 50% of the development cost through a bond or debt financing, reducing the debt service cost of the developer, and therefore lowering their revenue requirement and resulting PPA rate.

Summary:

The CPC Land Option and Land Lease Agreements provide MCE with an excellent local project development site consistent with its local development goals based on the following considerations:

- The project size and expected energy production would support the future renewable energy requirements of MCE customers.
- The project is expected to be an MCE owned project.
- Energy from the project is expected to be competitively priced because of tax equity partnerships and or “utility prepay” financing.

Recommendation: Authorize finalization and approval of two agreements as follows:

1. Land Option Agreement with Chevron Products Company
 2. Land Lease with Chevron Products Company
-

LEASE OPTION AGREEMENT

THIS LEASE OPTION AGREEMENT (this “**Agreement**”) is made and entered into as of August ___, 2014 (the “**Effective Date**”), by and between **Chevron Products Company**, a division of Chevron U.S.A. Inc., a Pennsylvania corporation (“**Chevron**”), and **Marin Clean Energy**, a California Joint Powers Authority (“**MCE**”). Each of Chevron and MCE are sometimes referred to as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. Chevron owns the real property located in Contra Costa County, California depicted on Exhibit A (each a “**Parcel**” and collectively, the “**Property**”) totaling approximately sixty (60) gross acres. The Parcels are part of a larger refinery owned and operated by Chevron (the “**Chevron Refinery**”).

B. MCE seeks from Chevron, and Chevron is willing to grant to MCE, a license to enter, cross, and use the Property to investigate the feasibility of developing and operating a photovoltaic solar energy-generation project on the Parcels (the “**Project**”) and an exclusive option and right to enter into a long-term solar energy facility site lease for the Property upon the terms and conditions set forth in this Agreement.

C. MCE’s development of the Project will benefit the public by allowing MCE to provide electricity from renewable resources to members of the public and fulfill its role as a California Joint Powers Authority. MCE’s status as a California Joint Powers Authority and the public benefit that will result from this Agreement and MCE’s involvement in the Project are key factors in Chevron’s decision to lease the Property to MCE on the terms of this Agreement. Chevron would not enter into this Agreement or the Lease but for MCE’s status as a public entity and the public benefits arising from MCE’s involvement.

NOW, THEREFORE, in consideration of these premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Chevron and MCE agree as follows:

AGREEMENT

1. **EXCLUSIVE LEASE OPTION**. Chevron grants MCE the exclusive right and option during the Option Period (defined below) to enter into a Solar Energy Facility Site Lease in the form attached to this Agreement as Exhibit B (the “**Lease**”) for the lease of the Property and an exclusive right to use the Property for Solar Operations (the “**Lease Option**”). For purposes of this Agreement, “**Solar Operations**” means: solar energy resource evaluation; solar energy development; converting solar energy into electrical energy; storing, collecting, and transmitting the electrical energy converted from solar energy; and any and all other activities related to the foregoing conducted on the Property. The Lease Option is subject and subordinate to any matters of record existing prior to the Effective Date. The Lease Option is contingent on MCE obtaining, and providing to Chevron, a current survey of the Property, and MCE may not exercise the Lease Option until MCE has obtained, and provided to Chevron, a current survey of the Property that has been reviewed and accepted by Chevron.

1.1 Exercise of Lease Option. During the Option Period, MCE may exercise the Lease Option with respect to the Property by providing written notice of exercise (“**Notice of Exercise**”) of the Lease Option to Chevron by no later than 5:00 p.m. Pacific Time on the Termination Date (defined below), together with two (2) originals of the Lease duly executed by MCE. If MCE timely and properly exercises the Lease Option, Chevron shall execute the two (2) originals of the Lease within five (5) business days after receipt by Chevron of MCE's Notice of Exercise (along with the two executed copies of the Lease) provided that either (a) the Property has been deactivated from the Zone (as defined below), or (b) Chevron has obtained authorization from the San Francisco Port Commission (the “**Port**”) to enter into the Lease. Chevron shall promptly deliver one executed original of the Lease to MCE. The Parties acknowledge that MCE may elect not to exercise the Lease Option if certain conditions cannot be satisfied, including MCE's obtaining any necessary approvals and agreements and Chevron's deactivation of the Property from the Zone. Chevron shall use commercially reasonable efforts to cause such deactivation of the Property from the Zone.

1.2 Lapse of Option. In the event MCE does not exercise the Lease Option by 5:00 p.m. Pacific Time on the Termination Date, this Agreement shall automatically terminate without further action by any Party, and the rights granted by Chevron to MCE in this Section 1 shall be of no further force or effect.

1.3 Option Payment. MCE shall pay Chevron the amount of one dollar (\$1) as consideration for the Lease Option.

2. TERM. This Agreement is effective as of the Effective Date and will continue until the earlier of (a) the first anniversary of the EIR Approval Date, (b) the date MCE exercises the Lease Option with respect to the Property in accordance with Section 1.1, (c) the termination date set out in either Chevron's or MCE's written notice of termination in accordance with Section 5 below, (d) the date this Agreement terminates pursuant to Section 5.4 below, or (e) the date MCE ceases to be a Joint Powers Authority (the “**Term**,” the date on which this Agreement terminates, the “**Termination Date**”). Notwithstanding the foregoing, MCE may only exercise the Lease Option from and after the EIR Approval Date until 5:00 p.m. Pacific Time on the Termination Date (such period, the “**Option Period**”). The license granted to MCE in Section 3 below will survive the Termination Date for a period of twenty (20) days for the sole purpose of enabling MCE to remove any and all monitoring devices, equipment, and facilities that are the personal property of MCE from the Property. For purposes of this Agreement, “**EIR Approval Date**” means the date the City Council for the City of Richmond certifies the Environmental Impact Report for the Chevron Refinery Modernization Project on terms acceptable to Chevron.

3. FEASIBILITY STUDIES.

3.1 Feasibility Studies. During the Term, and at MCE's sole cost, MCE shall be entitled to make such investigations, examinations and studies of the Property as MCE deems necessary or desirable (the “**Feasibility Studies**”), including, but not limited to, review and approval of the condition of title, any contract or other commitment with respect to the Property, tax and appraisal issues, preliminary construction issues, studies of solar radiation, solar energy and other meteorological data, soils tests and studies, a Phase I environmental site assessment, surveys, and studies on the Property, and land use and energy development regulatory issues.

Notwithstanding the foregoing, MCE may not (i) conduct any studies or tests that penetrate the ground or the landfill cap and drainage system located therein without Chevron's prior written consent, which may be granted or withheld at Chevron's sole discretion or (ii) damage or interfere with the groundwater protection system shown in Exhibit C. MCE must provide Chevron with twenty-four (24) hours' notice prior to entering the Property to conduct Feasibility Studies. While conducting the Feasibility Studies or any other activities on the Property, MCE shall comply with all Federal, State, or local laws, ordinances, or statutes, and the orders, rules, and regulations of any Federal, State, or local governmental agency and the Port, applicable to the Property, the use and operation thereof, and improvements thereon (collectively, "**Applicable Laws**"), and Chevron's security procedures for the Chevron Refinery, a copy of which Chevron shall provide to MCE upon request. MCE shall promptly repair any damage to the Property caused by the foregoing Feasibility Studies and shall conduct such Feasibility Studies in a manner that does not materially disrupt Chevron's activities on the Property or at the Chevron Refinery. MCE acknowledges and agrees that any materials delivered by Chevron pursuant to this Agreement are delivered without representation or warranty by Chevron as to completeness or correctness. If MCE terminates this Agreement pursuant to Section 5, then MCE shall deliver to Chevron copies of any data collected by MCE on the Property; provided that MCE shall have no obligation to provide Feasibility Studies or other analysis of the Solar Operations conducted by or on behalf of MCE for the Project. MCE acknowledges that Chevron has made no representations or warranties regarding the Property or its physical condition or legal status. MCE further acknowledges that the Parcels are located within a U.S. Foreign Trade Subzone 3B (the "**Zone**") and as such MCE shall comply with all requirements imposed by the Foreign Trade Zone Board of the U.S. Dept. of Commerce ("**FTZ Board**"), U.S. Customs and Border Protection ("**CBP**"), the Port and Chevron for activities within the Zone, so long as the Property is located within the Zone. MCE further acknowledges that Chevron retains the right to modify the terms and conditions of this Agreement if required to comply with requirements imposed by the FTZ Board, CBP and/or the Port. To the extent that the Property is removed from the Zone and is thereafter reactivated, MCE shall be required to comply with all requirements imposed by the FTZ Board, CBP and/or the Port.

3.2 Roadway License. During the Term, Chevron hereby grants to MCE, at no additional cost or expense, for use by MCE and its employees, agents, and contractors, a license on and along certain interior roads and private driveways within the Chevron Refinery, generally as depicted on Exhibit D, for ingress and egress by vehicular traffic between the public roads entering the Chevron Refinery and the Property, for the purposes of conducting the Feasibility Studies.

3.3 Chevron's Existing Facilities. Chevron shall make available to MCE for inspection any surveys, as-built drawings and reports for all subsurface and overhead pipelines and utility facilities, the landfill cap and drainage system and groundwater control systems, and permits and other documents relating to materials used to fill in the fertilizer evaporation ponds, but only to the extent such documents exist as of the Effective Date, relate directly to the proposed Solar Project and are in Chevron's possession as of the Effective Date.

4. EXCLUSIVITY. During the Term, Chevron will not sell, contract to sell, assign, lease, or otherwise transfer any Parcel, unless such sale, contract to sell, assignment, or lease is subject to MCE's exclusive rights under this Agreement. Chevron has not granted to any party

other than MCE rights to convert the solar resources of the Property for electrical energy or to otherwise use the Property for solar energy conversion purposes.

5. DEFAULT; TERMINATION.

5.1 Defaults. Each of the following events shall constitute an event of default by the Parties and shall permit the non-defaulting Party to terminate this Agreement and/or pursue all other appropriate remedies:

5.1.1 The failure or omission by MCE to pay amounts required to be paid hereunder when due, and such failure or omission has continued for five (5) days after Chevron has delivered written notice of the default to MCE;

5.1.2 The failure or omission by either Party to observe, keep or perform any of the other terms, agreements or conditions set forth in this Agreement, and such failure or omission has continued for thirty (30) days after written notice from the other Party (or such longer period required to cure such failure or omission, not to exceed sixty (60) days, if such failure or omission cannot reasonably be cured within such thirty (30) day period); or

5.1.3 A Party files for protection or liquidation under the bankruptcy laws of the United States or any other jurisdiction or has an involuntary petition in bankruptcy or a request for the appointment of a receiver filed against it and such involuntary petition or request is not dismissed within forty-five (45) days after filing.

5.2 Chevron's Right to Terminate. Chevron may immediately terminate this Agreement by providing written notice to MCE if an event of default of MCE's obligations under this Agreement, as described in Section 5.1 above, has occurred and remains uncured after any relevant cure period.

5.3 Termination by MCE. In addition to the rights to terminate granted to MCE under Section 5.1.2 and 5.1.3 above, MCE, at its sole and absolute discretion, may terminate this Agreement at any time upon thirty (30) days' written notice to Chevron.

5.4 Non-Occurrence of EIR Approval. If the EIR Approval Date does not occur by December 31, 2014, this Agreement will automatically terminate and be of no further force or effect.

5.5 Effect of Termination. In the event that Chevron and MCE do not execute the Lease prior to the Termination Date, then upon such termination, MCE shall, within twenty (20) days after the Termination Date remove all equipment and materials from the Property and restore the soil, to the extent disturbed by MCE, to a condition reasonably similar to its original condition and shall comply with any resulting remediation requirements imposed by any applicable governmental authority. If MCE fails to remove any such equipment or materials within twenty (20) days after termination of this Agreement, such failure shall be deemed an abandonment of such equipment or materials by MCE, in which case Chevron may remove such equipment and materials, and in which case MCE shall reimburse Chevron for reasonable and actual costs of removal incurred by Chevron within thirty (30) days after receipt of an invoice from Chevron.

6. **ASSIGNMENT.** The Parties acknowledge that MCE's status as a California Joint Powers Authority is an important basis on which the Parties are entering into this Agreement and that Chevron would not lease the Property on the terms of the Lease to a party other than a governmental entity. Accordingly, MCE may not assign this Agreement or any of its rights or duties hereunder without Chevron's prior written consent, which consent may be given or withheld at Chevron's sole discretion.

7. **INSURANCE.** Prior to MCE's entry onto the Property and thereafter throughout the Term, MCE shall, at its sole cost and expense, obtain and maintain and keep in full force and effect during the Term a commercial general liability insurance policy insuring MCE and Chevron against loss or liability caused by MCE's activities on, and use of, the Property, in an amount not less than Three Million Dollars (\$3,000,000) of combined single limit liability coverage per occurrence, accident or incident, subject to a commercially reasonable deductible. All such policies shall include Broad Form Contractual liability insurance coverage insuring coverage for all of MCE's indemnity obligations under this Agreement. All such policies shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, however occasioned. All such policies shall be endorsed to add Chevron and any lender or other party with an insurable interest in the Lease or the Property named by Chevron as an additional insured and to provide that any insurance maintained by Chevron shall be excess insurance only. Such coverage shall also contain endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including employees as additional insureds; and (iii) providing for coverage of employer's automobile non-ownership liability. All such insurance shall provide for severability of interests; shall provide that an act or omission of one of the named insureds shall not reduce or avoid coverage to the other named insureds; and shall afford coverage for all claims based on acts, omissions, injury and damage, which claims occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. MCE shall also maintain Workers' Compensation insurance in accordance with California law. The limits of all insurance described in this Section shall not, however, limit the liability of MCE hereunder. The insurance required to be obtained by MCE pursuant to this Section 8 shall be primary insurance and (a) shall provide that the insurer shall be liable for the full amount of the loss up to and including the total amount of liability set forth in the declarations without the right of contribution from any other insurance coverage of Chevron, (b) shall be carried with companies reasonably acceptable to Chevron, and (c) shall specifically provide that such policies shall not be subject to cancellation, reduction of coverage or other change except after at least thirty (30) days prior written notice to Chevron. Duly executed certificates evidencing the issuance of such policies, together with satisfactory evidence of payment of the premium thereon, shall be deposited with Chevron on or prior to the date on which MCE or any of MCE's agents or contractors enter the Property, and upon each renewal of such policies, which shall be effected not less than thirty (30) days prior to the expiration date of the term of such coverage. MCE shall not do or permit to be done anything which shall invalidate any of the insurance policies referred to in this Section. MCE and Chevron each hereby waives any and all rights of recovery against the other, or against the officers, employees, agents, partners and beneficiaries of the other, for loss of or damage to the property of the waiving Party, or the property of others under its control, to the extent of proceeds received as a result of such loss or damage under any insurance policy carried by Chevron or MCE. MCE and Chevron shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver is contained in this Agreement. Chevron makes no representation that

the limits of liability specified to be carried by MCE under the terms of this Agreement are adequate to protect either Party. If MCE believes that the insurance coverage required under this Agreement is insufficient to adequately protect MCE, MCE shall provide, at its own expense, such additional insurance as MCE deems adequate.

8. INDEMNIFICATION. MCE shall indemnify, protect, defend and hold harmless Chevron and its directors, officers, employees, and agents (collectively, “**Chevron Indemnitees**”) from and against any and all claims, damages, losses, proceedings, causes of action, costs, expense or liability (including attorneys’ fees and costs), including any personal injury, death or property damage, now or hereafter arising from the Project, the Feasibility Studies, any activities of MCE, its agents or employees on or related to the Property, or from any breach or default by MCE in the performance of any obligation on the part of MCE to be performed under the terms of this Agreement, except to the extent such damage, loss, expense or liability is caused by the active negligence, gross negligence, or willful misconduct of such Chevron Indemnitee (“**Claims**”). In the event any action or proceeding is brought against any Chevron Indemnitee by reason of any Claim, MCE upon notice from such Chevron Indemnitee shall defend the same at MCE’s expense with counsel reasonably satisfactory to such Chevron Indemnitee. The obligations of MCE contained in this Section shall survive the termination of this Agreement. Except to the extent such damages, losses, expenses or liability is caused by the active negligence, gross negligence, or willful misconduct of such Chevron Indemnitee, MCE hereby waives any claims against the Chevron Indemnites for injury to MCE’s business or any loss of income therefrom or for damage to the equipment, goods, wares, merchandise or other property of MCE, or for injury or death of MCE’s agents, employees, invitees, or any other person in or about the Parcels from any cause whatsoever, regardless of whether the same results from conditions existing upon the Property or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to MCE.

9. LIENS. MCE shall not file, or allow to be filed, any lien against the Property or Chevron’s personal property, fixtures or improvements on the Property. In the event any such lien shall be filed, MCE shall promptly take such action as will remove or satisfy the lien; provided, however, that MCE may contest any lien (or any aspect thereof) and, pending the determination of such contest, postpone the removal or satisfaction thereof, except that MCE shall not postpone such removal or satisfaction so long as to permit or cause any adverse effect on, or loss or impairment of title to, the Property or any of Chevron’s real or personal property. If MCE fails to timely remove or satisfy a lien hereunder, Chevron may, after thirty (30) days’ prior written notice to MCE stating with reasonable specificity the actions that will be taken by Chevron to remove or satisfy such lien, perform such actions for the account of MCE and MCE shall pay the cost thereof. To the extent allowed by law, MCE may bond to secure the lien so long as by law the bond will become the sole security for the lien and Chevron’s use of or interest in the Chevron Refinery and the Parcels is not compromised.

10. MISCELLANEOUS PROVISIONS.

10.1 Notices. All notices or other communications required or permitted by this Agreement shall be in writing and shall be deemed given when personally delivered, or in lieu of such personal service, five (5) days after deposit in the United States mail, first class,

postage prepaid, certified, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party. Any notice shall be addressed as follows:

If to Chevron: Chevron Products Company
Richmond Refinery
841 Chevron Way
Richmond, CA 94801
510-242-4401
Attn: Refinery Manager

With a copy to: Chevron Products Company
Downstream Law Department
6001 Bollinger Canyon Road
San Ramon, CA 94583
925-842-1000
Attn: Office of General Counsel

If to MCE: Marin Clean Energy
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
dweicz@mceCleanEnergy.org
Attn: Executive Officer

With a copy to: Troutman Sanders LLP
805 SW Broadway, Suite 1560
Portland, OR 97205-3326
503-290-2338
ben.fisher@troutmansanders.com
Attn: Ben Fisher

Any Party may change its address for purposes of this Section by giving written notice of such change to the other parties in the manner provided in this Section.

10.2 Waiver. The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power, or remedy upon a breach of any provision of this Agreement will not constitute a waiver of any provision of this Agreement or limit the party's right to enforce any provision or exercise any right in the future.

10.3 Confidentiality.

10.3.1 Each Party shall treat as confidential information disclosed to it by any other Party pursuant to this Agreement, including information concerning the Parcels and the Project disclosed before or after the Effective Date (collectively, “**Confidential Information**”); provided, however, that the following information shall not be Confidential Information: (a) information that at the time of disclosure or acquisition was in the public domain or later entered the public domain other than by breach of this Section 11.3 or a confidentiality

obligation owed to the disclosing Party, provided that all environmental information shall be Confidential Information, irrespective of whether such information is in the public domain; (b) information that at the time of disclosure or acquisition was already known to and had been reduced to writing by the recipient; or (c) information that after disclosure or acquisition was received from a third party that had no duty to maintain the information in confidence.

10.3.2 Unless otherwise agreed to herein, or required by law, no Party may, unless authorized by the disclosing Party to do so: (a) copy, reproduce, distribute or disclose to any person any Confidential Information, or any facts related thereto; (b) permit any third party to have access to Confidential Information; or (c) use Confidential Information for any purpose other than for the purpose of pursuing the activities as contemplated herein. The disclosing Party hereby authorizes the receiving Party to disclose Confidential Information to its attorneys, lenders, or prospective assignees; provided, however, that the receiving Party shall require in writing such persons to treat Confidential Information in a manner consistent with this Agreement.

10.3.3 In the event that a Party that has received Confidential Information from another Party is requested under the California Public Records Act, the Freedom of Information Act, in any legal proceeding or by any governmental authority to disclose any Confidential Information, the receiving Party shall, to the extent permitted under Applicable Law, give the providing Party prompt notice of such request so that the providing Party may seek an appropriate protective order. If, in the absence of a protective order, the receiving Party is nonetheless advised by counsel that disclosure of the Confidential Information is required (after exhausting any appeal requested by the providing Party at the providing Party's expense and permitted under Applicable Law), the receiving Party may disclose such Confidential Information without liability hereunder provided that only such portion of the Confidential Information required to be disclosed shall be made available.

10.4 Entire Agreement; Amendments. This Agreement and the attached Exhibits constitute the entire agreement between Chevron and MCE respecting its subject matter. Any agreement, understanding or representation respecting the Property, this Agreement, or any other matter referenced herein not expressly set forth in this Agreement, or in a subsequent writing signed by both parties, is null and void. This Agreement may not be modified or amended except in a writing signed by both Parties. No purported modifications or amendments, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, will be binding on either Party.

10.5 Legal Matters.

10.5.1 **Governing Law; Dispute Resolution.** This Agreement is governed by and will be interpreted in accordance with the laws of the State of California, without regard to principles of conflicts of law. In the event of any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation, termination, breach, existence, scope, or validity thereof (a "**Dispute**"), the Dispute shall be resolved in the Superior Court of Contra Costa County, California. In any such action, the Parties shall jointly request that the

Superior Court appoint a referee to resolve all legal and factual issues of the Dispute pursuant to Code of Civil Procedure Sections 638 et seq.

10.5.2 **No Consequential Damages.** Notwithstanding anything to the contrary in this Agreement, neither Party shall be entitled to, and each of Chevron and MCE hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement.

10.5.3 **Attorney Fees.** If any action proceeding at law or in equity, (collectively an “**Action**”), shall be brought to recover any rent under this Agreement, or for or on account of any breach of or to enforce or interpret any of the terms, covenants, or conditions of this Agreement, the Prevailing Party shall be entitled to recover from the other Party as a part of such Action, or in a separate Action brought for that purpose, its reasonable attorney’s fees and costs and expenses (including expert witness fees) incurred in connection with the prosecution or defense of such Action, including any appeal thereof. “**Prevailing Party**” within the meaning of this Section shall include, without limitation, a Party who brings an action against the other after the other is in breach or default, if such action is dismissed upon the other’s payment of the sums allegedly due or upon the other’s performance of the covenants allegedly breached, or if the Party commencing such action or proceeding obtains substantially the relief sought by it in such action, whether or not such action proceeds to a final judgment or determination.

10.5.4 **Partial Invalidity.** Should any provision of this Agreement be held in a final and unappealable decision by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect and unimpaired by the court’s holding.

10.6 **Conflicts of Interest.** Conflicts of interest relating to this Agreement are strictly prohibited and the provisions of this Section shall apply in reciprocity to both Parties. Except as otherwise expressly provided herein, neither MCE nor Chevron nor any director, employee or agent of either Party shall give to or receive from any director, employee or agent of the other Party any gift, entertainment or other favor of significant value, or any commission, fee or rebate. Likewise, neither MCE nor Chevron nor any director, employee or agent of either Party shall enter into any business relationship with any director, employee or agent of the other Party or any of its affiliates. Each Party shall promptly notify the other Party of any violation of this Section and any consideration received or paid as a result of such violation, which shall promptly be paid over or credited to the appropriate Party. Additionally, in the event of any violation of this Section, including any violation occurring prior to the Effective Date, resulting directly or indirectly in either Party’s consent to enter into this Agreement, either Party may at its option, terminate this Agreement pursuant to the notice provisions contained in this Agreement. Any legal, risk management or fiduciary representative(s) authorized by either Party may audit any and all pertinent records of the other Party for the sole purpose of determining whether there has been compliance with this Section.

10.7 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

10.8 No Partnership. Nothing contained in this Agreement shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more of the parties to this Agreement.

10.9 Effective Date. The Effective Date shall be the date on which both Parties have signed this Agreement.

10.10 Memorandum of Agreement. The Parties shall execute and acknowledge a memorandum of this Agreement in the form attached as Exhibit E at the same time as the execution of the Agreement. MCE shall cause such memorandum to be recorded in the Official Records of the County of Contra Costa.

10.11 Press Release. Notwithstanding the restrictions of Section 10.3, at either Party's request, the Parties shall reasonably cooperate to prepare and issue a joint press release or other public announcement regarding the Project and the general terms of this Option Agreement.

10.12 No Recourse to Members of Lessee. 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.) and is a public entity separate from its constituent members. Under Article VIII of Lessee's Operating Rules and Regulations, MCE shall be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Chevron shall have no rights to and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members to the extent such claims arise from MCE's obligations under this Agreement.

(Signature Page Follows)

IN WITNESS WHEREOF, MCE and Chevron have caused this Lease Option Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

CHEVRON PRODUCTS COMPANY,
a Division of Chevron U.S.A Inc.,
a Pennsylvania corporation

By: _____

Its _____

MARIN CLEAN ENERGY

By: _____

Dawn Weisz

Its Executive Officer

MCE Board Resolution No. _____,
Adopted on _____, 2014

APPROVED AS TO FORM:

Troutman Sanders LLP

Ben Fisher

Counsel for Marin Clean Energy

EXHIBIT A
DEPICTION OF PROPERTY



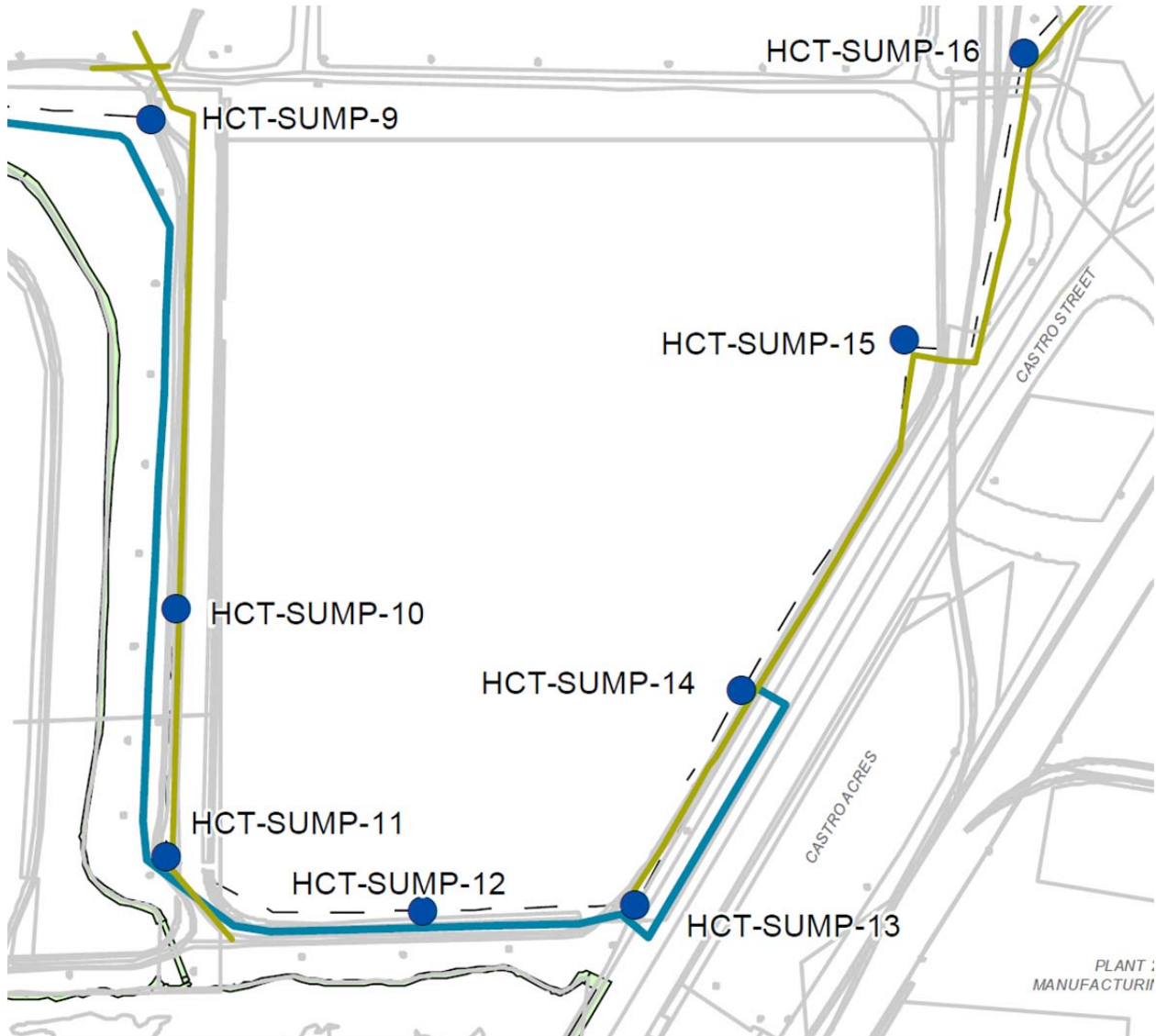
EXHIBIT B

LEASE

[Attached]

EXHIBIT C

DIAGRAM OF GROUNDWATER PROTECTION SYSTEM



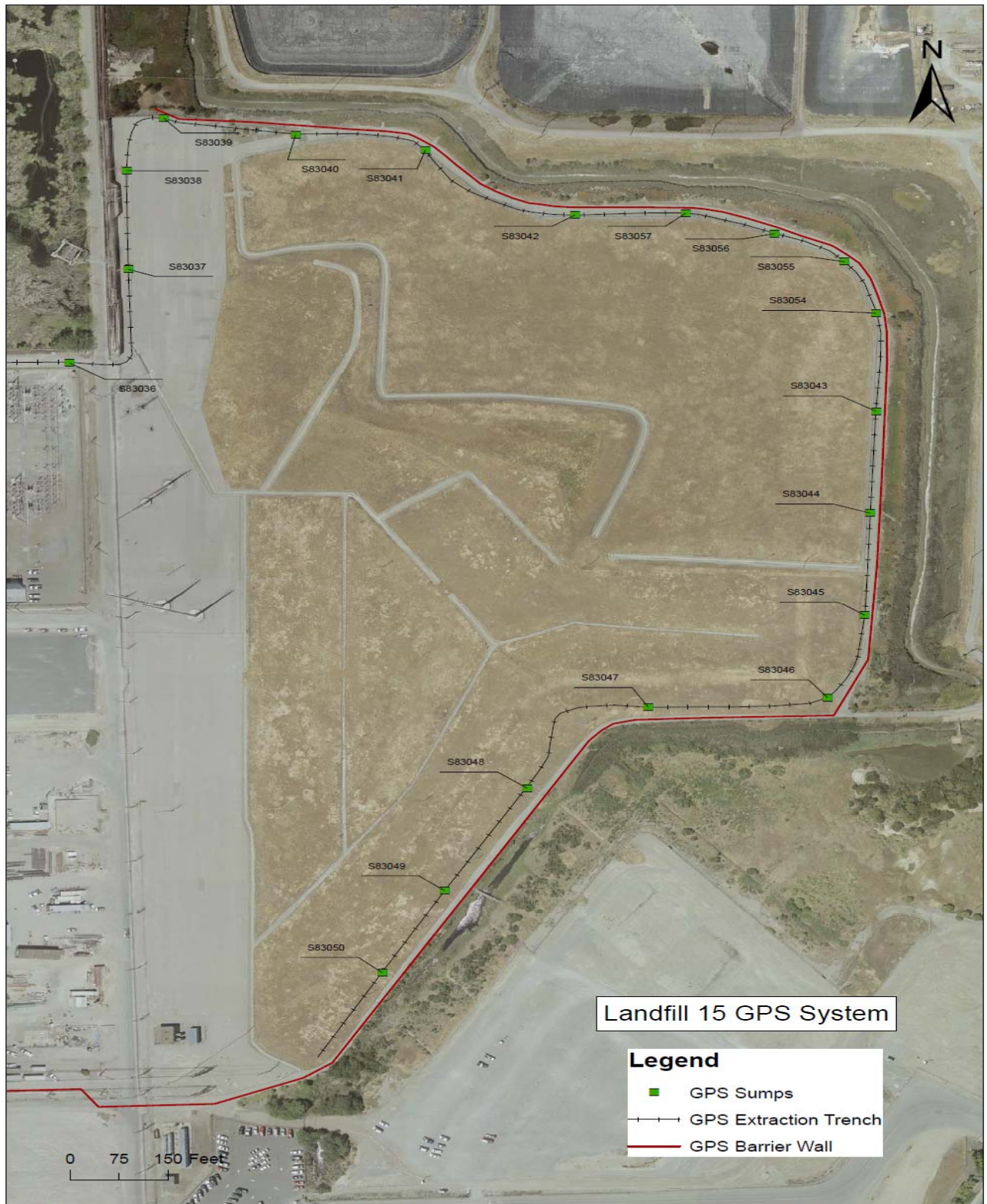


Exhibit C-2

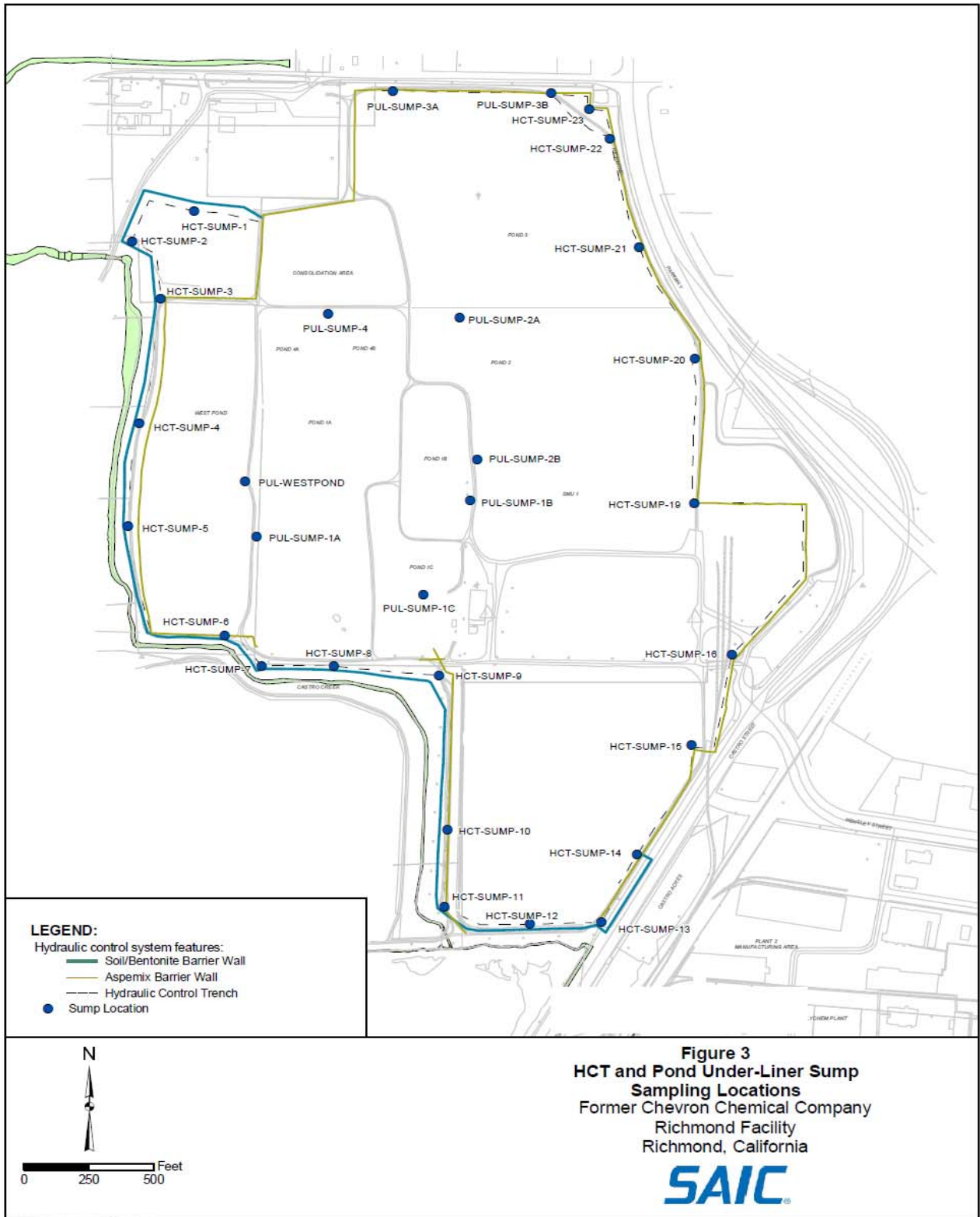


EXHIBIT D

ROADWAY LICENSE AREA

[Note: To be mutually agreed upon following discussion by the parties]

EXHIBIT E

MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Marin Clean Energy
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Attn: Executive Officer

(Space Above for Recorder's Use)

APN: 561-100-034, 561-100-037 & 561-100-038

MEMORANDUM OF LEASE OPTION AGREEMENT

THIS MEMORANDUM OF LEASE OPTION AGREEMENT (this "**Memorandum**") is made and entered into as of August __, 2014 (the "**Effective Date**") by and between CHEVRON PRODUCTS COMPANY, a division of Chevron U.S.A. Inc., a Pennsylvania corporation ("**Optionor**"), and MARIN CLEAN ENERGY, a California Joint Powers Authority ("**Optionee**").

Recitals

A. Optionor and Optionee are parties to that certain unrecorded Lease Option Agreement of even date herewith ("**Option Agreement**"), under which Option Agreement Optionor has granted to Optionee and Optionee has agreed to accept from Optionor an option to lease that certain real property depicted on Exhibit "A" attached hereto (the "**Property**").

B. Optionor and Optionee now desire to provide for public notice of the existence of the Option Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Option. Optionor hereby grants to Optionee the option to lease the Property upon the terms and subject to the terms and conditions set forth in the Option Agreement, and all of the terms and conditions of the Option Agreement are hereby incorporated into this Memorandum by this reference. Initially capitalized terms that are used but not defined herein shall have the meanings ascribed to them in the Option Agreement.

2. Term of the Option. Subject to the terms and conditions set forth in the Option Agreement, the term of the option to lease the Property commences on the Effective Date and will continue until 5:00 p.m. Pacific time on the earlier of (a) the first anniversary of the EIR Approval Date, (b) the date Optionee exercises the Lease Option with respect to the Property in

accordance with Section 1.1 of the Option Agreement, (c) the termination date set out in either Optionor's or Optionee's written notice of termination in accordance with Section 5 of the Option Agreement, (d) the date this Agreement terminates pursuant to Section 5.4 of the Option Agreement, or (e) the date Optionee ceases to be a Joint Powers Authority.

3. Conflict of Provisions. This Memorandum is prepared for the purpose of recordation and shall not alter or affect in any way the rights and obligations of Optionor and Optionee under the Option Agreement. In the event of any inconsistency between this Memorandum and the Option Agreement, the terms of the Option Agreement shall control.

[Signature pages to follow.]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease Option Agreement as of the date first set forth above.

OPTIONOR:

CHEVRON PRODUCTS COMPANY,
a Division of Chevron U.S.A Inc.,
a Pennsylvania corporation

By: _____

Its _____

OPTIONEE:

MARIN CLEAN ENERGY

By: _____

Dawn Weisz

Its Executive Officer

MCE Board Resolution No. _____,

Adopted on _____, 2014

APPROVED AS TO FORM:

Troutman Sanders LLP

Ben Fisher

Counsel for Marin Clean Energy

STATE OF CALIFORNIA)
) SS
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature) [Seal]

STATE OF CALIFORNIA)
) SS
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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(Signature) [Seal]

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Witness my hand and official seal.

(Signature) [Seal]

Exhibit “A”
to
Memorandum of Lease Option Agreement

Depiction of Property

[Attached]

EXHIBIT E

MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Marin Clean Energy
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Attn: Executive Officer

(Space Above for Recorder's Use)

APN: 561-100-034, 561-100-037 & 561-100-038

MEMORANDUM OF LEASE OPTION AGREEMENT

THIS MEMORANDUM OF LEASE OPTION AGREEMENT (this "**Memorandum**") is made and entered into as of June __, 2014 (the "**Effective Date**") by and between CHEVRON PRODUCTS COMPANY, a division of Chevron U.S.A. Inc., a Pennsylvania corporation ("**Optionor**"), and MARIN CLEAN ENERGY, a California Joint Powers Authority ("**Optionee**").

Recitals

A. Optionor and Optionee are parties to that certain unrecorded Lease Option Agreement of even date herewith ("**Option Agreement**"), under which Option Agreement Optionor has granted to Optionee and Optionee has agreed to accept from Optionor an option to lease that certain real property depicted on Exhibit "A" attached hereto (the "**Property**").

B. Optionor and Optionee now desire to provide for public notice of the existence of the Option Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Option. Optionor hereby grants to Optionee the option to lease the Property upon the terms and subject to the terms and conditions set forth in the Option Agreement, and all of the terms and conditions of the Option Agreement are hereby incorporated into this Memorandum by this reference. Initially capitalized terms that are used but not defined herein shall have the meanings ascribed to them in the Option Agreement.

2. Term of the Option. Subject to the terms and conditions set forth in the Option Agreement, the term of the option to lease the Property commences on the Effective Date and will continue until 5:00 p.m. Pacific time on the earlier of (a) the first anniversary of the EIR Approval Date, (b) the date Optionee exercises the Lease Option with respect to the Property in

accordance with Section 1.1 of the Option Agreement, (c) the termination date set out in either Optionor's or Optionee's written notice of termination in accordance with Section 5 of the Option Agreement, (d) the date this Agreement terminates pursuant to Section 5.4 of the Option Agreement, or (e) the date Optionee ceases to be a Joint Powers Authority.

3. Conflict of Provisions. This Memorandum is prepared for the purpose of recordation and shall not alter or affect in any way the rights and obligations of Optionor and Optionee under the Option Agreement. In the event of any inconsistency between this Memorandum and the Option Agreement, the terms of the Option Agreement shall control.

[Signature pages to follow.]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease Option Agreement as of the date first set forth above.

OPTIONOR:

CHEVRON PRODUCTS COMPANY,
a Division of Chevron U.S.A Inc.,
a Pennsylvania corporation

By: _____

Its _____

OPTIONEE:

MARIN CLEAN ENERGY

By: _____

Dawn Weisz

Its Executive Officer

MCE Board Resolution No. _____,

Adopted on _____, 2014

APPROVED AS TO FORM:

Shute, Mihaly & Weinberger LLP

Andrew W. Schwartz

Counsel for Marin Clean Energy

STATE OF CALIFORNIA)
) SS
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature) [Seal]

STATE OF CALIFORNIA)
) SS
COUNTY OF _____)

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(Signature) [Seal]

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(Signature)

STATE OF CALIFORNIA)
) SS
COUNTY OF _____)

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personally appeared _____ who proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature) [Seal]

Exhibit “A”
to
Memorandum of Lease Option Agreement

Depiction of Property

[Attached]

SOLAR ENERGY FACILITY SITE LEASE

between

CHEVRON PRODUCTS COMPANY, as Lessor

and

MARIN CLEAN ENERGY, as Lessee

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16.15	No Recourse to 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.) and is a public entity separate from its constituent members. Under Article VIII of Lessee’s Operating Rules and Regulations, Lessee shall be solely responsible for all debts, obligations and liabilities accruing and arising out of this Lease. Lessor shall have no rights to and shall not make any claims, take any actions or assert any remedies against any of Lessee’s constituent members to the extent such claims arise from Lessee’s obligations under this Lease.	37

Exhibit A – Legal Description

Exhibit B – Lease Exceptions

Exhibit C – Groundwater Protection System

Exhibit E – Location of Roadway License

Exhibit F – Memorandum of Lease

SOLAR ENERGY FACILITY SITE LEASE
(Richmond Refinery)

This **SOLAR ENERGY FACILITY SITE LEASE** (this “**Lease**”) is made and entered into as of _____, 201__ (the “**Effective Date**”), by and between **Chevron Products Company**, a division of Chevron U.S.A. Inc., a Pennsylvania corporation (“**Lessor**”), and **Marin Clean Energy**, a California Joint Powers Authority (“**Lessee**”). Each of Lessor and Lessee are sometimes referred to as a “**Party**” and collectively as the “**Parties.**”

RECITALS

A. Lessee is the developer, owner, and operator of photovoltaic solar energy generation equipment and facilities suitable for delivery of electrical energy to an electrical transmission grid owned and operated by a utility.

B. Lessor is the owner of certain real property located in Contra Costa County, California, identified as Assessor Parcel Numbers 561-100-034, 561-100-037, and 561-100-038 as depicted on the attached Exhibit A and incorporated herein by this reference (the “**Property**”), totaling approximately sixty (60) gross acres. The Property is part of a larger refinery owned and operated by Lessor (the “**Chevron Refinery**”).

C. Lessee desires to obtain from Lessor an exclusive lease for purposes of constructing, installing, operating, maintaining, repairing, replacing, and removing the Solar Project (defined below) to be located on the Property, together with a right of access on, over, and across those portions of the Chevron Refinery as reasonably necessary for the purpose of constructing, installing, operating maintaining, repairing, replacing, and removing from time to time the Solar Project installed on the Property.

D. Lessor desires to lease the Property to Lessee for the purposes set forth in Recital C and to grant Lessee such access rights as necessary for such purposes on the terms and conditions herein contained.

E. This Lease and Lessee’s development of the Solar Project will benefit the public by: allowing Lessee to provide electricity from renewable resources to members of the public and fulfill its role as a California Joint Powers Authority; teaching and educating the public about producing electricity from renewable resources; facilitating public oversight and involvement of the Solar Project; and securing energy supply, price stability, energy efficiencies, and local and economic workforce benefits (collectively, the “**Project Public Benefits**”). Lessee’s status as a California Joint Powers Authority and the Project Public Benefits that will result from the Solar Project being operated by Lessee are key factors in Lessor’s decision to lease the Property to Lessee on the terms of this Lease and Lessor would not lease the Property on the terms of this Lease to an entity other than a California Joint Powers Authority or other governmental entity that could provide the Project Public Benefits.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Lessor hereby agree as follows:

AGREEMENT

1. **DEFINITIONS.** Capitalized terms not otherwise defined herein shall have the meaning set forth below:

1.1 **“Applicable Law”** means any Federal, State, or local laws, ordinances, or statutes, and the orders, rules, and regulations of any Federal, State, or local governmental agency, and the San Francisco Port Commission (the **“Port”**) applicable to the Property and improvements thereon, and the use and operation thereof.

1.2 **“Effective Date”** shall be the date on which both Parties have signed this Lease.

1.3 **“Environmental Attributes”** means any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the Solar Energy Facilities or the electric energy, capacity or other generator-based products produced therefrom, including but not limited to (i) any avoided emissions of pollutants to the air, soil or water, such as sulfur oxides, nitrogen oxides and carbon monoxide, and any rights related thereto, (ii) any avoided emissions of methane, carbon dioxide and other “greenhouse gases” that have been determined by the United Nations Intergovernmental Panel on Climate Change or any other governmental, quasi-governmental or non-governmental agency or body to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere, and any rights related thereto, and (iii) any reporting rights relating to the reduction of “greenhouse gases” under Section 1605(b) of the National Energy Policy Act of 1992 or under any other federal, state, local or foreign law, rule or regulation related to the reduction of air pollutants or “greenhouse gases” or the trading of emissions or emissions credits, including so-called “green tags” or “green certificates.”

1.4 **“Environmental Incentives”** include, but are not limited to (i) federal, state or local production tax credits and investment tax credits associated with the construction or operation of the Solar Energy Facilities; (ii) any other financial incentives in the form of credits, reductions, or allowances associated with the Solar Energy Facilities that are applicable to a local, state or federal income taxation obligation, (iii) grants or subsidies in support of renewable energy, (iv) emission reduction credits encumbered or used by the Solar Energy Facilities for compliance with local, state, or federal operating or air quality permits, and (v) all rebates, benefits, reductions, tax deductions, offsets, and allowances and entitlements of any kind, howsoever entitled, resulting from the Environmental Attributes or the installation and operation of the Solar Energy Facilities.

1.5 **“Initial Energy Delivery Date”** means the initial date upon which electrical energy produced by the Solar Energy System is sold to the purchasing utility pursuant to the PPA.

1.6 **“Interconnection Facilities”** means all improvements, the purpose of which is to deliver electrical power from the Solar Energy Facilities to the electrical transmission grid of a utility, including, without limitation, transformers and electrical transmission lines.

1.7 “**PPA**” means a power purchase agreement entered into between Lessee and Pacific Gas and Electric Company with respect to the Solar Project.

1.8 “**Solar Energy Facilities**” means (a) the Solar Energy System; (b) electrical wires and cables required for the gathering and transmission of electrical energy and for communication purposes, which wires and cables may be placed overhead on appurtenant support structures; (c) one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy; (d) energy storage facilities; (e) solar energy measurement equipment; (f) maintenance yards, control buildings, control boxes and computer monitoring hardware; and (g) any other improvements, including roads, fixtures, facilities, fences, machinery and equipment useful or appropriate to accomplish any of the foregoing that are constructed or installed on the Property by Lessee; provided, however, the Solar Energy Facilities shall not be constructed in any location that would require an easement or right-of-way to be granted across other portions of Lessor’s property or interfere with Lessor’s ability to close the Integrated Waste Pond System north of the fertilizer plant evaporation ponds.

1.9 “**Solar Energy System**” means individual units or arrays of solar energy collection cells, panels, mirrors, lenses and related facilities necessary to harness sunlight for photovoltaic electric energy generation, including without limitation, heating, power generation systems, and fossil fuel-based boilers installed in connection with the Solar Energy Facilities, existing and future technologies used or useful in connection with the generation of electricity from sunlight, and associated support structures, braces, wiring, plumbing, remote monitoring, including without limitation the establishment at Lessee’s sole discretion of a land based or satellite based high speed internet connection, and related equipment constructed on the Property.

1.10 “**Solar Operations**” means solar energy resource evaluation; solar energy development; converting solar energy into **electrical** energy through the Solar Energy System; collecting and transmitting the electrical energy converted from solar energy; storing, collecting, and transmitting the electrical energy converted from solar energy; and any and all activities related to the foregoing conducted on the Property.

1.11 “**Solar Project**” means any and all Solar Energy Facilities, Interconnection Facilities, and the Viewing Platform, that are developed, constructed, and operated on the Property as an integrated system to generate and deliver electrical power to a utility or other power purchaser.

1.12 “**Viewing Platform**” means the viewing platform to be developed, constructed, and maintained by Lessee on the Property for the purpose of allowing the general public to observe the Solar Project during normal business hours.

2. **LEASE OF PROPERTY.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Lessor, Lessor hereby leases the Property to Lessee and Lessee hereby leases the Property from Lessor. The lease of the Property is subject to: (i) all matters of record; (ii) all Applicable Laws; (iii) all items listed in Exhibit B; and (iv) authorization from the Port. Lessee acknowledges that Lessee has inspected the Property, is

aware of the general activities on neighboring properties and the Chevron Refinery, is aware that the Property has been or is currently the site of fertilizer plant evaporation ponds, one or more waste management units (a.k.a. landfills), various groundwater control systems (including hydraulic control trench, aspermix wall, clay liner, slurry barrier wall), Castro Creek and potential wetlands, and that the Property is suitable for the Solar Operations and Lessee accepts the Property in its present, AS-IS, WITH ALL FAULTS condition. Lessee acknowledges that activities on neighboring properties or the Chevron Refinery may generate dust or particulate matter that comes on to the Property and that Lessor will have no obligations or liabilities arising from or relating to such dust or particulate matter. Lessee also acknowledges that portions of the property have been filled and may continue to settle and that Lessor will have no obligations or liabilities arising from or relating to such settling. Lessee acknowledges that Lessor has made no representations or warranties regarding the Property or its physical condition or legal status.

3. **PURPOSES OF LEASE; PERMITTED USES.**

3.1 **Purpose of Lease for Solar Operations.** The lease created by this Lease is solely and exclusively for the Solar Project and throughout the term of this Lease, Lessee shall have exclusive possession of the Property and shall have the sole and exclusive right to use the Property for Solar Operations and to convert all of the solar resources of the Property for solar energy generation, subject to Lessor's reserved rights as otherwise set forth in this Lease. Except as expressly provided herein, Lessee shall have no right to use the Property for any other purpose.

3.2 **Permitted Uses of Property by Lessee for Solar Operations.** The rights granted to Lessee in this Lease with respect to Solar Operations permit Lessee to do the following without notice to or approval by Lessor, subject to the terms and conditions of this Lease:

3.2.1 construct, install, and operate the Solar Energy Facilities and the Interconnection Facilities on the Property;

3.2.2 maintain, clean, repair, replace, dispose of, and provide security for part or all of the Solar Energy Facilities and the Interconnection Facilities;

3.2.3 add or remove equipment as needed to increase or decrease the capacity of the Solar Energy System;

3.2.4 remove, trim, prune, top or otherwise control the growth of any tree, shrub, plant or other vegetation; on or that intrudes (or upon maturity could intrude) into the Property, including, without limitation, anything that could obstruct, interfere with or impair Solar Operations;

3.2.5 construct, access, and make available to the general public during normal business hours the Viewing Platform and remove the Viewing Platform at the end of the Term;

3.2.6 install and maintain on the Property communication lines and facilities, including wireless facilities, that carry communications to and from lands other than the Property;

3.2.7 place signage on the Property as reasonably approved by Lessor, subject to Applicable Law and the issuance of any required governmental permits;

3.2.8 remove the Solar Energy Facilities, the Interconnection Facilities, the Viewing Platform, and all other equipment or facilities as permitted under this Lease;

3.2.9 conduct in-person physical inspections of the Solar Energy Facilities and the Property; and

3.2.10 conduct press conferences and other media events on the Property with Lessor's prior written approval, which may not be unreasonably withheld.

3.3 **Use Restrictions.** In addition to the other terms and conditions contained in this Lease:

3.3.1 Lessee may not use the groundwater for any purpose whatsoever, nor may Lessee engage in any subsurface intrusions other than as required in the physical construction, maintenance, repair, alteration, replacement or removal of the Solar Project and in accordance with the requirements of Sections 6.3 and 6.5 below;

3.3.2 Lessee may conduct a Phase 1 environmental report or assessment of the Property. Lessee may not conduct any studies or tests that penetrate the ground or the landfill cap and drainage system located therein without Chevron's prior written consent, which may be granted or withheld in Lessor's sole discretion. Notwithstanding the foregoing, Lessor hereby provides its consent for the testing set forth on Exhibit G;

3.3.3 Lessee shall at all times use the Property so as not to damage or interfere with any facilities of Lessor or holders of easements on the Property or at the Chevron Refinery, or interfere with Lessor's operation of the Chevron Refinery (and, without limiting the generality of the foregoing, Lessee shall not damage or interfere with the groundwater protection system shown in Exhibit C);

3.3.4 Lessee may not commit or knowingly allow to be committed any violation of Applicable Law, public nuisance, act of waste or other act or thing in or about the Property that will in any manner obstruct or interfere with the rights of Lessor or other occupants of the Chevron Refinery or landowners adjacent to the Chevron Refinery or injure, solicit or canvass them, nor may Lessee allow the Property to be used for any unlawful purpose;

3.3.5 Lessee, its agents, employees, contractors, licensees, and invitees shall comply at all times during the Term with Lessor's safety and operating procedures as set forth in Exhibit D as amended from time to time and where such amendment(s) are provided in writing to Lessee with reasonable advance notice; and

3.3.6 Lessee acknowledges that the Property is located within a U.S. Foreign Trade Subzone 3B (the “**Zone**”). Lessor shall use commercially reasonable efforts to cause the Property to be deactivated from the Zone, provided that Lessee shall comply with all requirements imposed by the Foreign Trade Zone Board of the U.S. Dept. of Commerce (“**FTZ Board**”), U.S. Customs and Border Protection (“**CBP**”), the Port, and Lessor for construction and operations within the Zone so long as the Property remains within the Zone. Lessee further acknowledges that Lessor retains the right to modify the terms and conditions of this Lease if required to comply with requirements imposed by the FTZ Board, CBP, or the Port. In the event that the Property is subsequently reactivated within the Zone following any deactivation, Lessee shall comply with all requirements imposed by the FTZ Board, CBP the Port and Lessor for construction and operations within the Zone.

3.4 **Roadway License.** During the term of this Lease, Lessor hereby grants to Lessee, at no additional cost or expense, for use by Lessee and its contractors, licensees, and invitees, a license on and along certain interior roads and private driveways within the Chevron Refinery, as depicted in the drawings set forth as Exhibit E, for ingress and egress by vehicular traffic between the public roads entering the Chevron Refinery and the Property, subject to the terms and conditions of this Lease (the “**Roadway License**”). Subject to Section 3.7, the Roadway License shall not be restricted as to hours of use nor shall advance notice of its use be required. Lessee shall pay its reasonable share of costs and expenses related to the improvement, maintenance, or repair of the roads covered by the Roadway License resulting from Lessee’s use of the roads; Lessor shall be responsible for its reasonable share of the costs and expenses related to the improvement, maintenance, or repair of the roads shared with Lessee resulting from Lessor’s use. Lessor reserves the right to designate different roads and private driveways and to relocate the roads and private driveways to be used by Lessee in accordance with the Roadway License; provided, however, Lessee will at all times be ensured reasonable access to the Property. The Roadway License will terminate upon the termination of this Lease.

3.5 **Lessor Access.** During the Term, Lessor shall have the right upon reasonable notice and at reasonable and safe times (except in an emergency, in which event no notice shall be required) to visit the Property and access the Solar Project for other purposes, including the following: (i) to comply with Applicable Law and policies of Lessor’s insurance carrier(s); (ii) to prevent waste or deterioration of the Property, or to post notices of non-responsibility for alterations, additions, or repairs; or to show the Property to prospective purchasers or lenders; (iii) to access, repair, replace, and use existing groundwater protection systems on the Property, as shown in Exhibit C; and (iv) to operate, maintain, repair and replace any existing surface, subsurface and overhead pipelines and utility facilities servicing the Chevron Refinery. The Parties will cooperate to minimize any interference with the Solar Operations during the Term of this Lease. Lessor’s rights of entry as set forth in this Section 3.5 shall be subject to the reasonable security regulations of Lessee, and to the requirement that Lessor shall use reasonable efforts to minimize interference with Lessee’s business activities on the Property. Lessor shall be entitled to exercise the foregoing rights without any abatement of rent and without liability to Lessee for any injury or inconvenience to or interference with Lessee’s business, quiet enjoyment of the Property, or any other loss occasioned thereby. Under no circumstances shall Lessor’s access to the Property interfere with the Solar Energy System’s exposure to sunlight. During the Term, Lessee shall allow all governmental entities and their

respective officials, agents and representatives to access to the Property at all times, and Lessee shall cooperate with such governmental entities in connection with any such access.

3.6 **Access Restrictions.** Notwithstanding anything in this Lease to the contrary, Lessor may, at any time and without prior notice, restrict access to the Property for health and safety reasons at its reasonable discretion. If it is not possible to provide such notice in advance of the restriction of access, Lessor shall provide the notice as soon as reasonably practicable after the restriction of access. Lessor shall remove the restriction as soon as reasonably practicable after imposing the restriction and notify Lessee of the removal of the restriction.

4. **TERM.** The term of this Lease will commence on the Effective Date and continue for a period of twenty-five (25) years (the “**Initial Term**”). Provided no Event of Default by Lessee under this Lease remains outstanding and uncured at the time Lessee gives notice to Lessor of the exercise of Lessee’s right to extend the term of this Lease, Lessee has the right and option to extend the term of this Lease for a period of five (5) years (the “**Extension Period**”), by delivering written notice of such extension to Lessor not less than one hundred eighty (180) days prior to the end of the Initial Term. For purposes of this Lease, “**Term**” means the Initial Term, as extended by the Extension Period, if exercised by Lessee, and “**Expiration Date**” means the last day of the Term.

4.1 **Early Termination.** Notwithstanding anything to the contrary in this Lease, Lessor has the right, exercisable at any time within one hundred eighty (180) days after the Early Termination Event Date (defined below), to terminate this Lease upon written notice to Lessee (the “**Early Termination Event Notice**”), which termination shall be effective one hundred twenty (120) days after the date of delivery of the Early Termination Event Notice to Lessee, in the event that: (i) the Operating Approvals (as defined in Section 6.4) have not been obtained by the date that is four (4) years after the Effective Date; (ii) Lessee has not commenced construction, as set forth in Section 6.5 below, by the date that is six (6) months after the Solar Facility Permitting Date; (iii) Lessee has not completed construction of the Solar Project with at least two (2) megawatts of inverter nameplate generating capacity and the Initial Energy Delivery Date has not occurred within one (1) year after the Solar Facility Permitting Date; (iv) Lessee fails to Continuously Operate the Solar Project (as defined in Section 6.8); or (v) Marin Clean Energy ceases to be a California Joint Powers Authority and does not transfer title to the Solar Facility to another government agency with a similar purpose (each such date that would trigger Lessor’s right to terminate, an “**Early Termination Event Date**”).

4.2 **Partial Termination.** Notwithstanding anything to the contrary in this Lease, Lessor has the right, exercisable at any time within one hundred eighty (180) days after the Partial Termination Event Date (defined below), to terminate this Lease with respect to any portion of the Property that has not been developed with Solar Energy Facilities by giving written notice to Lessee (the “**Partial Termination Event Notice**”), which termination shall be effective thirty (30) days after the date of delivery of the Partial Termination Event Notice to Lessee, in the event that: (i) on the fifth (5th) anniversary of the Initial Energy Delivery Date, Lessee has not developed Solar Energy Facilities on at least twenty-five (25) acres of the Property with at least two tenths (.2) of a megawatt of inverter nameplate generating capacity per Developed Acre; or (ii) on the tenth (10th) anniversary of the Initial Energy Delivery Date,

Lessee has not developed Solar Energy Facilities on the entire Property (less any portion of the Property on which it is infeasible to develop Solar Energy Facilities or on which other features of the Solar Project have been constructed) with at least two tenths (.2) of a megawatt of inverter nameplate generating capacity per Developed Acre (each such date that would trigger Lessor's right of partial termination, a "**Partial Termination Event Date**"). If Lessee's failure to meet the generating capacity requirements at either Partial Termination Event Date is reasonably caused by limitations imposed within an interconnection agreement with Pacific Gas & Electric, however, Lessor shall have no right to partial termination under this Section 4.2. For purposes of this Section, "**Developed Acre**" means each acre, or portion thereof, on which Solar Energy Facilities have been developed, net of all access roads, required setbacks and easements.

5. **PAYMENTS TO LESSOR.**

5.1 **Annual Rent.** Commencing on the Effective Date and throughout the Term of this Lease, Lessee shall pay rent to Lessor in the annual amount of One Dollar (\$1.00) (the "**Annual Rent**"); provided, however, that if Lessee ceases to be a governmental entity or if Lessee assigns this Lease or subleases all or any portion of the Property to an entity other than a governmental entity or the Developer (as defined in Section 11.3), then the Annual Rent will automatically increase to the Fair Market Rent, as defined below; provided, further, that on the fifteenth (15th) and twentieth (20th) anniversaries of the Effective Date and at the commencement of the Extension Period, the Annual Rent will automatically increase to the Fair Market Rent unless the Solar Project continues to provide Project Public Benefits. For purposes of this Section 5.1, the Solar Project shall be deemed to continue to provide Project Public Benefits if the sole energy off taker is a governmental entity. So long as the Annual Rent remains One Dollar (\$1.00), Lessee shall pay rent annually on the Effective Date and each anniversary thereof. If the Annual Rent increases to the Fair Market Rent, then rent will be payable in advance in quarterly instalments on the first day of each calendar quarter, prorated for any partial period. Lessee shall pay to Lessor the Annual Rent set forth above without deduction, offset, or abatement, and without prior notice or demand. Rent shall be payable in lawful money of the United States to Lessor at the address stated in the Section 17.4 to this Lease or to such other places as Lessor may from time to time designate in writing. Lessee's obligation to pay rent for any partial year shall be prorated. If any installment of rent or any other sum due from Lessee is not received by Lessor within five (5) days after Lessee's receipt of Lessor's written notice of such non-payment, Lessee shall pay to Lessor an additional sum equal to six percent (6%) of the amount overdue as a late charge. Notwithstanding the preceding sentence to the contrary, Lessor shall not be obligated to deliver any notice of non-payment as a condition to imposing a late charge more than once in any calendar year. Such late charge shall be added to the installment of rent due but unpaid and such sum shall bear interest from the date the installment of rent was due until paid at the Default Rate (as defined in Section 14.1.4). The amount of the late charge shall represent liquidated damages for, and a reasonable estimate of, Lessor's administrative costs of collection, the exact amount of which would be extremely difficult or impractical to fix. Lessor's acceptance of such late charge shall not excuse any default by Lessee hereunder, and shall not preclude Lessor from pursuing any other rights and remedies it may have relating to such default.

5.2 **Fair Market Rent.** For purposes of this Lease, "**Fair Market Rent**" means the rent (including annual increases) that a tenant would pay a willing landlord for a ground lease for property that is comparable to the Property in a comparable area in Contra

Costa, Marin, or Alameda Counties, California, taking into consideration such factors as the square footage of the Property; the length of the lease in question; appropriate inducements and concessions then being included in such comparable leases for comparable space, including but not limited to so-called free or abated rents; and the credit standing of Lessee. For purposes of the determination of Fair Market Rent in this Section 5.2, the Parties agree that the highest and best use of the Property shall be for a ground lease for a solar or other renewable energy system.

5.2.1 Lessor and Lessee shall negotiate Fair Market Rent within thirty (30) days following assignment of or transfer of the Lease to an entity other than a governmental entity or sublease of all or any portion of the Property to an entity other than a governmental entity or the Developer. In the event Lessor and Lessee cannot agree upon Fair Market Rent within the thirty (30) day period set forth above, then each Party shall within five (5) days, select an appraiser holding the MAI designation, or, if the MAI designation is eliminated, the closest available equivalent, holding all required California licenses and certifications, each with not less than ten (10) years of experience in commercial and industrial rentals in Marin, Contra Costa, or Alameda Counties, California. The two brokers so appointed shall appraise the Fair Market Rent taking into account the considerations set forth above and meet within thirty (30) days after their appointment to attempt to agree on the Fair Market Rent. The agreement of the appraisers as the Fair Market Rent shall be binding on the Parties.

5.2.2 If the two appraisers so appointed cannot reach agreement within five (5) days after their initial meeting, then within twenty-one (21) days after the failure of the appraisers to reach agreement (“**Notice Date**”), the two shall appoint a third appraiser with the same qualifications (“**Third Appraiser**”). Within five (5) days after the Parties’ appraisers select the Third Appraiser, the proposed Third Appraiser shall make all disclosures required by CCP Section 1281.9 or equivalent provision of California Law if Section 1281.9 is repealed. Within fifteen (15) days after service of the proposed Third Appraiser’s disclosure statement, each Party may disqualify the first proposed Third Appraiser with or without cause by written notice to the other Party, the Parties’ appraisers and the proposed Third Appraiser. If a Party disqualifies the first proposed Third Appraiser, then the Parties’ appraisers shall select a second proposed Third Appraiser within fifteen (15) days after the disqualification. The second proposed Third Appraiser shall make all required disclosures within five (5) days after his or her tentative selection by the Parties’ appraisers. Each Party shall have fifteen (15) days after service of the disclosures to disqualify the second proposed Third Appraiser by written notice to the other Party, the Parties’ appraisers, and the second proposed Third Appraiser, which disqualification shall only be for cause, as documented in the notice. If the second proposed Third Appraiser is disqualified, the Parties and their appraisers may repeat the process used for the second proposed Third Appraiser until they select a Third Appraiser who is not disqualified. However, except as the Parties may otherwise agree, after the first to occur of disqualification of the first proposed Third Appraiser or 110 days after the Notice Date, either Party may petition the Superior Court for Contra Costa County pursuant to CCP Section 1281.6 (or equivalent provision) to appoint a Third Appraiser who satisfies the requirements of Section 5.2.1 to act as arbitrator and Third Appraiser pursuant to Section 5.2.3 of this Lease. In the event of such a petition, a Party may petition the Court to disqualify a Court-appointed arbitrator only upon a showing of cause. Except as otherwise provided in this Section 5.2.2, CCP Sections 1281.9 and 1281.91 (or equivalent provisions) shall apply to the selection of the Third Appraiser. The Third Appraiser will be acting in an arbitration role, and thus the Third Appraiser will have the

immunity of a judicial officer from civil liability arising pursuant to CCP Section 1297.119 (or equivalent provision), which states: "An arbitrator has the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator under any statute or contract."

5.2.3 The Third Appraiser shall appraise the Fair Market Rent for the Property taking into account the considerations set forth above and within twenty-one (21) days after the Third Appraiser's appointment, the three appraisers shall meet to attempt to agree on the Fair Market Rent. If agreement cannot be reached, then the two closest appraisals will be averaged, and such figure will become the Annual Rent and be binding on both Parties. Each Party shall pay the fee of its respective appraiser, and both Parties shall share the cost of the Third Appraiser, if necessary.

5.3 **Additional Rent; Net Lease.** All other costs and charges payable by Lessee in accordance with the terms of this Lease (including insurance premiums and maintenance costs) shall be deemed to be additional rent; provided, however, Lessor shall pay all real property taxes assessed upon the Property, excluding the Solar Project. All Base Monthly Rent and additional rent shall constitute "rent" for all purposes. Other than real property taxes, this rent payable by Lessee hereunder is intended to be absolutely net, and Lessor shall have no obligations to pay maintenance or other costs associated with the Property.

5.4 **Security Deposit.** Prior to commencement of construction or installation of any portion of the Solar Project, Lessee shall deposit with Lessor the sum of one hundred thousand dollars (\$100,000) (the "**Initial Deposit**") as security for the faithful performance by Lessee of all of its obligations hereunder. If the Annual Rent increases to Fair Market Rent pursuant to Section 5.1, then Lessee shall deposit with Lessor an additional sum equal to three months Annual Rent (together with the Initial Deposit, the "**Deposit**") as security for the faithful performance by Lessee of all of its obligations hereunder. If Lessee fails to pay rent or any other sums due hereunder, or otherwise defaults with respect to any provision of this Lease, after the expiration of any applicable notice and cure period, Lessor may use, apply, or retain all or any portion of the Deposit for the payment of any rent or other sum in default, or to compensate Lessor for the payment of any other sum which Lessor may become obligated to spend by reason of Lessee's default, or to compensate Lessor for any expenditures, loss or damage which Lessor may suffer thereby. Lessee waives any restrictions on use of the Deposit set forth in Section 1950.7 of the California Civil Code, to the extent inconsistent with the permissible uses of the Deposit agreed to above. If Lessor so uses or applies all or any portion of the Deposit, Lessee shall, within ten (10) business days after written demand therefor, deposit with Lessor an amount in cash sufficient to restore the Deposit to the full amount hereinabove stated. Lessor shall not be required to keep the Deposit separate from its general funds. The Deposit, less any portion thereof which Lessor is entitled to retain, shall be returned, without payment of interest, to Lessee (or at Lessor's option to the last assignee, if any, of Lessee's interest hereunder) within thirty (30) days after the later of the expiration of the term hereof, or the date on which Lessee vacates the Property.

6. **SOLAR PROJECT.**

6.1 **Ownership.** During the term of the Lease, Lessor shall have no ownership or other interest in any Solar Project installed on the Property, any Environmental Attributes

produced therefrom, or any Environmental Incentives attributable thereto. Lessee's furnishings, machinery and equipment, including solar panels and related electrical generating equipment, shall remain the property of Lessee and may be removed by Lessee, provided Lessee at Lessee's expense immediately after removal repairs any damage to the Property caused thereby. The manner of operation of the Solar Project, including, but not limited to, decisions on when to conduct maintenance, is within the sole discretion of Lessee.

6.2 **Maintenance.** Lessee, at its sole cost and expense, shall keep in good and safe condition, order and repair the Property, and every part thereof, including without limitation: (a) performance of all weed abatement, rodent and pest control, disking and any similar activities, (b) all equipment and alterations installed by Lessee, and (c) any items of maintenance and repair to the Solar Energy Facilities which may be required by any governmental entity with jurisdiction. Lessee shall, at Lessee's expense, maintain in good condition and repair all improvements installed on the Property by Lessee, including, without limitation, all solar panels and related equipment comprising the Solar Energy Facilities. Lessor shall, at its sole cost and expense, keep in good and safe condition, order and repair Lessor's facilities, in, on or under the Property, including without limitation, a landfill cap and drainage system and various groundwater control systems and other remedial systems installed to address Prior Covered Contamination or Lessor Covered Contamination (as defined in Section 10.2) ("Lessor's Maintenance Obligation"). Except as to Lessor's Maintenance Obligation, Lessee hereby waives all rights it may have under Sections 1932(1), 1941, and 1942 of the California Civil Code, and any similar or successor statute or law which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Property in good condition, order and repair. Except as to Lessor's Maintenance Obligation, Lessor shall have no obligation under this Lease to perform any alteration, maintenance, repair or replacement of any portion of the Property or any improvements installed thereon, nor to pay for any such alteration, maintenance, repair or replacement.

6.3 **Design.** Lessee, at its sole cost and expense, shall prepare detailed plans for the Solar Project for Lessor's review and approval, which approval may not be unreasonably withheld, conditioned, or delayed (the "**Plans**"). The Plans must show: (i) the location of all Solar Energy Facilities and Interconnection Facilities; (ii) the extent to which any of the Solar Energy Facilities or the Interconnection Facilities penetrate the ground; and (iii) any other matters reasonably requested by Lessor. Lessee shall obtain Lessor's written approval of the Plans prior to submitting the Plans to any third party, including the Port or any other government agency responsible for permitting or approving the Solar Project. If the Plans need to be revised for any reason after Lessor has approved the Plans, then Lessee shall submit the revised Plans to Lessor for Lessor's review and approval, which approval may not be unreasonably withheld, conditioned, or delayed. In no event will approval of the Plans by Lessor be deemed to constitute a representation by Lessor that the work called for in the Plans complies with applicable legal requirements. Without limiting the bases on which Lessor may withhold approval of the Plans, the parties acknowledge that it will be reasonable for Lessor to withhold approval of the Plans if: (i) construction of the Solar Energy Facilities or the Interconnection Facilities in accordance with the Plans would penetrate, harm, or otherwise interfere with any of Lessor's facilities in, on, or under the Property, including, without limitation, a landfill cap and drainage system and various groundwater control systems; or (ii) the Plans would damage or impede Lessor's ability to access and use the existing groundwater protection system on the

Property, as shown in Exhibit C. Lessee may not make any changes to the Plans without Lessor's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed.

6.4 **Permitting.** Prior to commencing construction or installation of any part of the Solar Project, Lessee, at its sole cost and expense, shall (i) obtain all required approvals and permits to construct and operate the Solar Project, including compliance with the California Environmental Quality Act, and (ii) enter into the PPA (collectively, the "**Operating Approvals**"). If Lessee has not obtained the Operating Approvals by the date that is four (4) years after the Effective Date, then Lessor may terminate this Lease pursuant to Section 4.1 above. The term "**Solar Facility Permitting Date**" will mean the date that Lessee has obtained all Operating Approvals.

6.5 **Construction.** Lessee, at its sole cost and expense, shall construct the Solar Project in accordance with the Plans approved by Lessor, the Operating Approvals, and all Applicable Laws. Lessee shall mobilize on the Property and commence construction on or before the date that is six (6) months after the Solar Facility Permitting Date. Lessee shall complete construction of the Solar Project with at least two (2) megawatts of inverter nameplate generating capacity and the Initial Energy Delivery Date shall occur within one year after the Solar Facility Permitting Date. If Lessee fails to meet any of the deadlines set forth in this Section 6.5, then Lessor may terminate the Lease pursuant to Section 4.1 above. During construction of the Solar Project, Lessee may not penetrate, harm, or otherwise interfere with any of Lessor's facilities in, on, or under the Property, including, without limitation, a landfill cap and drainage system and various groundwater control systems, and Lessee acknowledges the presence of the same. During construction of the Solar Project, Lessee shall, to the extent required by Applicable Law, employ hazardous operations contractors with experience working in a refinery environment. Upon completion of the Solar Project, Lessee, at its sole cost and expense, shall immediately deliver to Lessor "as-built" plans and specifications therefor. All construction work permitted to be done by Lessee shall be performed by a licensed contractor in a prompt, diligent, and good and workmanlike manner and in compliance with all applicable statutes, ordinances, regulations, codes and orders of governmental authorities and insurers of the Property and the requirements of this Lease.

6.6 **Alterations.** Except as otherwise expressly set forth in this Lease, Lessee shall not, without Lessor's prior written approval, which approval may not be unreasonably withheld, conditioned, or delayed, make any alterations or improvements in, on or about the Property. Should Lessee make any alterations or additions without obtaining Lessor's approval, Lessee shall immediately remove the same at Lessee's expense upon demand by Lessor. Any alteration or addition that Lessee shall desire to make in or about the Property shall be presented to Lessor in written form, with proposed detailed plans and specifications therefor prepared at Lessee's sole expense. Any consent by Lessor thereto shall be deemed conditioned upon Lessee's acquisition of all permits required to make such alteration from all appropriate governmental agencies, including the Port, the furnishing of copies thereof to Lessor prior to commencement of the work, and the compliance by Lessee with all conditions of said permits in a prompt and expeditious manner, all at Lessee's sole expense. Upon completion of any such alteration or addition, Lessee, at its sole cost and expense, shall immediately deliver to Lessor "as-built" plans and specifications therefor. All construction work permitted to be done by

Lessee shall be performed by a licensed contractor in a prompt, diligent, and good and workmanlike manner and in compliance with all applicable statutes, ordinances, regulations, codes and orders of governmental authorities and insurers of the Property and the requirements of this Lease. Lessee or its agents shall obtain and pay for all licenses and permits necessary therefor.

6.7 **Independent Interconnection.** Lessee, at its sole cost and expense, shall cause the Solar Energy Facilities to have independent Interconnection Facilities with Pacific Gas & Electric Company. Lessee acknowledges that Lessee may not use any existing electrical connection to the Chevron Refinery's electrical grid, substations, or any other electrical component of Lessor and that the Interconnection Facilities must be independent of the same.

6.8 **Continuous Operation.** Lessee, at its sole cost and expense, shall Continuously Operate the Solar Project. For purposes of this Agreement, Lessee will be deemed to "**Continuously Operate the Solar Project**" as long as the Solar Energy System generates photovoltaic electric energy and transmits such energy to the Interconnection Facilities at least (i) one (1) day during any calendar month and (ii) two hundred (200) days during any calendar year.

6.9 **Removal.** Lessee, at its sole cost and expense, no later than sixty (60) days prior to the Expiration Date, shall remove all alterations and improvements installed on the Property by Lessee and repair any damage occasioned thereby, and restore the Property to substantially the condition existing as of the Effective Date. The obligations of Lessee set forth in this Section will survive the termination of this Lease. Without limiting the generality of the above provisions, Lessee shall be required to remove all footings, foundations, underground utilities and similar improvements and equipment installed on the Property by Lessee. Lessee shall be liable to Lessor for Lessor's costs of removal of any abandoned alterations, improvements, or equipment of Lessee that Lessee fails to remove, together with the cost of returning the Property to its condition as of the date Lessee originally took possession and the transportation and storage or disposal costs of such items. If Lessee is performing its removal obligations under this Section 6.9 following the termination of the Lease, during such period of removal Lessee shall maintain the insurance required of Lessee under Section 8.2 and pay an occupancy fee to Lessor at the same rate as the effective rental rate under this Lease immediately prior to such termination.

6.10 **Security.** Lessee shall, at its sole expense, provide security services for the Property and the Solar Project as necessary to ensure the safety of the Property and its occupants (the "**Security Services**"). The Security Services must be provided in a manner consistent with Lessor's security procedures for the Chevron Refinery, a copy of which Lessor shall provide to Lessee upon request. As part of the Security Services, Lessee shall, at Lessee's cost, install additional fences around the Solar Project in a location and of a quality approved by Lessor, which approval may not be unreasonably withheld, conditioned, and delayed. Lessor will not be responsible for providing security guards or other security protection for all or any portion of the Property. Lessee shall not be responsible for providing security for roads on the Chevron Refinery property used to access the Property. Within one month after the start of construction of the Solar Project, the Parties shall meet to coordinate and cooperate regarding (i) security for the Property and the portions of the Chevron Refinery in close proximity to the Property; and (ii)

response to emergencies due to vandalism, terrorism, or natural disasters and the other emergencies described in Section 16 below. The Parties shall exchange contact information for security personnel who shall be available to respond to emergencies all day on every day of the year.

6.11 **Viewing Platform.** As part of the Solar Project, Lessee may construct the Viewing Platform in accordance with the Plans. Lessee shall operate the Viewing Platform in accordance with rules and regulations to be developed and agreed to by Lessee and Lessor, which rules and regulations will comply with Lessor's security procedures for the Chevron Refinery.

6.12 **Local Labor Requirements.** During any construction on the Property, Lessee shall comply with the following local labor requirements:

6.12.1 Lessee shall and shall cause its general contractor and any subcontractors to pay prevailing wages in the construction of the Generating Facilities as those wages are determined pursuant to Labor Code Sections 1720 et seq., and implementing regulations of the Department of Industrial Relations, and all other applicable federal, state and local laws, regulations and ordinances pertaining to labor standards insofar as those laws, regulations and ordinances apply to the performance of this Agreement, including any applicable City of Richmond employment requirements, including but not limited to the City's Living Wage Ordinance (Richmond Municipal Code Chapter 2.60), the City's Business Opportunity Ordinance (Richmond Municipal Code Chapter 2.50), and the City's Local Employment Program Ordinance (Richmond Municipal Code Chapter 2.56). Lessee shall and shall cause its general contractor and any subcontractors to keep and retain such records as are necessary to determine compliance with any such applicable laws, regulations and ordinances. During the construction of the Solar Project, Lessee shall post at the construction sites the applicable prevailing rates of per diem wages under the City's Living Wage Ordinance. Lessee shall indemnify, hold harmless and defend (with counsel reasonably acceptable to Landlord) Landlord against any claims for damages, compensation, fines, penalties or other amounts arising out of failure or alleged failure of any person or entity (including Lessee and its general contractor and any subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., and implementing regulations of the Department of Industrial Relations in connection with construction of the Solar Project. In addition, Lessee shall and shall cause its general contractor and any subcontractors to promptly deliver to Landlord, upon request, documents verifying its compliance with the Living Wage Ordinance, which include documents which evidence that each affected employee has been notified regarding the wages required to be paid pursuant to the Living Wage Ordinance. This Section 6.12 shall survive the termination of this Agreement. Lessee and all sub-contractors must use Employment and Training labor tracking software Elations for certified payroll reporting.

6.12.2 In addition to the hiring and subcontracting goals set forth in the City's Business Opportunity Ordinance and Local Employment Program Ordinance, Lessee shall make good faith efforts to employ the highest possible number of Richmond residents as follows:

6.12.2.1 Lessee shall make a good faith effort to preferentially select Richmond residents for the work force;

6.12.2.2 If a general contractor or any subcontractor makes good faith efforts to comply with the above work force composition but is unable to do so and documents such good faith efforts to Landlord's satisfaction, the above work force composition may be reduced prorata to the extent that the City Manager (or designee) and Lessee determine that there are insufficient qualified workers available from Richmond;

6.12.2.3 For purposes of calculating the work force composition, a general contractor may exclude one supervisor.

6.12.3 For the construction of the Solar Project, Lessee shall require its general contractor to solicit qualified subcontractors headquartered in Richmond prior to releasing solicitations for bids to subcontractors headquartered outside of Richmond. Lessee agrees to require its general contractor to use an open, competitive bidding process that allows equal opportunity for all potential bidders to submit bids for the work. If the general contractor makes good faith efforts to comply with the above subcontractor percentages but is unable to do so and documents such good faith efforts to Lessee's satisfaction, the above percentages may be reduced prorata to the extent that the Richmond City Manager (or designee) and Lessee determine that there are insufficient qualified firms headquartered in Richmond. Before entering into a contract with any subcontractor, Lessee or its general contractor shall first obtain Lessor's written approval of the subcontractor.

6.12.4 All subcontractors used for the electrical installation work shall hold a valid C-10 license issued by the California Contractors State License Board.

7. TAXES; UTILITIES.

7.1 **Taxes on the Property and the Solar Project.** Lessee's leasehold improvements shall be Lessee's personal property and shall not be considered real property. Commencing on the Effective Date and throughout the Term, Lessee shall pay directly to any charging authority prior to delinquency all taxes assessed against and levied upon Lessee's leasehold improvements, including without limitation the installation of the Solar Project on the Property, equipment and all other personal property of Lessee situated in or about the Property, and any reclassification of the Property as a result of the Solar Project or this Lease. Lessor shall pay all real property taxes assessed upon the Property (excluding the Solar Project), and shall be responsible for the payment of all real and personal property taxes and assessments levied on the Property value with respect to periods prior to the term of this Lease. Lessee's obligation to pay taxes shall be prorated as of the Effective Date and the Expiration Date (or the date of any sooner termination of the Term). Lessor shall cooperate with Lessee to ensure any and all property tax bills are delivered to the appropriate Party. If Lessor pays any taxes or assessments for which Lessee is responsible under this Section 7.1, Lessee shall, promptly on demand from Lessor, reimburse Lessor for such amounts as additional rent. If Lessee pays any taxes or assessments for which Lessor is responsible under this Section 7.1, Lessor shall, promptly on demand from Lessee, reimburse Lessee for such amounts.

7.2 **Tax Contests.** Each Party reserves the right to contest with taxing authorities any taxes or assessments imposed which it believes in good faith are excessive or from which it believes in good faith it should be exempt, provided that the contesting Party shall

not allow any such taxes or assessments to remain unpaid for such length of time as would allow any part or all of the Property or the Solar Project to be sold or foreclosed upon or any property of the other Party to be subject to a lien for the nonpayment of same and the contesting Party shall pay any penalties or interest resulting from such contest.

7.3 **Utilities.** Commencing as of the Effective Date and throughout the Term, Lessee shall pay when due directly to the charging authority all charges for water, gas, electricity, telephone, refuse pickup and all other utilities and services supplied or furnished to the Property during the term of this Lease, together with any taxes thereon. Lessor will have no obligation to provide utilities or interconnection facilities to Lessee pursuant to this Lease. In no event shall Lessor be liable to Lessee for failure or interruption of any such utilities or services, and no such failure or interruption shall entitle Lessee to terminate this Lease or to withhold rent or other sums due hereunder.

8. **LESSEE'S REPRESENTATIONS, WARRANTIES AND COVENANTS.**
Lessee hereby represents, warrants and covenants to Lessor as follows:

8.1 **Location of Solar Project; Site Plans.** Subject to the procedures and requirements in Section 6.3 above, Lessee shall make all siting decisions with regard to the location and siting of the Solar Project subject to all Applicable Law. Lessee shall post the access roads it constructs within the Property going to and from the Solar Project as being private roads only for use by authorized personnel (including Lessor during Lessor's times of permitted entry hereunder) in connection with the Solar Project. Any road constructed by Lessee on the Property shall be subject to all easements and dedications of records as of the Effective Date.

8.2 **Insurance.** Commencing on the Effective Date, Lessee shall, at its sole cost and expense, obtain and maintain and keep in full force and effect during the Term a commercial general liability insurance policy applying to the condition, use, occupancy and maintenance of the Property and the business operated by Lessee, or any other occupant on the Property insuring Lessee and Lessor against loss or liability caused by Lessee's occupation and use of the Property under this Lease, in an amount not less than Three Million Dollars (\$3,000,000) of combined single limit liability coverage per occurrence, accident or incident, subject to a commercially reasonable deductible. All such policies shall include Broad Form Contractual liability insurance coverage insuring coverage for all of Lessee's indemnity obligations under this Lease. All such policies shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, however occasioned. All such policies shall be endorsed to add Lessor and any lender or other party with an insurable interest in the Lease or the Property named by Lessor as an additional insured and to provide that any insurance maintained by Lessor shall be excess insurance only. Such coverage shall also contain endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including employees as additional insureds; and (iii) providing for coverage of employer's automobile non-ownership liability. All such insurance shall provide for severability of interests; shall provide that an act or omission of one of the named insureds shall not reduce or avoid coverage to the other named insureds; and shall afford coverage for all claims based on acts, omissions, injury and damage, which claims occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Lessee shall also maintain Workers' Compensation insurance in accordance with California law. The limits of all insurance described in this Section 8.2 shall

not, however, limit the liability of Lessee hereunder. If, in the reasonable opinion of Lessor, the amount of insurance required hereunder is less than the amount typically carried in the market by tenants of comparable industrial facilities in the vicinity of the Property, Lessee shall increase said insurance coverage to such market amount. Lessee shall also maintain any insurance coverage required by any utility company purchasing electrical power from Lessee's project. As of the completion of construction of the Solar Project, Lessee shall, at Lessee's sole expense, obtain and keep in force during the term of this Lease, a policy of fire and extended coverage insurance including a standard "all risk" endorsement, insuring the fixtures, equipment, personal property, leasehold improvements and alterations of Lessee within the Property for the full replacement value thereof, as the same may increase from time to time due to inflation or otherwise. The proceeds from any of such policies shall be used for the repair or replacement of such items so insured and, provided such insurance proceeds are used for such repair and replacement, Lessor shall have no interest in such insurance proceeds. During construction of the Solar Project, (a) Lessee shall maintain course of construction insurance applicable to the work in progress, and (b) Lessee's contractors shall maintain commercial general liability insurance and workers' compensation insurance comparable to that required of Lessee herein. The insurance required to be obtained by Lessee pursuant to this Section 8.2 shall be primary insurance and (a) shall provide that the insurer shall be liable for the full amount of the loss up to and including the total amount of liability set forth in the declarations without the right of contribution from any other insurance coverage of Lessor, (b) shall be carried with companies reasonably acceptable to Lessor, and (c) shall specifically provide that such policies shall not be subject to cancellation, reduction of coverage or other change except after at least thirty (30) days prior written notice to Lessor. Duly executed certificates evidencing the issuance of such policies, together with satisfactory evidence of payment of the premium thereon, shall be deposited with Lessor on or prior to the earlier of the Effective Date or the date on which Lessee or any of Lessee's agents or contractors enter the Property, and upon each renewal of such policies, which shall be effected not less than thirty (30) days prior to the expiration date of the term of such coverage. Lessee shall not do or permit to be done anything which shall invalidate any of the insurance policies referred to in this Section 8.2. Lessee and Lessor each hereby waives any and all rights of recovery against the other, or against the officers, employees, agents, partners and beneficiaries of the other, for loss of or damage to the property of the waiving Party, or the property of others under its control, to the extent of proceeds received as a result of such loss or damage under any insurance policy carried by Lessor or Lessee. Lessee and Lessor shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver is contained in this Lease. Lessor makes no representation that the limits of liability specified to be carried by Lessee under the terms of this Lease are adequate to protect either Party. If Lessee believes that the insurance coverage required under this Lease is insufficient to adequately protect Lessee, Lessee shall provide, at its own expense, such additional insurance as Lessee deems adequate.

8.3 **Indemnity; Safety Measures; Waiver of Claims.**

8.3.1 Lessee shall indemnify, protect, defend and hold harmless Lessor and its directors, officers, employees, and agents (collectively, "**Lessor Indemnitees**") from and against any and all claims, damages, losses, proceedings, causes of action, costs, expense or liability (including attorneys' fees and costs), including any personal injury, death or property damage, now or hereafter arising from any occurrence in or about the Property, or from the Solar

Project or the Solar Operations, or from any breach or default by Lessee in the performance of any obligation on the part of Lessee to be performed under the terms of this Lease, except to the extent such damage, loss, expense or liability is caused by the active negligence, gross negligence, or willful misconduct of such Lessor Indemnitee (“**Lessor Claims**”). In the event any action or proceeding shall be brought against any Lessor Indemnitee by reason of any Lessor Claim, Lessee upon notice from such Lessor Indemnitee shall defend the same at Lessee’s expense with counsel reasonably satisfactory to such Lessor Indemnitee. The obligations of Lessee contained in this Section shall survive the termination of this Lease. Except to the extent such damages, losses, expenses or liability is caused by the active negligence, gross negligence or willful misconduct of such Lessor Indemnitee, Lessee hereby waives any claims against the Lessor Indemnitees for injury to Lessee’s business or any loss of income therefrom or for damage to the equipment, goods, wares, merchandise or other property of Lessee, or for injury or death of Lessee’s agents, employees, invitees, or any other person in or about the Property from any cause whatsoever, regardless of whether the same results from conditions existing upon the Property or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessee.

8.3.2 Lessor shall indemnify, protect, defend and hold harmless Lessee and its directors, officers, employees, and agents (collectively, “**Lessee Indemnitees**”) from and against any and all claims, damages, losses, proceedings, causes of action, costs, expense or liability (including attorneys’ fees and costs), including any personal injury, death or property damage, now or hereafter arising from any occurrence in or about the Property, or from the Solar Project or the Solar Operations, or from any breach or default by Lessor in the performance of any obligation on the part of Lessor to be performed under the terms of this Lease, caused by the active negligence, gross negligence or willful misconduct of Lessor or its directors, officers, employees, and agents, or from Prior Covered Contamination or Lessor Covered Contamination (as defined in Section 10.2) except to the extent such damages, losses, expenses or liability is caused by the active negligence, gross negligence or willful misconduct of such Lessee Indemnitee, (“**Lessee Claims**”). In the event any action or proceeding shall be brought against any Lessee Indemnitee by reason of any Lessee Claim, Lessor upon notice from such Lessee Indemnitee shall defend the same at Lessor’s expense with counsel reasonably satisfactory to such Lessee Indemnitee. The obligations of Lessor contained in this Section shall survive the assignment or transfer of it rights, liabilities, or obligations under and the expiration or termination of this Lease. Except to the extent such damages, losses, expenses or liability is caused by the active negligence, gross negligence or willful misconduct of such Lessee Indemnitee, Lessor hereby waives any claims against the Lessee Indemnitees for injury to Lessor’s business or any loss of income therefrom or for damage to the equipment, goods, wares, merchandise or other property of Lessor, or for injury or death of Lessor’s agents, employees, invitees, or any other person in or about the Property or the Chevron Refinery from any cause whatsoever, regardless of whether the same results from conditions existing upon the Property or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessor.

8.4 **Requirement of Governmental Agencies.** Lessee, at its sole cost and expense, shall comply in all respects with all Applicable Law. In its sole discretion and through appropriate legal proceedings brought in the name of Lessee, Lessee shall, at its sole cost and expense, have the right to contest the validity or applicability to the Property or the Solar Project

of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity relating to the Solar Project or Lessee's Solar Operations on the Property, provided that such contest does not create any liability of any kind to Lessor, and Lessee shall reimburse Lessor for any out-of-pocket costs (including attorneys' costs and fees) in connection with Lessor's required involvement in any such contest. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee at Lessee's sole cost and expense, but Lessee shall indemnify, protect, defend and hold harmless Lessor from and against any and all claims, damages, losses, proceedings, causes of action, costs, expense or liability (including attorneys' fees and costs) arising out of such contest, including without limitation, from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order, regulation or property assessment.

8.5 **Liens**. Lessee shall not file, or allow to be filed, any lien against the Property. In the event any lien shall be filed, Lessee shall promptly take such action as will remove or satisfy the lien; provided, however, that Lessee may contest any lien (or any aspect thereof) and, pending the determination of such contest, postpone the removal or satisfaction thereof, except that Lessee shall not postpone such removal or satisfaction so long as to permit or cause any adverse effect on, or loss or impairment of title to, the Property or any of Lessor's real or personal property. If Lessee fails to timely remove or satisfy a lien, Lessor may, after thirty (30) days' prior written notice to Lessee stating with reasonable specificity the actions that will be taken by Lessor to remove or satisfy such lien, perform such actions for the account of Lessee and Lessee shall pay the cost thereof as additional rent. To the extent allowed by law, Lessee may bond to secure the lien so long as by law the bond will become the sole security for the lien and Lessor's use of or interest in the Chevron Refinery and the Property is not compromised.

9. **LESSOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS**.
Lessor hereby represents, warrants and covenants to Lessee as follows:

9.1 **Exclusivity**. Lessor has not granted to any party other than Lessee rights to convert the solar resources of the Property for electrical energy or to otherwise use the Property for solar energy conversion purposes. Other than matters of record and those encumbrances listed in Exhibit B, Lessor has not granted a lease, license, or right to possession of any part of the Property for any other purpose. In no event during the term of this Lease shall Lessor construct, build or locate or allow others to construct, build or locate any Solar Energy System, Solar Energy Facilities, or similar project on the Property, or to use any part of the Property except for the purposes set forth in Section 3.5.

9.2 **Non-Interference**. Lessor will not initiate or conduct activities that could damage, impair or otherwise adversely affect the Solar Energy Facilities or their function. Except for the rights reserved and granted to Lessor in this Lease, neither Lessor nor any employee, officer, agent, or contractor or any other person acting on behalf of Lessor or at Lessor's direction or request shall impede or interfere with: (i) the siting, permitting, construction, installation, maintenance, operation, replacement, or removal of Solar Energy Facilities on the Property; (ii) Lessee's access over the Property to the Solar Energy Facilities; (iii) the undertaking of any other activities of Lessee permitted under this Lease; (iv) the transmission of electric, electromagnetic or other forms of energy to or from the Property; or (v) the Solar

Energy Facilities' exposure to sunlight (subject to the acknowledgement regarding dust and particulates in the fourth sentence of Section 2).

9.3 **Requirements of Governmental Agencies/Lenders.** To the extent required by any Applicable Law, Lessor, at no cost or expense to Lessor, shall reasonably cooperate with and assist Lessee in complying with or obtaining any land use permit and approval, tax-incentive or tax-abatement program approval, building permit, environmental impact review or any other approval reasonably required by Lessee in connection with the development, financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Solar Project, including execution of applications for such approvals and delivery of information and documentation related thereto, and execution, if required, of any orders or conditions of approval. Lessee shall reimburse Lessor for its actual expense directly incurred in connection with such cooperation.

9.4 **Quiet Enjoyment.** Subject to Lessor's rights of entry hereunder, Lessor covenants and warrants that Lessee shall peacefully hold and enjoy all of the rights granted by this Lease for its entire term without hindrance or interruption by Lessor or any person lawfully or equitably claiming by, through, under or superior to Lessor subject to the terms of this Lease.

9.5 **Acknowledgment of Lessee's Right to Erect Fences.** Subject to Lessor's rights of entry pursuant to the terms herein, Lessor acknowledges and agrees that Lessee may erect fences or other security measures around the Property or the Solar Project in accordance with Section 6.10 above. Lessee shall provide to Lessor keys or access codes to all fences constructed by Lessee on the Property.

10. **ENVIRONMENTAL REMEDIATION.**

10.1 **Environmental Remediation by Lessee.** In the event environmental contamination results from Lessee's operation and use of the Property and that environmental contamination is covered by applicable federal, state or local laws in effect and enforced during the Term, this Section 10.1 shall apply. The definitions and requirements of Section 10.2 shall apply to Prior Covered Contamination (as that term is defined in Section 10.2.1 below).

10.1.1 **"Covered Contamination"** means (i) any environmental contamination as a result of Lessee's use of the Property or the Solar Project that is covered by Applicable Law, (ii) any environmental contamination or threatened environmental contamination that results from any penetration, disturbance, or impairment of the landfill cap and drainage system or groundwater control systems by Lessee, its agents, employees, contractors, licensees, and invitees, and (iii) any other environmental condition that is covered by Applicable Law existing on the Property as of the Effective Date to the extent such condition is exacerbated by Lessee's operation and use of the Property or the Solar Project.

10.1.2 **"Claim Against Lessee"** means receipt by Lessor or Lessee of a notice, claim, demand, or complaint from any third party or from any government agency with jurisdiction for investigation, containment, remediation or removal of Covered Contamination, or for the payment of damages, costs, or expenses arising from or relating to the presence of or the escape, leakage, spillage, discharge, emission or release from the Property into, onto or under the

Property, adjacent land, or any groundwater source, watercourse, body of water, or wetland, of any Covered Contamination alleged to have resulted from Lessee's operation and use of the Property or the Solar Project.

10.1.3 If a Claim Against Lessee occurs, the Party first receiving notice of the Prior or Lessor Claim will immediately notify the other Party, and Lessee will proceed after receipt of notice of the claim to assess and, if required, to take any action necessary to fully and finally resolve the claim. If any investigation, containment, remediation or removal of Covered Contamination is undertaken, Lessee shall be deemed to have satisfied its obligations once Lessee completes the work to the satisfaction of the governmental agency having jurisdiction over the matter, or as otherwise required under any settlement agreement or court order. If Lessee, in good faith, believes that the claimed contamination is not Covered Contamination or that Lessee is not otherwise responsible for the Claim Against Lessee, then Lessee shall have the right to challenge such claim in an appropriate forum.

10.1.4 In the event action is taken against either Party regarding a Claim Against Lessee, or commenced by Lessee to challenge a Claim Against Lessee, Lessor shall cooperate with Lessee in the defense thereof.

10.2 **Environmental Remediation by Lessor.**

10.2.1 **"Prior Covered Contamination"** means environmental contamination and that was present in, on or under the Property prior to the Effective Date.

10.2.2 **"Lessor Covered Contamination"** means escape, leakage, spillage, discharge, emission or release from the Property into, onto or under the Property of environmental contamination caused by Lessor after the Effective Date and which is covered by Applicable Law.

10.2.3 Lessor shall disclose to Lessee any contamination not caused by Lessee but related to the Property that Lessor learns of subsequent to Lessee taking possession of the Property.

10.2.4 **"Prior Covered Contamination Claim or Contamination Claim"** (hereinafter, **"Prior or Lessor Claim"**) means receipt by Lessor or Lessee of a notice, claim, demand, or complaint from any third party, or from any government agency with jurisdiction for containment, remediation or removal of Prior Covered Contamination or Lessor Covered Contamination, or for the payment of damages, costs, or expenses arising from or relating to for the presence of or the escape, leakage, spillage, discharge, emission or release from the Property into, onto or under the Property, adjacent land, or any groundwater source, watercourse, body of water, or wetland, of any Prior Covered Contamination or Lessor Covered Contamination.

10.2.5 If a Prior or Lessor Claim occurs, the Party first receiving notice of the Prior or Lessor Claim will immediately notify the other Party, and Lessor will proceed after receipt of notice of the claim to assess and, if required, to take any action necessary to fully and finally resolve the claim. If any containment, remediation or removal of Prior Covered Contamination or Lessor Covered Contamination is undertaken, Lessor shall be deemed to have

satisfied its obligations once Lessor completes the work to the satisfaction of the governmental agency having jurisdiction over the matter, or as otherwise required under any settlement agreement or court order. If Lessor, in good faith, believes that the claimed contamination is not Prior Covered Contamination or Lessor Covered Contamination or that Lessor is not otherwise responsible for the Prior or Lessor Claim, then Lessor shall have the right to challenge such claim in an appropriate forum.

10.2.6 In the event action is taken against either Party regarding a Prior or Lessor Claim, or commenced by Lessor to challenge a Prior or Lessor Claim, Lessee shall provide to Lessor such non-confidential documents related to the Property as are reasonably requested by Lessor and shall grant Lessor access to the Property in such reasonable time and manner as does not interfere with Lessee's operations on the Property.

10.3 **Survival of Obligations.** The Parties' obligations under this Section 10 shall survive transfer or assignment of the Parties' interests under this Lease or expiration or termination of this Lease.

11. **ASSIGNMENT AND SUBLETTING.**

11.1 **Assignment and Subletting Prohibited.** The Parties acknowledge that Lessee's status as a California Joint Powers Authority is an important basis on which the Parties are entering into this Lease and that Lessor would not lease the Property on the terms of this Lease to a party other than a governmental entity. The Parties further acknowledge that the Project Public Benefits would be significantly reduced and impeded if the Project ceased to be operated by Marin Clean Energy or another governmental entity. Accordingly, Lessee may not assign this Lease, sublet the Property or Solar Project or any part thereof, or any right or privilege appurtenant thereto, encumber its interest under this Lease or any rights of Lessee hereunder except to the extent permitted under Section 12.3, enter into any license or concession agreement respecting all or any portion of the Property, or suffer any other person to occupy or use the Property or any portion thereof (each, an "**Assignment**") without the prior written consent of Lessor, which consent may be given or withheld at Lessor's sole discretion, except as otherwise set forth in Sections 11.2 and 11.3 below. Notwithstanding the foregoing or anything to the contrary in this Lease, it is specifically agreed that Lessee may assign the Lease or sublet all or a portion of the Property or Solar Project to Stion Corporation (or a related special project vehicle or single purpose entity) (collectively, "**Stion**") as a Developer (as that term is defined below), provided the conditions set forth in Section 11.2 and 11.3 below are satisfied. An encumbrance of Lessee's interest under this Lease or the Solar Project as security for a loan or other financing of the Solar Project, to the extent permitted by Section 12.3, shall not constitute an Assignment. If Lessee proposes to assign this Lease or sublet the Property, Lessee shall provide written notice thereof to Lessor, together with a detailed description of all terms of such Assignment and the proposed assignee or sublessee. If Lessee is a partnership or a limited liability company, a change in the general partner or manager of Lessee, a transfer, voluntary or involuntary, of more than 50% of the interests in the partnership or the company, or the dissolution of the partnership or the company, shall be deemed an Assignment. If Lessee is a corporation, any dissolution, merger, consolidation, or other reorganization of Lessee, or the transfer, either all at once or in a series of transfers, of a controlling percentage of the capital stock of Lessee, or the sale, or series of sales within any one (1) year period, of all or

substantially all of Lessee's assets located in, on, or about the Property, shall be deemed an Assignment. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least fifty-one percent (51%) of the total combined voting power of all classes of Lessee's capital stock issued, outstanding, and entitled to vote for the election of directors.

11.2 **Permitted Assignment to Government Entity.** Notwithstanding Section 11.1 above, Lessee may assign this Lease, sublet the Property or any part thereof, or any right or privilege appurtenant thereto, or license all or any proportion of the Property to a government entity with Lessor's prior written consent, which consent may not be unreasonably withheld, conditioned, or delayed.

11.3 **Permitted Sublet for Development.** Notwithstanding Section 11.1 above, Lessee may sublet all or a portion of the Property to a third party (the "**Developer**") for the purposes of developing the Solar Project with Lessor's prior written consent, which consent may not be unreasonably withheld, conditioned, or delayed, subject to the following conditions: (i) Lessee remains the power off-taker pursuant to a power purchase agreement with the Developer; (ii) the term of the sublease is no longer than necessary for the Developer to realize the full benefit of any federal, state or local production tax credits and investment tax credits associated with the construction or operation of the Solar Project, except that this subsection (ii) shall not apply in the event that Stion is the Developer sublessee; (iii) the Developer is reasonably satisfactory to Lessor, taking into account such factors as the Developer's financial condition and experience developing comparable projects; (iv) Lessor and the Developer enter into a sublease agreement on terms and conditions reasonably satisfactory to Lessor; and (v) the sublease agreement does not expand the obligations or limit the rights of Lessor under this Lease.

11.4 **Lessor's Right of First Offer.** In the event Lessee elects to assign this Lease or sublease the Property (other than a sublease to the Developer), Lessor shall have a right of first offer as follows: Lessee shall give Lessor written notice specifying the terms and conditions on which Lessee desires to assign the Lease or sublease all or a portion of the Property and offering to assign or sublease to Lessor on the stated terms and conditions (the "First Offer"). Within thirty (30) days after receipt of the notice, Lessor shall either accept or reject the First Offer. If Lessor accepts the First Offer, then the parties shall proceed in accordance with the terms and conditions stated in the First Offer. If Lessor rejects the First Offer (or does not respond in writing within such thirty (30) day period, which failure shall act as a rejection), then Lessee shall be free to assign the Lease or sublease the Property to others, provided such assignment or sublease is on substantially similar terms as the First Offer to Lessor. Any offer of sale for a substantially reduced purchase price as compared to the First Offer, or with substantially different terms, must first be presented to Lessor as a new offer.

11.5 **Assignments Generally.** Any Assignment without Lessor's prior written consent pursuant to this Section shall at Lessor's election be void, and shall constitute an Event of Default. If Lessee shall purport to assign this Lease, or sublease all or any portion of the Property, or permit any person or persons other than Lessee to occupy the Property, without Lessor's prior written consent, Lessor may collect rent from the person or persons then or thereafter occupying the Property and apply the net amount collected to the rent reserved herein, but no such collection shall be deemed a waiver of Lessor's rights and remedies under this

Section 11, or the acceptance of any such purported assignee, sublessee or occupant, or a release of Lessee from the further performance by Lessee of covenants on the part of Lessee herein contained. The consent by Lessor to any Assignment shall not constitute a waiver of the provisions of this Section 11, including the requirement of Lessor's prior written consent, with respect to any subsequent Assignment. In the event Lessor shall consent to an Assignment pursuant to this Section 11, Lessee shall nonetheless remain primarily liable for all obligations and liabilities of Lessee under this Lease, including but not limited to the payment of rent. Lessee shall reimburse Lessor upon demand for the reasonable out-of-pocket expenses, including reasonable attorneys' fees, incurred by Lessor in connection with the negotiation, review, and documentation of any requested Assignment. In the event of an assignment or sublease to an entity other than a governmental entity or the Developer, the rent shall be adjusted in accordance with Section 5.2 above.

12. **ESTOPPEL CERTIFICATES; ATTORNMEN; SUBORDINATION.**

12.1 **Lessor's Security.**

12.1.1 **Estoppel Certificate.** Lessee shall, within fifteen (15) days following request by Lessor, execute and deliver to Lessor an estoppel certificate: (a) certifying that this Lease has not been modified and is in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect; (b) stating the date to which the rent and other charges are paid in advance, if at all; (c) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessee hereunder, or if there are uncured defaults on the part of Lessee, stating the nature of such uncured defaults; and (d) evidencing the status of this Lease as may be reasonably required either by a lender making a loan to Lessor to be secured by a deed of trust or mortgage encumbering the Property or a purchaser of the Property from Lessor. In the event of any financing or sale of the Property by Lessor, Lessee shall deliver to Lessor the current financial statements of Lessee with an opinion of a certified public accountant, including a balance sheet and profit and loss statement for the then current fiscal year, and the two (2) immediately prior fiscal years, all if available without further preparation and all prepared in accordance with generally accepted accounting principles consistently applied. Lessor shall keep any financial statements of Lessee delivered to Lessor strictly confidential and shall endeavor to cause any prospective lender or purchaser to do the same. The failure by Lessee to deliver an estoppel certificate or to deliver any such financial statements within fifteen (15) days following such request shall be an Event of Default under this Lease.

12.1.2 **Attornment.** Lessee shall attorn to any third party purchasing or otherwise acquiring the Property at any sale or other proceeding, or pursuant to the exercise of any rights, powers or remedies under any mortgages or deeds of trust or ground leases now or hereafter encumbering all or any part of the Property, as if such third party had been named as Lessor under this Lease. Such attornment shall be upon all of the terms and conditions of this Lease. Lessee shall execute a new lease with such new Lessor on the same terms of this Lease if so required by such new Lessor.

12.2 **Lessee's Security.**

12.2.1 **Estoppel Certificate.** Lessor shall, within fifteen (15) days following request by Lessee, execute and deliver to Lessee an estoppel certificate: (a) certifying that this Lease has not been modified and is in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect; (b) stating the date to which the rent and other charges are paid in advance, if at all; (c) acknowledging that there are not, to Lessor's knowledge, any uncured defaults on the part of Lessee hereunder, or if there are uncured defaults on the part of Lessee, stating the nature of such uncured defaults; and (d) evidencing the status of this Lease as may be reasonably required either by the holder of a mortgage, grant a deed of trust on, and/or pledge of the Lease and/or the Solar Project as security for a loan or other financing of the Solar Project ("**Leasehold Mortgagee**") or by a Permitted Transferee (as defined below). The failure by Lessor to deliver an estoppel certificate within fifteen (15) days following such request shall be a default under this Lease. For purposes of this Lease, "**Permitted Transferee**" means (i) an assignee pursuant to an Assignment permitted under Section 11; (ii) a Leasehold Mortgagee that takes title to this Lease pursuant to a foreclosure of a Leasehold Mortgage or a sale in lieu thereof; or (iii) an Eligible Foreclosure Successor that takes title to this Lease pursuant to Section 12.3.12.

12.2.2 **Attornment.** Any Permitted Transferee shall succeed to the interest of Lessee under this Lease and shall have all the rights and duties of Lessee under this Lease and be bound to this Lease to the same extent as Lessee, but only during the period when such Permitted Transferee owns the leasehold estate. Any Permitted Transferee shall immediately provide Lessor with written notice of such transfer. Lessor shall attorn to any Permitted Transferee upon all of the terms and conditions of this Lease. If so required by the Permitted Transferee, Lessor shall execute a new lease with the Permitted Transferee on the same terms of this Lease. Where a Leasehold Mortgagee acquires title to this Lease or the Solar Project under Section 12.3, then the following breaches, if any, relating to the prior Lessee shall be deemed cured: (i) attachment, execution of or other judicial levy upon the leasehold estate, (ii) assignment for the benefit of creditors of Lessee, (iii) judicial appointment of a receiver or similar officer to take possession of the leasehold estate or the underlying fee-owned property, or (iv) filing any petition by, for or against Lessee under any chapter of the Federal Bankruptcy Code. The benefits afforded to any Permitted Transferee pursuant to this Section 12.2.2 are conditioned on (i) such Permitted Transferee assuming in writing all duties and obligations of Lessee under this Lease from and after the date the Permitted Transferee takes title to this Lease and (ii) such Permitted Transferee paying rent in accordance with Section 5.1, including any increase of Annual Rent to Fair Market Rent, if applicable.

12.2.3 **Subordination.** Lessor agrees that any mortgage, deed of trust, or other instrument of security now of record or which is recorded after the date of this Lease affecting the Property or any portion thereof, shall be subject to and subordinate to this Lease and any Developer sublease, and any mortgage, grant of a deed of trust on, and/or pledge of the Lease and/or the Solar Project as security for a loan or other financing of the Solar Project, and such subordination is hereby made effective without any further act of Lessor. Lessor further agrees that Lessor shall obtain from the holder of any mortgage, deed of trust, or other instrument of security affecting the Property now of record or which is recorded after the date of this Lease ("**Property Mortgagee**"), concurrently with Lessee entering into a Developer sublease, a written and acknowledged subordination, nondisturbance, and attornment agreement in a commercially reasonable and recordable form, subject to Lessor's reasonable approval, that

provides, among other things, that as long as Lessee performs its obligations under this Lease, no foreclosure of, deed given in lieu of foreclosure of, or sale under the encumbrance, and no steps or procedures taken under the encumbrance held by the Property Mortgagee, shall affect Lessee's or the Leasehold Mortgagee's rights under this Lease. The Property Mortgagee and Lessor shall execute and return to Lessee and the Leasehold Mortgagee the written and acknowledged agreement and any other documents reasonably required by Lessee and the Leasehold Mortgagee to accomplish the purposes of this Section, or comments to such agreement or documents, within seven (7) days after delivery thereof to Lessor and the Property Mortgagee, and the failure of the Lessor and the Property Mortgagee to execute, acknowledge, and return any such instruments or provide comments shall constitute a default hereunder.

12.3 **Leasehold Mortgages.**

12.3.1 **Lessee's Right to Mortgage Lease and Solar Project.** Lessee shall have the right, at any time and from time to time, to mortgage, grant a deed of trust on, and or pledge the Lease and/or the Solar Project as security for a loan or other financing of the Solar Project, subject to Lessor's approval of the Leasehold Mortgagee or lender, which approval may not be unreasonably withheld, conditioned, or delayed. Lessee agrees to furnish Lessor with a correct and complete copy of any such security instrument. Lessor agrees that Lessee's interest under the Lease or the Solar Project may be encumbered under this section 12.3.1, and further agrees to subordinate any mortgage, deed of trust, or other instrument of security now of record or which is recorded after the date of this Lease affecting the Property or any portion thereof to any mortgage, grant of a deed of trust on, and/or pledge of the Lease and/or the Solar Project as security for a loan or other financing of the Solar Project as set forth in Section 12.2.3, above. In no event shall a security instrument under this section 12.3.1 encumber Lessor's fee interest in the underlying property.

12.3.2 **Leasehold Mortgagee Consent to Lease Termination.** There shall not be entered into between Lessor and Lessee any agreement of cancellation, termination, surrender, acceptance of surrender, amendment or modification of this Lease without the prior written consent of the Leasehold Mortgagee, whose consent shall not be unreasonably withheld. This Lease shall not merge into the fee underlying the Property without the prior written consent of such Leasehold Mortgagee.

12.3.3 **Leasehold Mortgagee's Right to Cure Default.** Lessor, upon giving Lessee any notice under this Lease, including, without limitation, notice of an Event of Default, shall at the same time serve by one of the methods specified in Section 17.4 of this Lease, copies of such notice upon each Leasehold Mortgagee whose address has previously been provided to Lessor by Lessee in writing. No notice served upon Lessee (including, without limitation, a notice of termination of this Lease) shall be effective unless a copy has been served upon each Leasehold Mortgagee at the address provided by Lessee. Following receipt of any such notice of an Event of Default, each Leasehold Mortgagee shall have the right to remedy the Event of Default, or cause the same to be remedied, within the same time allowed to Lessee under Sections 14.1.1 and 14.1.2 of this Lease.

12.3.4 **Leasehold Mortgagee's Right to Foreclose.** If a noncurable breach of this Lease occurs, a Leasehold Mortgagee shall have the right to begin foreclosure

proceedings and to obtain possession of the Lease and/or Solar Project, so long as the Leasehold Mortgagee (i) notifies Lessor, within 30 days after receipt of Lessor's notice of an Event of Default, of its intention to effect this remedy; (ii) diligently institutes steps or legal proceedings to foreclose on or recover possession of the Lease (after the Leasehold Mortgagee has completed its customary pre-foreclosure due diligence requirements), and thereafter prosecutes the remedy or legal proceedings to completion with due diligence and continuity; and (iii) keeps and performs, during the foreclosure period (including the pre-foreclosure due diligence period), all of the covenants and conditions of this Lease.

12.3.5 **Multiple Leasehold Mortgagees.** In the event of conflict between the rights of multiple Leasehold Mortgagees, the rights of the respective Leasehold Mortgagees shall be determined in the order of priority of their Leasehold Mortgages.

12.3.6 **Leasehold Mortgagee Named as Additional Insured.** The name of the Leasehold Mortgagee may be added as a loss payee of any fire and extended coverage insurance carried by Lessee, provided that insurance proceeds are first used for repair and restoration as required by this Lease, unless a Leasehold Mortgagee's security has been impaired and such Leasehold Mortgagee is legally entitled to the application of the insurance proceeds to the unpaid indebtedness of Lessee, in which case such insurance proceeds shall be paid to the Leasehold Mortgagee up to the amount of the unpaid indebtedness secured by any such Leasehold Mortgage(s). The terms of this Section 12.3.6 do not modify or limit either Party's rights or obligations under Section 15.4.

12.3.7 **Liability of Leasehold Mortgagees.** Except with respect to payment of Annual Rent or additional rent and except as provided in Section 12.3.4, the Leasehold Mortgagee shall not be liable for the performance of Lessee's obligations under this Lease unless the Leasehold Mortgagee has succeeded to and has possession of the interest of Lessee under this Lease.

12.3.8 **Leasehold Mortgage Not Assignment.** The making of any Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or Transferee of this Lease or the leasehold estate so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Lessee under this Lease to be performed.

12.3.9 **Lessor's Receipt of Notices.** Lessor agrees, whenever requested by any Leasehold Mortgagee, to confirm, in writing, the receipt of any notice from the Leasehold Mortgagee.

12.3.10 **Assignment to Leasehold Mortgagee.** The Leasehold Mortgagee shall have the option to be assigned this Lease in the event that Lessee, Lessee's trustee or assignee elects to reject this Lease under Section 365(a) of the Bankruptcy Code. In the event that the Leasehold Mortgagee exercises its option to have this Lease assigned to it, such a rejection by Lessee, Lessee's trustee or assignee, whether by election, by operation of law or otherwise, shall not terminate this Lease if the Leasehold Mortgagee cures any outstanding Event

of Default of Lessee under this Lease other than Events of Default of Lessee that are personal to Lessee and cannot be cured by a party other than Lessee, such as transfer and bankruptcy.

12.3.11 **Assignment of Rents**. Lessor consents to a provision in any Leasehold Mortgage or otherwise for an assignment of rents from subleases of the Improvements to the holder thereof, effective on the date on which the Leasehold Mortgagee has succeeded to and takes possession of the interest of Lessee under this Lease.

12.3.12 **Foreclosure Not a Breach**. The foreclosure of a Leasehold Mortgage, or any sale thereunder to an Eligible Foreclosure Successor, whether by judicial proceedings or by virtue of any power contained in any Leasehold Mortgage, or any conveyance of the leasehold estate created hereby from Lessee to any Leasehold Mortgagee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not breach any provision of or constitute an Event of Default under this Lease and shall not require Lessor's consent, and upon such foreclosure, sale or conveyance and Leasehold Mortgagee's execution and delivery to Lessor of a lease assumption agreement in a commercially reasonable form, Lessor shall recognize the Leasehold Mortgagee, or such Eligible Foreclosure Successor, as Lessee under the Lease. For purposes of this Lease, "**Eligible Foreclosure Successor**" means an entity that (i) has, during the ____ year period immediately preceding the transfer, owned and operated at least ____ megawatts of inverter nameplate generating capacity of photovoltaic solar electricity generating equipment and facilities in accordance with applicable operating requirements, and (ii) is recognized nationally or internationally in the solar industry as having substantial experience managing, developing or operating solar photovoltaic energy facilities similar to the Solar Energy Facilities..

13. **TRANSFER OF LESSOR'S INTEREST**. If Lessor or any successor to Lessor sells, conveys, or transfers the Property or any portion thereof that is subject to this Lease (each such sale, conveyance, or transfer, a "**Transfer**"), so long as Lessor has delivered to Lessee prior written notice of any proposed Transfer, then all rights, liabilities and obligations of Lessor under this Lease accruing from and after such Transfer shall become the rights, liabilities and obligations of the transferee, and the transferring Lessor shall have no further right, obligation or liability under this Lease accruing thereafter. The term "Lessor" as used in this Lease, so far as the covenants or obligations on the part of Lessor are concerned, shall be limited to mean and include only the owner at the time in question of the fee title to the Property. The covenants and obligations contained in this Lease on the part of Lessor shall, subject to the foregoing, be binding upon each Lessor hereunder only during this or its respective period of ownership. Lessee agrees to attorn to any new Lessor following a Transfer of which Lessee has notice pursuant to Section 12.1.2 above.

14. **DEFAULT AND TERMINATION**.

14.1 **Default by Lessee**. The occurrence of any of the following shall constitute a default and breach of this Lease by Lessee (each an "**Event of Default**"):

14.1.1 **Monetary Default**. The failure or omission by Lessee to pay amounts required to be paid hereunder when due, and such failure or omission has continued for five (5) days after Lessor has delivered written notice of the default to Lessee. Any such notice

shall constitute the notice required under Section 1161 of the California Code of Civil Procedure (and/or any related or successor statutes regarding unlawful detainer actions), provided such notice is given in accordance with the requirements of such statute.

14.1.2 **Non-Monetary Default.** The failure or omission by Lessee to observe, keep or perform any of the other terms, agreements or conditions set forth in this Lease, and such failure or omission has continued for thirty (30) days after written notice from Lessor (or such longer period required to cure such failure or omission in the event the default is not reasonably susceptible of cure within a thirty (30) day period, but in no event shall such cure period exceed a total cure period of sixty (60) days after the occurrence of a non-monetary default, if Lessee commences such cure within the initial thirty (30) day period and diligently prosecutes such cure to completion).

14.1.3 **Bankruptcy by Lessee.** The occurrence of any of the following (i) Lessee files for protection or liquidation under the bankruptcy laws of the United States or any other jurisdiction or has an involuntary petition in bankruptcy or a request for the appointment of a receiver filed against it and such involuntary petition or request is not dismissed within forty-five (45) days after filing; (ii) Lessee's assignment of its assets for the benefit of its creditors; (iii) the sequestration of, attachment of, or execution on, any substantial part of the property of Lessee or on any property essential to the conduct of Lessee's business on the Property, and Lessee shall have failed to obtain a return or release on such property within forty five (45) days thereafter, or prior to sale pursuant to such sequestration, attachment or execution, whichever is earlier; or (iv) an entry of any of the following orders by a court having jurisdiction, and such order shall have continued for a period of ninety (90) days: (1) an order adjudicating Lessee to be bankrupt or insolvent, (2) an order appointing a receiver, trustee or assignee of Lessee's property in bankruptcy or any other proceeding, or (3) an order directing the winding up or liquidation of Lessee.

14.2 **Lessor's Remedies.** Upon any Event of Default, Lessor shall have the following remedies, in addition to all other rights and remedies provided by law or equity: (i) Lessor, as described in California Civil Code Section 1951.4, shall be entitled to keep this Lease in full force and effect for so long as Lessor does not terminate Lessee's right to possession (whether or not Lessee shall have abandoned the Property) and Lessor may enforce all of its rights and remedies under this Lease, including the right to recover Annual Rent and additional rent, plus interest at the Default Rate from the due date of each installment of Annual Rent or additional rent until paid; or (ii) Lessor may terminate Lessee's right to possession by giving Lessee written notice of termination. On the giving of the notice, this Lease and all of Lessee's rights in the Property will terminate. Any termination under this Section will not release Lessee from the payment of any sum then due Lessor or from any claim for damages or rent previously accrued or then accruing against Lessee.

In the event this Lease is terminated pursuant to this Section 14.2, Lessor may recover from Lessee: (1) the worth at the time of award of the unpaid rent which had been earned at the time of termination; plus (2) 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 for the same period that Lessee proves could have been reasonably avoided; plus (3) 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 for the same period that Lessee proves could be reasonably avoided; plus (4) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform Lessee's obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom, including without limitation, the following: (i) expenses for repairing or restoring the Property, including removing any equipment or alterations installed by Lessee; (ii) real estate leasing commissions, advertising costs and other expenses of reletting the Property; (iii) costs incurred as owner of the Property including without limitation taxes and insurance premiums thereon, utilities and security; and (iv) expenses in retaking possession of the Property; (v) attorneys' fees and court costs.

The "worth at the time of award" of the amounts referred to in subsections (1) and (2) of this Section 14.2 shall be computed by allowing interest at the Default Rate. The "worth at the time of award" of the amount referred to in subsection (3) of this Section shall be computed by discounting such amount at the discount rate of the Federal Reserve Board of San Francisco at the time of award plus one percent (1%). The term "time of award" as used in subsections (1), (2), and (3) shall mean the date of entry of a judgment or award against Lessee in an action or proceeding arising out of Lessee's breach of this Lease. The term "rent" as used in this Section shall include all sums required to be paid by Lessee to Lessor pursuant to the terms of this Lease.

This Lease may be terminated by a judgment specifically providing for termination, or by Lessor's delivery to Lessee of written notice specifically terminating this Lease. In no event shall any one or more of the following actions by Lessor, in the absence of a written election by Lessor to terminate this Lease, constitute a termination of this Lease or a waiver of Lessor's right to recover damages under this Section 14.2: (1) appointment of a receiver in order to protect Lessor's interest hereunder; (2) consent to any subletting of the Property or assignment of this Lease by Lessee, whether pursuant to provisions hereof concerning subletting and assignment or otherwise; or (3) any other action by Lessor or Lessor's agents intended to mitigate the adverse effects of any breach of this Lease by Lessee, including without limitation any action taken to maintain and preserve the Property, or any action taken to relet the Property or any portion thereof for the account of Lessee and in the name of Lessee.

Lessee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, and under any other present or future law, in the event Lessee is evicted or Lessor otherwise lawfully takes possession of the Property by reason of any Event of Default.

If Lessee at any time shall fail to make any payment or perform any other act required to be made or performed by Lessee under this Lease, then Lessor may, but shall not be obligated to, make such payment or perform such other act to the extent Lessor may deem desirable, and may, in connection therewith, pay any and all expenses incidental thereto and employ counsel. No such action by Lessor shall be deemed a waiver by Lessor of any rights or remedies Lessor may have as a result of such failure by Lessee, or a release of Lessee from performance of such obligation. All sums so paid by Lessor, including without limitation all penalties, interest and costs in connection therewith, shall be due and payable by Lessee to Lessor on the day immediately following any such payment by Lessor, as additional rent. Lessor shall have the

same rights and remedies for the nonpayment of any such sums as Lessor may be entitled to in the case of default by Lessee in the payment of rent.

Any amount due to Lessor under this Lease not paid when due shall bear interest at the lower of fifteen percent (15%) per annum, or the highest rate then allowed by law (“**Default Rate**”), from the date due until paid in full. Payment of such interest shall not excuse or cure any default by Lessee under this Lease.

All sums payable by Lessee to Lessor or to third parties under this Lease in addition to such sums payable pursuant to Section 5 hereof shall be payable as additional sums of rent. For purposes of any unlawful detainer action by Lessor against Lessee pursuant to California Code of Civil Procedure Sections 1161-1174, or any similar or successor statutes, Lessor shall be entitled to recover as rent not only such sums specified in Section 5 as may then be overdue, but also all such additional sums of rent as may then be overdue.

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies herein provided or permitted at law or in equity.

No member, official, or employee of Lessee shall be personally liable to Lessor or any successor in interest under any Event of Default or for any amount which may become due to Lessor or successor or on any obligations under the terms of this Lease.

14.3 Default by Lessor. Lessor’s failure or omission by Lessor to observe, keep or perform any of the terms, agreements or conditions set forth in this Lease, and such failure or omission has continued for thirty (30) days after written notice from Lessee (or such longer period required to cure such failure or omission in the event the default is not reasonably susceptible of cure within a thirty (30) day period, but in no event shall such cure period exceed a total cure period of sixty (60) days after the occurrence of a default, if Lessor commences such cure within the initial thirty (30) day period and diligently prosecutes such cure to completion).

14.3.1 Lessee’s Remedies. Upon any Event of Default, Lessee shall have the following remedies, in addition to all other rights and remedies provided by law or equity: (i) Lessee shall be entitled to keep this Lease in full force and effect for so long as Lessor does not terminate Lessee’s right to possession (whether or not Lessee shall have abandoned the Property) and Lessee may enforce all of its rights and remedies under this Lease; or (ii) Lessee may terminate this Lease by giving Lessor written notice of termination. On the giving of the notice, this Lease will terminate and subject to Sections 6.9 and 14.3 and other provisions of this Lease that survive the expiration or termination of this Lease, neither Party will have any further rights or obligations under the Lease. Termination of this Lease under this Section 14.2.1 will not release Lessor from the payment of any sum then due Lessee or from any claim for damages accrued or then accruing against Lessor. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies herein provided or permitted at law or in equity. No director, officer, or employee of Lessor shall be personally liable to Lessee or any successor in interest in the event of any Default by Lessor or for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease.

14.4 **Surrender.** Lessee shall, upon expiration or sooner termination of this Lease, surrender the Property to Lessor in substantially the same condition as existed on the date Lessee originally took possession thereof, subject to the terms and conditions of Section 6.9 above.

14.5 **Holding Over.** This Lease shall terminate without further notice at the expiration of the Term. Any holding over by Lessee after expiration shall not constitute a renewal or extension of the Lease or give Lessee any rights in or to the Property unless otherwise expressly provided in this Lease. Any holding over after expiration (or termination, as applicable) of the Term with the express written consent of Lessor shall be construed to be a month-to-month tenancy at one hundred twenty-five percent (125%) of the Fair Market Rent, which rent shall be paid monthly during such hold over period. The month-to-month tenancy shall be on the terms, provisions, and conditions of this Lease except as provided in the preceding sentence.

15. **CONDEMNATION; DAMAGE OR DESTRUCTION.**

15.1 **Complete Taking.** If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Property or the Solar Project, for any public use, then the interests and obligations of Lessee under this Lease in or affecting Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of Property or the Solar Project, or (ii) the date of the condemnation judgment. Lessee shall continue to pay all amounts payable hereunder to Lessor until the earlier of such dates, at which time Lessor and Lessee shall be relieved of any and all further obligations and conditions to each other under this Lease.

15.2 **Partial Taking.** If, at any time during the term of this Lease, any authority having the power of eminent domain shall condemn any portion of the Solar Project or the Property, then the interest and obligations of Lessee under this Lease as to any portion of the Solar Project or the Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of such portion of the Solar Project or the Property, or (ii) the date of the condemnation judgment, and, unless this Lease is terminated as hereinafter provided, this Lease shall continue in full force and effect as to the remainder of the Solar Project and the Property. Lessee shall, at its own cost and expense, make all necessary repairs or alterations to the improvements constructed on the Property in order to make the portion of the Solar Project or Property not taken a functional unit, and the portion of any condemnation proceedings expressly designated for such restoration work shall be paid to Lessee to reimburse Lessee for such purpose. Each Party hereto waives the provisions of California Code of Civil Procedure Section 1265.130 allowing either Party to petition the superior court to terminate this Lease in the event of a partial taking of the Property. If such partial condemnation renders the Solar Project unusable or uneconomic or renders the Property unusable for the Solar Project or Lessee's Solar Operations, Lessee may terminate this Lease.

15.3 **Apportionment, Distribution of Award.** On any taking covered by Sections 15.1 or 15.2 above, all compensation awarded upon a taking shall belong to and be paid to Lessor, except that Lessee shall receive from the award (i) a sum attributable to Lessee's improvements or alterations made to the Property by Lessee at Lessee's expense with Lessor's

consent in accordance with this Lease, which Lessee has the right to remove from the Property pursuant to the provisions of this Lease, but are taken for public use or rendered unusable or uneconomic by the taking; (ii) if Lessee elects to remove any such improvements or alterations made to the Property at Lessee's expense due to the taking, Lessee shall receive the portion of the award to reimburse Lessee for its expenses for reasonable removal and relocation of its improvements or alterations not to exceed the market value of such improvements or alterations on the date possession of the Property is taken; or (iii) Lessee's cost to restore the Solar Project as a functional unit under Section 15.2 above.

15.4 **Damage or Destruction.** Subject to Section 17.1 below, no damage to or destruction of any equipment or improvements installed or constructed by Lessee on the Property shall affect any of Lessee's obligations under this Lease or entitle Lessee to terminate or otherwise modify any provisions of this Lease. Lessee waives the provisions of California Civil Code Sections 1932(2) and 1933(4), and any similar or successor statutes relating to termination of leases when the thing leased is substantially or entirely destroyed, and agrees that any such occurrence shall instead be governed by the terms of this Lease.

16. **MISCELLANEOUS.**

16.1 **Force Majeure.** If performance of this Lease or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure (defined below), the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration, up to a maximum of one hundred twenty (120) days, of such prevention, restriction or interference. The affected Party shall use commercially reasonable efforts to avoid or remove such causes of nonperformance, to mitigate the duration of any delay in performance, and shall continue performance hereunder to the extent permissible by the event of Force Majeure or whenever such causes are removed. A Force Majeure shall not excuse any obligation to pay any amounts when due and owing under this Lease. "**Force Majeure**" includes, but is not limited to, an act of God or the elements, site conditions, extreme or severe weather conditions, explosion, fire, epidemic, landslide, mudslide, sabotage, terrorism, lightning, earthquake, flood or similar cataclysmic event, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance or strike or other labor difficulty suffered by a Party or caused by any third party beyond the reasonable control of such Party, or any act or omission of any third party not controlled by or affiliated with a Party. Financial cost alone or as the principal factor shall not constitute grounds for a claim of Force Majeure. Where an event of Force Majeure not covered by the insurance Lessee is required to maintain under this Lease destroys or severely damages the Solar Project or the Property such that the Solar Project or the Property is rendered permanently unusable for Lessee's Solar Operations, Lessee may terminate the Lease and neither Party shall have any further rights and obligations under the Lease except for terms of this Lease that (i) expressly survive termination and (ii) following the event of Force Majeure, can reasonably be performed.

16.2 **Confidentiality.**

16.2.1 Each Party shall treat as confidential information disclosed to it by any other Party pursuant to this Lease, including information concerning the Property and the Solar Project disclosed before or after the Effective Date (collectively, "**Confidential**

Information”); provided, however, that the following information shall not be Confidential Information: (a) information that at the time of disclosure or acquisition was in the public domain or later entered the public domain other than by breach of this Section 16.2 or a confidentiality obligation owed to the disclosing Party, provided that all environmental information shall be Confidential Information, irrespective of whether such information is in the public domain; (b) information that at the time of disclosure or acquisition was already known to and had been reduced to writing by the recipient; or (c) information that after disclosure or acquisition was received from a third party that had no duty to maintain the information in confidence.

16.2.2 Unless otherwise agreed to herein, or required by law, no Party shall, unless authorized by the disclosing Party to do so: (a) copy, reproduce, distribute or disclose to any Person any Confidential Information, or any facts related thereto; (b) permit any third party to have access to Confidential Information; or (c) use Confidential Information for any purpose other than for the purpose of pursuing the activities as contemplated herein. The disclosing Party hereby authorizes the receiving Party to disclose Confidential Information to its attorneys, lenders, or prospective assignees; provided, however, that the receiving Party shall require in writing such persons to treat Confidential Information in a manner consistent with this Lease.

16.2.3 In the event that a Party that has received Confidential Information from another Party is requested in any legal proceeding or by any governmental authority to disclose any Confidential Information under the California Public Records Act or the Freedom of Information Act, the receiving Party shall, to the extent permitted under Applicable Law, give the providing Party prompt notice of such request so that the providing Party may seek an appropriate protective order. If, in the absence of a protective order, the receiving Party is nonetheless advised by counsel that disclosure of the Confidential Information is required (after exhausting any appeal requested by the providing Party at the providing Party's expense and permitted under Applicable Law), the receiving Party may disclose such Confidential Information without liability hereunder provided that only such portion of the Confidential Information required to be disclosed shall be made available.

16.2.4 The obligations of the Parties contained in this Section 16.2 shall survive the assignment or transfer of the Parties' rights, liabilities, or obligations under and the expiration or termination of this Lease. Successors and Assigns

16.3 **Successors and Assigns**. This Lease shall burden the Property and shall run with the land. This Lease shall inure to the benefit of and be binding upon Lessor and Lessee and, to the extent provided in any Assignment or Transfer under Sections 11 or 13, any assignee or transferee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to “Lessee” in this Lease shall be deemed to include assignees that hold a direct ownership interest in this Lease and actually are exercising rights under this Lease to the extent consistent with such interest.

16.4 **Notices**. All notices or other communications required or permitted by this Lease, including payments to Lessor, shall be in writing and shall be deemed given when personally delivered, or in lieu of such personal service, five (5) days after deposit in the United

States mail, first class, postage prepaid, certified, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party. Any notice shall be addressed as follows:

If to Lessor: Chevron Products Company
Richmond Refinery
841 Chevron Way
Richmond, CA 94801
510-242-4401
Attn: Refinery Manager

With a copy to: Chevron Products Company
Downstream Law Department
6001 Bollinger Canyon Road
San Ramon, CA 94583
925-842-1000
Attn: Office of General Counsel

If to Lessee: Marin Clean Energy
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
dweicz@mceCleanEnergy.com
Attn: Executive Officer

With a copy to: Troutman Sanders LLP
805 SW Broadway, Suite 1560
Portland, OR 97205-3326
503-290-2338
ben.fisher@troutmansanders.com
Attn: Ben Fisher

Any Party may change its address for purposes of this Section by giving written notice of such change to the other parties in the manner provided in this Section.

16.5 **Entire Agreement; Amendments.** This Lease and the attached Exhibits constitutes the entire agreement between Lessor and Lessee respecting its subject matter. Any agreement, understanding or representation respecting the Property, this Lease, the lease created by this Lease, or any other matter referenced herein not expressly set forth in this Lease, or in a subsequent writing signed by both Parties, is null and void. This Lease shall not be modified or amended except in a writing signed by both Parties. No purported modifications or amendments, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either Party.

16.6 **Legal Matters.**

16.6.1 **Governing Law; Dispute Resolution.** This Lease is governed by and shall be interpreted in accordance with the laws of the State of California, without regard to principles of conflicts of law. In the event of any dispute or claim that arises out of or that relates to this Lease, or to the interpretation, termination, breach, existence, scope, or validity thereof (a “**Dispute**”), the Dispute shall be resolved in the Superior Court of Contra Costa County, California. In any such action, the Parties shall jointly request that the Superior Court appoint a referee to resolve all legal and factual issues of the Dispute pursuant to Code of Civil Procedure Sections 638 et seq.

16.6.2 **No Consequential Damages.** Notwithstanding anything to the contrary in this Lease, neither Party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Lease.

16.6.3 **Attorney Fees.** If any action proceeding at law or in equity (collectively an “**Action**”), shall be brought to recover any rent under this Lease, or for or on account of any breach of or to enforce or interpret any of the terms, covenants, or conditions of this Lease, or for the recovery of possession of the Property, the Prevailing Party shall be entitled to recover from the other Party as a part of such Action, or in a separate Action brought for that purpose, its reasonable attorney’s fees and costs and expenses (including expert witness fees) incurred in connection with the prosecution or defense of such Action, including any appeal thereof. “**Prevailing Party**” within the meaning of this Section shall include, without limitation, a Party who brings an action against the other after the other is in breach or default, if such action is dismissed upon the other’s payment of the sums allegedly due or upon the other’s performance of the covenants allegedly breached, or if the Party commencing such action or proceeding obtains substantially the relief sought by it in such action, whether or not such action proceeds to a final judgment or determination.

16.6.4 **Partial Invalidity.** Should any provision of this Lease be held in a final and unappealable decision by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect and unimpaired by the court’s holding. Notwithstanding any other provision of this Lease, the parties agree that in no event shall the term of this Lease be longer than the longest period permitted by Applicable Law.

16.7 **Conflicts of Interest.** Conflicts of interest relating to this Lease are strictly prohibited and the provisions of this Section shall apply in reciprocity to both Parties. Except as otherwise expressly provided herein, neither Lessee nor Lessor nor any director, employee or agent of either Party shall give to or receive from any director, employee or agent of the other Party any gift, entertainment or other favor of significant value, or any commission, fee or rebate. Likewise, neither Lessee nor Lessor nor any director, employee or agent of either Party shall enter into any business relationship with any director, employee or agent of the other Party or any of its affiliates. Each Party shall promptly notify the other Party of any violation of this Section and any consideration received or paid as a result of such violation, which shall promptly be paid over or credited to the appropriate Party. Additionally, in the event of any violation of this Section, including any violation occurring prior to the Effective Date, resulting

directly or indirectly in either Party's consent to enter into this Lease, either Party may at its option, terminate this Lease pursuant to the notice provisions contained in this Lease. Any legal, risk management or fiduciary representative(s) authorized by either Party may audit any and all pertinent records of the other Party for the sole purpose of determining whether there has been compliance with this Section.

16.8 **No Partnership.** Nothing contained in this Lease shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more of the parties to this Lease.

16.9 **Brokerage Fee.** No brokerage fee or commission is payable to any person with respect to this Lease and each of Lessor and Lessee hereby indemnify and hold the other harmless from and against any claim for payment of such fee or commission from a person claiming to have represented it.

16.10 **Counterparts.** This Lease may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

16.11 **No Accord and Satisfaction.** No payment by Lessee, or receipt by Lessor, of an amount which is less than the full amount of Annual Rent and additional rent payable by Lessee hereunder at such time shall be deemed to be other than on account of (a) the earliest of such other sums due and payable, and thereafter (b) to the earliest rent due and payable hereunder. No endorsement or statement on any check or any letter accompanying any payment of rent or such other sums shall be deemed an accord and satisfaction, and Lessor may accept any such check or payment without prejudice to Lessor's right to receive payment of the balance of such rent and/or the other sums, or Lessor's right to pursue any remedies to which Lessor may be entitled to recover such balance.

16.12 **Time.** Time is of the essence with respect to the performance of each and every provision of this Lease in which time of performance is a factor. All references to days contained in this Lease shall be deemed to mean calendar days, unless otherwise specifically stated.

16.13 **Construction of Lease.** Each Party has been fully and competently represented by counsel of its own choosing in the negotiation and drafting of this Lease. Accordingly, the Parties agree that any rule of construction of contracts resolving any ambiguities against the drafting party shall be inapplicable to this Lease. Further, each Party acknowledges that it has read this entire document, including the attached exhibits and fully understands its terms and effect.

16.14 **Memorandum of Lease.** The Parties shall execute and acknowledge a memorandum of this Lease in the form attached as Exhibit F at the same time as the execution of the Lease. Lessee shall cause such memorandum to be recorded in the Official Records of the County of Contra Costa.

16.15 **No Recourse to 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.) and is a public entity separate from its constituent members. Under Article VIII of Lessee's Operating Rules and Regulations, Lessee shall be solely responsible for all debts, obligations and liabilities accruing and arising out of this Lease. Lessor shall have no rights to and shall not make any claims, take any actions or assert any remedies against any of Lessee's constituent members to the extent such claims arise from Lessee's obligations under this Lease.

(Signature Page Follows)

IN WITNESS WHEREOF, Lessee and Lessor have caused this Solar Energy Facility Site Lease to be executed and delivered by their duly authorized representatives as of the Effective Date.

LESSOR: CHEVRON PRODUCTS COMPANY,
a Division of Chevron U.S.A Inc., a Pennsylvania corporation

By: _____

Its _____

LESSEE: MARIN CLEAN ENERGY

By: _____

Dawn Weisz

Its Executive Officer

MCE Board Resolution No. _____,

Adopted on _____, 2014

APPROVED AS TO FORM:

Troutman Sanders LLP

Ben Fisher

Counsel for Marin Clean Energy

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

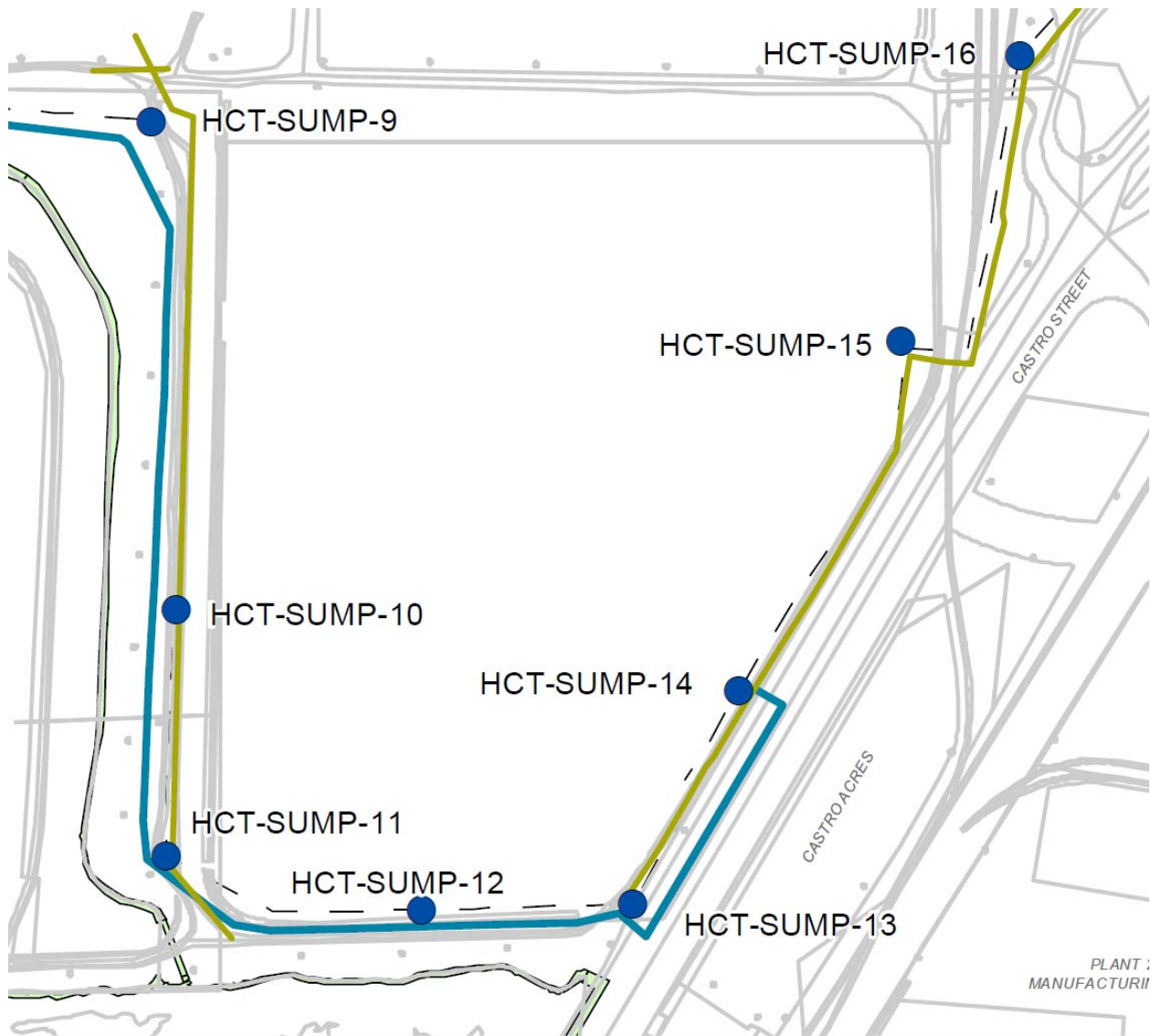
All of that real property located in the City of Richmond, County of Contra Costa, California, more particularly described as follows:

EXHIBIT B
LEASE EXCEPTIONS



EXHIBIT C

DIAGRAM OF GROUNDWATER PROTECTION SYSTEM



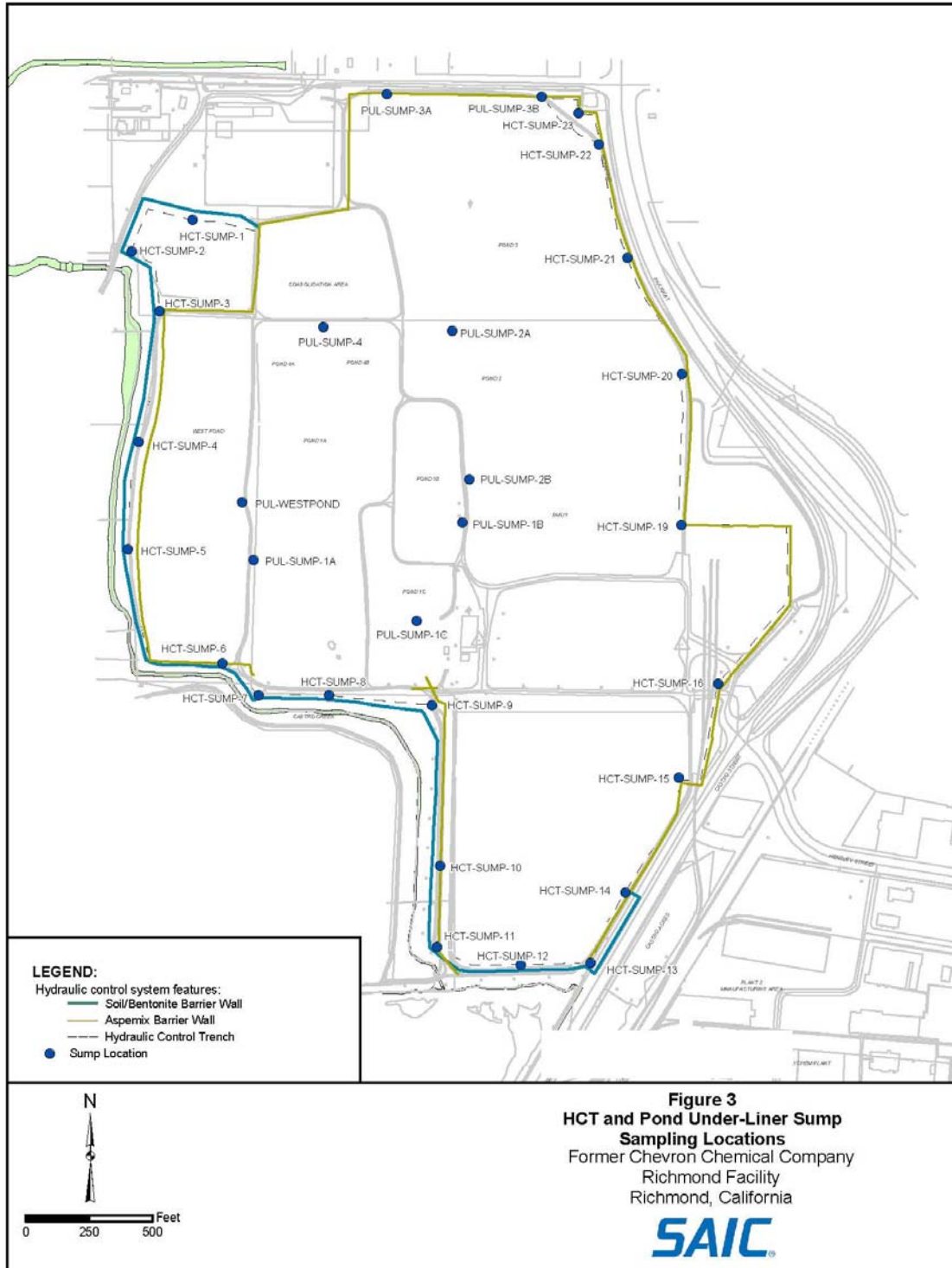


Exhibit C

EXHIBIT E
LOCATION OF ROADWAY LICENSE



EXHIBIT F

MEMORANDUM OF LEASE

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Marin Clean Energy
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Attn: Executive Officer

(Space Above for Recorder's Use)

APN: 561-100-034, 561-100-037 & 561-100-038

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "**Memorandum**") is made and entered into as of _____, 201__ (the "**Effective Date**") by and between CHEVRON PRODUCTS COMPANY, a division of Chevron U.S.A. Inc., a Pennsylvania corporation ("**Lessor**"), and MARIN CLEAN ENERGY, a California Joint Powers Authority ("**Lessee**").

Recitals

A. Lessor and Lessee are parties to that certain unrecorded Solar Energy Facility Site Lease of even date herewith ("**Lease**"), whereby Lessor has leased to Lessee and Lessee has leased from Lessor that certain real property described on Exhibit "A" attached hereto (the "**Property**").

B. This Memorandum is prepared and recorded for the purpose of effecting record notice of the Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Incorporation of Terms; Definitions. All of the terms and conditions of the Lease are hereby incorporated into this Memorandum by this reference. Initially capitalized terms that are used but not defined herein shall have the meanings ascribed to them in the Lease.

2. Term. The term of the Lease commenced on the Effective Date and shall continue for a period of twenty-five (25) years ("**Initial Term**"). Provided that no Event of Default by Lessee under the Lease remains outstanding and uncured at the time Lessee gives notice to Lessor of the exercise of Lessee's right to extend the term of the Lease, Lessee has the right and option to extend the term of the Lease for a period of five (5) years, by delivering written notice of such extension to Lessor not less than one hundred eighty (180) days prior to the end of the Initial Term.

3. Conflict of Provisions. This Memorandum is prepared for the purpose of recordation and shall not alter or affect in any way the rights and obligations of Lessor and Lessee under the Lease. In the event of any inconsistency between this Memorandum and the Lease, the terms of the Lease shall control.

[Signature pages to follow.]

Exhibit F

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the date first set forth above.

LESSOR:

CHEVRON PRODUCTS COMPANY,
a Division of Chevron U.S.A Inc.,
a Pennsylvania corporation

By: _____

Its _____

LESSEE:

MARIN CLEAN ENERGY

By: _____

Dawn Weisz

Its Executive Officer

MCE Board Resolution No. _____,

Adopted on _____, 2014

APPROVED AS TO FORM:

Troutman Sanders LLP
805 SW Broadway, Suite 1560
Portland, OR 97205-3326
503-290-2338
ben.fisher@troutmansanders.com
Attn: Ben Fisher

Counsel for Marin Clean Energy

Exhibit F

[illegible]

On _____, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature) [Seal]

STATE OF CALIFORNIA)
) SS
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature) [Seal]

Exhibit F

[illegible]

On _____, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)

STATE OF CALIFORNIA)
) SS
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)

Exhibit F

Exhibit “A”
to
Memorandum of Lease

Legal Description of Property

All that certain real property located in the County of Contra Costa, State of California,
more particularly described as follows:



September 4, 2014

TO: Marin Clean Energy Board

FROM: Greg Brehm, Director of Power Resources

RE: Power Purchase and Sale Agreement with EDP Renewables North America LLC for Renewable Energy Supply (Agenda Item #07)

ATTACHMENT: MCE – EDPR Power Purchase and Sale Agreement

Dear Board Members:

Overview:

Through MCE's 2014 Open Season procurement process ("Open Season") for Renewable Energy ("RE"), MCE received more than 15 offers for Product Category 1 "PCC 1" renewable energy. The subsequent evaluation of these proposals by staff and the Ad Hoc Contracts Committee yielded two shortlisted offers. EDP Renewables ("EDPR") provided an attractively priced offer in the Open Season for a newly constructed PCC 1 southern California wind project. The project will fill MCE's 2015 through 2018 net short position for PCC1 renewable energy. Because of the aggressive price offered, MCE staff consulted with the Ad Hoc Contracts Committee regarding the potential to expand the Open Season volumes to cover MCE's pending expansions and potentially using the PPC 1 product in place of planned PCC2, PCC3 and Voluntary Green-e renewable energy purchases. Staff reached out to EDP and successfully negotiated the attached contract for the following volumes:

144,000 MWh renewable energy for 2015 and

222,000 MWh renewable energy annually for 2016 through 2018

Staff and EDP developed a mutually agreeable power purchase agreement that would supply future renewable energy requirements of MCE customers. The immediate transaction is for purchase by MCE of renewable energy meeting the PCC 1 definition for the 2015 through 2018 delivery years. Requisite enabling documents, including pertinent commercial terms addressing the various energy products to be purchased/sold by the parties, are attached. The resultant draft agreements, attached hereto, accurately reflect the intended terms and conditions of this proposed transaction, which would supplement MCE's existing RE supply portfolio with an aggressively priced bundled PCC 1 resource and provide the flexibility to replace a portion of MCE's planed unbundled Renewable Energy Credit (REC) purchases from outside of CA with new bundled in-state renewable energy generation.

Location & Project Viability:

The Rising Tree wind farm is a 198 MW facility located in eastern Kern County, CA and is already under construction. The Project is located in Southern California Edison's service territory. MCE staff considered the potential impacts of congestion costs related to transmission and found a negligible to slightly positive price advantage to the benefit of MCE.

Portfolio Fit:

During the delivery term, on a hour ahead basis, EDPR will provide a generation forecast to MCE's scheduling coordinator, and MCE's scheduling coordinator shall schedule/ bid energy, into the California Independent System Operator ("CAISO") Balancing Authority on behalf of MCE. Because wind energy a variable renewable energy resources, the project will participate in the Variable Energy Resource (VER) program would agree to conform to economic dispatch through an automatic generation control system in order to avoid negative Locational Marginal Prices (LMPs) and CAISO imbalance energy charges. Additional information is provided below regarding the prospective counterparty.

Counterparty Strength:**EDP Renewables North America, LLC**

- EDP Renewables North America ("EDPR") based in Houston, Texas, is a subsidiary of EDP Renewables, a global renewable energy company based in Madrid, Spain.
- Energias de Portugal, S.A. ("EDP"), a vertically-integrated utility company, headquartered in Lisbon, Portugal, is the majority shareholder of EDPR
- EDPR is rated Ba1 by Moody's, BB+ by S&P, and BBB+ by Fitch
- EDP Renewables is a renewable energy developer that builds, owns, and operates electricity facilities for its own generation portfolio as well as third parties. As of March 31, 2014, the company has approximately 7,800 megawatts of net wind generation capacity, 81% of which is powering the United States, Spain, and Portugal
- EDP has 23,000 MW of installed electricity generation capacity worldwide.



Blue Canyon Wind Farm in Oklahoma, above. EDP Renewables photo

Contract Terms:

MCE's Standard Power Purchase and Sale Agreement – this agreement establishes a contractual relationship between EDP Renewables and MCE, enabling the parties to transact for specific energy products.

The contract format was revised for the 2014 Open Season, and has been reviewed by both MCE in-house counsel and external legal counsel. The contract is short term (2015 to 2018) delivering 99 MW of new in-state renewable energy.

The agreement contains the essential terms that govern forward purchases and sales of wholesale electricity, and is essentially the same agreement MCE used in contracting with previous open season vendors.

Contract Overview:

- Project location: Mojave, Kern County, CA
- Guaranteed commercial operation date: July, 2015
- Delivery profile: As available PCC 1 renewable energy
- No collateral obligations to MCE

Summary:

The EDP Renewables PPA agreement is a good fit for MCE's resource portfolio based on the following considerations:

- The project size and expected energy production will support the future renewable energy requirements of MCE customers inclusive of the expansion into Napa County.
- The project is being operated by an experienced team.
- Energy from the project is competitively priced.
- The bundled in-state renewable energy will replace a substantial volume of unbundled RECs and move MCE to 33% RPS compliance 5 years ahead of schedule.

Recommendation: Authorize approval of the Power Purchase and Sale Agreement with EDP Renewables North America LLC for Renewable Energy Supply.

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: Rising Tree Wind Farm III LLC, a Delaware limited liability company

Buyer: Marin Clean Energy, a California joint powers authority

Description of Facility: A 99 MW wind energy electric generating facility located in Kern County, California

Guaranteed Commercial Operation Date: July 31, 2015

Delivery Term: The Delivery Term is the period beginning the later of July 1, 2015, or the date on which Commercial Operation is achieved, through December 31, 2018.

Contract Price: \$XX/MWh

Product:

Energy

Green Attributes (if Renewable Energy Credit, please check the applicable box below):

☒ Renewable Energy Credit (Bucket 1)

☐ Renewable Energy Credit (Bucket 2)

☐ Renewable Energy Credit (Bucket 3)

Capacity Attributes

Expected Energy for First Contract Year: 144,000 MWh (less than full calendar year), to be prorated if Commercial Operation occurs after July 1, 2015

Scheduling Coordinator: Buyer/Buyer Third-Party

Development Security: Guaranty from EDP Renewables North America LLC, with a maximum liability of \$6,000,000

Performance Security: Guaranty from EDP Renewables North America LLC, with a maximum liability of \$6,000,000

Notice Addresses:

Seller:

Rising Tree Wind Farm III LLC
808 Travis Street, Suite 700
Houston, TX 77002
Attention: Contract Administration (Attn: Ann Walter)
Phone No.: (713) 265-0253

Fax No.: (713) 265-0365
Email: ann.walter@edpr.com

With a copy to:

EDP Renewables North America LLC
808 Travis Street, Suite 700
Houston, TX 77002
Attention: General Counsel
Phone No.: (713) 265-0350
Fax No.: (713) 356-2500
Email: legalnotices@edpr.com

And a copy to:

EDP Renewables North America LLC
808 Travis Street, Suite 700
Houston, TX 77002
Attention: Executive Vice President, Western Region
Phone No.: (713) 265-0350
Fax No.: (713) 356-2500
Email: andrew.young@edpr.com

Scheduling:

Market Operations
Email: MktOps@edpr.com
Phone No.: (713) 265-0350
Fax No.: (713) 265-0365

Buyer:

Marin Clean Energy
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Attention: Greg Brehm, Director of Power Resources
Fax No.: (415) 459-8095
Phone No.: (415) 464-6037
Email: gbrehm@mceCleanEnergy.org

With a copy to:

Troutman Sanders LLP
805 SW Broadway, Suite 1560
Portland, Oregon 97205
Attention: Stephen Hall
Fax No.: (503) 290-2405

Phone No.: (503) 290-2336

Email: stephen.hall@troutmansanders.com

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

SELLER
Rising Tree Wind Farm III LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

BUYER
Marin Clean Energy

By: _____
MCE Chairperson

By: _____
MCE Executive Officer

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Exhibits:

Exhibit A-1	Description of Facility
Exhibit A-2	Description of Related Facilities
Exhibit B	Facility Construction and Commercial Operation
Exhibit C	Contract Price
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Exhibit E	[intentionally omitted]
Exhibit F	Guaranteed Energy Production Damages Calculation
Schedule F-1	Expected Energy

POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement (“**Agreement**”) is entered into as of September 4, 2014 (the “**Effective Date**”), between Seller and Buyer (each also referred to as a “**Party**” and collectively as the “**Parties**”).

RECITALS

WHEREAS, Seller intends to develop, design, construct, and operate the wind energy electric generating facility known as the “Rising Tree III Wind Farm” to be located in California in the location identified in Exhibit A, having a Guaranteed Capacity to Buyer of 99 MW AC (the “**Facility**”); and

WHEREAS, Affiliates of Seller intend to develop, design, construct, and operate the wind energy electric generating facilities in close proximity to the Facility known as the “Rising Tree I Wind Farm” and the “Rising Tree II Wind Farm” (collectively, the “Related Facilities”) which will have nameplate capacities of 79.2 MW and 19.8 MW, respectively, and which will have the same point of interconnection to the CAISO Grid as the Facility.

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, all Energy generated by the Facility, all Green Attributes related to the generation of such Energy, and all Capacity Attributes;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1 DEFINITIONS

1.1. **Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Adjusted Energy Production**” has the meaning set forth in Exhibit F.

“**Agreement**” has the meaning set forth in the Preamble and includes any exhibits, schedules and any written supplements hereto, any designated collateral, credit support or similar arrangement between the Parties.

“Available Capacity” means the capacity from the Facility, expressed in whole MWs, that is available to generate Energy.

“Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of sixty (60) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“Buyer” has the meaning set forth on the Cover Sheet.

“Buyer Bid Curtailment” means the occurrence of all of the following:

(a) the CAISO provides notice to a Party or Buyer’s SC, requiring the Party to produce less Energy from the Facility than forecasted to be produced from the Facility for a period of time;

(b) for the same time period as referenced in (a), Buyer or Buyer’s SC:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Energy forecasted to be produced from the Facility; and

(c) no other circumstances exist that constitute a Planned Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same time period as referenced in (a).

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce generation from the Facility by the amount, and for the period of time set forth in such order, for reasons unrelated to a Planned Outage, Forced Outage, Force Majeure and/or Curtailment Order.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order, and no other circumstances exist that constitute a Planned Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same time period.

“**CAISO**” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“**CAISO Charges Invoice**” has the meaning set forth in Section 4.3(d).

“**CAISO Grid**” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“**CAISO Tariff**” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“**California Renewables Portfolio Standard**” or “**RPS**” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), and X-1 2 (2011), codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“**Capacity Attribute**” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the CAISO grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“**Capacity Damages**” has the meaning set forth in Exhibit B.

“**CEC**” means the California Energy Commission or its successor agency.

“**CEC Certification and Verification**” means that the CEC has certified (or, with respect to periods before the Facility has been constructed, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Energy qualifies as generation from an Eligible Renewable Energy Resource for purposes of the Facility.

“**Commercial Operation**” has the meaning set forth in Exhibit B.

“**Commercial Operation Date**” has the meaning set forth in Exhibit B.

“**Commercial Operation Delay Damages**” means an amount equal to \$100 per MW of generating capacity that has not reached commercial operation per day.

“**Confidential Information**” has the meaning set forth in Section 19.1.

“**Contract Price**” has the meaning set forth in Section 3.3.

“**Contract Term**” has the meaning set forth in Section 2.1.

“Contract Year” means each calendar year during the Contract Term, commencing on the Commercial Operation Date, *provided* that if the first (1st) and last Contract Years are not full calendar years, the first Contract Year shall mean the period from the Commercial Operation Date to December 31 of such calendar year, and the last Contract Year shall mean the period from January 1 of the last Contract Year through the last day of the Contract Term.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“CPUC” means the California Public Utilities Commission, or successor entity.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Fitch or Moody’s. If ratings by S&P, Fitch and Moody’s are not equivalent, the lower rating shall apply.

“Curtailment Order” means any of the following:

a) the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including, but not limited to, (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO’s electric system integrity or the integrity of other systems to which the CAISO is connected;

b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

c) a curtailment ordered by the CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy to the Delivery Point; or

d) a curtailment in accordance with Seller’s obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator.

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order.

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Deemed Delivered Energy” means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to (a) the EIRP Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, whether or not Seller is participating in EIRP during the Buyer Curtailment Period, less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period or, (b) if there is no EIRP Forecast available, using relevant Facility availability, weather, historical and other pertinent data for the period of time during the Buyer Curtailment Period less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference calculated pursuant to (a) or (b) above is negative as compared to the amount of metered Energy at the CAISO revenue meter for the Facility, the Deemed Delivered Energy shall be zero (0).

“Defaulting Party” has the meaning set forth in Section 11.1(a).

“Delivered Energy” means all Energy produced from the Facility or, to the extent permitted hereunder, the Related Facilities as measured in MWh at the CAISO revenue meter of the Facility or the Related Facilities, as applicable, based on a power factor of precisely one (1) and net of all Electrical Losses.

“Delivery Point” means the Facility PNode, which is RTREE_2_WIND3.

“Delivery Term” has the meaning set forth on the Cover Sheet, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Development Cure Period” has the meaning set forth in Exhibit B.

“Development Security” means (i) cash, (ii) an irrevocable, non-transferable standby letter of credit issued by a U.S. commercial bank, or a U.S. branch or subsidiary of a foreign commercial bank with a Credit Rating of at least A- from S&P or Fitch or A3 from Moody’s, or (iii) a guaranty from Guarantor, in each case in the amount equal to \$6,000,000 and, with respect to clauses (ii) and (iii), in a form reasonably acceptable to Buyer.

“Early Termination Date” has the meaning set forth in Section 11.2.

“Effective Date” has the meaning set forth on the Preamble.

“Eligible Intermittent Resource Protocol” or **“EIRP”** has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Electrical Losses” means all applicable losses, including the following: any transmission or transformation losses between the CAISO revenue meter and the Delivery Point.

“Energy” means metered electrical energy, measured in MWh, which is produced by the Facility.

“Event of Default” means either a Seller Default or Buyer Default as specified in Article 11.

“Expected Energy” has the meaning set forth in Exhibit F, Schedule F-1.

“Facility” means the facility described more fully in Exhibit A attached hereto.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Fitch” means Fitch Ratings Ltd. or its successor

“Force Majeure Event” has the meaning set forth in Section 10.1.

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from making power available at the Delivery Point and that is not the result of a Force Majeure Event.

“Forced Outage” has the meaning defined in the CAISO Tariff.

“Future Environmental Attributes” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the non-defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

“Generally Accepted Accounting Principles” or **“GAAP”** means the standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant SEC rule.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO and NERC; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its displacement of conventional Energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS operating rules.

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

“Grossed Up Value” means, with respect to Production Tax Credits, the value of the payment received in lieu of Production Tax Credits on an after-tax basis, such that, after paying federal and state income tax on such payment (which shall be deemed to be at the highest marginal rate in each case), the net remaining amount is equal to the dollar amount of the Production Tax Credits with respect to which the payments were made.

“Guaranteed Capacity” means ninety-nine (99) MW AC capacity measured at the Delivery Point.

“Guaranteed Commercial Operation Date” has the meaning set forth in Exhibit B.

“Guaranteed Energy Production” has the meaning set forth in Section 4.7.

“Guarantor” means, with respect to Seller, (i) EDP Renewables North America LLC, a Delaware limited liability company, so long as it has a Net Worth, measured as of the last day of the fiscal quarter for which financial statements are available, of not less than \$500,000,000, or (ii) any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or Fitch or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least \$500,000,000, (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer in a form reasonably acceptable to Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer in a form reasonably acceptable to Buyer.

“Imbalance Energy” means the amount of Energy, in any given settlement period, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

“Indemnified Party” has the meaning set forth in Section 17.1.

“Indemnifying Party” has the meaning set forth in Section 17.1.

“Installed Capacity” means the sum of the actual generating capacity of the Facility, not to exceed 99 MW.

“Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Facility and the Related Facilities will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in order to meet the terms and conditions of this Agreement.

“Interest Rate” has the meaning set forth in Section 8.2.

“Law” means any applicable law, statute, regulation, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt, equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form reasonably acceptable to Buyer.

“Locational Marginal Price” or **“LMP”** has the meaning set forth in CAISO Tariff.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the non-defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes and Resource Adequacy Benefits (to the extent such Capacity Attributes and Resource Adequacy Benefits would have been available from the Facility) and the Grossed Up Value of lost Production Tax Credits.

“Lost Output” has the meaning set forth in Exhibit F.

“Milestones” means the development activities for significant permitting, interconnection, financing and construction milestones set forth in Exhibit H.

“Moody’s” means Moody’s Investors Service, Inc., or its successor.

“MW” means megawatts measured in alternating current.

“MWh” means megawatt-hour.

“Negative Imbalance Energy” has the meaning set forth in Section 3.4.

“Negative LMP” means, in any Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Delivery Point is less than zero dollars (\$0).

“Negative LMP Costs” has the meaning set forth in Section 3.3(c).

“NERC” means the North American Electric Reliability Corporation.

“Net Worth” means, with respect to any Person, such Person’s total assets (excluding good will) less such Person’s total liabilities, in each case as determined in accordance with GAAP.

“Non-Defaulting Party” has the meaning set forth in Section 11.2.

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

“Participating Intermittent Resource Protocol” or **“PIRP”** has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

“Participating Transmission Owner” or **“PTO”** means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is Southern California Edison Company.

“Party” has the meaning set forth in the Preamble.

“Performance Measurement Period” has the meaning set forth in Section 4.7.

“Performance Security” means (i) cash, (ii) an irrevocable, non-transferable standby letter of credit issued by a U.S. commercial bank, or a U.S. branch or subsidiary of a foreign commercial bank with a Credit Rating of at least A- from S&P or A3 from Moody’s, or (iii) a guaranty from Guarantor, in each case in the amount equal to \$6,000,000 and, with respect to clauses (ii) and (iii), in a form reasonably acceptable to Buyer.

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“Planned Outage” means a planned outage for the routine repair or maintenance of all or any part of the Facility or for the purposes of new construction work, and does not include any outage designated as forced or unplanned as defined by the CAISO or NERC/GADS protocols.

“PNode” has the meaning set forth in the CAISO Tariff.

“Positive Imbalance Energy” has the meaning set forth in Section 3.4.

“Product” means (i) Energy, (ii) Green Attributes and (iii) Capacity Attributes.

“Production Tax Credit” or **“PTC”** means the tax credit for electricity produced from certain renewable generation resources described in Section 45 of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

“Prudent Operating Practice” means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

“Qualified Assignee” means any Person that has (or will contract with a Person that has) competent experience in the operation and maintenance of similar electrical generation systems and is financially capable of performing Seller’s obligations (considering such Person’s own financial wherewithal and that of such Person’s guarantor or other credit support) under this Agreement.

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Related Facilities” means the facilities described more fully in Exhibit A-2 attached hereto.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Credit (Bucket 1)” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Credit (Bucket 2)” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Credit (Bucket 3)” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section

399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

“Schedule” means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered on any given day or days at a specified Delivery Point.

“Scheduled Energy” means the Energy that clears under the applicable CAISO market based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices.

“Scheduling Coordinator” or **“SC”** means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“Seller” has the meaning set forth on the Cover Sheet.

“Settlement Amount” means the non-defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the non-defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the non-defaulting Party. If the non-defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“System Emergency” means any condition that: (a) requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Termination Payment” has the meaning set forth in Section 11.3.

“Terminated Transaction” has the meaning set forth in Section 11.2.

“Test Energy” means the Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Facility to the CAISO and (ii) the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

“Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“Variable Energy Resource” has the meaning set forth in the CAISO Tariff.

“WECC” means the Western Electricity Coordinating Council or its successor.

“Week-Ahead Forecast” has the meaning set forth in Section 4.4(c).

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS’ operating rules.

1.2. **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified, and in the event of a conflict, the provisions of the main body of this Agreement shall prevail over the provisions of any attachment or annex;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the term “including” means “including without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of

construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1. Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein (“**Contract Term**”); provided, however, that this Agreement shall remain in effect insofar as it relates to the delivery of WREGIS Certificates until all WREGIS Certificates attributable to the Energy produced by the Facility during the Delivery Term and purchased by Buyer have been delivered to Buyer as provided herein.

(b) [intentionally omitted]

(c) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 19 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2. **Conditions Precedent.** Subject to Section 3.6, Buyer shall have no obligation whatsoever to purchase the Product from the Facility under this Agreement until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) All Facility systems necessary for continuous operation and metering have been installed and are tested and certified;

(b) All applicable agreements between Seller and CAISO required for the performance of Seller’s obligations under this Agreement have been executed, delivered and shall be in full force and effect, including a Participating Generator Agreement, a Meter Service Agreement, and a Scheduling Coordinator Agreement and a copy of each agreement shall have been delivered to Buyer;

(c) All applicable agreements between Seller and the PTO, including an Interconnection Agreement, have been executed, delivered and shall be in full force and effect and a copy of each agreement delivered to Buyer;

(d) The Interconnection Facilities of Seller have demonstrated the ability to accept the full-load output of the Facility and final permission to commence Commercial Operation has been granted by the PTO and the CAISO, including satisfaction of all requirements of the Interconnection Agreement;

(e) All applicable regulatory authorizations, approvals and permits for the continuous operation of the Facility have been obtained and all conditions thereof completed and shall be in full force and effect;

(f) Seller has received documentation from the PTO that Delivery Network Upgrades (as defined in the CAISO Tariff) for the Facility have been completed;

(g) [intentionally omitted]

(h) Seller has received the requisite pre-certification of the CEC Certification and Verification (and will reasonably expect to receive in no more than ninety (90) days from the Commercial Operation Date the final CEC Certification and Verification) for the Facility;

(i) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system or have completed any other requirements to enable Buyer to receive WREGIS Certificates associated with the Energy sold to Buyer hereunder; and

(j) Seller successfully completes an initial Facility performance test, using industry accepted testing procedures, which demonstrates peak facility electrical output of no less than ninety percent (90%) of the Installed Capacity, as adjusted for ambient conditions, on the date of the performance test, which shall not be less than 89 MW. Seller has delivered to Buyer a certification of a licensed professional engineer certifying that ninety percent (90%) of the Installed Capacity is capable of generating energy in accordance with the manufacturer's specifications.

(k) Seller has paid Buyer for all Commercial Operation Delay Damages owing under this Agreement, if any.

2.3. **Progress Reports.** Seller shall report to Buyer quarterly on progress of the Milestones, from the Effective Date until the start of construction, at which point Seller shall report to Buyer monthly, until the Commercial Operation Date. The form of these progress reports shall be substantially similar to the progress reports delivered by Seller under its power purchase agreements with Southern California Edison Company.

ARTICLE 3 PURCHASE AND SALE

3.1. **Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable Contract Price, all of the Product produced by the Facility. At its sole discretion, Buyer may re-sell or use for another purpose all or a portion of the Product. Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, and/or any Capacity Attributes thereof, from the Facility for resale in the market, and retain and receive any and all related

revenues. Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order. Except as provided in Section 4.1(c), Seller shall not have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement.

3.2. **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all of the Green Attributes, attributable to the Energy produced by the Facility, including delivery of WREGIS Certificates attributable to the Energy produced by the Facility during the Delivery Term but which are not created until after the end of the Delivery Term.

3.3. **Compensation.**

(a) Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Delivered Energy. Subject to Section 4.5(b), Buyer shall pay for Deemed Delivered Energy at the applicable Contract Price plus the Grossed Up Value of the Production Tax Credits times the amount of such Deemed Delivered Energy.

(b) If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy exceeds one hundred twenty percent (120%) of the Expected Energy for such Contract Year, for each additional MWh of Product delivered to Buyer in such Contract Year, the price to be paid shall be the lesser of (i) seventy-five percent (75%) of the Contract Price or (ii) the Day-Ahead price for the each Settlement Interval. Buyer shall give Seller Notice as soon as the amount of Delivered Energy plus the amount of Deemed Delivered Energy exceeds one hundred twenty percent (120%) of the Expected Energy for such Contract Year.

(c) If during any Settlement Interval, Seller delivers Product amounts in excess of the Installed Capacity, then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the Negative LMP times such excess MWh ("**Negative LMP Costs**").

(d) Seller shall receive no compensation from Buyer for Delivered Energy during any Curtailment Period.

(e) If (i) Buyer fails or is unable to take Product made available at the Delivery Point during any period and such failure to take is not excused by a Seller Default or a Force Majeure Event, or (ii) Seller is not able to make available Product due to a Buyer Default, Buyer shall pay Seller, as Seller's sole remedy, an amount equal to the product of (1) the Deemed Delivered Energy for such period and (2) the Contract Price applicable during such period, plus the Grossed Up Value of the Production Tax Credits times the amount of such Deemed Delivered Energy.

3.4. **Imbalance Energy.** Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Week-Ahead Forecast provided by Seller pursuant to Section 4.4(c). Buyer and Seller recognize that from time to time the amount of Delivered Energy will

deviate from the amount of Scheduled Energy. When Delivered Energy minus Scheduled Energy is a positive amount, it shall be considered “**Positive Imbalance Energy**,” when Delivered Energy minus Scheduled Energy is a negative amount, the absolute (i.e., positive) value of that amount shall be considered the “**Negative Imbalance Energy**.” Except for penalties arising from Seller’s failure to comply with the CAISO Tariff, Buyer shall be responsible for all CAISO costs and charges, including costs and charges related to Imbalance Energy, and to receive all CAISO revenues and credits, including revenues related to Positive Imbalance Energy related to the Delivered Energy. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent reasonably possible. Seller shall promptly notify Buyer as soon as reasonably possible of any material imbalance that is occurring or has occurred; provided that notice of imbalances due to the intermittent nature of energy generation from the Facility need only be provided as part of the regular ongoing update of the Week-Ahead Forecast.

3.5. **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller’s sole expense, in Seller’s efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.6. **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. In such event, if Buyer wants to receive such Future Environmental Benefits, Buyer shall give Seller Notice of its intent to claim such Future Environmental Attributes and Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7. **Intentionally Omitted.**

3.8. **Capacity Attributes.** Seller has entered into an interconnection agreement for the Facility. Seller may request Full Capacity Deliverability Status in the CAISO generator interconnection process, but shall have no obligation to achieve Full Capacity Deliverability Status, nor shall this Agreement be affected if it is not obtained. If Seller elects to pursue Full Capacity Deliverability Status, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits, if any, associated with the Facility to Buyer.

3.9. **CEC Certification and Verification.** Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the *RPS Eligibility Guidebook, Seventh Edition* (or its successor). Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.10. **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

3.11. **California Renewables Portfolio Standard.** Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1. **Delivery.**

(a) **Energy.** Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Delivered Energy on an as-generated, instantaneous basis. Notwithstanding anything to the contrary in this Agreement (including with respect to any Force Majeure Event), Buyer shall be responsible for all charges, penalties, Negative LMPs, ratcheted demand or similar charges, and any transmission related charges, including imbalance penalties or congestion charges associated with Delivered Energy after its

receipt at and from the Delivery Point. Seller shall be responsible for all charges, penalties, ratcheted demand or similar charges, and any transmission related charges, including imbalance penalties or congestion charges associated with Delivered Energy up to the Delivery Point. Seller shall also be responsible for any other charges, costs or penalties assessed by CAISO that are associated with the Facility or Seller's violation of applicable regulatory requirements. Except for the charges, costs and penalties for which this Agreement expressly provides Seller is responsible, Buyer shall be responsible for all CAISO charges, costs and penalties associated with the Scheduling, delivery, receipt, transmission or use of all Delivered Energy. Each Party shall perform all generation, scheduling, and transmission services in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Delivered Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility and from the Related Facilities (to the extent any deliveries are made from the Related Facilities under Section 4.1(c)), and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility or the Related Facilities, as applicable.

(c) Related Facilities. Notwithstanding anything herein to the contrary, (i) if the Facility has not achieved Commercial Operation at the Guaranteed Capacity by the Guaranteed Commercial Operation Date, or (ii) if Seller reasonably determines that it will not otherwise deliver the Guaranteed Energy Production during the then applicable Performance Measurement Period, Seller shall have the right to supply Product to Buyer from either or both of the Related Facilities from time to time until (1) in the case of clause (i), the entire Guaranteed Capacity of the Facility has achieved Commercial Operation or an Event of Default has occurred under Section 11.1(b)(ii), and (2) in the case of clause (ii), the Facility has achieved its Guaranteed Energy Production for the then applicable Performance Measurement Period.

4.2. Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Delivered Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of the WREGIS Certificates evidencing such Green Attributes in accordance with WREGIS.

4.3. Scheduling Coordinator Responsibilities.

(a) Buyer as Scheduling Coordinator for the Facility. During the Delivery Term, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Product at the Delivery Point. At least thirty (30) days prior to the anticipated Commercial Operation Date of the Facility, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Facility effective as of the beginning of the Delivery Term until the end of the Delivery Term. During the Delivery Term, Seller shall not authorize or designate

any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as Seller's Scheduling Coordinator except for cause or unless agreed to by Buyer. Buyer (as Seller's SC) shall submit Schedules to the CAISO based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Buyer (as Seller's SC) shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Delivered Energy consistent with EIRP whenever EIRP is applicable, and consistent with Buyers' best estimate based on the information reasonably available to Buyer including Buyer's forecast whenever EIRP is not applicable.

(b) Notices. Buyer (as Seller's SC) shall provide Seller with access to a web based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, forecast data, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Seller shall be responsible for all CAISO costs (including scheduling and forecasting fees, penalties and other charges) and shall be entitled to all CAISO revenues (including credits and other payments) in each case, associated with (i) the Seller not notifying the CAISO and Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), and (ii) any other failure by Seller to abide by the CAISO Tariff where performance by Seller is required under this Agreement and that results in penalties or sanctions being imposed by the CAISO. The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to outage reporting or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Seller shall pay the amount of CAISO Charges Invoices for which it is responsible under this Agreement by adjustment of the next monthly invoice during the Delivery Term or within ten Business Days of Seller's receipt of the CAISO Charges Invoice, if after the Delivery Term. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement.

The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as Seller's SC) may be required to dispute CAISO settlements in respect of the Facility. To the extent such dispute involves costs or charges for which Seller would be responsible hereunder and Seller requests Buyer to dispute such costs or charges, Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) incurred in disputing such costs or charges.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

4.4. **Forecasting.** Seller shall provide the forecasts described below. Seller's Available Capacity forecasts shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Available Capacity. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Delivered Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) Monthly Forecast of Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

(c) Weekly Forecast of Wind Energy Generation. During the Delivery Term, Seller shall provide Buyer with access to a non-binding forecast of the Facility's expected Energy generation for each hour of the next 168 hours ("**Week-Ahead Forecast**"). The Week-Ahead Forecast shall be updated at least hourly (and, at Seller's election, more frequently) so that it continually provides a forecast of the Facility's expected Energy generation for the next 168 hours. Each Week-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Facility's expected Energy generation for such hour. If Seller fails to provide Buyer with a Week-Ahead Forecast or to update the Week-Ahead Forecast as required herein, then Buyer shall rely on the most recent Week-Ahead Forecast or, if it does not cover the day or

hour in question, the Monthly Delivery Forecast, and Seller's obligations and liabilities hereunder will be based on the most recent Week-Ahead Forecast or such Monthly Delivery Forecast until the Week-Ahead Forecast is provided or updated, as applicable.

(d) CAISO Tariff Requirements. Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and the CAISO, in providing all data, information, and authorizations required thereunder.

4.5. Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the Facility's generation by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or Buyer Bid Curtailment.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Energy from the Facility to the Delivery Point for reasons unrelated to Force Majeure Events or Curtailment Orders pursuant to a dispatch Notice delivered to Seller, provided that (i) for the first twenty-four (24) hours of Buyer Curtailment Period per Contract Year, Buyer shall pay Seller the Grossed Up Value of all Production Tax Credits for the Deemed Delivered Energy associated with such Buyer Curtailment Period(s) and (ii) Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of twenty-four (24) hours per Contract Year at the applicable Contract Price plus the Grossed Up Value of all Production Tax Credits for all Deemed Delivered Energy.

(c) Curtailment Procedures. Prior to the Commercial Operation Date, Buyer and Seller will establish procedures for providing for automatic curtailment when the Negative LMP is below -\$30/MWh. Such procedures may also implement any other automatic or manual Buyer Curtailment arrangements that Buyer may reasonably request and that are reasonably capable of being implemented. Buyer may adjust the Negative LMP curtailment price on such Notice to Seller as the Parties may establish as part of such procedures (not in any event to exceed ten (10) days' Notice). For purposes of compensation to Seller, such curtailments will be deemed a Buyer Curtailment Order and a Buyer Curtailment Period, and Seller will be compensated for such curtailments in accordance with Section 4.5(b).

(d) Failure to Comply. If Seller fails to comply with (i) a Curtailment Order, then, for each MWh of Delivered Energy that the Facility generated in contradiction to the Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), and (ii) a Buyer Curtailment Order or Buyer Bid Curtailment, then, for each MWh of Delivered Energy that the Facility generated in contradiction to the Buyer Curtailment Order or Buyer Bid Curtailment, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (B) + (C), where in each case (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh during the Curtailment Period, (B) is the Negative LMP Cost, if any, for the Buyer Curtailment Period or Curtailment Period, and (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

4.6. **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit F:

(a) **Facility Maintenance.** Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility included in any of Seller's forecasts delivered pursuant to Section 4.4 or as otherwise previously agreed to between Buyer and Seller.

(b) **Forced Facility Outage.** Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) **System Emergencies and other Interconnection Events.** Seller shall be permitted to reduce deliveries of Product during any period of System Emergency or upon notice of a Curtailment Order pursuant to the terms of the Interconnection Agreement or applicable tariff.

(d) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7. **Expected Energy and Guaranteed Energy Production.** The quantity of Product that Seller expects to be able to deliver to Buyer during each Contract Year is set forth in Exhibit F, Schedule F-1 ("**Expected Energy**"). Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any twenty-four (24) consecutive calendar month period during the Delivery Term ("**Performance Measurement Period**"). "**Guaranteed Energy Production**" means an amount of Product, as measured in MWh, equal to one-hundred fifty percent (150%) of the average annual Expected Energy for such period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure events, Buyer's failure to perform, Curtailment Periods and Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the Product in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure events, Buyer's failure to perform, Curtailment Periods, and Buyer Curtailment Periods. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit F.

ARTICLE 5

TAXES

5.1. **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available Energy to Buyer, that are imposed on Energy prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Energy that are imposed on Energy at and from the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the

Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Energy hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2. **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefore from the other Party. All Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1. **Maintenance of the Facility.** Seller shall comply with applicable Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2. **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit F Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

ARTICLE 7 METERING

7.1. **Metering.** Seller shall measure the amount of Energy produced at the Facility (and, to the extent Energy is provided from a Related Facility under Section 4.1(c), at such Related Facility) using a commercially available, CAISO revenue-grade metering system. Such meter shall be installed and maintained at Seller's cost. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

7.2. **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third-parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1. **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than fifteen (15) days after the end of the prior monthly billing period. Each invoice (a) shall include records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Energy by the Facility and, if applicable, the Related Facilities for any Settlement Interval during the preceding month, including, without reservation, the amount of Product in MWh delivered during the prior billing period as set forth in CAISO T+12 settlement statements, the amount of Energy in MWh produced by the Facility and, if applicable, the Related Facilities as read by the CAISO revenue grade meter, the Contract Price applicable to such Product, deviations between the quantity of Energy produced and the quantity of Delivered Energy, and the CAISO prices at the Delivery Point for each Settlement Interval; (b) shall provide Buyer access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format specified by Buyer, covering the Delivered Energy and the WREGIS Certificates transferred in the preceding month determined in accordance with the applicable provisions of this Agreement.

8.2. **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the end of the month or within fifteen (15) days after receipt of the invoice, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance at the Interest Rate. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3. **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by applicable Law. Upon fifteen (15) days Notice to Seller, Buyer shall be granted reasonable

access (subject to any confidentiality requirements) to the accounting books and records necessary to confirm all invoices generated pursuant to this Agreement.

8.4. **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if (i) Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, (ii) there is determined to have been a meter inaccuracy sufficient to require a payment adjustment, or (iii) the CAISO adjusts amounts previously paid in a manner that would affect the amounts invoiced hereunder. If the required adjustment is in favor of Buyer, Buyer's monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller (other than adjustments resulting from a CAISO adjustment) shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the non-erring Party received Notice thereof.

8.5. **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6. **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Exhibits B and F, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7. **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer in the amount of \$6,000,000 within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect until it is replaced with the Performance Security, and if Buyer collects or is entitled to

collect Commercial Operation Delay Damages from Seller for Seller's failure to achieve the Guaranteed Commercial Operation Date, Seller may draw on the Development Security in an amount equal to the Commercial Operation Delay Damages owed by Seller hereunder. Following the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly return the Development Security to Seller, less the amounts drawn in accordance with Exhibit B. If the Development Security is a letter of credit and the issuer of such letter of credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such letter of credit and such letter of credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such letter of credit by such issuer, Seller shall have three (3) Business Days to either post cash or deliver a substitute letter of credit that meets the requirements set forth in the definition of Development Security.

8.8. **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer in the amount of \$6,000,000. If the Performance Security is not a form described in the definition of Performance Security, it shall be in a form and substance reasonably satisfactory to Buyer. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a letter of credit and the issuer of such letter of credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such letter of credit and such letter of credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such letter of credit by such issuer, Seller shall have three (3) Business Days to either post cash or deliver a substitute letter of credit that meets the requirements set forth in the definition of Development Security.

8.9. **Buyer's Financial Statements.**

(a) Beginning with the first month after the Effective Date, on or before the fifteenth (15th) day of the month, Buyer will provide Seller Buyer's unaudited financial statements for the preceding month, which shall have been prepared in accordance with GAAP.

(b) Within ninety (90) days after the end of each calendar year, Buyer will provide Seller Buyer's audited financial statements for the preceding calendar year, which shall have been prepared in accordance with GAAP.

8.10. **Buyer's Credit Assurances.** If (i) Buyer fails to pay the undisputed portion of Seller's invoice when due as provided in Section 8.2 two or more times during the Delivery Term, or (ii) Buyer's "Net Position" as reflected on its most recent financial statements is less than \$8,000,000, Seller may provide Buyer with Notice requesting performance security in an amount not to exceed the product of the Contract Price and the amount of Expected Energy for a three (3) month period. Upon receipt of such Notice, Buyer shall provide such performance security within five (5) Business Days after Seller's Notice.

ARTICLE 9 NOTICES

9.1. **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on the Cover Sheet or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2. **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1. Definition.

(a) **"Force Majeure Event"** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force

Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy at a higher price, than the Contract Price); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Period; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; or (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

10.2. **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3. **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4. **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive twelve (12) month period, then either Party may terminate this Agreement upon Notice to the other Party with respect to the Facility experiencing

the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other Party, save and except for amounts and liabilities that had accrued prior to the termination date and those obligations specified in Section 2.1(c).

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1. **Events of Default.** An “Event of Default” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party’s obligations to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 4.3) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Facility or one of the Related Facilities;

(ii) the failure by Seller to achieve Commercial Operation within one hundred eighty (180) days after the Guaranteed Commercial Operation Date;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least ten percent (10%) of the Expected Energy amount for the current Contract Year, and Seller fails to demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 of this Agreement;

(v) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days (thirty (30) days in the case of clause (A)) after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating from at least one of the credit rating agencies of at least "A-" by S&P or Fitch or "A3" by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than thirty (30) days prior to the expiration of the outstanding Letter of Credit.

11.2. **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the right (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date, to accelerate all amounts owing between the Parties, and to collect liquidated damages calculated in accordance with Section 11.3 Termination Payment below; (b) to withhold any payments due to the Defaulting Party under this Agreement; (c) to suspend performance; and (d) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement.

11.3. **Termination Payment.** The Termination Payment (“**Termination Payment**”) for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party netted into a single amount. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost

Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4. **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5. **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.

11.6. **Rights And Remedies Are Cumulative.** Except where liquidated damages are provided as the exclusive remedy and with respect to damages owing on termination, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.7. **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES

12.1. **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

12.2. **Waiver and Exclusion of Other Damages.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTION 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT F, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEXT SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1. **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any applicable Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

The Facility has its first point of interconnection with a California balancing authority.

13.2. **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other applicable laws.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any applicable Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

13.3. **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any applicable Law.

ARTICLE 14 ASSIGNMENT

14.1. **General Prohibition on Assignments.** Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment that is allowed by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

14.2. **Permitted Assignment; Change of Control of Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); or (c) subject to Section 15.1, a Lender as collateral, *provided however*, that in each of the foregoing situations, the assignee shall be a Qualified Assignee; *provided, further*, that in each such case, Seller shall give Notice to Buyer no fewer than fifteen (15) Business Days before such assignment that (i) notifies Buyer of such assignment and (ii) provides to Buyer a written agreement signed by the Person to which Seller wishes to assign its interests which (y) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (z) certifies that such Person shall meet the definition of a Qualified Assignee. In the event that Buyer, in good faith, does not agree that Seller's assignee meets the definition of a Qualified Assignee, then the matter shall be submitted to dispute resolution hereunder; *provided, however*, that if Seller wants to complete the assignment prior to completion of the dispute resolution process, either Seller must agree to remain financially responsible under this Agreement until the dispute is resolved, or Seller's assignee must provide payment security in an amount and form reasonably acceptable to Buyer. Any direct or indirect change of control of Seller (whether voluntary or by operation of Law) up to the level of EDP Renewables North America LLC shall be deemed an assignment under this Section 14.2; *provided, however*, that the sale or transfer of equity interests in connection with a financing transaction (including the sale of tax equity) shall not be considered a change of control of Seller. Any assignment by Seller, its successors or assigns under this Section 14.2 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Buyer.

14.3. **Change of Control of Buyer.** Buyer may assign its interests in this Agreement to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, *provided* that no fewer than fifteen (15) Business Days before such assignment Buyer (a) notifies Seller of such assignment, (b) provides to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests reasonably satisfactory in form and substance to Seller stating that such Person assumes all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 15.2(b), and (c) Seller is reasonably satisfied that such Person has the financial capability to perform all of Buyer's obligations under this Agreement. In the event that Seller, in good faith, does not agree that Buyer's assignee has the financial capability to perform all of Buyer's obligations under this Agreement, then the matter shall be submitted to dispute resolution

hereunder; *provided, however*, that if Buyer wants to complete the assignment prior to completion of the dispute resolution process, either Buyer must agree to remain financially responsible under this Agreement until the dispute is resolved, or Buyer's assignee must provide payment security in an amount and form reasonably acceptable to Seller. Any direct or indirect change of control of Buyer (whether voluntary or by operation of Law) shall be deemed an assignment under this Section 14.2. Any assignment by Buyer, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Seller.

ARTICLE 15 LENDER ACCOMMODATIONS

15.1. **Granting of Lender Interest.** Notwithstanding Section 14.2 or Section 14.3, either Party may, without the consent of the other Party, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Each Party's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party's interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving the other Party such initial Notice, the granting Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.

15.2. **Rights of Lender.** If a Party grants an interest under this Agreement as permitted by Section 15.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by the granting Party under this Agreement to prevent or cure a default by the granting Party in accordance with Section 11.2, and such act performed by Lender shall be as effective to prevent or cure a default as if done by the granting Party.

(b) The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments and other documents reasonably requested by the granting Party or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that Buyer recognizes the Lender's security interest, that provides for customary extended notice and cure rights in favor of the Lender, and that contains such other provisions as may be reasonably requested by Seller or any such Lender; provided, however, that all costs and expenses (including reasonable attorney's fees) incurred by Buyer in connection with a consent to assignment and other documents requested by Seller or Seller's Lender shall be borne by Seller.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the

granting Party hereunder; *provided* that non-granting shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.

15.3. **Cure Rights of Lender.** The non-granting Party shall provide Notice of the occurrence of any Event of Default described in Section 11.1 or 11.2 hereof to any Lender, and such Party shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder. The non-granting Party shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder.

ARTICLE 16 DISPUTE RESOLUTION

16.1. **Governing Law.** This agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

16.2. **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

16.3. **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of inhouse counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 17 INDEMNIFICATION

17.1. Indemnification.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 17.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

17.2. **Claims.** Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 18 INSURANCE

18.1. Insurance.

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than two million dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of five million dollars (\$5,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) **Employer's Liability Insurance.** Employers' Liability insurance shall not be less than one million dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the one million dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semitrailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than one million dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 18.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Buyer shall be given at least thirty (30) days prior written Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, Seller, among other things and without restricting Buyer's remedies under the law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 18 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller

shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 19

CONFIDENTIAL INFORMATION

19.1. **Definition of Confidential Information.** The following constitutes “**Confidential Information**,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) proposals and negotiations until this Agreement is approved and executed by the Buyer, (b) the Contract Price, to the extent permitted by law, and (c) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

19.2. **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion. Buyer shall notify Seller promptly if Buyer receives a Public Records Act request or similar request for this Agreement or for Confidential Information provided by Seller.

19.3. **Irreparable Injury; Remedies.** Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 19 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief and/or notwithstanding Section 12.2, consequential damages.

19.4. **Disclosure to Lender.** Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to any potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 19 to the same extent as if it were a Party.

ARTICLE 20

MISCELLANEOUS

20.1. **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior

agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

20.2. **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

20.3. **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

20.4. **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy service provider and energy service recipient, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

20.5. **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

20.6. **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

20.7. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

20.8. **Facsimile or Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

20.9. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

20.10. **No Recourse to Members of Buyer.** Buyer 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 its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members in connection with this Agreement.

EXHIBIT A

DESCRIPTION OF THE FACILITY

Site Name: Rising Tree Wind Farm

Site Location: Portions of Sections 2, 3, 9, 10, 11, 15 and 16 in Township 10 North, Range 14 West, SBM.

County: Kern County, California

MW AC: 99

P-node/Delivery Point: RTREE_2_WIND3

Additional Information:

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**

- a. Seller shall construct the Facility in order to complete the Facility by the Guaranteed Commercial Operation Date (defined below).

2. **Commercial Operation of the Facility.** “**Commercial Operation**” means the condition existing when (i) all necessary permits have been obtained and all conditions to operate the Facility have been satisfied and complied with in order to produce, sell and transmit Energy, (ii) the Seller receives final permission to parallel from the PTO, (iii) ninety percent (90%) of the Guaranteed Capacity has been completed and is ready to produce and deliver Energy to Buyer, and (iv) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement; and (vi) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved. The “**Commercial Operation Date**” shall be the later of (x) July 1, 2015 or (y) the date on which Commercial Operation is achieved.

- a. Seller shall cause Commercial Operation for the Facility to occur by July 31, 2015 (as may be extended by the Development Cure Period (defined below), the “**Guaranteed Commercial Operation Date**”). Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date and shall confirm to Buyer in writing when Commercial Operation has been achieved.

- b. [intentionally omitted]

- c. If Seller does not achieve Commercial Operation by the date that is thirty (30) days after the Guaranteed Commercial Operation Date, Seller shall pay “**Commercial Operation Delay Damages**” to Buyer for each day thereafter for each MW of generating capacity of the Facility that has not achieved commercial operation until the Commercial Operation Date is achieved. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within one hundred eighty (180) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement, which termination shall be effective upon written Notice to Seller.

4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended, by a number of days equal to the period of such delay, if:

- a. despite the exercise of diligent and commercially reasonable efforts by Seller, all material permits, consents, licenses, approvals, or authorizations from any

Governmental Authority, required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit the Seller and Facility to make available and sell Product are not received by May 1, 2015;

- b. a Force Majeure Event occurs;
- c. despite the exercise of diligent and commercially reasonable efforts by Seller, the Interconnection Facilities are not complete and ready for the Facility to connect and sell Energy at the Delivery Point by June 30, 2015; or
- d. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operations Date;

provided, however, that any cumulative extensions granted pursuant to this section (except for clause (d)) shall not exceed one hundred twenty (120) days ("**Development Cure Period**").

- 5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or network upgrades such that the Installed Capacity is equal to the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date and does not make up any shortfall in Energy that would have been produced from the Guaranteed Capacity by providing Energy from the Related Facilities, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to One Hundred Thousand Dollars (\$100,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.
- 6. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Commercial Operation Delay, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof.

EXHIBIT C

CONTRACT PRICE

The Contract Price of the Product shall be:

Contract Year	Contract Price
1 – 4	\$XX/MWh

EXHIBIT D

EMERGENCY CONTACT INFORMATION

BUYER:

Greg Brehm, Director of Power Resources
Marin Clean Energy
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Fax No.: (415) 459-8095
Phone No.: (415) 464-6037
Email: gbrehm@mceCleanEnergy.org

SELLER:

Remote Operations Control Center
808 Travis Street, Suite 700
Houston, TX 77002
Fax No: (713) 265-0365
Phone No: (713) 356-2573
Email: rocc@edpr.com

EXHIBIT E
INTENTIONALLY OMITTED

EXHIBIT F

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production, during any Performance Measurement Period, a liquidated damages payment shall be due from

$$(A - B) * (C - D)$$

Where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the generation-weighted average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Delivery Point, plus (b) the average market price for Renewable Energy Credits in the CAISO market for the Performance Measurement Period

D = the Contract Price for the Performance Measurement Period, in \$/MWh

“**Adjusted Energy Production**” shall mean the sum of the following: Delivered Energy + Deemed Delivered Energy + Lost Output.

“**Lost Output**” means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Default, or Curtailment Order and shall be calculated in the same manner as Deemed Delivered Energy.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer within thirty (30) days of such Notice.

SCHEDULE F-1

EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

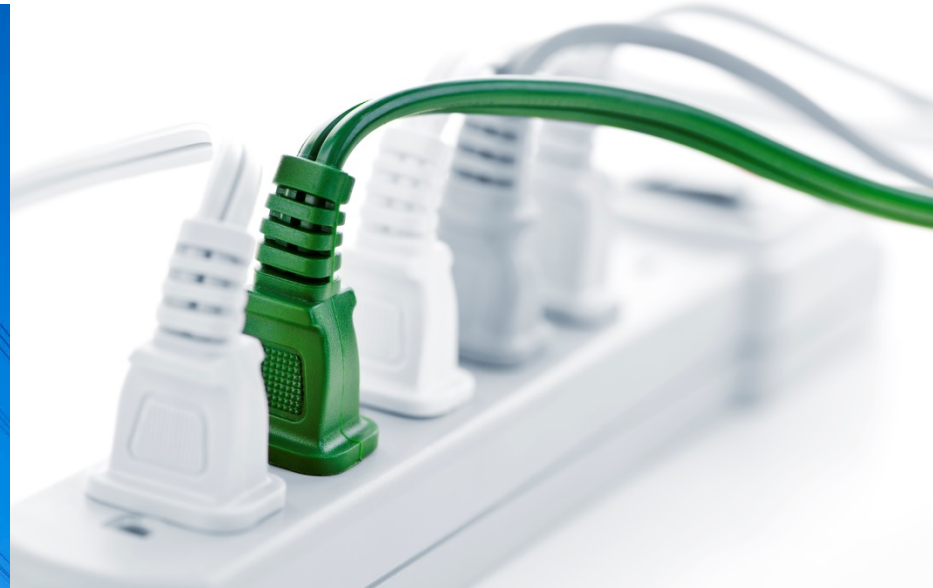
Hour Ending	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN	24.7	23.7	21.0	23.5	22.1	24.0	22.6	22.7	18.7	23.3	24.0	25.7	29.2	31.6	33.1	31.6	32.1	32.6	34.0	33.7	30.5	27.6	28.0	27.1
FEB	40.3	37.9	36.8	35.4	33.4	32.6	33.1	29.2	27.8	33.2	34.1	34.4	36.0	38.2	41.0	39.8	40.0	40.2	41.7	42.4	42.2	42.8	41.3	41.6
MAR	48.3	46.9	45.5	43.9	40.4	40.6	39.0	36.3	35.1	35.2	37.3	39.9	41.7	45.4	47.1	48.3	49.5	50.6	51.9	49.0	47.9	48.6	46.7	48.4
APR	54.6	53.3	54.2	54.2	51.1	49.1	45.1	44.1	40.9	42.1	42.1	45.4	48.1	52.5	58.1	61.6	64.8	64.3	62.4	64.1	63.0	62.8	60.9	59.7
MAY	62.6	64.4	59.1	54.1	49.9	47.0	44.9	41.2	38.0	38.3	40.9	43.4	46.0	49.8	53.5	58.1	63.2	61.3	59.6	60.2	60.8	64.2	64.2	65.1
JUN	69.1	66.7	63.1	60.7	54.5	48.8	40.2	32.8	26.2	24.5	24.7	26.6	31.3	36.8	43.0	48.4	53.7	59.0	60.8	61.9	64.7	68.4	69.0	69.0
JUL	60.4	56.1	50.6	46.4	39.3	31.8	23.6	15.1	10.5	10.0	10.3	10.2	12.9	18.0	23.3	29.5	36.6	43.8	49.2	55.7	60.1	60.1	61.2	61.2
AUG	50.8	48.1	44.3	39.1	32.5	24.5	18.2	13.1	8.6	7.6	7.2	8.5	10.0	13.4	17.5	23.6	29.4	35.6	40.7	46.7	49.3	48.6	49.5	50.2
SEP	45.1	43.5	36.6	31.0	25.0	19.2	15.5	12.2	9.8	9.0	9.6	10.7	13.4	15.4	19.7	25.7	31.7	39.3	46.6	52.1	52.5	50.5	49.5	47.5
OCT	38.9	38.2	33.3	33.0	31.0	29.5	26.5	22.6	21.2	21.9	24.9	26.1	28.3	31.1	34.9	38.1	41.2	44.1	46.8	46.7	44.7	42.0	39.1	40.1
NOV	34.9	32.3	32.5	30.3	30.5	27.6	28.1	23.7	24.5	28.0	30.6	33.3	36.6	36.8	36.7	35.9	37.6	37.2	38.5	39.0	37.6	35.3	36.6	36.1
DEC	33.9	34.5	34.3	38.4	35.2	33.2	30.9	27.0	25.4	23.8	26.9	28.7	30.7	31.2	33.3	33.6	33.5	34.7	35.5	34.4	35.3	33.9	34.3	33.2



Power Purchase and Sale Agreement with EDP Renewables North America LLC for Renewable Energy Supply (Agenda Item #07)

Greg Brehm -Director of Power Resources| Marin Clean Energy

September 4, 2014



Introduction

- 2014 Open Season, MCE was primarily interested in new, CA-based renewable resources for the 2018 and beyond timeframe.
- Near term opportunity for relatively low cost CA based wind raises policy issues with regards to cost/qualitative tradeoffs.
- MCE staff consulted with the Ad Hoc Contracts Committee to expand the Open Season volumes to cover MCE's pending expansions
- Potentially using the PPC 1 product in place of planned PCC2, PCC3 and Voluntary Green-e renewable energy purchases

EDP Renewables – Rising Tree Wind Farm

Under consideration for transitioning nearly 100% of our Voluntary “unbundled” REC needs to a NEW -Bundled California PCC1 project.

- New CA-based wind available for 2015-2018 at relatively low cost.
- Exceeds defined need for PCC1 during this time; would be used in lieu of PCC2, PCC3 and voluntary REC purchases.
- In effect, would increase use of CA based, bundled renewable energy and reduce renewable energy imports/unbundled REC purchases.
- Would increase annual MCE costs by approximately 1% during this time period relative to baseline projections.



EDP Renewables – Rising Tree Wind Farm

- **Project: Rising Tree Wind**
- **Technology: New - Wind Project**
- **Location: Fresno County, 300 miles South East of San Rafael**
- **Product: As Available energy - FCDS, Q2 2015** *(Little value to MCE)*
- **Capacity: Up to 100 MW**
- **Annual energy: 144,000 MWh MWhs 2015, 222,000 MWh 2016-2018**
- **Contract Term: July 2015 to Dec 2018 (1- 4 Years)**
- **Key strengths: Counterparty experience , technological diversity, ease of product integration, new project, FCDS At completion of Tehachapi Renewable Transmission Project ("TRTP")**
- **Concerns: Lesser known Counterparty, No PLA, substantial PPA mark-up**
- **Notable PPA revisions: Multiple**



EDP Renewables – Rising Tree Wind Farm

Contract Overview:

Project location: Mojave, Kern County, CA

Guaranteed commercial operation date: July, 2015

Delivery profile: As available PCC 1 renewable energy

No collateral obligations to MCE



EDP Renewables – Rising Tree Wind Farm

Counterparty Strength:

EDP Renewables North America, LLC

- EDP Renewables North America (“EDPR”) based in Houston, Texas, is a subsidiary of EDP Renewables, a global renewable energy company based in Madrid, Spain.
- Energias de Portugal, S.A. (“EDP”), a vertically-integrated utility company, headquartered in Lisbon, Portugal, is the majority shareholder of EDPR
- EDPR is rated Ba1 by Moody's, BB+ by S&P, and BBB+ by Fitch
- EDP Renewables is a renewable energy developer that builds, owns, and operates electricity facilities for its own generation portfolio as well as third parties. As of March 31, 2014, the company has approximately 7,800 megawatts of net wind generation capacity, 81% of which is powering the United States, Spain, and Portugal
- EDP has 23,000 MW of installed electricity generation capacity worldwide.



EDP Renewables – Rising Tree Wind Farm

Summary:

The EDP Renewables PPA agreement is a good fit for MCE's resource portfolio based on the following considerations:

- The project size and expected energy will support the future renewable energy requirements of MCE customers inclusive of the expansion into Napa County.
- The project is being operated by an experienced team.
- Energy from the project is competitively priced.
- The bundled in-state renewable energy will replace a substantial volume of unbundled RECs and move MCE to 33% RPS compliance 5 years ahead of schedule.



Questions? Comments?





September 4, 2014

TO: Marin Clean Energy Board

FROM: Emily Goodwin, Director of Internal Operations

RE: Office Space Proposal (Agenda Item #08)

ATTACHMENT: A. Draft Lease Agreement
B. Addendum to Lease Agreement
C. Office Space Cost Comparison
D. Renderings of Renovated Office Space

Dear Board Members:

SUMMARY:

As reported at the July 3, 2014 Board meeting, based on the BioMarin acquisition of the San Rafael Corporate Center (SRCC), and the subsequent permanent evacuation plan of existing tenants, MCE has researched a variety of commercial office space options in central Marin that included comparable amenities to our existing lease at the SRCC. As a reminder to information presented in July, 2014, MCE's office space lease term extends through 2019 and includes a relocation clause (effective with a 90 day notice). BioMarin has offered to extend a relocation option to MCE to a comparable space at the 750 Lindero Street campus. However, BioMarin is making all efforts to vacate the premises as early as possible.

Following extensive research on available commercial space for several months, with the participation of staff, management, Board Directors, the Executive Committee and real estate agents, MCE narrowed the best possible locations down to one vacant commercial property at 700 Fifth Avenue in San Rafael and the existing relocation space on 750 Lindero Street at the SRCC. As presented in July, because a finalized lease arrangement and recommendation was not yet available at that time, MCE Board Directors delegated authority to the Executive Committee on lease decision making at either the July 16, 2014 or August 20, 2014 Executive Committee meetings.

Since the July Board meeting and as presented at both the July 16, 2014 and August 20, 2014 Executive Committee meetings, MCE staff has made significant progress on the finalization of a lease for the 700 Fifth Avenue property, noted in Attachments A and B (lease and addendum). Staff has also negotiated an incentive package from BioMarin for terminating the existing lease at the San Rafael Corporate Center and moving out no later than March 1, 2013.

The move to 700 Fifth Avenue offers MCE a multitude of beneficial opportunities not otherwise possible should we relocate to the available space at 750 Lindero Street, within the SRCC. In summary, a few of the highlights are captured below:

1. Ample office/meeting room space (10,710 RSF) including parking
2. Long term (10 year) lease at fair market price with option to renew
3. Substantial renovations/upgrades covered in base price
4. Near full occupancy of entire building, allowing for identifiable MCE headquarters
5. Ability to sublet roughly 2,500 to appropriate tenant(s)
6. Ability to rent meeting room space to community groups
7. Opportunity to create an incubator program for local organizations
8. Opportunity for an Energy Efficiency & Renewables Library/Demonstration Room
9. Closer proximity to public transportation (SMART terminal) and downtown

Over the course of numerous meetings with Board Directors (including presentations to the full Board, Executive Committee and onsite tours of the potential office space), MCE staff has gratefully received sound guidance on lease negotiations and critical provisions for inclusion in the lease and construction work plan. These provisions are reflected in the finalized lease and addendum documents before you for consideration.

Additionally, MCE staff has included a cost comparison spreadsheet, Attachment C, for reference which details the costs of our current lease, the relocation option at 750 Lindero Street in the SRCC against the proposed new office space at 700 Fifth Avenue. One notable feature of the lease structure is the timetable for paying rent on the full occupancy of the building. While MCE will occupy the entire space initial (until otherwise subletting unused space), we will incur no rent during the first three months of occupancy. We will then begin to pay rent on the fourth month assuming 6,500 RSF for that first year, 8,500 RSF the second year and the full 10,710 RSF the third year through the term of the lease. The advantage here is full use of the building and ample time to find appropriate tenants for the unused office space, and interested parties for the meeting room space, without incurring all the associated cost.

The Lease Agreement uses the standard AIR Commercial Real Estate Association Form Lease which is commonly used for single tenant lease arrangements throughout the commercial real estate sector. Edits made to the lease throughout negotiations are captured in red and blue lined text which cannot be altered until the finalized version of the lease is signed by both counterparties; this is an inherent feature of the AIR Form designed for version control. To further define the lease arrangements an Addendum to the Lease Agreement is also included. This document includes an overview of the key components of the lease and work plan, a diagram of the existing premises with a work plan letter agreement regarding tenant improvements and preliminary space plan capturing those improvements/renovations. Attachment D includes several images of the renovated space, illustrated in with architectural renderings which cover the following vantage points:

1. Exterior Building Entry
2. Main Lobby
3. Upstairs facing north
4. Upstairs facing south (along north wall)
5. Upstairs facing south (closer to main staircase)

Recommendation: Authorize finalization and execution of the Lease Agreement and Addendum to Lease Agreement for 700 Fifth Avenue in San Rafael.



LESSEE'S COMMENTS 08/22/14 P.M.

DRAFT

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 August , 2014,
is made by and between 700 FIFTH AVENUE, LLC, a California limited liability company ("Lessor")
and MARIN CLEAN ENERGY, a non-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 with approximately 35 spaces.

1.3 **Term:** ten (10) years and no months ("Original Term") commencing January 1, 2015 ("Premises"). (See also Paragraph 2)
("Commencement Date") and ending December 31, 2024 ("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:** none 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 \$17,910.00 (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");

INITIALS

INITIALS

☒ 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 59.~~

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 61 ;
- ☒ a plot plan depicting the Premises (**Exhibit A**);
- ☐ a current set of the Rules and Regulations;
- ☒ a Work Letter (**Exhibit B and B-1**);
- ☐ 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

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 ~~January 1, 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 ~~January 1, 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 ~~January 1, 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

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' and consultants' 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 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) clarifiers. 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.~~

(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 (ie. 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, 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. SUBJECT TO REVIEW AND APPROVAL BY LESSEE'S INSURANCE BROKER.

(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

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

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

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.

10.2

(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 (1/2 of 2014-2015 and 1/2 of 2015-2016) ("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 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 attorn 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.

(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 ~~40~~ 6% 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.

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 1.9 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 1.9, 15, 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

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.

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

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.

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: _____ Executed at: _____

On: _____ On: _____

By LESSOR:

700 FIFTH AVENUE, LLC.

By LESSEE:

MARIN CLEAN ENERGY

By: _____ By: _____

Name Printed: Ted B. Shuel Name Printed: _____

Title: Manager Title: _____

By: _____ By: _____

Name Printed: _____ Name Printed: _____

Title: _____ Title: _____

Address: _____ Address: _____

Telephone: () _____ Telephone: () _____

Facsimile: () _____ Facsimile: () _____

Email: _____ Email: _____

Email: _____ Email: _____

Federal ID No. _____ Federal ID No. _____

DRAFT

INITIALS

INITIALS

DRAFT

BROKER:

BROKER:

Att: _____	Att: _____
Title: _____	Title: _____
Address: _____	Address: _____
Telephone:() _____	Telephone:() _____
Facsimile:() _____	Facsimile:() _____
Email: _____	Email: _____
Federal ID No. _____	Federal ID No. _____
Broker/Agent DRE License #: _____	Broker/Agent DRE License #: _____
_____	_____
_____	_____

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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INITIALS

ADDENDUM TO LEASE

The following paragraphs shall constitute a part of the Standard Industrial/Commercial Single-Tenant Lease – Gross dated as of September __, 2014, being entered into concurrently between **700 FIFTH AVENUE, LLC.**, a California limited liability company, as Lessor, and **MARIN CLEAN ENERGY**, a non-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.** In the event Lessor is unable to substantially complete Lessor's Work by the scheduled Commencement Date of January 1, 2015, Lessor shall also have the right to delay the Commencement Date for a period ending by no later than February 1, 2015, provided that Lessor gives Lessee written notice of such election by no later than December 15, 2014. 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. In the event that the Commencement Date has not occurred by February 1, 2015, Lessor shall credit Lessee against Base Rent due hereunder with the sum of \$2,142.86 per day for each day after February 1, 2015 until the Commencement Date has occurred. [PLEASE ADD APPROPRIATE LIQUIDATED DAMAGES LANGUAGE FOR THE PARTIES TO INITIAL.]

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.

(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, which Lessee shall have the right to approve prior to Lessor's execution, with such approval not to 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 [DOES LESSOR CURRENTLY MAINTAIN EQ INSURANCE?] on the Premises. The current annual

premiums for the foregoing insurance are \$17,385 and Lessor estimates that the premiums for the Base Year will be approximately \$17,910. [PLEASE PROVIDE LESSEE WITH A COPY OF THE CURRENT BILLING FOR INSURANCE AT THE BASE PREMIUM RATE.]

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 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.

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.

56. **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 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.

57. **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.

58. Disability Access Requirements.

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

(b) Except as otherwise provided in (c), below, Landlord 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) Tenant 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 Tenant's Alterations.

59. Brokers' Commission. Lessor agrees to pay to the Brokers the following fees upon occurrence of the following events: (i) The sum of \$60,735 to Lessee's Broker and \$30,367 to Lessor's Broker upon full execution of this Lease, and (ii) The sum of \$60,735 to Lessee's Broker and \$30,367 to Lessor's Broker upon Lessor's receipt of the first payment of Base Rent (scheduled for April 1, 2015).

60. 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.

61. No Recourse Against Constituent Members of Tenant. Tenant 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. Tenant 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 Tenant's constituent members in connection with this Lease.

EXHIBIT A

DIAGRAM OF PREMISES

[PENDING UPDATED VERSION OF THE ADDENDUM A DIAGRAM OF PREMISES WHICH SHOWS THE FOOTPRINT OF THE BUILDING AND THE ADJOINING PARKING LOT WITH THE LOCATIONS OF THE APPROXIMATELY 35 PARKING SPACES.]

EXHIBIT B

WORK LETTER AGREEMENT

THIS WORK LETTER AGREEMENT supplements that certain Standard Industrial/Commercial Single-Tenant Lease dated September __, 2014 ("Lease"), executed by 700 Fifth Avenue, LLC, as Lessor, and Marin Clean Energy, a non-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. Within thirty (30) days after execution of the Lease, Lessor shall provide Lessee with the Construction Drawings and Specifications showing the details of the Tenant Improvements. The 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.

3. Within seven (7) days after receipt of the 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 and, thereafter, the Construction Drawings shall be resubmitted for Lessee's approval in accordance with the preceding sentence. 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. The Tenant Improvements shall be constructed 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.

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.

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.

5. As provided in Paragraph 51 of the Lease, the Lease Commencement Date shall be on the date Lessor substantially completes the Tenant Improvements.

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) The Tenant Improvements have been substantially completed in accordance with the approved Construction Drawings (except for minor punch list items); and
- (b) A certificate of occupancy and/or finalized building permit 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 use its best 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;
- 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;
- d. Provide ADA access from the parking lot to the entrance to the Building and replace the current landscaping between the parking lot and the Building, subject to a mutually agreed space plan initially designed by Lessor's architect; and
- e. Install Fire Sprinklers if required the San Rafael Building Department.

The design and materials used to construct the foregoing Additional Tenant Improvements shall be at Lessor's sole discretion; however, Lessor shall control costs by using capped performance based contracts for work performed. Any cost of the Additional Tenant Improvements (including the actual construction costs, architectural and engineering fees, and permit fees) in excess of \$____TBD____) shall be paid by Lessee within thirty (30) days after billing by Lessor.

10. Notwithstanding anything to the contrary in this Work Letter Agreement or the Lease, it shall be the responsibility of Lessor at its sole cost and expense to remove from the Project and Premises all Hazardous Substances prior to the construction of the Tenant Improvements.

EXHIBIT B-1

PRELIMINARY SPACE PLAN

[PENDING PRELIMINARY SPACE PLAN TO THE NEXT VERSION OF THE ADDENDUM.]

[PENDING TENANT REQUESTS THAT A PRICING PLAN SIMILAR TO THAT PREPARED BY BRYSON BURNS, DATED JUNE 26, 2014, BE UPDATED, IF NECESSARY, AND ATTACHED TO THE LEASE.]

Comparative Cost Analysis

781 Lincoln

Year	Size	Rent/SF	Rent/Month	Rent/Year	Util&Jan/SF	Util&Jan/Month	Util&Jan/Year	Occ. Cost	Occ Cost/Sf/Month
2014	4957	\$ 3.35	\$ 16,605.95	\$ 199,271.40	Included	Included	Included	\$ 199,271.40	\$ 3.35
2015	4957	\$ 3.38	\$ 16,754.66	\$ 201,055.92	Included	Included	Included	\$ 201,055.92	\$ 3.38

** We are required to move no later than March 1, 2015*

750 Lindaro

Year	Size	Rent/SF	Rent/Month	Rent/Year	Util&Jan/SF	Util&Jan/Month	Util&Jan/Year	Occ. Cost	Occ Cost/Sf/Month
1	6300	\$ 3.25	\$ 20,475.00	\$ 245,700.00	Included	Included	Included	\$ 245,700.00	\$ 3.25
2	6300	\$ 3.35	\$ 21,089.25	\$ 253,071.00	Included	Included	Included	\$ 253,071.00	\$ 3.35
3	6300	\$ 3.45	\$ 21,721.93	\$ 260,663.13	Included	Included	Included	\$ 260,663.13	\$ 3.45
4	6300	\$ 3.55	\$ 22,373.59	\$ 268,483.02	Included	Included	Included	\$ 268,483.02	\$ 3.55
5	6300	\$ 3.66	\$ 23,044.79	\$ 276,537.51	Included	Included	Included	\$ 276,537.51	\$ 3.66
6	6300	\$ 3.77	\$ 23,736.14	\$ 284,833.64	Included	Included	Included	\$ 284,833.64	\$ 3.77
7	6300	\$ 3.88	\$ 24,448.22	\$ 293,378.65	Included	Included	Included	\$ 293,378.65	\$ 3.88
8	6300	\$ 4.00	\$ 25,181.67	\$ 302,180.01	Included	Included	Included	\$ 302,180.01	\$ 4.00
9	6300	\$ 4.12	\$ 25,937.12	\$ 311,245.41	Included	Included	Included	\$ 311,245.41	\$ 4.12
10	6300	\$ 4.24	\$ 26,715.23	\$ 320,582.77	Included	Included	Included	\$ 320,582.77	\$ 4.24
Average		\$ 3.73	\$ 23,472.29	\$281,667.52				\$281,667.52	\$ 3.73

700 Fifth

Year	Size	Rent/SF	Rent/Month	Rent/Year	Util&Jan/SF	Util&Jan/Month	Util&Jan/Year	Occ. Cost	Occ Cost/Sf/Month
1	10710	\$ 1.86	\$ 19,890.00	\$ 179,010.00	\$ 0.20	\$ 2,142.00	\$ 25,704.00	\$ 204,714.00	\$ 1.59
2	10710	\$ 2.50	\$ 26,790.00	\$ 321,480.00	\$ 0.21	\$ 2,206.26	\$ 26,475.12	\$ 347,955.12	\$ 2.71
3	10710	\$ 3.25	\$ 34,768.00	\$ 417,216.00	\$ 0.21	\$ 2,272.45	\$ 27,269.37	\$ 444,485.37	\$ 3.46
4	10710	\$ 3.34	\$ 35,812.00	\$ 429,744.00	\$ 0.22	\$ 2,340.62	\$ 28,087.45	\$ 457,831.45	\$ 3.56
5	10710	\$ 3.44	\$ 36,886.00	\$ 442,632.00	\$ 0.23	\$ 2,410.84	\$ 28,930.08	\$ 471,562.08	\$ 3.67
6	10710	\$ 3.58	\$ 38,361.00	\$ 460,332.00	\$ 0.23	\$ 2,483.17	\$ 29,797.98	\$ 490,129.98	\$ 3.81
7	10710	\$ 3.73	\$ 39,896.00	\$ 478,752.00	\$ 0.24	\$ 2,557.66	\$ 30,691.92	\$ 509,443.92	\$ 3.96
8	10710	\$ 3.87	\$ 41,492.00	\$ 497,904.00	\$ 0.25	\$ 2,634.39	\$ 31,612.68	\$ 529,516.68	\$ 4.12
9	10710	\$ 4.03	\$ 43,151.00	\$ 517,812.00	\$ 0.25	\$ 2,713.42	\$ 32,561.06	\$ 550,373.06	\$ 4.28
10	10710	\$ 4.19	\$ 44,877.00	\$ 538,524.00	\$ 0.26	\$ 2,794.82	\$ 33,537.89	\$ 572,061.89	\$ 4.45
Average		\$ 3.38	\$ 36,192.30	\$ 428,340.60	\$ 0.23	\$ 2,455.56	\$ 29,466.76	\$ 457,807.36	\$ 3.56













September 4, 2014

TO: Marin Clean Energy Board

FROM: Dawn Weisz, Executive Officer

RE: MCE Sustainable Workforce Policy (Agenda Item #9)

ATTACHMENT: Draft Policy 011 – MCE Sustainable Workforce Policy

Dear Board Members:

Background

On July 16, 2014, MCE Staff brought a draft Sustainable Workforce Policy to the Executive Committee for review and consideration. The Executive Committee provided guidance to MCE Staff, and we bring the attached Draft Policy 011 – MCE Sustainable Workforce Policy before you for your consideration.

The Draft Sustainable Workforce Policy is designed to support MCE’s mission “to address climate change by reducing energy related greenhouse gas emissions and securing energy supply, price stability, energy efficiencies and local economic and workforce benefits.” Specifically, this Draft Sustainable Workforce Policy supports:

1. Local businesses and the local workforce;
2. Union labor from multiple trades;
3. Apprenticeship programs; and
4. Green and sustainable businesses.

The Draft Sustainable Workforce Policy provides guidance to MCE on its procurement and contracting with regards to:

- MCE Power Purchase Agreements with Third Parties
- MCE-Owned Generation Projects
- MCE Feed-In Tariff Projects
- MCE Energy Efficiency Projects
- MCE Services and Supplies

Recommendations:

Approve Policy 011 – MCE Sustainable Workforce Policy.



SUSTAINABLE WORKFORCE POLICY: 011

Support of local businesses, union labor and apprenticeship programs that create employment opportunities are important components of building and sustaining healthy and sustainable communities. It is in the interest of MCE to provide fair compensation and sustainable workforce opportunities within a framework of efficiency and competitive service and the promotion of renewable energy, energy efficiency and greenhouse gas reduction.

MCE recognizes the importance of locally generated renewable energy in assuring that California is provided with (1) adequate supplies of renewable energy for economic growth, (2) sustained local job opportunities and job creation, and (3) effective means to reduce the impacts of greenhouse gas emissions. MCE also recognizes the opportunities that energy efficiency programs provide for local workforce training and employment.

MCE supports quality apprenticeship training programs in construction craft occupations to foster long-term, fairly compensated employment opportunities for local graduates and believes that local apprenticeship programs are an efficient vehicle for delivering quality training in construction industry craft occupations.

MCE therefore desires to facilitate and encourage the following objectives in performing construction activities for energy efficiency and renewable energy projects:

- (1) Support for and direct use of local businesses;
- (2) Support for and direct use of union members from multiple trades;
- (3) Support for and use of training and apprenticeship programs from within MCE's service territory; and
- (4) Support for and direct use of green and sustainable businesses.

MCE will supports the objectives stated above through purchases from third parties, through MCE owned projects and through implementation of its Feed-in Tariff in the following way:

MCE Power Purchase Agreements with Third Parties

Marin Clean Energy shall collect information from respondents to any Open Season and/or RFP process regarding past, current and/or planned efforts by project developers and their contractors to:

- Employ workers and use businesses from the MCE service territory.
- Employ licensed contractors and certified electricians.
- Utilize multi-trade project labor agreements on the proposed project or any prior project developments.
- Utilize local apprentices during construction and maintenance.
- Pay workers the correct prevailing wage rates for each craft, classification and type of work performed.
- Display a poster at jobsites informing workers of prevailing wage requirements.
- Provide workers compensation coverage to on-site workers.
- Support and use apprenticeship programs.

Relevant information submitted by bidders will be used to evaluate potential workforce impacts of proposed projects with the goal of promoting fair worker treatment, multi-trade collaboration, and support of the existing wage base in local communities where contracted projects will be located.

MCE Owned Generation Projects

Any MCE-owned renewable development project shall use best efforts to support local businesses, union labor and apprenticeship programs through multi-trade agreements and/or through multiple agreements for work. Each contractor or subcontractor performing work on any MCE-owned project shall use a combination of local labor, union labor and apprenticeship programs. For each renewable energy project MCE or its contractor shall employ on its regular workforce at least one employee who is enrolled and participating in a local apprenticeship program. Such apprenticeship program must have been approved by the State Department of Apprenticeship Standards.

MCE Feed-In Tariff Projects

Each contractor or subcontractor performing work on any MCE Feed-in Tariff project shall use commercially reasonable efforts to utilize local businesses, union labor, multi-trade agreement, and/or apprenticeship programs.

MCE Energy Efficiency Projects

MCE shall use best efforts to support local businesses, union labor and/or local apprenticeship programs in the implementation of its energy efficiency programs. Each contractor or subcontractor performing work on any MCE energy efficiency program shall use commercially reasonable efforts to utilize local businesses, union labor, and/or apprenticeship programs in program implementation.

MCE Services and Supplies

MCE shall use best efforts to support local business in the purchase of services and supplies for the agency. MCE will proactively seek services from local businesses and businesses that have been Green Business certified and/or are taking steps to protect the environment.

DRAFT



September 4, 2014

TO: Marin Clean Energy Board

FROM: Dawn Weisz, Executive Officer

RE: Resolution of the Board of Directors of Marin Clean Energy
Adopting Amendment 8 to Marin Clean Energy Joint Powers
Agreement to Account for the County of Napa and the City of San
Pablo (Agenda Item #10)

ATTACHMENT: A. Draft Amendment 8 to the MCE Joint Powers Agreement
B. Resolution No. 2014-05 of the Board of Directors of Marin
Clean Energy Adopting Amendment 8 to the Marin Clean Energy
Joint Powers Agreement
C. Draft Updated MCE JPA Agreement

Dear Board Members:

SUMMARY:

Effective December 19, 2008, and in consideration of certain amendments thereafter, thirteen municipalities located within the geographic boundaries of Marin County, and the City of Richmond are part of a separate public agency, known as Marin Clean Energy (or "MCE"), formerly known as the Marin Energy Authority, under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.). MCE was established in order to collectively study, promote, develop, conduct, operate, and manage energy programs. The enabling accord, a Joint Powers Agreement ("JPA") entered into by these jurisdictions, describes MCE's organization, governance, powers and authorities, charter goals and objectives as well as the conditions under which new members may be added to MCE. As stated in the JPA, the "first priority" of MCE was to implement a community choice aggregation program, which was accomplished on May 7, 2010.

In response to public interest and MCE's successful operational track record, the City of Richmond has joined MCE. Subsequently, the County of Napa and the City of San Pablo have requested and received approval for membership in MCE. Article 3.1, Addition of Parties, of the JPA describes the conditions under which a non-member municipality may become a signatory. These conditions include: 1) the adoption of a resolution by the non-member municipality requesting membership in the Authority; 2) the adoption of a resolution by MCE authorizing membership of the then non-member municipality; 3)

the adoption of an authorizing ordinance (CCA formation) and execution of the JPA by the non-member municipality.

On June 3, 2014 the Board of Supervisors of the County of Napa voted to approve a resolution requesting membership in MCE and voted to approve the ordinance required by Public Utilities Code Section 366.2(c)(10). On August 4, 2014 the City Counsel of San Pablo voted to approve a resolution requesting membership in MCE and voted to approve the ordinance required by Public Utilities Code Section 366.2(c)(10). The second reading of the County of Napa ordinance occurred on July 15, 2014 and the second reading of the City of San Pablo ordinance is scheduled for September, 2014.

As previously discussed by your Board, the inclusion of the County of Napa and the City of San Pablo will extend MCE's commitment to renewable energy and the environment, promoting further GHG reductions within the region. To appropriately document MCE's expanded membership, the Authority's JPA must be updated, including Exhibits B (List of the Parties), C (Annual Energy Use) and D (Voting Shares). Exhibits C and D, in particular, identify key information that may be used during MCE's decision making processes, as MCE will apply a voting structure that is, in part, weighted based on proportional annual energy use of the Member Agencies. Additional discussion focused on MCE's voting structure is described in Article 4.9, Board Voting Related to the CCA Program. In addition, a signature page executed by the Board President of the County of Napa and the Mayor of the City of San Pablo will be added to the updated JPA. A draft Amended JPA, including updates to the aforementioned exhibits, is attached hereto for review. In general, the significant majority of the JPA remains unchanged.

Recommendation: Approve Resolution No. 2014-05 of the Board of Directors of MCE Adopting Amendment 8 to the MCE Joint Powers Agreement subject to the final reading of the San Pablo CCA ordinance.

**AMENDMENT NO. 8 TO MARIN ENERGY AUTHORITY
JOINT POWERS AUTHORITY AGREEMENT**

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

City of Belvedere
Town of Corte Madera
Town of Fairfax
City of Larkspur
City of Mill Valley
City of Novato
City of Richmond
Town of Ross
Town of San Anselmo
City of San Pablo
City of San Rafael
City of Sausalito
Town of Tiburon
County of Marin
County of Napa

2. Exhibit C to the Agreement, which specifies “Annual Energy Use” for each party to the Agreement, is hereby amended to reflect annual energy use within each member’s jurisdiction for the 2014 calendar year, inclusive of the County of Napa and the City of San Pablo.

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

4. This Amendment No. 8 does not limit the authority of the Board to update Exhibits B, C and D in the future without further amending the Agreement as provided by Sections 1.3 and 4.9.2.3 of the Agreement.

This Amendment No. 8 to the Marin Energy Authority Joint Powers Authority Agreement was duly adopted by the Board of Directors in accordance with Article 8.4 of this Agreement on September 4, 2014.

RESOLUTION NO. 2014-05

**A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN
ENERGY ADOPTING AMENDMENT 8 TO THE MARIN CLEAN ENERGY
JOINT POWERS AGREEMENT**

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

WHEREAS, MCE members include the following communities: the County of Marin, the City of Belvedere, the Town of Corte Madera, the Town of Fairfax, the City of Larkspur, the City of Mill Valley, the City of Novato, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Rafael, the City of Sausalito and the Town of Tiburon; and

WHEREAS, the County of Napa and the City of San Pablo requested membership in MCE; and

WHEREAS, the MCE Board approved, by resolution, the membership request of the County of Napa and the City of San Pablo at duly noticed public meeting on June 5, 2014 and July 3, 2014, respectively; and

WHEREAS, Amendment 8 to the Joint Powers Agreement will amend Exhibits B (List of Parties), C (Annual Energy Use) and D (Voting Shares) of the Joint Powers Agreement to account for the County of Napa and the City of San Pablo;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of Marin Clean Energy that Exhibits B, C, and D of the Joint Powers Agreement are modified and added according to Amendment 8.

PASSED AND ADOPTED at a regular meeting of the Marin Energy Authority Board of Directors on this 4th day of September 2014, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
City of Belvedere				
Town of Corte Madera				
Town of Fairfax				
City of Larkspur				
County of Marin				
City of Mill Valley				
City of Novato				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Rafael				
City of Sausalito				
Town of Tiburon				

Damon Connolly, Chair

ATTEST:

Dawn Weisz, Executive Officer

**Marin Energy Authority
- Joint Powers Agreement -**

Effective December 19, 2008

As amended by Amendment No. 1 dated December 3, 2009

As further amended by Amendment No. 2 dated March 4, 2010

As further amended by Amendment No. 3 dated May 6, 2010

As further amended by Amendment No. 4 dated December 1, 2011

As further amended by Amendment No. 5 dated July 5, 2012

As further amended by Amendment No. 6 dated September 5, 2013

As further amended by Amendment No. 7 dated December 5, 2013

Among The Following Parties:

City of Belvedere

Town of Corte Madera

Town of Fairfax

City of Larkspur

City of Mill Valley

City of Novato

City of Richmond

Town of Ross

Town of San Anselmo

City of San Pablo

City of San Rafael

City of Sausalito

Town of Tiburon

County of Marin

County of Napa

MARIN ENERGY AUTHORITY JOINT POWERS AGREEMENT

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

RECITALS

1. The Parties are either incorporated municipalities or counties sharing various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and their inhabitants.
2. In 2006, the State Legislature adopted AB 32, the Global Warming Solutions Act, which mandates a reduction in greenhouse gas emissions in 2020 to 1990 levels. The California Air Resources Board is promulgating regulations to implement AB 32 which will require local government to develop programs to reduce greenhouse emissions.
3. The purposes for the Initial Participants (as such term is defined in Section 2.2 below) entering into this Agreement include addressing climate change by reducing energy related greenhouse gas emissions and securing energy supply and price stability, energy efficiencies and local economic benefits. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar and wind energy production.
4. The Parties desire to establish a separate public agency, known as the Marin Energy Authority (“Authority”), under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”) in order to collectively study, promote, develop, conduct, operate, and manage energy programs.
5. The Initial Participants have each adopted an ordinance electing to implement through the Authority Community Choice Aggregation, an electric service enterprise agency available to cities and counties pursuant to California Public Utilities Code Section 366.2 (“CCA Program”). The first priority of the Authority will be the consideration of those actions necessary to implement the CCA Program. Regardless of whether or not Program Agreement 1 is approved and the CCA Program becomes operational, the parties intend for the Authority to continue to study, promote, develop, conduct, operate and manage other energy programs.

AGREEMENT

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

ARTICLE 1 CONTRACT DOCUMENTS

- 1.1 **Definitions.** Capitalized terms used in the Agreement shall have the meanings specified in Exhibit A, unless the context requires otherwise.
- 1.2 **Documents Included.** This Agreement consists of this document and the following exhibits, all of which are hereby incorporated into this Agreement.

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

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

ARTICLE 2 FORMATION OF MARIN ENERGY AUTHORITY

- 2.1 **Effective Date and Term.** This Agreement shall become effective and Marin Energy Authority shall exist as a separate public agency on the date this Agreement is executed by at least two Initial Participants after the adoption of the ordinances required by Public Utilities Code Section 366.2(c)(10). The Authority shall provide notice to the Parties of the Effective Date. The Authority shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated in accordance with Section 7.4, subject to the rights of the Parties to withdraw from the Authority.
- 2.2 **Initial Participants.** During the first 180 days after the Effective Date, all other Initial Participants may become a Party by executing this Agreement and delivering an executed copy of this Agreement and a copy of the adopted ordinance required by Public Utilities Code Section 366.2(c)(10) to the Authority. Additional conditions, described in Section 3.1, may apply (i) to either an incorporated municipality or county desiring to become a Party and is not an Initial Participant and (ii) to Initial Participants that have not executed and delivered this Agreement within the time period described above.

- 2.3 Formation.** There is formed as of the Effective Date a public agency named the Marin Energy Authority. Pursuant to Sections 6506 and 6507 of the Act, the Authority is a public agency separate from the Parties. The debts, liabilities or obligations of the Authority shall not be debts, liabilities or obligations of the individual Parties unless the governing board of a Party agrees in writing to assume any of the debts, liabilities or obligations of the Authority. A Party who has not agreed to assume an Authority debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Parties agree to assume the debt, liability or obligation of the Authority. Notwithstanding Section 8.4 of this Agreement, this Section 2.3 may not be amended unless such amendment is approved by the governing board of each Party.
- 2.4 Purpose.** The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to each Party to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. Without limiting the generality of the foregoing, the Parties intend for this Agreement to be used as a contractual mechanism by which the Parties are authorized to participate as a group in the CCA Program, as further described in Section 5.1. The Parties intend that subsequent agreements shall define the terms and conditions associated with the actual implementation of the CCA Program and any other energy programs approved by the Authority.
- 2.5 Powers.** The Authority shall have all powers common to the Parties and such additional powers accorded to it by law. The Authority is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its purposes, including, but not limited to, each of the following:
- 2.5.1** make and enter into contracts;
 - 2.5.2** employ agents and employees, including but not limited to an Executive Director;
 - 2.5.3** acquire, contract, manage, maintain, and operate any buildings, works or improvements;
 - 2.5.4** acquire by eminent domain, or otherwise, except as limited under Section 6508 of the Act, and to hold or dispose of any property;
 - 2.5.5** lease any property;
 - 2.5.6** sue and be sued in its own name;
 - 2.5.7** incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Section 53850 et seq. and authority under the Act;
 - 2.5.8** issue revenue bonds and other forms of indebtedness;
 - 2.5.9** apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state or local public agency;

- 2.5.10 submit documentation and notices, register, and comply with orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;
 - 2.5.11 adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority (“Operating Rules and Regulations”); and
 - 2.5.12 make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services.
- 2.6 **Limitation on Powers.** As required by Government Code Section 6509, the power of the Authority is subject to the restrictions upon the manner of exercising power possessed by the County of Marin.
- 2.7 **Compliance with Local Zoning and Building Laws.** Notwithstanding any other provisions of this Agreement or state law, any facilities, buildings or structures located, constructed or caused to be constructed by the Authority within the territory of the Authority shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities, buildings or structures are constructed.

ARTICLE 3 AUTHORITY PARTICIPATION

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

- 3.2 **Continuing Participation.** The Parties acknowledge that membership in the Authority may change by the addition and/or withdrawal or termination of Parties. The Parties agree to participate with such other Parties as may later be added, as described in Section 3.1. The Parties also agree that the withdrawal or termination of a Party shall not affect this Agreement or the remaining Parties' continuing obligations under this Agreement.

ARTICLE 4 GOVERNANCE AND INTERNAL ORGANIZATION

- 4.1 **Board of Directors.** The governing body of the Authority shall be a Board of Directors ("Board") consisting of one director for each Party appointed in accordance with Section 4.2.
- 4.2 **Appointment and Removal of Directors.** The Directors shall be appointed and may be removed as follows:
- 4.2.1 The governing body of each Party shall appoint and designate in writing one regular Director who shall be authorized to act for and on behalf of the Party on matters within the powers of the Authority. The governing body of each Party also shall appoint and designate in writing one alternate Director who may vote on matters when the regular Director is absent from a Board meeting. The person appointed and designated as the Director or the alternate Director shall be a member of the governing body of the Party.
- 4.2.2 The Operating Rules and Regulations, to be developed and approved by the Board in accordance with Section 2.5.11, shall specify the reasons for and process associated with the removal of an individual Director for cause. Notwithstanding the foregoing, no Party shall be deprived of its right to seat a Director on the Board and any such Party for which its Director and/or alternate Director has been removed may appoint a replacement.
- 4.3 **Terms of Office.** Each Director shall serve at the pleasure of the governing body of the Party that the Director represents, and may be removed as Director by such governing body at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed to fill the position of the previous Director in accordance with the provisions of Section 4.2 within 90 days of the date that such position becomes vacant.
- 4.4 **Quorum.** A majority of the Directors shall constitute a quorum, except that less than a quorum may adjourn from time to time in accordance with law.

- 4.5 Powers and Function of the Board.** The Board shall conduct or authorize to be conducted all business and activities of the Authority, consistent with this Agreement, the Authority Documents, the Operating Rules and Regulations, and applicable law.
- 4.6 Executive Committee.** The Board may establish an executive committee consisting of a smaller number of Directors. The Board may delegate to the executive committee such authority as the Board might otherwise exercise, subject to limitations placed on the Board's authority to delegate certain essential functions, as described in the Operating Rules and Regulations. The Board may not delegate to the Executive Committee or any other committee its authority under Section 2.5.11 to adopt and amend the Operating Rules and Regulations.
- 4.7 Commissions, Boards and Committees.** The Board may establish any advisory commissions, boards and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, other energy programs and the provisions of this Agreement.
- 4.8 Director Compensation.** Compensation for work performed by Directors on behalf of the Authority shall be borne by the Party that appointed the Director. The Board, however, may adopt by resolution a policy relating to the reimbursement of expenses incurred by Directors.
- 4.9 Board Voting Related to the CCA Program.**
- 4.9.1.** To be effective, on all matters specifically related to the CCA Program, a vote of the Board shall consist of the following: (1) a majority of all Directors shall vote in the affirmative or such higher voting percentage expressly set forth in Sections 7.2 and 8.4 (the "percentage vote") and (2) the corresponding voting shares (as described in Section 4.9.2 and Exhibit D) of all such Directors voting in the affirmative shall exceed 50%, or such other higher voting shares percentage expressly set forth in Sections 7.2 and 8.4 (the "percentage voting shares"), provided that, in instances in which such other higher voting share percentage would result in any one Director having a voting share that equals or exceeds that which is necessary to disapprove the matter being voted on by the Board, at least one other Director shall be required to vote in the negative in order to disapprove such matter.
- 4.9.2.** Unless otherwise stated herein, voting shares of the Directors shall be determined by combining the following: (1) an equal voting share for each Director determined in accordance with the formula detailed in Section 4.9.2.1, below; and (2) an additional voting share determined in accordance with the formula detailed in Section 4.9.2.2, below.
- 4.9.2.1 Pro Rata Voting Share.** Each Director shall have an equal voting share as determined by the following formula: (1/total number of

Directors) multiplied by 50, and

4.9.2.2 Annual Energy Use Voting Share. Each Director shall have an additional voting share as determined by the following formula: (Annual Energy Use/Total Annual Energy) multiplied by 50, where (a) "Annual Energy Use" means, (i) with respect to the first 5 years following the Effective Date, the annual electricity usage, expressed in kilowatt hours ("kWhs"), within the Party's respective jurisdiction and (ii) with respect to the period after the fifth anniversary of the Effective Date, the annual electricity usage, expressed in kWhs, of accounts within a Party's respective jurisdiction that are served by the Authority and (b) "Total Annual Energy" means the sum of all Parties' Annual Energy Use. The initial values for Annual Energy use are designated in Exhibit C, and shall be adjusted annually as soon as reasonably practicable after January 1, but no later than March 1 of each year

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

4.10 Board Voting on General Administrative Matters and Programs Not Involving CCA. Except as otherwise provided by this Agreement or the Operating Rules and Regulations, each member shall have one vote on general administrative matters, including but not limited to the adoption and amendment of the Operating Rules and Regulations, and energy programs not involving CCA. Action on these items shall be determined by a majority vote of the quorum present and voting on the item or such higher voting percentage expressly set forth in Sections 7.2 and 8.4.

4.11 Board Voting on CCA Programs Not Involving CCA That Require Financial Contributions. The approval of any program or other activity not involving CCA that requires financial contributions by individual Parties shall be approved only by a majority vote of the full membership of the Board subject to the right of any Party who votes against the program or activity to opt-out of such program or activity pursuant to this section. The Board shall provide at least 45 days prior written notice to each Party before it considers the program or activity for adoption at a Board meeting. Such notice shall be provided to the governing body and the chief administrative officer, city manager or town manager of each Party. The Board also shall provide written notice of such program or activity adoption to the above-described officials of each Party within 5 days after the Board adopts the program or activity. Any Party voting against the approval of a program or other activity of the Authority requiring financial contributions by individual Parties may elect to opt-out of participation in such program or activity by

providing written notice of this election to the Board within 30 days after the program or activity is approved by the Board. Upon timely exercising its opt-out election, a Party shall not have any financial obligation or any liability whatsoever for the conduct or operation of such program or activity.

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

4.13 Selection of Board Officers.

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

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

4.13.3 Treasurer and Auditor. The Board shall appoint a qualified person to act as the Treasurer and a qualified person to act as the Auditor, neither of whom needs to be a member of the Board. If the Board so designates, and in accordance with the provisions of applicable law, a qualified person may hold both the office of Treasurer and the office of Auditor of the Authority. Unless otherwise exempted from such requirement, the Authority shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall act as the depositary of the Authority and have custody of all the money of the Authority, from whatever source, and as such, shall have all of the duties and responsibilities specified in Section 6505.5 of the Act. The Board may require the Treasurer and/or Auditor to

file with the Authority an official bond in an amount to be fixed by the Board, and if so requested the Authority shall pay the cost of premiums associated with the bond. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The Board may transfer the responsibilities of Treasurer to any person or entity as the law may provide at the time. The duties and obligations of the Treasurer are further specified in Article 6.

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

ARTICLE 5

IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

5.1 Preliminary Implementation of the CCA Program.

- 5.1.1 Enabling Ordinance.** Except as otherwise provided by Section 3.1, prior to the execution of this Agreement, each Party shall adopt an ordinance in accordance with Public Utilities Code Section 366.2(c)(10) for the purpose of specifying that the Party intends to implement a CCA Program by and through its participation in the Authority.
- 5.1.2 Implementation Plan.** The Authority shall cause to be prepared an Implementation Plan meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations as soon after the Effective Date as reasonably practicable. The Implementation Plan shall not be filed with the Public Utilities Commission until it is approved by the Board in the manner provided by Section 4.9.

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

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

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

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

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

ARTICLE 6

FINANCIAL PROVISIONS

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

6.2 Depository.

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

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

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

6.3 Budget and Recovery Costs.

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

6.3.2 County Funding of Initial Costs. The County of Marin shall fund the Initial Costs of the Authority in implementing the CCA Program in an amount not to exceed \$500,000 unless a larger amount of funding is approved by the Board of Supervisors of the County. This funding shall be paid by the County at the times and in the amounts required by the Authority. In the event that the CCA Program becomes operational, these Initial Costs paid by the County of Marin shall be included in the customer charges for electric services as provided by Section 6.3.4 to the extent permitted by law, and the County of Marin shall be reimbursed from the

payment of such charges by customers of the Authority. The Authority may establish a reasonable time period over which such costs are recovered. In the event that the CCA Program does not become operational, the County of Marin shall not be entitled to any reimbursement of the Initial Costs it has paid from the Authority or any Party.

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

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

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

ARTICLE 7 WITHDRAWAL AND TERMINATION

7.1 Withdrawal.

7.1.1 General.

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

7.1.1.2 Subsequent to the Authority's execution of Program Agreement 1, a Party may withdraw its membership in the Authority, effective as of the beginning of the Authority's fiscal year, by giving no less than 6

months advance written notice of its election to do so, which notice shall be given to the Authority and each Party, and upon such other conditions as may be prescribed in Program Agreement 1.

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

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

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

7.3 Continuing Liability; Refund. Upon a withdrawal or involuntary termination of a Party, the Party shall remain responsible for any claims, demands, damages, or liabilities arising from the Party's membership in the Authority through the date of its withdrawal or involuntary termination, it being agreed that the Party shall not be responsible for any claims, demands, damages, or liabilities arising after the date of the Party's withdrawal or involuntary termination. In addition, such

Party also shall be responsible for any costs or obligations associated with the Party's participation in any program in accordance with the provisions of any agreements relating to such program provided such costs or obligations were incurred prior to the withdrawal of the Party. The Authority may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with the Authority, as reasonably determined by the Authority, to cover the Party's liability for the costs described above. Any amount of the Party's funds held on deposit with the Authority above that which is required to pay any liabilities or obligations shall be returned to the Party.

- 7.4 **Mutual Termination.** This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its membership in the Authority, and thus terminate this Agreement with respect to such withdrawing Party, as described in Section 7.1.
- 7.5 **Disposition of Property upon Termination of Authority.** Upon termination of this Agreement as to all Parties, any surplus money or assets in possession of the Authority for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement and under any program documents, shall be returned to the then-existing Parties in proportion to the contributions made by each.

ARTICLE 8 MISCELLANEOUS PROVISIONS

- 8.1 **Dispute Resolution.** The Parties and the Authority shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Should such efforts to settle a dispute, after reasonable efforts, fail, the dispute shall be settled by binding arbitration in accordance with policies and procedures established by the Board.
- 8.2 **Liability of Directors, Officers, and Employees.** The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. The Authority shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Section 995 et seq. Nothing in this section shall be construed to limit the defenses


available under the law, to the Parties, the Authority, or its Directors, officers, or employees.

- 8.3 Indemnification of Parties.** The Authority shall acquire such insurance coverage as is necessary to protect the interests of the Authority, the Parties and the public. The Authority shall defend, indemnify and hold harmless the Parties and each of their respective Board or Council members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Authority under this Agreement.
- 8.4 Amendment of this Agreement.** This Agreement may be amended by an affirmative vote of the Board in which the minimum percentage vote and percentage voting shares, as described in Section 4.9.1, shall be no less than 67%. The Authority shall provide written notice to all Parties of amendments to this Agreement, including the effective date of such amendments. A Party shall be deemed to have withdrawn its membership in the Authority effective immediately upon the vote of the Board approving an amendment to this Agreement if the Director representing such Party has provided notice to the other Directors immediately preceding the Board's vote of the Party's intention to withdraw its membership in the Authority should the amendment be approved by the Board. As described in Section 7.3, a Party that withdraws its membership in the Authority in accordance with the above-described procedure may be subject to continuing liabilities incurred prior to the Party's withdrawal. In the event that the Authority decides to not implement the CCA Program, the minimum percentage vote of 67% shall be conducted in accordance with Section 4.10 rather than Section 4.9.1.
- 8.5 Assignment.** Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this Section 8.5 shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties. This Section 8.5 does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party's contributions to the Authority, or the disposition of proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the Parties under this Agreement.
- 8.6 Severability.** If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Parties, that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provision shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.

- 8.7 **Further Assurances.** Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, to effectuate the purposes and intent of this Agreement.
- 8.8 **Execution by Counterparts.** This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.
- 8.9 **Parties to be Served Notice.** Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (a) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt and (b) by mail shall be conclusively deemed given 48 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of the Authority or Party, as the case may be, or such other person designated in writing by the Authority or Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties.

**ARTICLE 9
SIGNATURE**

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

By: 

Name: Thomas Cromwell


Title: Mayor

Date: December 8, 2008

Party: City of Belvedere

**ARTICLE 9
SIGNATURE**

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

By: _____

Name: Alexandra Cock

Title: Mayor

Date: December 6, 2011

Party: Town of Corte Madera

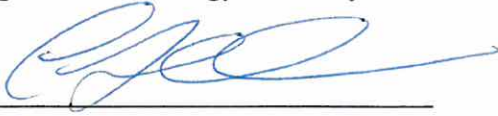
ATTEST

_____
Christine Green, Town Clerk

**ARTICLE 9
SIGNATURE**

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

By: _____



Name: _____

CHARLES F. MCGLASHAN

Title: _____

PRESIDENT, BD OF SUPERVISORS

Date: _____

NOVEMBER 18 2008

Party: _____

COUNTY OF MARIN

ARTICLE 9

Marin Clean Energy JPA Agreement

SIGNATURE

Amendment No. 8

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

By: 

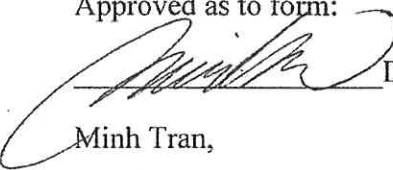
Name: Mark Luce,

Title: Chairman, Napa County Board of Supervisors

Date: 7/22/14

Party: Napa County

Approved as to form:



Minh Tran,

Date

7/21/14

County Counsel

**ARTICLE 9
SIGNATURE**

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

By: David Weinsoff

Name: David Weinsoff

Title: Mayor

Date: 2.12.09

Party: Town of Fairfax

ARTICLE 9
SIGNATURE

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

By: _____

Name: _____

Title: _____

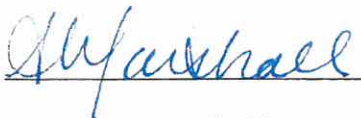
Date: _____

Party: _____

Larry Chu
Larry Chu
Mayor, Larkspur
November 16, 2011
CITY OF LARKSPUR

ARTICLE 9
SIGNATURE

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

By: 

Name: Shawn E. Marshall

Title: Mayor

Date: December 2, 2008

Party: City of Mill Valley

**ARTICLE 9
SIGNATURE**

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

By: Madeline R. Kellner

Name: Madeline R. Kellner

Title: Mayor

Date: October 7, 2011

Party: City of Novato

ARTICLE 9

SIGNATURE

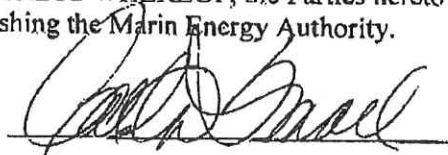
IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority

By: *Gayle McLaughlin*
Name: *Gayle McLaughlin*
Title: *Mayor*
Date: *7/5/12*
Party: *City of Richmond*

**ARTICLE 9
SIGNATURE**

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

By:



Name:

Carla Small

Title:

Mayor

Date:

11/16/11

Party:

Town of Ross

**ARTICLE 9
SIGNATURE**

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

By: 

Name: Peter Breen

Title: Mayor

Date: January 9, 2009

Party: Town of San Anselmo

ARTICLE 9
SIGNATURE

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

By: Cyr N. Miller

Name: Cyr N. Miller

Title: Vice Mayor

Date: DECEMBER 1, 2008

Party: CITY OF SAN RAFAEL

**ARTICLE 9
SIGNATURE**

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

By: Amy Belser

Name: Amy Belser

Title: Mayor

Date: November 18, 2008

Party: City of Sausalito

Attest:

Debbie Radioso
Deputy City Clerk

**ARTICLE 9
SIGNATURE**

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

By: 

Name: ALICE FREDERICKS

Title: MAYOR

Date: 2/10/09

Party: TOWN OF TIBURON

Exhibit A

**To the
Joint Powers Agreement
Marin Energy Authority**

-Definitions-

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

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

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

“Agreement” means this Joint Powers Agreement.

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

“Authority” means the Marin Energy Authority.

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

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

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

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

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

“Effective Date” means the date on which this Agreement shall become effective and the Marin Energy Authority shall exist as a separate public agency, as further described in Section 2.1.

“Implementation Plan” means the plan generally described in Section 5.1.2 of this Agreement that is required under Public Utilities Code Section 366.2 to be filed with the California Public Utilities Commission for the purpose of describing a proposed CCA Program.

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

“Initial Participants” means, for the purpose of this Agreement,

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

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

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

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

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

Exhibit B

**To the
Joint Powers Agreement
Marin Energy Authority**

-List of the Parties-

City of Belvedere
Town of Corte Madera
Town of Fairfax
City of Larkspur
City of Mill Valley
City of Novato
City of Richmond
Town of Ross
Town of San Anselmo
City of San Pablo
City of San Rafael
City of Sausalito
Town of Tiburon
County of Marin
County of Napa

Exhibit C
To the
Joint Powers Agreement
Marin Clean Energy
- Annual Energy Use -

This Exhibit C is effective as of September 5, 2014.

Party	kWh (2012/2013*)
City of Belvedere	9,973,170
Town of Corte Madera	62,093,107
Town of Fairfax	24,700,647
City of Larkspur	63,174,199
City of Mill Valley	69,176,164
City of Novato	286,565,119
City of Richmond	581,012,267
Town of Ross	13,529,793
Town of San Anselmo	46,642,417
City of San Pablo	97,383,170
City of San Rafael	347,362,327
City of Sausalito	48,099,763
Town of Tiburon	40,913,144
County of Marin	330,023,521
County of Napa	348,095,521
Authority Total Energy Use	2,368,744,329

*Data Provided by PG&E

Exhibit D
To the
Joint Powers Agreement
Marin Clean Energy
- Voting Shares -

This Exhibit D is effective as of September 5, 2014.

Party	kWh (2012/2013*)	Section 4.9.2.1	Section 4.9.2.2	Voting Share
City of Belvedere	9,973,170	3.33%	0.21%	3.54%
Town of Corte Madera	62,093,107	3.33%	1.31%	4.64%
Town of Fairfax	24,700,647	3.33%	0.52%	3.85%
City of Larkspur	63,174,199	3.33%	1.33%	4.67%
City of Mill Valley	69,176,164	3.33%	1.46%	4.79%
City of Novato	286,565,119	3.33%	6.05%	9.38%
City of Richmond	581,012,267	3.33%	12.26%	15.60%
Town of Ross	13,529,793	3.33%	0.29%	3.62%
Town of San Anselmo	46,642,417	3.33%	0.98%	4.32%
City of San Pablo	97,383,170	3.33%	2.06%	5.39%
City of San Rafael	347,362,327	3.33%	7.33%	10.67%
City of Sausalito	48,099,763	3.33%	1.02%	4.35%
Town of Tiburon	40,913,144	3.33%	0.86%	4.20%
County of Marin	330,023,521	3.33%	6.97%	10.30%
County of Napa	348,095,521	3.33%	7.35%	10.68%
	2,368,744,329	50.00%	50.00%	100.00%

*Data Provided by PG&E



September 4, 2014

TO: Marin Clean Energy Board

FROM: Dawn Weisz, Executive Officer

RE: Request from the City of El Cerrito for Membership Analysis and Consideration as a Member of MCE (Agenda Item #11)

ATTACHMENTS: A. Policy 007: New Customer Communities
B. MCE Affiliate Membership Process
C. Membership Request from the City of El Cerrito

Dear Board Members:

SUMMARY:

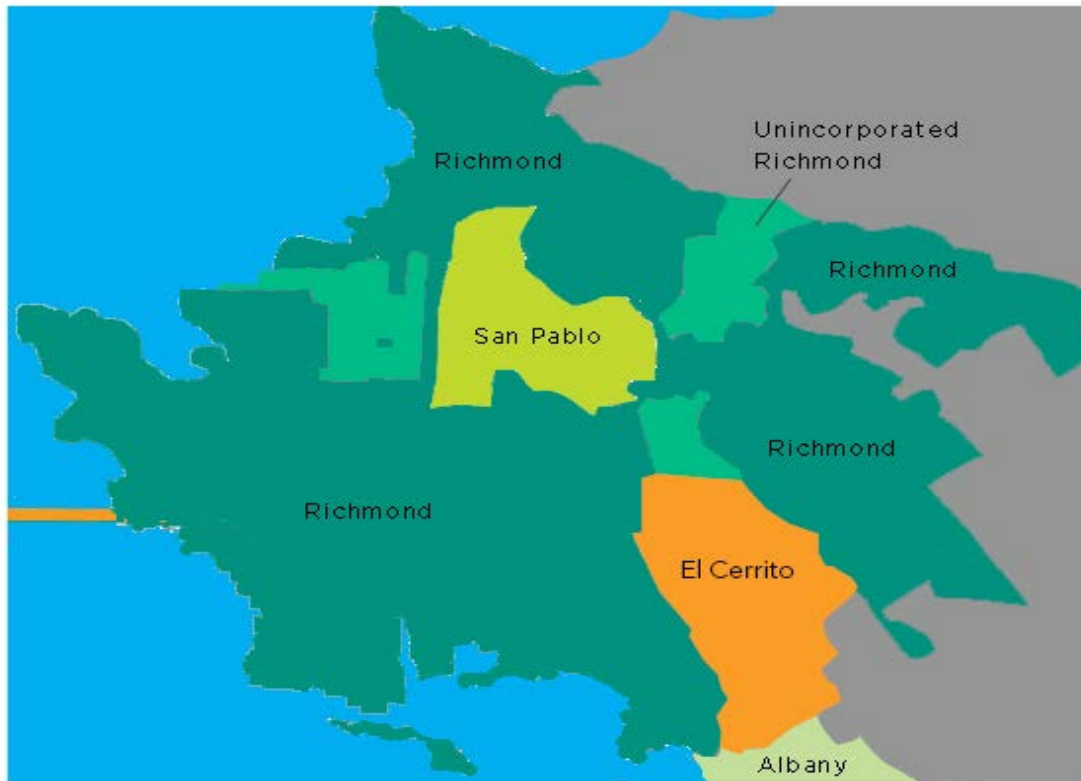
The MCE mission is to address climate change by using a wide range of renewable energy sources, reducing energy related greenhouse gas emissions and promoting the development of energy efficiency programs. On September 25, 2013 your Board adopted Policy 007: New Customer Communities, which describes MCE's policy to explore and support electric service in new communities to further agency goals. Policy 007 allows for new communities to be offered MCE service through two channels, affiliate membership or special-consideration membership as described in Attachment A. On September 25, 2013 your Board also approved the MCE Affiliate Membership Process described in Attachment B.

Step 1 of the Affiliate Membership process requires the governing body of an interested community to submit a letter to MCE, requesting consideration as a member. Since approval of Policy 007 MCE has received a request from the County of Napa and the Cities of San Pablo and Benicia. MCE has completed membership studies for all three of these communities. On July 23, 2014, MCE received a membership request from the City of El Cerrito.

The City of El Cerrito spans more than three and a half square miles and has a population of approximately 24,000. Located in West Contra Costa County, El Cerrito is situated between to MCE's existing jurisdiction, sharing borders on the east and the west with the City of Richmond as shown below.

In 2006, the City passed resolutions to endorse the U.S. Mayors Climate Protection Agreement, and the greenhouse gas (GHG) emissions reduction targets of California's Global Warming Solutions Act (AB 32). Similarly, in 2011, the City approved its participation in the Institute for Local Government Beacon Award Program for 'Local Leadership on Solving Climate Change.' On May 21, 2013, El Cerrito adopted its

Climate Action Plan with the following goals: to reduce the community's GHG emissions 15% below 2005 levels by 2020; and 30% below 2005 levels by 2035.



Representatives from the City of El Cerrito wish to join MCE to provide choices for more renewable energy in their jurisdiction, and to reduce greenhouse gas emissions.

Step 2 of the Affiliate Membership process requires that staff evaluate the request from any community that has completed Step 1 to determine if internal resources are available to consider the request, and to ensure that the performance of a quantitative membership analysis would not create negative impacts to core agency functions. Staff has completed this evaluative process, and determined that at this time, a quantitative membership analysis for the community of El Cerrito could be conducted without negative impacts to core agency functions. Conducting the membership analysis at this time is likely to result in some staff efficiencies related to market research and collection of pricing information which could be applied concurrently in each customer base. In addition, the proximate location of the City of El Cerrito could lead to simplified outreach activities as it is geographically adjacent to our existing jurisdiction. All costs of the membership analysis and related staff support during the process would be covered by the City of El Cerrito through a contract for services with MCE which has already been approved by the El Cerrito City Council.

Step 3 requires that the request from interested communities be presented to the MCE Board to consider adherence to criteria D, E, F and G below, and to authorize membership, subject to the performance of a quantitative membership analysis by staff.

Affiliate Membership Criteria:

- A. Allowing for MCE service in new community will result in a projected net rate reduction for existing customer base.

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

Step 4 requires that if the membership request is approved by your Board, staff will enter into a contract with the City of El Cerrito to fund costs of the quantitative membership analysis and to cover any other related MCE staff costs, such as responses to questions and participation in appropriate community meetings. After contract finalization, staff would then undertake and complete the membership analysis, with primary focus on quantitative criteria A, and also with an assessment of items B and C above.

Recommendation: Approve the membership request of the City of El Cerrito.



POLICY NO. 007 – NEW CUSTOMER COMMUNITIES

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

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

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

Whereas the addition of new communities to MEA's membership will inevitably increase state-wide renewable energy percentages due to MCE's specified minimum renewable energy supply percentage of 50%; and

Whereas the addition of new communities to MEA's membership will also decrease greenhouse gas emissions within the Western United States as a result of minimum renewable energy supply percentages exceeding such percentages provided by California's IOUs.

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

In consideration of the above, MEA will allow access to service in new communities through two channels, affiliate membership or special-consideration membership, as applicable:

Affiliate membership considered if:

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

Special-consideration membership considered if:

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



MCE Affiliate Membership Process

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

Step 2: Staff evaluates request timing to determine if internal resources are available to consider request, and to ensure no impact to core agency functions.

Step 3: Request submitted to MEA Board to consider adherence to criteria D, E, F and G below, and to authorize initiation of membership analysis.

Step 4: Following MEA Board approval, staff executes contract with governing body of new jurisdiction to fund costs of membership analysis. Staff undertakes and completes analysis, with primary focus on quantitative criteria A, B and C below.

Step 5: Results of membership analysis presented to governing body of new community and to MEA Board. 1). If quantitative affiliate membership criteria are met, community is automatically authorized to complete affiliate membership process. 2). If qualitative criteria are not met but other compelling criteria are present, Board may consider approval of affiliate membership.

Step 6: Governing body of new jurisdiction approves resolution requesting membership, ordinance authorizing community choice aggregation service through MCE and signs JPA Agreement as an Affiliate Party.

Step 7: MEA Board adopts resolution authorizing membership of the additional incorporated municipality and submits updated Implementation Plan to CPUC.

Affiliate Membership Criteria:

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



OFFICE OF THE MAYOR
Janet Abelson

Agenda Item No. 5(C)
Attachment 3

July 15, 2014

Dawn Weisz, Executive Director
Marin Clean Energy
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901

Dear Ms. Weisz:

I am pleased to provide this letter requesting that Marin Clean Energy (MCE) conduct a Membership Analysis to explore whether extending membership to the City of El Cerrito would be mutually beneficial.

In 2013, the City of El Cerrito adopted its Climate Action Plan (CAP) with overall greenhouse gas emissions reduction targets of 15% below 2005 levels by 2020 and 30% below 2005 levels by 2035. To achieve these targets, the City identified Community Choice Aggregation as one of the most cost-effective ways to reduce El Cerrito's greenhouse gas emissions. The CAP also identified objectives to reduce energy use in existing buildings by 20% and to facilitate greater adoption of renewable energy in both the residential and commercial sectors.

In addition to offering competitive energy rates and a high percentage of electricity coming from renewable resources, we are interested in MCE's incentive programs that encourage community members to become more energy efficient and to install solar.

We believe membership in a CCA such as MCE could go far in helping the City reach its CAP goals, as well as provide our residents with greater choice in the energy marketplace.

Sincerely,

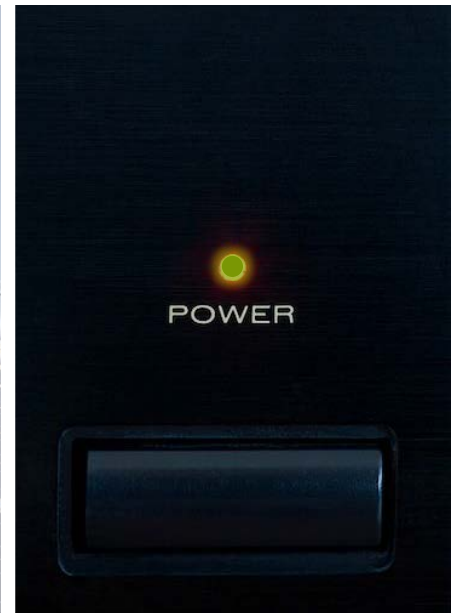
A handwritten signature in black ink that reads "Janet Abelson". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Janet Abelson
Mayor
City of El Cerrito



MCE Communications Update

Alex DiGiorgio | Communications Director
Marin Clean Energy | September 4, 2014



Meetings and Events

Date	Event	City
8/1/14	Film Night in the Park	Fairfax
8/4/14	San Pablo City Council Meeting	San Pablo
8/7/14	Energy Efficiency Community Workshop	Novato
8/11/14	San Pablo Library Lunch Event	San Pablo
8/13/14	Energy Efficiency Community Workshop	West Marin
8/16/14	San Pablo Farmers Market	San Pablo
8/17/14	San Mateo Sustainability Commission Meeting	San Mateo
8/21/14	Atchinson Village Sustainability Meeting	Richmond
8/27/14	Resource Management and Climate Protection Committee Meeting	San Mateo
8/29/14	Film Night in the Park	San Rafael
8/30/14	Film Night in the Park	San Rafael
8/21/14	Atchinson Village Sustainability Meeting	Richmond
9/2/14	San Pablo City Council Meeting	San Pablo
9/3/14	Marin Coalition Luncheon & Speaker Event	San Rafael
9/5/14	Local Government Sustainable Energy Coalition Meeting	Oakland

Meetings and Events

Date	Event	City
9/10/14	San Pablo Community Workshop	San Pablo
9/13/14	San Pablo Farmers Market	San Pablo
9/16/14	Marin Economic Forum Presents “Marinovation”	San Rafael
9/17/14	Policy Maker Forum on Community Choice	Sunnyvale
9/21/14	Marin National Drive Electric Week Celebration	San Rafael
9/28/14	San Anselmo Country Fair Day	San Anselmo

Deep Green Solar Schools Campaign

- Novato High School, Terra Linda High School, and Tomales High School
- Competing to get the most Deep Green sign ups
- Winner will receive a 3 kW solar system, installed by OneEnergy
- Campaign ends on 9/28/14



Deep Green Champion Certificates

- From Marin Clean Energy
- From Municipal Councils and Supervisors



Questions or Comments?



September 4, 2014

TO: Marin Clean Energy Board
FROM: Elizabeth Kelly, Legal Director
RE: Legislative Policy (Agenda Item #13)
ATTACHMENTS: Draft MCE Legislative Policy Guidelines

Dear Board Members:

Background

On July 9, 2014, MCE Staff brought draft Legislative Policy Guidelines to the Executive Committee for review and consideration. The Executive Committee provided guidance to MCE Staff, and we bring the attached Legislative Policy Guidelines before you for your consideration.

The Legislative Policy Guidelines are designed to provide MCE staff standing authority to take action on legislative matters that relate to furthering MCE's mission and provide MCE lobbyists a better understanding of the organizational preferences regarding the variety of issues that will arise during the course of a legislative session.

The Legislative Policy Guidelines provide Board directives in the following topic areas:

- Support California Community Choice Aggregation
- Reduce Greenhouse Gas Emissions
- Promote Local Economic and Workforce Benefits

Recommendations:

Approve Legislative Policy Guidelines.



Marin Clean Energy Legislative Policy Guidelines

The Legislative Policy Guidelines are designed to provide MCE staff standing authority to take action on legislative matters that relate to furthering MCE's mission and provide MCE lobbyists a better understanding of the organizational preferences regarding the variety of issues that will arise during the course of a legislative session.

Support California Community Choice Aggregation

Support legislation that protects and fosters CCA within the state. Support legislation that supports CCA autonomy in policymaking and decision-making. Oppose legislation that unfairly discriminates against CCAs or CCA customers or reduces CCA policymaking or decision-making autonomy.

Reduce Greenhouse Gas Emissions

Support legislation that would reduce greenhouse gas emissions through renewable energy and demand reduction. Support energy efficiency programs for CCA customers and non-customers through CCAs, local governments and partnerships. Support legislation that facilitates cost-effective renewable energy in California. Support cost-effective deployment of electric vehicles, demand response, energy storage and other tools to reduce greenhouse gas emissions. Monitor and consider supporting efforts that accelerate bringing renewables to market such as streamlining land-use and permitting processes. Board approval is required for any issue that impacts local land use authority.

Promote Local Economic and Workforce Benefits

Support legislation that improves workforce development in energy efficiency and renewable energy in California and in the MCE service territory. Support legislation that provides economic benefits to the energy efficiency and renewable energy sectors in California and in the MCE service territory.



September 4, 2014

TO: Marin Clean Energy Board
FROM: Elizabeth Kelly, Legal Director
RE: Regulatory Update for July and August 2014 (Agenda Item #14)

Dear Board Members:

Executive Summary of Regulatory Affairs for July and August 2014

Below is a summary of the key activities at the California Public Utilities Commission (CPUC) for July and August 2014 impacting community choice aggregation and MCE.

PG&E 2014 General Rate Case (GRC) (A.12-11-009 & A.13-04-012)

On August 14, 2014 the CPUC voted out PG&E's Phase 1 General Rate Case, resulting in a 6.2% rate increase for PG&E. In this proceeding:

1. *MCE Successfully Sought a Competitively Neutral Return of \$340 Million from Department of Energy ("DOE") Litigation.*

PG&E had proposed an allocation of funds that would not have withheld funds from our customers. MCE reached a settlement with PG&E to ensure that funds were returned in a competitively neutral manner.

2. *MCE Successfully Sought Competitively Neutral Recovery of Overhead Costs for Public Purpose Programs.*

As a result of MCE's efforts and its settlement with PG&E, PG&E is re-allocating \$32 million of overhead costs of its energy efficiency programs from the distribution line item to the energy efficiency programs themselves.

3. *MCE Fought against PG&E's Request to Spend PG&E Ratepayer Funds for "Customer Retention" Activities.*

MCE fought against PG&E's request to spend ratepayer – rather than shareholder – funds to undertake "customer retention" activities. However, the CPUC agreed to allow PG&E to recover costs from ratepayers for these anticompetitive activities.

PG&E 2015 Energy Resource Recovery Account Application (ERRA) (A.14-05-014)

On August 22, 2014, MCE served its testimony in the PG&E ERRA proceeding. In this testimony:

1. MCE Requests a Correction to PG&E's Methodology for "Vintaging" Customers for Purposes of the Power Charge Indifference Adjustment (PCIA).

PG&E currently uses a methodology for assigning "vintages" to CCA customers that results in CCA customers having ongoing obligations regarding the PCIA exit fee, contrary to prior CPUC Decisions.

2. MCE Requests a Return to Customers of the Negative PCIA Balance.

Based on prior CPUC decisions, the PCIA exit fee is not permitted to "go negative." This has resulted in PG&E holding on to a negative balance of the PCIA which PG&E has not applied to positive PCIA amounts. MCE is requesting that these negative amounts offset the exit fees currently being imposed on customers.

Renewables Portfolio Standard (RPS) (R.11-05-005)

On July 25, 2014, MCE submitted its 2013 Reporting Year RPS filing. MCE is significantly exceeding the state-wide RPS requirements as shown below:

<u>MCE RPS Summary Report</u>	<u>MWh</u>	<u>% of Total Retail Sales</u>
Total Retail Sales	1,110,487	n/a
Annual RPS Target	222,097	20.0%
Total RPS Eligible RECs Procured	360,267	32.4%
Total RPS Eligible RECs Retired for Compliance	318,332	28.7%

Demand Response (DR) (R.13-09-011)

On August 4, 2014, a Settlement to which MCE was a party was filed in the DR proceeding. This Settlement addressed a wide range of DR concerns and issues; MCE specifically participated to ensure that cost allocation would not be predetermined by the Settlement.

On August 11, 2014, MCE filed its Brief on cost allocation issues related to DR in this proceeding. MCE: (1) requested that the CPUC update DR policies to enable full participation in DR by CCAs and CCA customers; (2) set forth guiding principles on cost allocation for DR; (3) requested that the CPUC enable advanced metering infrastructure (Smart Meter) real time data access for DR programs; and (4) requested that DR participation incentives be competitively neutral.

Net Energy Metering (NEM) Proceeding (R.14-07-002)

On July 10, 2014, the Commission launched a new rulemaking proceeding to evaluate the future of net energy metering (NEM). MCE filed Opening Comments on the scope of the proceeding. MCE stated that: (1) the Commission should ensure that any NEM Tariffs enacted are competitively neutral in regards to CCAs; (2) new NEM policies must prevent cross-subsidization of bundled customers by CCA customers; and (3) the Commission must allow CCAs to retain their autonomy in their own NEM programs.

Rulemaking for the Development of Distribution Resource Plans (R.14-08-013)

On August 14, 2014, the Commission launched a new rulemaking proceeding regarding the development of investor-owned utility (IOU) distribution resource plans. This proceeding is a result of new Public Utilities Code Section 769. The IOU distribution resource plans can include: “distributed renewable generation resources, energy efficiency, energy storage, electric vehicles, and demand response technologies.” (Section 769(a).) This proceeding poses significant risks of IOUs requesting funding and/or authority over technologies which are fundamentally generation-related. MCE will be involved to ensure that CCAs maintain their autonomy regarding generation-related resources and to ensure that the distribution resource plans are not anti-competitive or result in cross-subsidization.



September 4, 2014

TO: Marin Clean Energy Board

FROM: Shalini Swaroop, Regulatory Counsel

RE: MCE Legislative Executive Summary (Agenda Item #14)

Dear Board Members:

Assembly Bill 2145 (Bradford) – Community Choice Aggregation

MCE's top legislative priority has been to educate the public and legislators on the impact of AB 2145 on community choice aggregation in the state, and on MCE specifically. Attached to this Staff Report is the list of entities in opposition to AB 2145.

On April 11, 2014, AB 2145 (Bradford) was introduced to make the following changes to existing community choice aggregation (CCA) legislation:

1. Beginning January 1, 2015, CCA customers would be enrolled on an "opt-in" basis instead of an "opt-out basis."
2. CCAs would be required to provide a five year forecast of rates compared with the incumbent investor owned utility (IOU).
3. CCAs would be required to provide a five year forecast of expected greenhouse gas (GHG) emissions and a two year retrospective of greenhouse gas emissions compared with incumbent IOU.
4. A complaint process that currently exists for CCAs to file complaints against IOUs at the California Public Utilities Commission (CPUC) would allow IOUs to file complaints against CCAs.

The bill was passed through the Assembly Utilities and Commerce Committee (of which Assm. Bradford is the chair) on April 28, 2014. The bill also passed through the Assembly Appropriations Committee on May 23. On May 28, 2014, the bill passed through the Assembly Floor with 51 aye votes and 15 no votes.

On June 12, 2014, the author amended the bill and removed the GHG reporting requirements and required that the incumbent IOU provide five year rate forecast information to the CCA in order to facilitate the five year rate comparison.

On June 23, 2014 at the Senate Energy, Utilities, and Communications Committee ("Senate Energy Committee"), the following compromise was reached:

1. CCAs would retain an "opt-out" structure.
2. CCAs would be limited to three contiguous counties, unless a non-qualifying jurisdiction had passed an ordinance to join or form a CCA before January 1, 2015.

After a hearing in the Senate Appropriations Committee, the five-year forecast requirements were removed. Thus, the only remaining elements of the bill include:

1. A contiguous three-county limitation for CCAs, unless a non-qualifying jurisdiction had passed an ordinance to join or form a CCA before January 1, 2015.
2. A CCA is required to provide reference to a current rate comparison between the CCA and utility rates on each opt-out notice, including rates specific to that customer's rate schedule.
3. The bill allows the investor-owned utility to file a complaint against a CCA at the California Public Utilities Commission.

Current Status:

AB 2145 will go to the Senate Floor for a vote during the week of August 25, 2014.

Assembly Bill 2188 (Muratsuchi) – Solar Permitting

Background:

AB 2188 is intended to promote and encourage the use of solar energy systems by requiring a streamlined permitting process for small rooftop solar systems in California. The bill is aligned with MCE's mission to promote the development and use of a wide range of renewable energy sources, including but not limited to solar and wind energy production at competitive rates for customers. On March 3, 2014, MCE issued a letter in support of AB 2188. The bill passed through the Assembly Floor on May 27, 2014.

Current Status:

AB 2188 has passed in both the Senate and Assembly Floors. The Governor has until September 30, 2014 to veto or sign the bill into law.

Senate Bill 1414 (Wolk) – Demand Response

Background:

SB 1414 would require (1) the California Public Utilities Commission to establish demand response programs and tariffs of investor-owned utilities, and (2) all load-serving entities to maintain demand response resources. This legislation as currently drafted would open the door to potential application of the Cost Allocation Mechanism to demand response programs.

Current Status:

The bill has passed through the Assembly Appropriations Committee and is awaiting an Assembly Floor Vote. MCE has contacted the author's office on its concerns regarding cost allocation and CCA autonomy on ability to run demand response programs.

Senate Bill 1139 (Hueso) – Requiring Certain Geothermal Procurement

Background:

SB 1139 requires each load serving entity in the state to procure geothermal resources constructed after January 1, 2015. This bill overly restricts procurement from all load serving entities and is opposed by a wide variety of stakeholders, including all investor-owned utilities and some geothermal providers. The bill is supported by a variety of labor organizations.

Current Status:

The bill has passed through the Assembly Appropriations Committee and is awaiting an Assembly Floor Vote.