Executive Committee Meeting
Friday, March 3, 2017
12:00 P.M.

The Barbara George Conference Room
1125 Tamalpais Avenue, San Rafael, CA 94901

Agenda Page 1 of 2

1. Board Announcements (Discussion)

2. Public Open Time (Discussion)

3. Report from CEO (Discussion)

4. Consent Calendar (Discussion/Action)
   C.1 Approval of 2.3.17 Meeting Minutes
   C.2 Monthly Budget Update
   C.3 Revised MCE Staff Position
   C.4 6th Agreement with Jay Marshall
   C.5 9th Agreement with Maher Accountancy
   C.6 5th Agreement with Braun, Blaising, McLaughlin & Smith
   C.7 3rd Agreement with Davis Wright Tremaine, LLP
   C.8 7th Agreement with Niemela Pappas & Associates
   C.9 8th Agreement with Richards, Watson & Gershon
   C.10 5th Agreement with Troutman Sanders, LLP
   C.11 6th Agreement with Community Energy Services Corporation (CESC)
   C.12 1st Agreement with The Energy Alliance Association (TEAA)
   C.13 2nd Agreement with Kreativz, Inc.

5. Proposed Employee Benefit Allocation Adjustment
   (Discussion/Action)

6. Update on California Community Choice Association & CCA Activities
   in Other Communities (Discussion)
7. Review Draft 3.16.17 Board Agenda (Discussion)

8. Committee Member & Staff Matters (Discussion)

9. Adjourn
Roll Call
Present:
Denise Athas, City of Novato
Sloan Bailey, Town of Corte Madera
Ford Greene, Town of San Anselmo
Kevin Haroff, City of Larkspur
Bob McCaskill, City of Belvedere

Absent: Tom Butt, Chair, City of Richmond
Kate Sears, County of Marin

Staff: Katie Gaier, Human Resources Manager
       Elizabeth Kelly, General Counsel
       David McNeil, Finance and Project Manager
       Dawn Weisz, CEO

Action Taken:

Agenda Item #4 – Consent Calendar (Discussion/Action)
   C.1 Approval of 1.13.16 Meeting Minutes 
   C.2 Monthly Budget Update 
   C.3 New MCE Staff Position

ACTION: It was M/S/C (Bailey/Greene) to approve Consent Calendar Items C.1 through C.3. Motion carried by unanimous 5-0 vote. (Absent: Butt and Sears).

Agenda Item #5 – Proposed Budget Amendment for FY 2016/17 (Discussion/Action)

ACTION: It was M/S/C (McCaskill/Athas) to recommend the Proposed Budget Amendment for FY 2016/17 to the Board of Directors. Motion carried by unanimous 5-0 vote. (Absent: Butt and Sears).
Agenda Item #6 – Proposed Budgets for FY 2017/18 (Discussion/Action)

ACTION: It was M/S/C (Bailey/Greene) to direct staff to present Proposed Budgets for FY 2017/18 to the Board at its February 2017 meeting. Motion carried by unanimous 5-0 vote. (Absent: Butt and Sears).

Agenda Item #7 – Proposed Rates for FY 2017/18 (Discussion/Action)

ACTION: It was M/S/C (Athas/McCaskill) to direct staff to present Proposed Rates for FY 2017/18 to the Board at its February meeting. Motion carried by unanimous 4-0 vote. (Absent: Bailey, Butt and Sears).

Agenda Item #8 – Delegation of Authorities and Contracting (Discussion/Action)

ACTION: It was M/S/C (Greene/McCaskill) to recommend Proposed Resolution 2017-02 – A Resolution of the Board of Directors of MCE Delegating Contracting Authorities to the MCE Board for approval at its February meeting. Motion carried by unanimous 4-0 vote. (Absent: Bailey, Butt and Sears).

Agenda Item #9 – Review Draft 2.16.17 Board Agenda (Discussion)

No action required on this item.

The meeting was adjourned to the next Executive Committee Meeting on March 3, 2017.

___________________________________________
Tom Butt, Executive Committee Chair

ATTEST:

___________________________________________
Dawn Weisz, Chief Executive Officer
ACCOUNTANTS’ COMPILATION REPORT

Board of Directors
Marin Clean Energy

Management is responsible for the accompanying special purpose statement of Marin Clean Energy (a California Joint Powers Authority) which comprise the budgetary comparison schedule for the period ended January 31, 2017, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

The special purpose statement is prepared in accordance with the budgetary basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. This report is intended for the information of the Board of Directors of MCE.

Management has elected to omit substantially all of the disclosures required by accounting principles generally accepted in the United States of America. If the omitted disclosures were included in the special purpose budgetary comparison statement, they might influence the user’s conclusions about the Authority’s results of operations. Accordingly, this special purpose budgetary comparison statement is not designed for those who are not informed about such matters.

The supplementary information contained on page 4 is presented for purposes of additional analysis. The supplementary information has been compiled from information that is the representation of management. We have not audited or reviewed the supplementary information and, accordingly, do not express an opinion or provide any assurance on such supplementary information.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy
San Rafael, CA
February 20, 2017
## MARIN CLEAN ENERGY

### OPERATING FUND

#### BUDGETARY COMPARISON SCHEDULE

April 1, 2016 through January 31, 2017

<table>
<thead>
<tr>
<th></th>
<th>2015/16</th>
<th>2016/17</th>
<th>YTD Budget</th>
<th>Variance (Under)</th>
<th>YTD Budget</th>
<th>Annual Budget</th>
<th>Budget Remaining</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ENERGY REVENUE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenue - Electricity (net of allowance)</td>
<td>$127,682,526</td>
<td>$150,418,230</td>
<td>$151,638,000</td>
<td>($1,219,770)</td>
<td>99.20%</td>
<td>$181,351,000</td>
<td>$30,932,770</td>
</tr>
<tr>
<td>Other revenue</td>
<td>455,221</td>
<td>127,335</td>
<td>127,335</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL ENERGY REVENUE</strong></td>
<td>$128,137,747</td>
<td>$150,545,565</td>
<td>$151,638,000</td>
<td>($1,092,435)</td>
<td>99.28%</td>
<td>$181,351,000</td>
<td>$30,805,435</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td><strong>ENERGY EXPENSES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service fees- PG&amp;E</td>
<td>712,297</td>
<td>910,718</td>
<td>1,014,600</td>
<td>($103,882)</td>
<td>89.76%</td>
</tr>
<tr>
<td><strong>TOTAL ENERGY EXPENSES</strong></td>
<td>$103,378,272</td>
<td>$126,637,153</td>
<td>$130,367,600</td>
<td>($3,730,447)</td>
<td>97.14%</td>
</tr>
<tr>
<td><strong>NET ENERGY EXPENSES</strong></td>
<td>$24,759,475</td>
<td>$23,908,412</td>
<td>$21,270,400</td>
<td>$2,638,012</td>
<td>21,063,000</td>
</tr>
<tr>
<td>Personnel</td>
<td>2,512,889</td>
<td>3,726,775</td>
<td>3,806,359</td>
<td>($79,584)</td>
<td>97.91%</td>
</tr>
<tr>
<td>Data manager</td>
<td>2,387,155</td>
<td>2,721,986</td>
<td>3,045,800</td>
<td>($323,814)</td>
<td>89.37%</td>
</tr>
<tr>
<td>Technical and scheduling services</td>
<td>517,251</td>
<td>478,915</td>
<td>634,060</td>
<td>($155,145)</td>
<td>75.53%</td>
</tr>
<tr>
<td>Legal counsel</td>
<td>380,494</td>
<td>503,407</td>
<td>680,833</td>
<td>($177,426)</td>
<td>73.94%</td>
</tr>
<tr>
<td>Communications services and related expenses</td>
<td>553,150</td>
<td>417,667</td>
<td>417,667</td>
<td>($127,335)</td>
<td>(127,335)</td>
</tr>
<tr>
<td>Other services</td>
<td>266,988</td>
<td>305,800</td>
<td>305,800</td>
<td>($38,812)</td>
<td>89.37%</td>
</tr>
<tr>
<td>General and administration</td>
<td>210,825</td>
<td>268,690</td>
<td>268,690</td>
<td>($57,865)</td>
<td>89.37%</td>
</tr>
<tr>
<td>Occupancy</td>
<td>180,565</td>
<td>235,089</td>
<td>235,089</td>
<td>($54,524)</td>
<td>93.20%</td>
</tr>
<tr>
<td>Integrated demand-side pilot programs</td>
<td>3,850</td>
<td>4,167</td>
<td>4,167</td>
<td>($323,814)</td>
<td>(89.37%)</td>
</tr>
<tr>
<td>Marin County green business program</td>
<td>-</td>
<td>10,000</td>
<td>10,000</td>
<td>-</td>
<td>100.00%</td>
</tr>
<tr>
<td>Low income solar programs</td>
<td>4,000</td>
<td>12,000</td>
<td>12,000</td>
<td>($8,000)</td>
<td>(66.67%)</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING EXPENSES</strong></td>
<td>$7,017,167</td>
<td>$9,365,623</td>
<td>$10,186,219</td>
<td>($820,596)</td>
<td>91.94%</td>
</tr>
<tr>
<td><strong>OPERATING INCOME (LOSS)</strong></td>
<td>$17,742,308</td>
<td>$14,542,789</td>
<td>$11,084,181</td>
<td>$3,458,608</td>
<td>131.20%</td>
</tr>
</tbody>
</table>

**NONOPERATING REVENUES**

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Grant Income</td>
<td>7,231</td>
<td>76,859</td>
<td>76,859</td>
<td>($69,628)</td>
</tr>
<tr>
<td><strong>TOTAL NONOPERATING REVENUES</strong></td>
<td>$7,231</td>
<td>$76,859</td>
<td>$116,667</td>
<td>($39,808)</td>
</tr>
</tbody>
</table>

**NONOPERATING EXPENSES**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest expense and financing costs</td>
<td>123,680</td>
<td>32,515</td>
<td>310,833</td>
<td>($278,318)</td>
</tr>
<tr>
<td>Depreciation (supplemental)</td>
<td>63,555</td>
<td>76,240</td>
<td>83,333</td>
<td>($7,093)</td>
</tr>
<tr>
<td><strong>TOTAL NONOPERATING INCOME (EXPENSES)</strong></td>
<td>(180,004)</td>
<td>(31,896)</td>
<td>245,604</td>
<td>11.49%</td>
</tr>
</tbody>
</table>

**CHANGE IN NET POSITION**

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital outlay</td>
<td>(160,067)</td>
<td>(110,139)</td>
<td>(310,833)</td>
<td>200,694</td>
</tr>
<tr>
<td>Depreciation (supplemental)</td>
<td>63,555</td>
<td>76,240</td>
<td>83,333</td>
<td>($7,093)</td>
</tr>
<tr>
<td>Repayment of loan principal</td>
<td>(2,024,038)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Transfer to Renewable Energy Reserve</td>
<td>(1,000,000)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Transfer to Local Renewable Development Fund</td>
<td>(151,383)</td>
<td>(173,263)</td>
<td>(173,263)</td>
<td>-</td>
</tr>
<tr>
<td><strong>TOTAL CAPITAL EXPENDITURES, INTERFUND TRANSFERS &amp; OTHER</strong></td>
<td>(3,272,473)</td>
<td>(207,162)</td>
<td>(400,763)</td>
<td>193,601</td>
</tr>
<tr>
<td><strong>Net increase (decrease) in available fund balance</strong></td>
<td>$14,289,831</td>
<td>$14,303,731</td>
<td>$10,405,918</td>
<td>$3,897,813</td>
</tr>
</tbody>
</table>

See accountants' compilation report.
### MARIN CLEAN ENERGY
#### ENERGY EFFICIENCY PROGRAM FUND
#### BUDGETARY COMPARISON SCHEDULE
April 1, 2016 through January 31, 2017

<table>
<thead>
<tr>
<th>REVENUE AND OTHER SOURCES:</th>
<th>Budget</th>
<th>Actual</th>
<th>Budget Remaining</th>
<th>Actual/Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public purpose energy efficiency program</td>
<td>$1,220,267</td>
<td>$1,051,423</td>
<td>$168,844</td>
<td>86.16%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EXPENDITURES AND OTHER USES:</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Public purpose energy efficiency program</td>
<td>$1,220,267</td>
<td>$1,051,423</td>
<td>$168,844</td>
<td>86.16%</td>
</tr>
</tbody>
</table>

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

### LOCAL RENEWABLE ENERGY DEVELOPMENT FUND
#### BUDGETARY COMPARISON SCHEDULE
April 1, 2016 through January 31, 2017

<table>
<thead>
<tr>
<th>REVENUE AND OTHER SOURCES:</th>
<th>Budget</th>
<th>Actual</th>
<th>Budget Remaining</th>
<th>Actual/Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer from Operating Fund</td>
<td>$173,263</td>
<td>$173,263</td>
<td>$-</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EXPENDITURES AND OTHER USES:</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Outlay and related</td>
<td>$173,263</td>
<td>246,867</td>
<td>(73,604)</td>
<td>142.48%</td>
</tr>
</tbody>
</table>

Net increase (decrease) in fund balance $- (73,604)$
Fund balance at beginning of period $73,604$
Fund balance at end of period $-$

### RENEWABLE ENERGY RESERVE FUND
#### BUDGETARY COMPARISON SCHEDULE
April 1, 2016 through January 31, 2017

<table>
<thead>
<tr>
<th>REVENUE AND OTHER SOURCES:</th>
<th>Amended Budget</th>
<th>Actual</th>
<th>Budget Remaining</th>
<th>Actual/Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other proceeds</td>
<td>$761,350</td>
<td>$-</td>
<td>$761,350</td>
<td>0.00%</td>
</tr>
<tr>
<td>Transfer from Operating Fund</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>N/A</td>
</tr>
<tr>
<td>Total revenue and other sources</td>
<td>$761,350</td>
<td>$-</td>
<td>$761,350</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EXPENDITURES AND OTHER USES:</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>939,850</td>
<td>273,825</td>
<td>666,025</td>
<td>29.13%</td>
<td></td>
</tr>
</tbody>
</table>

Net increase (decrease) in fund balance $-(178,500)$
Fund balance at beginning of period $1,000,000$
Fund balance at end of period $726,175$

See accountants' compilation report.
## MARIN CLEAN ENERGY

### BUDGETARY SUPPLEMENTAL SCHEDULE

April 1, 2016 through January 31, 2017

<table>
<thead>
<tr>
<th>Other services</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audit</td>
<td>$36,000</td>
</tr>
<tr>
<td>Accounting</td>
<td>120,000</td>
</tr>
<tr>
<td>IT Consulting</td>
<td>58,500</td>
</tr>
<tr>
<td>Human resources &amp; payroll fees</td>
<td>10,529</td>
</tr>
<tr>
<td>Miscellaneous professional fees</td>
<td>101,689</td>
</tr>
<tr>
<td><strong>Other services</strong></td>
<td><strong>$326,718</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>General and administration</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Data and telephone service</td>
<td>$25,569</td>
</tr>
<tr>
<td>Meeting room rentals</td>
<td>575</td>
</tr>
<tr>
<td>Office equipment lease</td>
<td>4,835</td>
</tr>
<tr>
<td>Dues and subscriptions</td>
<td>154,809</td>
</tr>
<tr>
<td>Conferences and professional education</td>
<td>28,938</td>
</tr>
<tr>
<td>Travel</td>
<td>30,183</td>
</tr>
<tr>
<td>Business meals</td>
<td>7,491</td>
</tr>
<tr>
<td>Miscellaneous administration</td>
<td>30,017</td>
</tr>
<tr>
<td>Office supplies and postage</td>
<td>54,273</td>
</tr>
<tr>
<td><strong>General and administration</strong></td>
<td><strong>$336,690</strong></td>
</tr>
</tbody>
</table>

See accountants' compilation report.
March 3, 2017

TO: MCE Executive Committee

FROM: Katie Gaier, Human Resources Manager

RE: Revised MCE Staff Position (Agenda Item #04 - C.3)

ATTACHMENT: Job Description – Legal Counsel/Senior Legal Counsel

Dear Executive Committee Members:

**SUMMARY:**
Due to the increasing number of contracts as well as other transactional work for the Legal and Regulatory Team, it has become necessary to create two levels of Legal Counsel. The proposed change requires a revision of the current Legal Counsel job description. This action creates an entry-level position of Legal Counsel and revises the current Legal Counsel to Senior Legal Counsel. Assigning an entry-level Legal Counsel to more basic legal work will result in the Senior Legal Counsel’s ability to focus on higher level work, including supervision. This change should result in a reduction in the need for outside counsel. There is no proposed salary change for the Senior Legal Counsel as it will remain at the same level as the current Legal Counsel at $119,925 - $178,390. The proposed salary for the revised Legal Counsel is $87,210 - $121,376. This salary range is consistent with Regulatory Counsel I, which has the same minimum requirements and breadth of responsibilities.

**Fiscal Impact:** There is no budget impact beyond what is included in the proposed FY 2017/18 staffing budget for the Legal and Regulatory Team.

**Recommendation:** Move the proposed revised Legal Counsel/Senior Legal Counsel job description and the new salary range for Legal Counsel to the MCE Board for approval on the consent calendar at its March meeting.
Legal Counsel
Senior Legal Counsel
Job Description

Summary
The MCE Legal Counsel positions work under direction from the General Counsel and/or the Senior Legal Counsel and have responsibility for a wide range of MCE transactional matters, with particular emphasis on contracts and areas of municipal and state law. The Legal Counsel positions review, evaluate, and finalize MCE contracts and related policies to ensure compliance with municipal and state law, and perform other duties as assigned.

Class Characteristics
The MCE Senior Legal Counsel works under the general direction of the General Counsel; the Legal Counsel works under the direction of the Senior Legal Counsel and/or the General Counsel. Depending upon the level, incumbents are assigned to support the General Counsel in the basic and advanced transactional areas of the law, including but not limited to review, evaluation, and finalization of contracts and related policies. The emphasis of the position is on legal transactions between MCE and its contractors who provide a wide range of services in support of the agency’s operations and compliance with municipal and state laws.

Essential Duties and Responsibilities (Illustrative Only)
Depending upon the level, incumbents may perform some or all of the following:
• Review, evaluate, and finalize various contracts;
• Develop contracts, terms and conditions, and non-disclosure agreements for ongoing energy management technology pilots and programs;
• Respond to Public Records Act requests, including review of documents related to Public Records Act requests;
• Develop policies, terms and conditions, and other materials supporting MCE functions;
• Address questions related to laws and regulations impacting MCE, including the Brown Act;
• Litigate matters or manage litigation matters for MCE;
• Assist in refining MCE’s contract management processes;
• Determine criticality of contracts that may need referral to outside counsel;
• Coordinate with outside counsel to finalize referred contracts;
• Supervise and/or provide lead work direction to other staff;
• As assigned, assists with the implementation of MCE’s Strategic Plan.
**Supervisory Responsibilities**

The Senior Legal Counsel has supervisory responsibilities for Legal Counsel, Law Clerks, and other Interns.

The Legal Counsel may provide lead work direction to Law Clerks and other Interns.

**Breakdown of Time Spent on Various Work Areas**

- Contract Review: 65%
- Related Legal Analysis: 25%
- Other Analytical Tasks: 10%

**Minimum Qualifications**

**Education/Experience**

Legal Counsel:
A law degree from an ABA approved law school and membership in the California Bar. Experience in contract law, municipal law, and energy is preferred.

Senior Legal Counsel:
A law degree from an ABA approved law school, membership in the California Bar, and at least three (3) years of transactional law experience is required. Experience in municipal law and energy is preferred.

**Knowledge of:**

- MCE and its mission and purpose.
- California laws governing the operation of electric utilities, in particular Community Choice Aggregation (CCA) programs, including data privacy requirements.
- Terminology typically used in the electric utility industry.
- Contract language in general, and specific to the utility industry.
- State and municipal law governing public agencies.
- Principles and practices of supervision and/or lead work direction in a public agency.
- Microsoft Office Suite including Excel, Word, PowerPoint, and Adobe Acrobat.

**Ability to:**

- Communicate effectively in written and oral form.
- Analyze data and produce effective written reports and arguments.
- Manage multiple priorities.
- Quickly adapt to changing priorities in a fast-paced, dynamic environment.
- Take responsibility and work independently, as well as coordinate team efforts.
- Be thorough and detail-oriented.
- Work accurately and swiftly under pressure.
- Demonstrate patience, tact, and courtesy.
- Establish and maintain effective working relationships with persons encountered during the performance of duties.
Language and Reasoning Skills

- Exercise exceptional analytical skills, sound judgment, creative problem solving, and commercial awareness.
- Analyze and interpret large amounts of information quickly and accurately, and make sound policy recommendations.
- Develop high-quality writing, research, and communication work products.
- Deliver clear and persuasive oral communication.
- Interact effectively with administrative bodies and MCE’s General Counsel, Chief Executive Officer, and Board of Directors.
- Manage projects and time efficiently.

Physical Demands

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

Work Environment

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

ADA Compliance

MCE will make reasonable accommodation of the known physical or mental limitations of a qualified applicant with a disability upon request.
TO: MCE Executive Committee
FROM: Justine Parmelee, Operations Associate
RE: Sixth Agreement with Jay Marshall (Agenda Item #04 – C.4)
ATTACHMENT: Draft Sixth Agreement with Jay Marshall

Dear Executive Committee Members:

SUMMARY:

Jay Marshall has been providing Information Technology (IT) support to MCE since July 2010, including computer, telephone and internet support services. The attached Sixth Agreement would allow for Jay Marshall to continue providing core business IT services and support to MCE staff between April 1, 2017 and March 31, 2018. Staff recommends approval of this Sixth Agreement with Jay Marshall in the amount of $108,000 for continuation of IT services.

Fiscal Impacts: Costs related to the referenced agreement are included in the FY 2017/18 Operating Fund Budget that Staff is recommending to the Board at its March 16, 2017 meeting.

THIS SIXTH AGREEMENT ("Agreement") is made and entered into this day March 3, 2017 by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and JAY MARSHALL, hereinafter referred to as "Contractor."

RE bâtels:
WHEREAS, MCE desires to retain a person or firm to provide the following services: general information technology (IT) support as requested by MCE staff;

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

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

1. SCOPE OF SERVICES:
Contractor agrees to provide all of the services described in Exhibit A attached hereto and by this reference made a part hereof.

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

3. FEES AND PAYMENT SCHEDULE; INVOICING:
The fees and payment schedule for furnishing services under this Agreement shall be based on the rate schedule which is attached hereto as Exhibit B and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement. Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE on a monthly basis for any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 60 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement.

4. MAXIMUM COST TO MCE:
In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of $108,000.

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

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

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

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.
6.1 GENERAL LIABILITY
The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars ($1,000,000) with a two million dollar ($2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. COMPLIANCE WITH APPLICABLE LAWS:
The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.
19. INVOICES; NOTICES
This Agreement shall be managed and administered on MCE’s behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address: invoices@mcecleanenergy.org

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

Contract Manager: Catalina Murphy
MCE Address: 1125 Tamalpais Avenue
San Rafael, CA 94901
Email Address: contracts@mcecleanenergy.org
Telephone No.: (415) 464-6014

Notices shall be given to Contractor at the following address:

Contractor: Jay Marshall
Address: 16 Portola Avenue
San Rafael, CA 94903
Email Address: jay@primemovertech.com
Telephone No.: (415) 987-7153

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

<table>
<thead>
<tr>
<th>Check applicable Exhibits</th>
<th>CONTRACTOR'S INITIALS</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ EXHIBIT A. Scope of Services</td>
<td></td>
</tr>
<tr>
<td>✓ EXHIBIT B. Fees and Payment</td>
<td></td>
</tr>
<tr>
<td>✓ EXHIBIT C. Insurance Reduction/Waiver</td>
<td></td>
</tr>
</tbody>
</table>

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

22. COMPLETE AGREEMENT
This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.
23. COUNTERPARTS
This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

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

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

APPROVED BY
Marin Clean Energy: ________________________________
By: ____________________________________________
CEO
Date: __________________________

By: ____________________________________________
Chairperson
Date: __________________________

CONTRACTOR: ________________________________
By: ____________________________________________
Date: __________________________

Name: __________________________________________

MODIFICATIONS TO STANDARD SHORT FORM

☑ Standard Short Form Content Has Been Modified

List sections affected: ____________________________

________________________________________________

Approved by MCE Counsel: __________________________
Date: __________________
EXHIBIT A
SCOPE OF SERVICES (required)

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

- Computer systems, including desktops, networking, internet connectivity
- Interior wiring for new users and user relocation
- File server and Switch/WIFI/Firewall
- Telephone systems, including handsets, voicemail, Allworx telephony software, connections to Internet and SIP provider for telephony
- Microsoft operating system and a single file/print server and Service Pack Installation and updates as required
- Google Applications and Egnyte file services support (Email and Cloud Back-up)
- Software, including Office, Acrobat Professional, Dreamweaver, anti-virus and anti-malware, and others
- Other hardware components

Contractor shall provide IT transitional assistance if MCE elects to contract IT services through a different contractor. If requested, Contractor shall provide and assist in transferring his full knowledge of MCE computer, telephone, and internet systems, settings, and passwords.

Contractor will choose an appropriate Subcontractor when on vacation leave.

Contractor shall work on-site at MCE’s office no less than 18 hours per week, typically on Tuesdays, Thursdays, and Fridays. Contractor shall provide additional support to MCE staff as needed, remote or on-site, on other weekdays.
EXHIBIT B
FEES AND PAYMENT SCHEDULE

For services provided under this agreement, MCE shall pay the Contractor a monthly fee of $9,000. Contractor shall bill MCE monthly for all services rendered. Additional hours beyond 18 in a given week must be approved in advance and invoiced separately. Additional hours shall be at a rate of $125/hour, billed in .25-hour increments. Invoices will not be accepted if received more than 60 days from the month that work was performed.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of $108,000 for the term of the Agreement.
EXHIBIT C
INSURANCE REDUCTION/WAIVER (if applicable)

CONTRACTOR: JAY MARSHALL

CONTRACT TITLE: Sixth Agreement By and Between Marin Clean Energy and Jay Marshall

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

<table>
<thead>
<tr>
<th>Check Where Applicable</th>
<th>Requested Limit Amount</th>
<th>MCE Use Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Liability Insurance</td>
<td>☒</td>
<td>$</td>
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<tr>
<td>Automobile Liability Insurance</td>
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<tr>
<td>Workers’ Compensation Insurance*</td>
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</tr>
<tr>
<td>*Sole Proprietors must provide representation of their exempt status below</td>
<td></td>
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<tr>
<td>Professional Liability Deductible</td>
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</tr>
</tbody>
</table>

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

General Liability Insurance is waived because the nature of services being provided by this Contractor does not place MCE into any significant liability risk.

Workers’ Compensation Insurance is waived as Contractor does not have any employees as verified by Contractor’s signature below.

Professional Liability Deductible is not applicable to this Agreement.

WORKERS’ COMPENSATION STATEMENT OF EXEMPTION

By signing below, I notify MCE that I am a ☒ sole proprietor ☐ partnership ☐ nonprofit organization ☐ closely held corporation

and do not have any employees whose employment requires me to carry workers’ compensation insurance. Therefore, I do not carry worker’s compensation insurance coverage.

Contractor Signature ____________________________
Printed Name of Contractor Jay Marshall________
Date ____________________________

Contract Manager Signature: ____________________________
Date: ____________________________
Telephone: ____________________________
Approved by: ____________________________
Date: ____________________________
March 3, 2017

TO: MCE Executive Committee

FROM: David McNeil, Finance and Project Manager

RE: Ninth Agreement with Maher Accountancy (Agenda Item #04 – C.5)

ATTACHMENT: Draft Ninth Agreement with Maher Accountancy

Dear Executive Committee Members:

____________________________________

**SUMMARY:**

On March 4, 2010 Maher Accountancy began providing MCE with general accounting services. Maher Accountancy continues to provide general accounting services, budget tracking, invoice processing, as well as employee payroll and employee benefit and accruals accounting services for MCE. The attached Ninth Agreement would allow for Maher Accountancy to continue providing these essential services between April 1, 2017 and March 31, 2018. The contract amount will not exceed $165,000.

**Fiscal Impacts:** Costs related to the referenced agreement are included in the FY 2017/18 Operating Fund Budget that Staff is recommending to the Board at its March 16, 2017 meeting.

**Recommendation:** Approve the Ninth Agreement with Maher Accountancy.
THIS NINTH AGREEMENT ("Agreement") is made and entered into this day March 3, 2017 by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and MAHER ACCOUNTANCY, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: accounting and payroll processing as requested by MCE staff;

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

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

1. SCOPE OF SERVICES:
Contractor agrees to provide all of the services described in Exhibit A attached hereto and by this reference made a part hereof.

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

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

4. MAXIMUM COST TO MCE:
In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of $165,000.

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

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

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

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.
6.1 GENERAL LIABILITY
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6.3 WORKERS’ COMPENSATION
The Contractor acknowledges the State of California requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

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

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

Email Address: invoices@mcecleanenergy.org

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

Contract Manager: Catalina Murphy
MCE Address: 1125 Tamalpais Avenue
San Rafael, CA  94901
Email Address: contracts@mcecleanenergy.org
Telephone No.: (415) 464-6014

Notices shall be given to Contractor at the following address:

Contractor: John Maher
Address: 1101 Fifth Avenue, Suite 200
San Rafael, CA 94901
Email Address: jmaher@mahercpa.com
Telephone No.: (415) 459-1249 ext. 1

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

- [ ] Check applicable Exhibits
- [ ] CONTRACTOR’S INITIALS

EXHIBIT A. [ ] Scope of Services
EXHIBIT B. [ ] Fees and Payment

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

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

23. COUNTERPARTS
This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.
24. PERFORMANCE AND PAYMENT BOND (REQUIRED IF CHECKED ☐)
Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender, supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

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

APPROVED BY
Marin Clean Energy: ____________________
CEO: ____________________
Date: ____________________

CONTRACTOR: ____________________
By: ____________________
Name: ____________________
Date: ____________________
Chairperson: ____________________
Date: ____________________

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

List sections affected: _____________________________________________________________
________________________________________________________________________________

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

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

**Accounting and Transactional Support**

1. Maintain the general ledger by:
   a. Posting:
      i. accounts receivable and accounts payable;
      ii. accrued revenue and expenses;
      iii. cash receipts and cash disbursements;
      iv. payroll.
   b. Prepare or maintain the following monthly analysis regarding general ledger account balances:
      i. Reconcile cash activity and balances with statements from Authority’s financial institution (i.e. bank statements);
      ii. Reconcile customer data manager reports of customer activity and accounts receivable;
      iii. Estimate customer revenue earned but not billed as of the end of the reporting period;
      iv. Estimate electricity costs incurred but not yet billed as of the end of the reporting period;
      v. Schedule of depreciation of capital assets;
      vi. Aged schedule of accounts payable;
      vii. Aged schedule of accounts receivable;
      viii. Schedules of details regarding all remaining balance sheet accounts.

2. Manage accounts payable by:
   a. Contractor utilizes a cloud-based accounts payable document management system (bill.com) to provide for documentation for management review, proper segregation of duties, and access to source data.
   b. Contractor ensures that required authorization is documented and that account coding is correct.
      i. MCE staff authorize approval of invoices and the release of payment by an independent payment service in order to provide an additional safeguard.


4. Manage compliance with fiscal provisions of vendor contracts: Before submitting vendor invoices for management approval, Contractor verifies that a vendor invoice agrees with contract provisions regarding time periods, rates, and financial limits.

5. Process payroll and maintain compensated absence accounting records.

**Budgeting**

6. Assist in development of entity budgets in collaboration with management and technical consultants.

7. Assist with budget compliance. Contractor monitors budget available and will make timely suggestions for any necessary budget amendments.

8. Provide assistance with the development and maintenance of departmental budget management processes as needed.

**Financial Reporting**

9. Prepare timely and accurate monthly financial reporting including:
   a. Operating, Energy Efficiency, Local Renewable Energy Development and Renewable Energy Reserve Fund Budgetary Comparison Schedules (4);
   b. MCE Monthly Compiled Financial Statements;
   c. MCE Monthly Financial Statements in Excel;
   d. Monthly YTD expenditure detail for each Department as needed;
   e. Provide accounting data to populate a MCE desktop version of Quickbooks.

10. File annual information returns such as form 1099/1096’s.

11. File various compliance reports for state and local agencies, such as user taxes, energy surcharges, and state controller reports.
Annual Audit
12. Prepare annual financial statements and coordinate with independent auditor.

Financial Controls
13. Assist with creating and maintaining a system of financial controls including recommendations for segregation of duties and other control measures as needed.
EXHIBIT B
FEES AND PAYMENT SCHEDULE

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

- Fees for general accounting services and payroll processing will be performed for $148,464. Payment will be made in monthly installments of $12,372, on or about the 15th of each month.
- Assistance with the annual audit will be performed for $16,496 and will be payable at the conclusion of the audit.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of $165,000 for the term of the agreement.
March 3, 2017

TO: MCE Executive Committee

FROM: Elizabeth Kelly, General Counsel

RE: Fifth Agreement with Braun, Blaising, McLaughlin & Smith
   (Agenda Item #04 – C.6)

ATTACHMENT: Draft Fifth Agreement with Braun, Blaising, McLaughlin & Smith

Dear Executive Committee Members:

______________________________

SUMMARY:

Braun, Blaising, McLaughlin & Smith (BBMS) has provided legal and regulatory assistance to MCE through four Agreements for services. Specifically, BBMS has provided assistance on the Long Term Procurement Plan (LTPP) proceedings, Energy Resource Recovery Account (ERRA) proceedings and other regulatory proceedings as requested. BBMS has also provided assistance on legal questions related to CCA and municipal utility issues and other legal questions as requested. There is an ongoing need for the services provided by BBMS. Staff recommends approval of a Fourth Agreement with Braun, Blaising, McLaughlin & Smith in the amount of $120,000 for continuation of legal and regulatory services.

Fiscal Impacts: Costs related to the referenced agreement are included in the FY 2017/18 Operating Fund Budget that Staff is recommending to the Board at its March 16, 2017 meeting.

Recommendation: Approve the Fifth Agreement with Braun, Blaising, McLaughlin & Smith.
THIS FIFTH AGREEMENT ("Agreement") is made and entered into this day March 3, 2017 by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and BRAUN, BLAISING, MCLAUGHLIN & SMITH, hereinafter referred to as "Contractor."

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

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

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

1. SCOPE OF SERVICES:
Contractor agrees to provide all of the services described in Exhibit A attached hereto and by this reference made a part hereof.

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

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

4. MAXIMUM COST TO MCE:
In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of $120,000.

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

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

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

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.
6.1 GENERAL LIABILITY
The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars ($1,000,000) with a two million dollar ($2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. COMPLIANCE WITH APPLICABLE LAWS:
The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.
19. INVOICES; NOTICES
This Agreement shall be managed and administered on MCE’s behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address: invoices@mcecleanenergy.org

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

Contract Manager: Catalina Murphy
MCE Address: 1125 Tamalpais Avenue
San Rafael, CA 94901
Email Address: contracts@mcecleanenergy.org
Telephone No.: (415) 464-6014

Notices shall be given to Contractor at the following address:

Contractor: Scott Blaising
Address: 915 L Street, Suite 1480
Sacramento, CA 95814
Email Address: blaising@braunlegal.com
Telephone No.: (916) 712-3961

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

Check applicable Exhibits

| EXHIBIT A. | Scope of Services |
| EXHIBIT B. | Fees and Payment |

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

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

23. COUNTERPARTS
This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.
24. PERFORMANCE AND PAYMENT BOND (REQUIRED IF CHECKED ☐)
Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender, supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

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

APPROVED BY
Marin Clean Energy:                      CONTRACTOR:

By:__________________________________          By:__________________________________
CEO                                             Name:__________________________________
         Date:__________________                  Date:__________________

By:__________________________________          By:__________________________________
Chairperson                Name:__________________________________
         Date:__________________                  Date:__________________

MODIFICATIONS TO STANDARD SHORT FORM

☐ Standard Short Form Content Has Been Modified

List sections affected: ________________________________

________________________________________________________

Approved by MCE Counsel: __________________________    Date: ____________

________________________________________________________
EXHIBIT A
SCOPE OF SERVICES (required)

Contractor will provide task-specific legal and regulatory services and assistance as requested and directed by the General Counsel, up to the maximum time/fees allowed under this Agreement.
EXHIBIT B
FEES AND PAYMENT SCHEDULE

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

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Partners</td>
<td>$395</td>
</tr>
<tr>
<td>Junior Partners</td>
<td>$330</td>
</tr>
<tr>
<td>Senior Associates</td>
<td>$295</td>
</tr>
<tr>
<td>Junior Associates</td>
<td>$250</td>
</tr>
<tr>
<td>Of Counsel</td>
<td>$305-$345</td>
</tr>
<tr>
<td>Contract Associate (As Authorized)</td>
<td>$290</td>
</tr>
<tr>
<td>Law Clerk and Associates Not Admitted to Bar</td>
<td>$165</td>
</tr>
</tbody>
</table>

Contractor shall bill in .10 hour increments on a monthly basis for all services rendered. In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **$120,000** for the term of the Agreement.
March 3, 2017

TO: MCE Executive Committee

FROM: Elizabeth Kelly, General Counsel

RE: Third Agreement with Davis Wright Tremaine, LLP (Agenda Item #04 – C.7)

ATTACHMENT: Draft Third Agreement with Davis Wright Tremaine, LLP

Dear Executive Committee Members:

_________________________________________________________________________________

SUMMARY:

On June 11, 2015, MCE entered into the First Agreement with Davis Wright Tremaine, LLP to provide a range of legal and advisory services pertaining to legal and regulatory matters at the direction of MCE. MCE entered into the Second Agreement with Davis Wright Tremaine, LLP on March 17, 2017 to continue legal services through March 31, 2017.

MCE staff has prepared the Third Agreement with Davis Wright Tremaine, LLP to continue the above services with an effective date of April 1, 2017 through March 31, 2018 with a maximum cost not to exceed $120,000.

Fiscal Impacts: Costs related to the referenced agreement are included in the FY 2017/18 Operating Fund Budget that Staff is recommending to the Board at its March 16, 2017 meeting.

Recommendation: Approve the Third Agreement with Davis Wright Tremaine, LLP.
THIRD AGREEMENT

BY AND BETWEEN

MARIN CLEAN ENERGY AND DAVIS WRIGHT TREMAINE, LLP

THIS THIRD AGREEMENT ("Agreement") is made and entered into this day March 3, 2017 by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and DAVIS WRIGHT TREMAINE, LLP, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: services pertaining to contractual, regulatory, and legal matters as requested and directed by MCE;

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

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

1. SCOPE OF SERVICES:
Contractor agrees to provide all of the services described in Exhibit A attached hereto and by this reference made a part hereof.

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

3. FEES AND PAYMENT SCHEDULE; INVOICING:
The fees and payment schedule for furnishing services under this Agreement shall be based on mutually agreed-upon fixed fees as described in Exhibit B, and by this reference incorporated herein. Increases to an agreed-upon fixed fee will only occur upon written approval of MCE.

Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE on a monthly basis for any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement.

4. MAXIMUM COST TO MCE:
In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of $120,000.

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

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

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 17 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Contractor of any negligence claim.
Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

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

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

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

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

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

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

8. CONFLICTS:
Contractor, by executing this Agreement, certifies that, at the time Contractor executes this Agreement and for the duration of this Agreement, Contractor does not have and will not perform services for any other clients which would create a conflict as between the interests of MCE hereunder and the interests of such other client, except as described in the attached Conflicts Waiver Letter included as Exhibit C or subject to written waiver by MCE. Contractor, by executing this Agreement, makes no such certification regarding potential and actual conflicts regarding MCE’s constituent members in connection with this Agreement.

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

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

11. RETENTION OF RECORDS AND AUDIT PROVISION:
Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees’ time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor’s premises or, at MCE’s option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refuse any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

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

13. TERMINATION:
A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five business days’ written notice to the party involved.
B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
C. Either party hereto may terminate this Agreement for any reason by giving 30 calendar days’ written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 20 Invoices; Notices.
D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).
E. MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

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

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

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

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

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

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

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

| Email Address: | invoices@mcecleanenergy.org |

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

| Contract Manager: | Catalina Murphy |
| MCE Address: | 1125 Tamalpais Avenue |
| San Rafael, CA 94901 |
| Email Address: | contracts@mcecleanenergy.org |
| Telephone No.: | (415) 464-6014 |

Notices shall be given to Contractor at the following address:

| Contractor: | Vidhya Prabhakaran |
| Address: | 505 Montgomery Street, Suite 800 |
| San Francisco, CA 94111 |
| Email Address: | vidhyaprabhakaran@dwt.com |
| Telephone No.: | (415) 276-6568 |

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

<table>
<thead>
<tr>
<th>Check applicable Exhibits</th>
<th>CONTRACTOR’S INITIALS</th>
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<tbody>
<tr>
<td>EXHIBIT A. Scope of Services</td>
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<td>EXHIBIT B. Fees and Payment</td>
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<tr>
<td>EXHIBIT C. Conflicts Waiver Letter</td>
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</tbody>
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22. SEVERABILITY
Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.
23. COMPLETE AGREEMENT
This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

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

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

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

APPROVED BY
Marin Clean Energy:                                   CONTRACTOR:

By:__________________________________                      By:__________________________________
CEO                                               Name:______________________________
Date:__________________                                    Date:__________________

By:__________________________________                      By:__________________________________
Chairperson                                      Date:__________________

MODIFICATIONS TO STANDARD SHORT FORM

☐ Standard Short Form Content Has Been Modified

List sections affected: __________ Section 8 -Conflicts and Section 3 ________________________________

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

Contractor will provide services pertaining to contractual, regulatory, and legal matters, as requested and directed by the General Counsel, up to the maximum time/fees allowed under this Agreement.
EXHIBIT B
FEES AND PAYMENT SCHEDULE

For services provided under this agreement, MCE shall pay the Contractor at mutually agreed-upon fixed fees per matter or assignment. Increases to an agreed-upon fixed fee will only occur upon written approval of MCE.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of $120,000 for the term of the Agreement.
June 10, 2015

Sarah Estes-Smith
Contract Manager
1125 Tamalpais Avenue
San Rafael, California 94901

Re: Conflicts Waiver Letter Between Marin Clean Energy and Davis Wright Tremaine LLP

Dear Sarah:

As you know, Davis Wright Tremaine is a large, full-service law firm and represents many clients with possible interests in Marin Clean Energy (“MCE”). It is possible that, from time to time during the time we represent the MCE, one of these clients might ask us to give them legal advice or represent it in a transaction, proceeding or dispute with, involving, or against the MCE as to legal matters that are not substantially related to the energy regulatory and contractual matters for on which we have been engaged to advise MCE. The categories of clients or the potential subject matter of such potential conflicts which are most likely to arise are:

Communications and Media Clients. We serve as outside counsel for many news media organizations and represent or have represented various Southern California, Bay Area and national newspapers and magazines, newspaper publisher associations, and various local and national broadcast media in connection with, among other matters, news gathering and reporting activities, their right to access to public records and/or meetings, and newsrack ordinance matters. Any of these media or newspaper organizations may seek our assistance in obtaining access to MCE’s records and/or meetings and in publishing or broadcasting stories about the MCE at any time, which could lead to disputes between MCE and the media involved, including litigation. These entities may similarly appear as amicus curiae in media and access matters directly adverse to the position of MCE.

Energy Clients. We also have a very active energy law and transactional practice within California and throughout the United States. In particular, we have represented and continue to represent parties who develop, purchase, own and operate power plants; marketers who engage in wholesale and retail energy and natural gas transactions; large consumers and resellers of energy and natural gas, including direct access customers; municipal and other governmental utilities; and transit districts (collectively “Energy Clients”). We also represent parties making
Sarah Estes-Smith  
June 10, 2015  
Page 2

In many instances, one or more of our Energy Clients appear in multi-party regulatory proceedings before state or federal energy/environmental authorities in which MCE may also be a participant ("Regulatory Proceedings"). It is possible that the interests that we are advancing in one or more of these Regulatory Proceedings is sufficiently different from the interest that the MCE may be advancing such that our representation of such Energy Client would be considered "adverse" to MCE. In addition, one or more of our Energy Clients or Financing Clients may be engaged in a commercial transaction ("Commercial Transaction") with MCE or in a Financing Transaction in which MCE is a participant.

MCE accordingly waives any possible conflict between Davis Wright Tremaine’s current representations of Energy Clients in such Regulatory Proceedings and Commercial Transactions, and of Financing Clients in Financing Transactions; provided that such representation in such proceedings or transactions is not directly related to the specific energy regulatory and contractual matters, which is the subject of the representation by Davis Wright Tremaine encompassed by this Agreement.

Davis Wright Tremaine will not disclose MCE-specific information received from MCE in the course of business to use in the provision of service to another client. Davis Wright Tremaine will create staff separation in representation if it is determined that any potential conflict may arise in the services provided to MCE with respect to other clients. It must be understood that Davis Wright Tremaine cannot undertake to represent MCE without assurance that MCE will not seek, on the basis of this engagement or any future engagement, to disqualify us from representing other clients, including those identified above, in any other matter, now or in the future, that is not substantially related to this engagement or any future engagement for MCE, including or with respect to the areas of potential disputes identified above, in any legal advice that might be adverse to the interests of MCE, any transactions, any alternative dispute resolution, administrative litigation, regulatory proceedings, and related appeals, or judicial proceeding, as long as a new engagement is not substantially related to work we are then doing or have done for MCE.
Accordingly, by countersigning this letter, MCE waives all present and future conflicts of interest concerning matters outside the scope of representation that is the subject of this engagement or any future engagement, including conflicts in transactional, regulatory, and litigation and other dispute resolution matters, and specifically including Davis Wright Tremaine’s present and future representation of the clients identified above on all current or future matters unrelated to the engagement or any future engagement for MCE. MCE further agrees not to seek to disqualify DWT in, or assert a conflict with respect to, any such engagement, including in any potential alternative dispute resolution, administrative litigation, regulatory or other related judicial proceeding involving any such engagement that is not substantially related to this engagement or any future engagement for MCE.

Very Truly Yours,

Davis Wright Tremaine LLP

Vidhya Prabakaran
Attorney

Approved on behalf of Marin Clean Energy
Dear Executive Committee Members:

SUMMARY:

Niemela Pappas & Associates has provided contract lobbyist services on behalf of MCE. Staff recommends creating a new agreement with Niemela Pappas & Associates in the amount of $94,500 for continuation of these services.

Fiscal Impacts: Costs related to the referenced agreement are included in the FY 2017/18 Operating Fund Budget that Staff is recommending to the Board at its March 16, 2017 meeting.

Recommendation: Approve the Seventh Agreement with Niemela Pappas & Associates.
MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT

SEVENTH AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND NIEMELA PAPPAS & ASSOCIATES

THIS SEVENTH AGREEMENT ("Agreement") is made and entered into this day March 3, 2017 by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and NIEMELA PAPPAS & ASSOCIATES, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: Contractor will act as a contract lobbyist on behalf of MCE as needed and requested by MCE staff;

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

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

1. SCOPE OF SERVICES:
Contractor agrees to provide all of the services described in Exhibit A attached hereto and by this reference made a part hereof.

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

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

4. MAXIMUM COST TO MCE:
In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of $94,500.

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

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

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

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.
6.1 GENERAL LIABILITY
The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars ($1,000,000) with a two million dollar ($2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

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

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

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

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

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

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

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

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

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

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

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

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

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

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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 RECURSSE 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.

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The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.
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This Agreement shall be managed and administered on MCE’s behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address: invoices@mcecleanenergy.org

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

Contract Manager: Catalina Murphy

MCE Address: 1125 Tamalpais Avenue
San Rafael, CA 94901

Email Address: contracts@mcecleanenergy.org
Telephone No.: (415) 464-6014

Notices shall be given to Contractor at the following address:

Contractor: Emily Pappas
Address: 1414 K Street, Suite 270
Sacramento, CA 95814
Email Address: pappas@npalobby.com
Telephone No.: (916) 661-5365

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

☐ Check applicable Exhibits

EXHIBIT A. ☑ Scope of Services
EXHIBIT B. ☑ Fees and Payment

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

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

23. COUNTERPARTS
This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.
24. **PERFORMANCE AND PAYMENT BOND** *(REQUIRED IF CHECKED ☐)*

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

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

**APPROVED BY**

**Marin Clean Energy:**

By:__________________________________________
CEO
Date:__________________

By:__________________________________________
Chairperson
Date:__________________

**CONTRACTOR:**

By:__________________________________________
Name:_______________________________
Date:________________________________

---

**MODIFICATIONS TO STANDARD SHORT FORM**

☐ Standard Short Form Content Has Been Modified

*List sections affected:__________________________________________________________

__________________________________________________________

Approved by MCE Counsel:_______________________________ Date:______________
EXHIBIT A
SCOPe OF SERVICES (required)

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

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

Contractor shall bill MCE monthly for all professional services rendered under this Agreement. A monthly retainer of $7,875 will be paid by MCE to Contractor for each month of service beginning April 1, 2017 until the end of the Agreement.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of $94,500 for the term of the Agreement.
March 3, 2017

TO: MCE Executive Committee

FROM: Elizabeth Kelly, General Counsel

RE: Eighth Agreement with Richards, Watson & Gershon (Agenda Item #04 – C.9)

ATTACHMENT: Draft Eighth Agreement with Richards, Watson & Gershon

Dear Executive Committee Members:

______________________________________________

SUMMARY:

Richards, Watson & Gershon provides various municipal and general legal services to MCE. These services have included providing advice on a wide range of municipal and joint powers authority issues, employment issues, recommendations regarding the Brown Act, the Public Records Act, the California Environmental Quality Act, and conflict of interest laws. Staff recommends creating a new contract in the amount of $40,000 with Richards, Watson & Gershon for continuation of these services.

Fiscal Impacts: Costs related to the contract are included in the FY 2017/18 Budget that Staff is recommending to the Board at its March 16, 2017 meeting.

Recommendation: Approve the Eighth Agreement with Richards, Watson & Gershon.
MCE Standard Form (Updated 2/7/17) EIGHTH Agreement – MCE & RICHARDS, WATSON & GERSHON Page 1 of 7

MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT

EIGHTH AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND RICHARDS, WATSON & GERSHON

THIS EIGHTH AGREEMENT ("Agreement") is made and entered into this day March 3, 2017 by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and RICHARDS, WATSON & GERSHON, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: legal assistance, including regarding joint powers authority issues and procedures, as requested by MCE staff;

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

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

1. SCOPE OF SERVICES:
Contractor agrees to provide all of the services described in Exhibit A attached hereto and by this reference made a part hereof.

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

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

4. MAXIMUM COST TO MCE:
In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of $40,000.

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

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

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

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.
6.1 GENERAL LIABILITY
The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars ($1,000,000) with a two million dollar ($2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. COMPLIANCE WITH APPLICABLE LAWS:
The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.
19. INVOICES; NOTICES
This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address: invoices@mcecleanenergy.org

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

Contract Manager: Catalina Murphy
MCE Address: 1125 Tamalpais Avenue
San Rafael, CA 94901
Email Address: contracts@mcecleanenergy.org
Telephone No.: (415) 464-6014

Notices shall be given to Contractor at the following address:

Contractor: Greg Stepanicich
Address: 44 Montgomery Street, Suite 3800
San Francisco, CA 94104-4811
Email Address: gstepanicich@rwglaw.com
Telephone No.: (415) 421-8484

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

☐ Check applicable Exhibits

<table>
<thead>
<tr>
<th>EXHIBIT A</th>
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</tr>
</thead>
<tbody>
<tr>
<td>EXHIBIT B</td>
<td>Fees and Payment</td>
</tr>
</tbody>
</table>

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

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

23. COUNTERPARTS
This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.
24. PERFORMANCE AND PAYMENT BOND (REQUIRED IF CHECKED ☐)
Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender, supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

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

APPROVED BY
Marin Clean Energy:
By:__________________________________
CEO
Date:__________________

CONTRACTOR:
By:__________________________________
Name:_______________________________
Date:________________________________

MODIFICATIONS TO STANDARD SHORT FORM
☑ Standard Short Form Content Has Been Modified
List sections affected: Section 6

Approved by MCE Counsel: ____________________________ Date: _______________
EXHIBIT A
SCOPE OF SERVICES (required)

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

- Attendance at meetings of the Board of Directors and its subcommittees when requested;
- Advice concerning MCE’s Joint Powers Agreement;
- Transactions with various contractors, and legal opinions related thereto;
- The Brown Act, Public Records Act, California Environmental Quality Act and conflict of interest laws; and
- Other legal tasks as specified by the CEO or General Counsel.
EXHIBIT B
FEES AND PAYMENT SCHEDULE

Contractor shall bill monthly for all services rendered under this agreement, according to the following hourly rates:

| Shareholders/Senior Attorneys | $300-$325 |
| Associates                  | $250     |

The above rates do not apply to any litigation services requested by MCE as such services would be billed at the rates mutually agreed upon by the parties.

Reimbursement of costs shall include copying charges (at the rate of 10 cents per page), messenger and delivery services, express mail and other similar out-of-pocket expenses at the firm’s cost.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of $40,000 for the term of the agreement.
March 3, 2017

TO: MCE Executive Committee

FROM: Elizabeth Kelly, General Counsel

RE: Fifth Agreement with Troutman Sanders, LLP (Agenda Item #04 – C.10)

ATTACHMENT: Draft Fifth Agreement with Troutman Sanders, LLP

Dear Executive Committee Members:

__________________________

SUMMARY:

Troutman Sanders, LLP provides legal services pertaining to new and existing power purchase agreements, including transaction support in drafting, negotiations, finalization and implementation. Troutman Sanders is also working closely with MCE staff on updates to standard form energy supply agreements and future power purchase agreements. Staff recommends creating a new contract in the amount of $180,000 with Troutman Sanders, LLP for energy transaction and related services.

Fiscal Impacts: Costs related to the referenced agreement are included in the FY 2017/18 Operating Fund Budget that Staff is recommending to the Board at its March 16, 2017 meeting.

Recommendation: Approve the Fifth Agreement with Troutman Sanders, LLP.
MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT

FIFTH AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND TROUTMAN SANDERS, LLP

THIS FIFTH AGREEMENT (“Agreement”) is made and entered into this day March 3, 2017 by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and TROUTMAN SANDERS, LLP, hereinafter referred to as "Contractor."

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

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

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

1. SCOPE OF SERVICES:
Contractor agrees to provide all of the services described in Exhibit A attached hereto and by this reference made a part hereof.

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

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

4. MAXIMUM COST TO MCE:
In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of $180,000.

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

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

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

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the Agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.
6.1 GENERAL LIABILITY (REQUIRED IF CHECKED ☐)
The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars ($1,000,000) with a two million dollar ($2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

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

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

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

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

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

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

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

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

12. TERMINATION:
A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five (5) business days' written notice to the party involved.
B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
C. Either party hereto may terminate this Agreement for any reason by giving thirty (30) calendar days’ written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 19 Invoices; Notices.
D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).
E. MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

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

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

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

16. INDEMNIFICATION:
Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. This indemnity is expressly subject to the terms and limits of Contractor's professional liability insurance.

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

18. COMPLIANCE WITH APPLICABLE LAWS:
The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.
19. INVOICES; NOTICES:
This Agreement shall be managed and administered on MCE’s behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address: invoices@mcecleanenergy.org

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

Contract Manager: Catalina Murphy
MCE Address: 1125 Tamalpais Avenue
San Rafael, CA 94901
Email Address: contracts@mcecleanenergy.org
Telephone No.: (415) 464-6014

Notices shall be given to Contractor at the following address:

Contractor: Stephen Hall
Address: 100 SW Main Street, Suite 1000
Portland, OR 97204
Email Address: stephen.hall@troutmansanders.com
Telephone No.: (503) 290-2336

20. ACKNOWLEDGEMENT OF EXHIBITS:
In the event of a conflict between the terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement will govern.

Contrary Exhibits

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

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

23. COUNTERPARTS:
This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.
24. PERFORMANCE AND PAYMENT BOND: *(REQUIRED IF CHECKED ☐)*
Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender, supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

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

**APPROVED BY**  
Marin Clean Energy:  
By:__________________________________  
CEO  
Date:__________________  
  
Contractor:  
By:__________________________________  
Name:_______________________________  
Date:________________________________

---

**MODIFICATIONS TO STANDARD SHORT FORM**

- Standard Short Form Content Has Been Modified

  List sections affected:  
  Section 5, 6, 12, 16, 20

**Approved by MCE Counsel:**  
Date: _______________
EXHIBIT A
SCOPE OF SERVICES (required)

Contractor will provide legal services to MCE as requested and directed by the CEO or the Director of Power Resources related to: new and existing power purchase agreements; new and existing scheduling coordination and portfolio management agreements; and new and existing project development agreements, up to the maximum time/fees allowed under this Agreement. Services may also include transaction support in drafting, negotiations, finalization, and appropriate implementation of power supply transactions.
EXHIBIT B
FEES AND PAYMENT SCHEDULE

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

- Stephen Hall $675 per hour
- Brian Harms $575 per hour
- John Leonti $675 per hour

Contractor shall bill monthly. All rates are subject to a ten (10) percent discount; provided, however, that the rates for services provided in 2017 after the total amount of services provided to MCE in 2017 exceeds $150,000 will be subject to an additional discount of five (5) percent. Contractor services will be task-specific with MCE providing direction on tasks to be undertaken by letter, voice communication, or email.

In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of $180,000 for the term of the Agreement.
March 3, 2017

TO: MCE Executive Committee

FROM: Beckie Menten, Director of Customer Programs

RE: Sixth Agreement with Community Energy Services Corporation (CESC) (Agenda Item #04 – C.11)

ATTACHMENT: Draft Sixth Agreement with Community Energy Services Corporation

Dear Executive Committee Members:

__________________________________________________________

SUMMARY:
The proposed Sixth Agreement with Community Energy Services Corporation (CESC) would provide continuation of services to MCE for implementation of the small commercial energy efficiency program.

Background
Energy efficiency has always been an integral component of the MCE vision. In July of 2012, MCE submitted an application for funding under the 2013-2014 Energy Efficiency Funding Cycle (A. 12-11-007). The application was based on the initial Energy Efficiency Plan, and included the following proposed sub-programs:
1. Multifamily
2. Single family utility demand reduction pilot program
3. Small commercial
4. Four financing pilot programs: On Bill Repayment for single family\(^1\), multifamily, small commercial and a standard offer pilot.

This application was approved on November 9, 2012, allocating over $4 million to MCE for the implementation of energy efficiency programs. In November of 2014, the California Public Utilities Commission (CPUC) voted to extend the funding at annual levels through 2025, or until the CPUC moves otherwise. In May 2016, the CPUC granted MCE’s Petition for Modification\(^2\) of its annual Energy Efficiency Programs and

\(^1\) The on-bill repayment pilot for single-family customers was subsequently closed in fall of 2015 after the financial institution withdrew. Funds have since been re-directed to the multifamily energy efficiency program.

\(^2\) California Public Utilities Commission Decision 16-05-004
Budgets in order to account for MCE’s inclusion of new communities. The additional funds allocated to MCE were $366,090, bringing MCE’s total annual funding allocated by the CPUC to $1,586,347.

The small commercial program is one of four program elements approved by the CPUC, and is funded at a total of $658,710. The program is designed to serve hard to reach small commercial properties by making energy efficiency opportunities easy to capture.

MCE has been contracting with CESC for support of its small commercial energy efficiency program since November of 2012. On December 15, 2015, your Board approved CESC’s contract for continued small commercial energy efficiency services through 2016, with an addendum added to continue services through February 28, 2017.

Under the proposed Sixth Agreement, CESC would continue to be the lead program implementer for the MCE small commercial energy efficiency program in Marin, Richmond, El Cerrito, and San Pablo. In 2017, MCE plans to expand its small commercial energy efficiency offerings to its entire service territory. Staff proposes that CESC cover new communities including Walnut Creek and Lafayette, and is working to prepare a contract with another implementer to cover the remaining portions of MCE’s service area. These contractors have been based on the pre-defined service geographic boundaries within which these implementers operate.

CESC would provide energy evaluations at no cost to small businesses, prepare and deliver energy evaluation reports, identify qualified contractors from a pool of pre-determined professionals who have agreed to specific terms, and oversee the installation of the efficiency measures for quality control.

This Agreement includes a performance incentive, a fee structure introduced in the Fourth Agreement. The performance incentive is available to CESC when projects are successfully completed. Under this fee structure, CESC is incentivized to meet or exceed energy savings goals while maintaining cost-effectiveness targets of the CPUC.

MCE staff requests approval of the draft Sixth Agreement with CESC, which requests a contract maximum of $156,360 and a contract end date of December 31, 2017. Staff selected CESC for their demonstrated performance to date.

**Fiscal Impacts:** The requested contract amount of $156,360 would be funded completely from the energy efficiency program funds allocated by the CPUC.

**Recommendation:** Approve the Sixth Agreement with Community Energy Services Corporation.
THIS SIXTH AGREEMENT ("Agreement") is made and entered into this day March 3, 2017 by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and COMMUNITY ENERGY SERVICES CORPORATION (CESC), hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: technical services to support MCE’s Small Commercial Energy Efficiency Program;

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

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

1. SCOPE OF SERVICES:
Contractor agrees to provide all of the services described in Exhibit A attached hereto and by this reference made a part hereof.

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

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

4. MAXIMUM COST TO MCE:
In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of $156,360.

5. TIME OF AGREEMENT:
This Agreement shall commence on March 4, 2017, and shall terminate on December 31, 2017. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

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

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 17 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Contractor of any negligence claim.
Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

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

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

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

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

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

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

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

9. ASSIGNMENT:
The rights, responsibilities and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.
10. RETENTION OF RECORDS AND AUDIT PROVISION:
Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees’ time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor’s premises or, at MCE’s option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged.

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

12. TERMINATION:
A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five business days’ written notice to the party involved.
B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
C. Either party hereto may terminate this Agreement for any reason by giving 30 calendar days’ written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 20 Notices.
D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).

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

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

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

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

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

18. COMPLIANCE WITH APPLICABLE LAWS:
The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.
19. NOTICES
This Agreement shall be managed and administered on MCE’s behalf by the Contract Manager named below. All invoices shall be submitted by email pursuant to paragraph 3. All other notices shall be given to MCE at the following location:

Contract Manager: Catalina Murphy
MCE Address: 1125 Tamalpais Avenue
San Rafael, CA 94901
Email Address: contracts@mcecleanenergy.org
Telephone No.: (415) 464-6014

Notices shall be given to Contractor at the following address:

Contractor: Martin Bond
Address: 1013 Pardee Street
Berkeley, CA 94710
Email Address: martin@ebenergy.org
Telephone No.: (510) 981-7757

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

☐ Check applicable Exhibits

CONTRACTOR’S INITIALS

EXHIBIT A. ☒ Scope of Services

EXHIBIT B. ☒ Fees and Payment

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

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

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

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

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

APPROVED BY
Marin Clean Energy:

By:__________________________________  CEO
    By:__________________________________  Date:__________________
    Name:_______________________________

By:__________________________________  Chairperson
    By:__________________________________  Date:__________________

CONTRACTOR:

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 (List sections affected: ______________________________)

☐ Optional Review by MCE Counsel at Marin Clean Energy’s Request

MCE Counsel: ________________________________  Date: __________

EXHIBIT A
SCOPE OF SERVICES (required)

Contractor will provide the following technical services to support MCE’s Commercial Energy Efficiency Program, as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

For Program Year 2017, DNV GL, an international energy efficiency implementer with offices in Oakland, California, and Community Energy Services Corporation (CESC) have agreed to merge their previously independent Direct Install programs to provide a single integrated offering for small and medium business customers (SMB) in Alameda and Contra Costa Counties. In Marin County, CESC and DNV GL are not merging, CESC will perform all duties under this contract.

MCE and PG&E will jointly implement and market this singular small business direct install program in the five cities where both PG&E and MCE have customers, which are El Cerrito, Lafayette, Richmond, San Pablo and Walnut Creek (Five Cities), to provide comprehensive lighting, refrigeration, and HVAC measures. For the purposes of marketing and branding, the merged program will be called the East Bay Energy Watch (EBEW) and the objective of the program will be to reduce energy consumption for targeted customers with comprehensive energy efficiency solutions. DNV GL will be the prime contractor with PG&E and CESC will be the prime contractor with MCE.

CESC’s responsibilities in its service area for MCE communities within the Commercial Energy Efficiency Program:

1. Administrative
   - Maintain data management, tracking, and accounting protocols to comply with MCE and CPUC program reporting requirements.
   - Update forms as needed, such as integrating customer-facing reports with financing options.
   - Identify and implement process improvements.
   - Assist with replying to data requests, CPUC financial audits, and regulatory filings

2. Marketing and Outreach
   - Develop, modify, and distribute marketing materials (flyers, applications, website, customer report).
   - Create case studies.
   - Design outreach campaigns.

3. Implementation
   - Provide project management assistance from project inception to completion, including but not limited to scheduling site visits, conducting assessments, creating savings and rebate estimates and finals, responding to customer inquiries, coordinating contractors and equipment installation, and conducting final Measurement & Verification (M&V).
   - Recruit, educate, and train contractors and suppliers.
   - Identify and implement any changes to program installation labor and material pricing.
   - Provide technical assistance services, including setting and documenting customer eligibility criteria, audit criteria, incentive levels, and overall project documentation.
   - Program planning, development, and design – as needed.
   - IT development for project management tasks.

4. Quality Assurance/Quality Control
   - Conduct QA/QC to ensure tracking and reporting documents are in sync and accurate.
   - Periodically review to verify that contractor requirements and M&V protocols (% pre and post inspection) are sufficient to ensure reasonable savings claims.

5. Coordinate with PG&E on programs to avoid duplication/competition
   - Hold meetings with complimentary and non-competitive EE & DR Programs operating in MCE territory.
   - Be available to provide services in new communities as appropriate.

DNV GLs Role in the Shared Cities

DNV GL will:
- Assist in planning outreach and marketing campaigns.
- Be the first point of contact for all leads from PG&E. DNV GL will assign the leads via the Sales Manager at CESC who will distribute and assign the opportunity for energy assessments.
• Be responsible for assigning contractors to projects. Contractors will be assigned on a rotating basis or based upon project or contractor attributes.
• Provide project management assistance from project inception to completion, for projects sourced by contractors directly.
• Conduct a % of post-inspection of program projects sufficient to ensure reasonable savings claims.
• Manage the EBEW Database. Prepare a report monthly with all projects in the Five Cities, and their status of the project.
EXHIBIT B  
FEES AND PAYMENT SCHEDULE

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

### Community Energy Services Corporation  
#### Hourly Rates (unless otherwise noted)

<table>
<thead>
<tr>
<th>Role</th>
<th>2017 Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admin</td>
<td></td>
</tr>
<tr>
<td>Division Director</td>
<td>$85.00</td>
</tr>
<tr>
<td>Program Manager</td>
<td>$75.00</td>
</tr>
<tr>
<td>Marketing</td>
<td></td>
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<tr>
<td>Manager</td>
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<tr>
<td>Coordinator</td>
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<tr>
<td>Direct Implementation</td>
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<tr>
<td>Program Manager</td>
<td>$75.00</td>
</tr>
<tr>
<td>Sr. Project Manager</td>
<td>$70.00</td>
</tr>
<tr>
<td>Project Manager</td>
<td>$65.00</td>
</tr>
<tr>
<td>Business Development Managers</td>
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</tr>
<tr>
<td>Program Assistant</td>
<td>$55.00</td>
</tr>
<tr>
<td>Project Coordinator</td>
<td>$30.00</td>
</tr>
<tr>
<td>Mileage</td>
<td>Per Mile at current IRS rate</td>
</tr>
<tr>
<td>Materials</td>
<td>At cost</td>
</tr>
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### Budget

<table>
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<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Costs</td>
<td>$13,500</td>
</tr>
<tr>
<td>Marketing and Outreach</td>
<td>$14,000</td>
</tr>
<tr>
<td>Program Performance Incentive¹ (Target of 798,042 gross kWh at $0.05/kWh and 2,104 gross therms at $0.30/therm)</td>
<td>$40,533.30</td>
</tr>
<tr>
<td>Technical Assistance Direct Implementation (Small Commercial)</td>
<td>$88,326.70</td>
</tr>
<tr>
<td>Contract Total (NTE)</td>
<td>$156,360</td>
</tr>
</tbody>
</table>

¹The program performance incentive may be invoiced by CESC on a kWh/project and therm/project completed basis. This incentive is to be invoiced monthly, and the invoice must include sufficient background documentation to calculate the incentive amount based on kWh and/or therm savings in completed projects. MCE reserves the right to reduce payment if more than 60% of kWh savings result from free LED measures, or 80% of therm savings result from free therms measures. The performance incentive shall be evaluated on an annual, not monthly basis.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **$156,360** for the term of the agreement.
March 3, 2017

TO: MCE Executive Committee

FROM: Beckie Menten, Director of Customer Programs

RE: First Agreement with The Energy Alliance Association (TEAA) (Agenda Item #04 – C.12)

ATTACHMENT: Draft First Agreement with The Energy Alliance Association

Dear Executive Committee Members:

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SUMMARY:
The proposed First Agreement with The Energy Alliance Association (TEAA) would enable MCE to offer small commercial energy efficiency services in its entire service area. TEAA would provide implementation services in Napa and Solano Counties, which are two counties not currently served by the existing implementer that serves Marin and Contra Costa Counties (Community Energy Services Corporation).

Background
Energy efficiency has always been an integral component of the MCE vision. In July 2012, MCE submitted an application for funding under the 2013-2014 Energy Efficiency Funding Cycle (A. 12-11-007). The application was based on the initial Energy Efficiency Plan and included the following proposed sub-programs:

1. Multifamily
2. Single family utility demand reduction pilot program
3. Small commercial
4. Four financing pilot programs: On Bill Repayment for single family\(^1\), multifamily, small commercial and a standard offer pilot.

This application was approved on November 9, 2012, allocating over $4 million to MCE for the implementation of energy efficiency programs. In November 2014, the California Public Utilities Commission (CPUC) voted to extend the funding at annual levels through 2025, or until the CPUC moves otherwise. In May 2016, the CPUC granted MCE’s Petition for Modification\(^2\) of its annual Energy Efficiency Programs and Budgets in order

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\(^1\) The on-bill repayment pilot for single-family customers was subsequently closed in fall of 2015 after the financial institution withdrew. Funds have since been re-directed to the multifamily energy efficiency program.

\(^2\) California Public Utilities Commission Decision 16-05-004
to account for MCE’s inclusion of new communities. The additional funds allocated to MCE were $366,090, bringing MCE’s total annual funding allocated by the CPUC to $1,586,347.

The small commercial program is one of four program elements approved by the CPUC, and is funded at a total of $658,710. The program is designed to serve hard to reach small commercial properties by making energy efficiency opportunities easy to capture.

Under the proposed First Agreement with TEAA, MCE plans to expand its small commercial energy efficiency offerings to its entire service territory. Staff proposes that TEAA cover new communities including Napa County and the city of Benicia.

MCE has been contracting with Community Energy Services Corporation (CESC) for support of its small commercial energy efficiency program since November 2012. CESC would continue to be the lead program implementer for the MCE small commercial energy efficiency program in Marin, Richmond, El Cerrito, and San Pablo. Staff is working to expand CESC’s contract to cover Walnut Creek and Lafayette.

CESC and TEAA both operate within pre-defined geographic boundaries.

TEAA would provide energy evaluations at no cost to small businesses, prepare and deliver energy evaluation reports, identify qualified contractors from a pool of pre-determined professionals who have agreed to specific terms, and oversee the installation of the efficiency measures for quality control.

This Agreement is based exclusively on a performance incentive, a fee structure employed in CESC’s contract. The performance incentive is available to TEAA when projects are successfully completed. Under this fee structure, TEAA is incentivized to meet or exceed energy savings goals while maintaining cost-effectiveness targets of the CPUC.

MCE staff requests approval of the draft First Agreement with TEAA, which requests a contract maximum of $35,653 and a contract end date of December 31, 2017.

Fiscal Impacts: The requested contract amount of $35,653 would be funded completely from the energy efficiency program funds allocated by the CPUC.

Recommendation: Approve the First Agreement with The Energy Alliance Association.
THIS FIRST AGREEMENT ("Agreement") is made and entered into this day March 3, 2017 by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and THE ENERGY ALLIANCE ASSOCIATION (TEAA), hereinafter referred to as "Contractor."

RECITALS:
WHEREAS, MCE desires to retain a person or firm to provide the following services: technical services to support MCE’s Small Commercial Energy Efficiency Program in Napa County and the City of Benicia;

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

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

1. SCOPE OF SERVICES:
Contractor agrees to provide all of the services described in Exhibit A attached hereto and by this reference made a part hereof.

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

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

4. MAXIMUM COST TO MCE:
In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of $35,653.

5. TIME OF AGREEMENT:
This Agreement shall commence on March 3, 2017, and shall terminate on December 31, 2017. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

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

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

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.
6.1 GENERAL LIABILITY
The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars ($1,000,000) with a two million dollar ($2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

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

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

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

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

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

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

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

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

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

12. TERMINATION:
A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five business days’ written notice to the party involved.
B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
C. Either party hereto may terminate this Agreement for any reason by giving 30 calendar days’ written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 20 Notices.
D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).

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

18. COMPLIANCE WITH APPLICABLE LAWS:
The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.
19. NOTICES
This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email, pursuant to paragraph 3. All other notices shall be given to MCE at the following location:

Contract Manager: Catalina Murphy
MCE Address: 1125 Tamalpais Avenue
San Rafael, CA 94901
Email Address: contracts@mcecleanenergy.org
Telephone No.: (415) 464-6014

Notices shall be given to Contractor at the following address:

Contractor: Kenneth R. Moore
Address: 1400 N. Dutton Ave, Ste 17
Santa Rosa, CA 95401
Email Address: kmoore@teaa.net
Telephone No.: (707) 542-3171

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

[✓] Check applicable Exhibits  CONTRACTOR'S INITIALS

| EXHIBIT A. | Scope of Services |
| EXHIBIT B. | Fees and Payment |

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

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

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

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

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

APPROVED BY

Marin Clean Energy:
By:__________________________________
CEO
Date:__________________

By:__________________________________
Chairperson
Date:__________________

CONTRACTOR:

By:__________________________________
Name:_______________________________
Date:________________________________

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 (List sections affected: ________________________________)

☐ Optional Review by MCE Counsel at Marin Clean Energy’s Request

MCE Counsel: ________________________________ Date: ____________
Contractor will provide the following technical services to support MCE’s Small Commercial Energy Efficiency Program in Napa County and the City of Benicia, as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

**EXHIBIT A**

**SCOPE OF SERVICES (required)**

<table>
<thead>
<tr>
<th>1. Administrative</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintain data management, tracking and accounting protocols to comply with MCE and CPUC program reporting requirements</td>
<td>Update forms as needed, such as integrating customer-facing reports with financing options</td>
</tr>
<tr>
<td>Identify and implement process improvements</td>
<td>Assistance replying to data requests, CPUC financial audits and regulatory filings</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Marketing and Outreach</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Develop, modify, and distribute marketing materials (flyers, applications, website, customer report)</td>
<td>Create case studies</td>
</tr>
<tr>
<td>Design outreach campaigns</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3. Implementation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Identify and target projects that will provide the most cost-effective savings by maintaining customer rebates within MCE’s budgeted rate averaging $0.185/kWh; total rebate cap not to exceed $52,347 for the term of this Agreement.</td>
<td>Provide project management assistance from project inception to completion, including but not limited to scheduling site visits, conducting assessments, creating savings and rebate estimates and finals, responding to customer inquiries, coordinating contractors and equipment installation, and conducting final Measurement &amp; Verification (M&amp;V)</td>
</tr>
<tr>
<td>Recruit, educate, and train contractors and suppliers</td>
<td>Identify and implement any changes to program installation labor and material pricing</td>
</tr>
<tr>
<td>Provide technical assistance services, including setting and documenting customer eligibility criteria, audit criteria, incentive levels, and overall project documentation</td>
<td>Program planning, development and design – as needed</td>
</tr>
<tr>
<td>IT development for project management tasks</td>
<td>Savings split between PG&amp;E and MCE will be 70% savings for PG&amp;E and 30% savings for MCE</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4. Quality Assurance/Quality Control</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Conduct QA/QC to ensure tracking and reporting documents are in sync and accurate</td>
<td>Periodically review contractor requirements and M&amp;V protocols (% pre and post inspection) are sufficient to ensure reasonable savings claims</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5. Coordinate with PG&amp;E on programs to avoid duplication/competition</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Hold meetings with complimentary and non-competitive Energy Efficiency &amp; Demand Response Programs operating in MCE territories in Napa County and the City of Benicia</td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT B
FEES AND PAYMENT SCHEDULE

For direct implementation services provided under this Agreement, MCE shall pay the Contractor, for performance of savings only, in accordance with the following payment fees/schedule:

<table>
<thead>
<tr>
<th>Budget</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program Performance Incentive¹</td>
<td>$0.126/kWh</td>
</tr>
<tr>
<td>(Target of 282,958 gross kWh)</td>
<td></td>
</tr>
<tr>
<td>Technical Assistance Direct</td>
<td>$35,653</td>
</tr>
<tr>
<td>Implementation (Small Commercial)</td>
<td></td>
</tr>
<tr>
<td>Contract Total (NTE)</td>
<td>$35,653</td>
</tr>
</tbody>
</table>

¹The program performance incentive may be invoiced by TEAA on a kWh/project completed basis. This incentive is to be invoiced monthly, and the invoice must include sufficient background documentation to calculate the incentive amount based on kWh savings in completed projects. MCE reserves the right to reduce payment if more than 60% of kWh savings result from free LED measures. The performance incentive shall be evaluated on an annual, not monthly basis.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of $35,653 for the term of the agreement.
March 3, 2017

TO: MCE Executive Committee

FROM: Kalicia Pivirotto, Marketing Manager

RE: Second Agreement with Kreativz, Inc. (Agenda Item #04 – C.13)

ATTACHMENT: Draft Second Agreement with Kreativz, Inc.

Dear Executive Committee Members:

___________________________________________________________

SUMMARY:
Kreativz, Inc. has maintained and developed MCE’s websites since April 7, 2016. If renewed, Kreativz would continue to ensure that the MCE website and infrastructure are performing optimally for site traffic loads, provide monthly monitoring of the backup system, and perform an annual backup recovery drill.

There is an ongoing need for the services provided by Kreativz. Staff recommends approval of the Second Agreement with Kreativz in the amount of $32,500 for services provided from April 1, 2017 through March 31, 2018.

Fiscal Impacts: Costs related to the referenced agreement are included in the FY 2017/18 Communications Budget that Staff is recommending to the Board at its March 16, 2017 meeting.

Recommendation: Approve the Second Agreement with Kreativz, Inc.
SECOND AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND KREATIVZ, INC.

THIS SECOND AGREEMENT ("Agreement") is made and entered into this day March 3, 2017 by and between MARIN CLEAN
ENERGY, hereinafter referred to as "MCE" and KREATIVZ, INC., hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: MCE website services;

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

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

1. SCOPE OF SERVICES:
Contractor agrees to provide all of the services described in Exhibit A attached hereto and by this reference made a part hereof.

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

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

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 $32,500.

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

6. INSURANCE AND SAFETY:
All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its
representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its
employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to
MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any
cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a
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criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 16 of this Agreement to indemnify, defend
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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
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The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall be fully responsible for the work product of subcontractors and shall fully indemnify MCE for work assigned to subcontractors. Nothing contained in this Agreement or otherwise stated between the parties shall create any legal or contractual relationship between MCE and any subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor’s obligation to pay its subcontractors is an independent obligation from MCE’s obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

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

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

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

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

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

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

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

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

MCE agrees to indemnify, save and hold harmless Consultant, its employees, officers, and agents, from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising from MCE’s gross negligence, recklessness or willful misconduct in the performance of this Agreement.

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

18. COMPLIANCE WITH APPLICABLE LAWS:
The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.
19. INVOICES; NOTICES
This Agreement shall be managed and administered on MCE’s behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address: invoices@mcecleanenergy.org

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

Contract Manager: Catalina Murphy
MCE Address: 1125 Tamalpais Avenue
San Rafael, CA 94901
Email Address: contracts@mcecleanenergy.org
Telephone No.: (415) 464-6014

Notices shall be given to Contractor at the following address:

Contractor: Kristin Lee Swenson
Address: 14 Commercial Blvd., Suite 119
Novato, CA 94949
Email Address: k@kreativz.com
Telephone No.: (415) 682-6842 (o) / (415) 600-7711 (m)

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

Check applicable Exhibits

| EXHIBIT A | ☒ Scope of Services |
| EXHIBIT B | ☒ Fees and Payment |

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

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

23. COUNTERPARTS
This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.
24. PERFORMANCE AND PAYMENT BOND (REQUIRED IF CHECKED ☐)
Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender, supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

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

APPROVED BY
Marin Clean Energy:                      CONTRACTOR:

By:__________________________________       By:__________________________________
CEO                                      Name:_______________________________
Date:__________________                  Date:__________________

By:__________________________________       By:__________________________________
Chairperson                              Name:_______________________________
Date:__________________                  Date:__________________

MODIFICATIONS TO STANDARD SHORT FORM

☒ Standard Short Form Content Has Been Modified

List sections affected:    Section 6, 8, 16

Approved by MCE Counsel: ___________________________                  Date: ____________
EXHIBIT A

SCOPE OF SERVICES (required)

Contractor will provide MCE website services as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement. The following list includes identified work needs in order of priority along with estimates of the maximum hours needed to complete each task. MCE staff may direct Contractor to prioritize and complete other work, not included below, as needed. Work under this contract shall not exceed 325 hours. The Contractor may utilize subcontractors as needed to efficiently address all levels of service that may be required to adequately maintain and further develop MCE websites. Contractor’s use of a subcontractor shall not alter the scope listed below and shall not increase the maximum cost of this Agreement.

<table>
<thead>
<tr>
<th>Task</th>
<th>Estimated Maximum Number of Hours</th>
</tr>
</thead>
</table>
| **Annual Budget for Project-Based Web Development & Design Updates** Contractor will provide web development and on-page/element design update services as needed for emerging needs or campaign-based customer engagement and interactive site enhancements such as 1) a map-based lookup feature for Support Green and Local Lookup database; 2) a thermometer or other infographic style tool to help customers visualize their impact; and 3) mobile site audit and corresponding improvements. These services may include, but are not limited to:  
  - On-page web design or re-design  
  - UI/UX element design or re-design  
  - Site bug fixes, troubleshooting  
  - Web development services  
  - Application Program Interface (API) or other third-party integrations  
  - Database development or updates  
  - Marketing technology development or integration services | 180 hours |
| **Monthly Website Security Updates for 2 Sites** Contractor will provide monthly maintenance services that include monitoring host Wordpress updates and maintenance with regard to standard security measures alongside other custom code or third-party plugins:  
  - Timely monitoring of WPEngine to ensure appropriate Wordpress security updates/patches are applied for the website’s core and third-party modules.  
  - Application of any additional corresponding Wordpress updates/patches to keep the site updated.  
  - Subsequent testing and Question/Answer after any update/patch is applied to the website. | Up to 6 hours, monthly (not to exceed 60 hours annually) |
| **Monthly Performance Maintenance for 2 Sites** Contractor will provide monthly maintenance services which include ensuring the site and infrastructure are performing optimally for site traffic loads:  
  - Monitoring of website traffic and load on each of the infrastructure components and ensuring each cloud infrastructure component is performing optimally. | 2 hours monthly (24 hours annually) |
<table>
<thead>
<tr>
<th>Monthly Backup System Monitoring and Annual Backup Recovery Drills for 2 Sites</th>
<th>1 hour monthly plus an additional 25 hours annually (not to exceed 37 hours annually)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor’s monthly maintenance services include monthly monitoring of the backup system and performing an annual backup recovery drill:</td>
<td></td>
</tr>
<tr>
<td>● Backup system monitoring monthly.</td>
<td></td>
</tr>
<tr>
<td>● Backup recovery drill shall be completed once annually; the drill includes restoring the website from existing backup simulating recovery from a data disaster.</td>
<td></td>
</tr>
<tr>
<td>Monthly Server &amp; Cloud Infrastructure Monitoring for 2 Sites</td>
<td>2 hours monthly (24 hours annually)</td>
</tr>
<tr>
<td>Contractor’s monthly maintenance services include monitoring the site host performance.</td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT B
FEES AND PAYMENT SCHEDULE

For services provided under this Agreement, MCE shall pay Contractor at a rate of $100 per hour. Contractor shall bill MCE monthly.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of $32,500 for the term of the agreement.
March 3, 2017

TO: MCE Executive Committee

FROM: Katie Gaier, Human Resources Manager

RE: Proposed Employee Benefit Allocation Adjustment (Agenda Item #05)

Dear Executive Committee Members:

**SUMMARY:**
On April 7, 2011, when MCE became the employer of record for MCE staff, the Board of Directors approved an $800 per month benefit allocation for health, dental, and vision insurance for those employees participating in the Kaiser health plan. Since that time, there has been no increase in the allocation, but the cost of insurance, especially health insurance, has increased. Over the past three years, Kaiser rates in Northern California have increased by 8.8%. During this same time, the demographics of MCE have changed such that there are more employees paying out-of-pocket for health, dental, and vision benefits. These changes include more employees with spouses and families as well as more older employees. As a small business (fewer than 100 employees), MCE’s Kaiser rates are based on age.

Based on the benefit year that began in June 2016 and the change in demographics, MCE currently has 15 employees out of 32 enrolled in health insurance who are paying out-of-pocket each month, ranging from $60 to $800, with most paying around $200. Six of the 15 impacted employees waive dental and/or vision to reduce their total out-of-pocket cost. The current out-of-pocket payment for all 15 employees totals approximately $4,000 per month.

Due to uncertainty about the Affordable Care Act, MCE’s insurance broker anticipates that the MCE plans will increase by 8-10% in June 2017, but actual rates are not yet available. Any increase will impact these employees and perhaps others who are now close to the $800 cap.

MCE management recommends an increase to the monthly benefit allocation of $200 per month, bringing the allocation from $800 to $1000. This change would reduce or
eliminate out-of-pocket costs for currently impacted employees, as well as others who might otherwise be impacted by the June 2017 rate adjustment. It is anticipated that the increase would result in no more than $48,000 in additional personnel costs per year.

There is no recommendation to increase the $500 provided to employees who waive MCE’s health insurance and are on an equivalent group plan.

**Fiscal Impact:** There are sufficient funds available in the proposed 2017/18 personnel budget to cover the cost of the increase.

**Recommendation:** Move the proposed employee benefit allocation adjustment to the MCE Board for approval on the consent calendar at its March meeting.

CC: David McNeil, Finance Manager
    Sarah Estes-Smith, Director of Internal Operations
California Community Choice Association (CalCCA) represents the interest of California’s community choice electricity providers in the legislature and at the relevant regulatory agencies. Each Community Choice Aggregator (CCA) chooses the sources of electricity while the utility continues to provide electric delivery services. CCA was enabled by Assembly Bill 117 in 2002, to allow local municipalities to take control of their energy supply.

CalCCA currently has seven operational members serving as its Board of Directors including: MCE, Sonoma Clean Power (SCP), Lancaster Choice Energy (LCE), CleanPowerSF, Peninsula Clean Energy (PCE), Silicon Valley Clean Energy (SVCE), and Apple Valley Choice Energy; and four affiliate members: The Cities of Davis and Corona, the counties of Los Angeles and Placer, and Central Coast Power representing the counties of Santa Barbara, San Luis Obispo, and Ventura.

### MCE

Launched in 2010, MCE serves more than 255,000 customers in Marin County, Napa County, and the cities of Benicia, El Cerrito, Lafayette, Richmond, San Pablo and Walnut Creek. MCE offers Light Green 50% renewable energy and Deep Green 100% renewable energy products.

**2,800+ California Jobs Supported**

In 2016, MCE’s new renewable projects have created more than 1.2 million union labor hours. MCE’s sustainable workforce policy outlines support for local businesses, union members, training and apprenticeship programs, and support for green and sustainable businesses. MCE has committed over $1.6 billion to build 813 MW of new California renewables.

**20 MW of New Local Renewable Projects**

MCE has 4.27 MW of new solar online in its local service area, with another 12 MW under construction. MCE’s 10.5MW solar project in Richmond is located on a brown field site and has a 50% local hire requirement. A local 3.6 MW waste-to-energy project is also under construction.

**MCE Wins 2016 Green Power Leadership Award**

The Center for Resource Solutions presented MCE with a Green Power Leadership Award at the annual Renewable Energy Markets conference, recognizing MCE’s leadership in the development of green power markets by championing renewable energy in California.

### SONOMA CLEAN POWER (SCP)

Sonoma Clean Power (SCP), launched in 2014, serves approximately 450,000 customers in Sonoma County. SCP offers CleanStart 36% renewable energy and EverGreen 100% local, renewable energy.

**CPUC Certifies SCP’s Plan to Serve Mendocino County**

In December 2016, the CPUC certified SCP’s Second Revised and Updated Implementation Plan. Under this revised plan, SCP will deliver service to Mendocino County starting in June 2017.

**Drive EverGreen Program Pairs Electric Vehicles and 100% Renewable Energy**

SCP has concluded its successful Drive EverGreen electric vehicle purchase/lease pilot. The pilot allowed customers to: 1) get an electric car by receiving SCP EV Incentive Certificates; 2) choose between discounted EV chargers or a “Juice Plug” through a program partner; 3) choose to drive on 100% renewable energy by opting up to 100% local renewable energy through SCP. During the Drive EverGreen program, SCP received almost 600 applications and distributed $480,000 in EV Incentive Certificates, 26% of which were issued to low-income customers.

### LANCASTER CHOICE ENERGY (LCE)

LCE began service in 2015 to 55,000 customers in the city of Lancaster, located in east Los Angeles County. LCE offers ClearChoice 35% renewable energy and SmartChoice 100% renewable energy to its customers, with approximately half of customers eligible for low-income energy programs. Lancaster is aiming to be the nation’s first zero net energy city.

**LCE and sPower’s First 10MW Local Renewable Energy Project is Operational**

In December 2016, Lancaster and sPower, an independent energy producer, announced that a new utility-scale solar project is operational. This resource is the city’s first project and will serve up 10MW of renewable energy through a 20-year power purchase agreement with LCE. The project is expected to power over 1,800 local homes.

**LCE Completes its First Year of Net Energy Metering (NEM)**

In October 2016, LCE celebrated its first full year of service to customers and conducted its first annual ‘true-up’ for over 3,500 NEM customers. LCE’s overproducing solar panel customers received just over $59,000 back, which is 234% more than they would have received had they remained under the Southern California Edison (SCE) NEM tariff.

**LCE Pursues Three Local Solar Site Developments**

LCE is currently working to develop three sites for 3MW solar energy projects. This 9MW of local power will contribute to LCE’s power portfolio.
Launched in 2016, CleanPowerSF serves approximately 75,000 customers in San Francisco. CleanPowerSF offers Green 35% renewable energy and SuperGreen 100% Green-e certified renewable energy.

GoSolarSF
In Spring 2017, CleanPowerSF customers will be eligible for new financial incentive levels to assist with the cost of installing solar panels on residential and commercial rooftops across San Francisco.

Service and Enrollment
CleanPowerSF has an opt out rate of approximately 2.4% with enrollment in SuperGreen, its 100% renewable product, at approximately 2.5%. Education and outreach to the public about CleanPowerSF continues at community group meetings, street fairs, and events. In Spring 2017, CleanPowerSF will enroll eligible NEM accounts.

Launched in October 2016, PCE serves customers in San Mateo County, including all 20 cities and unincorporated areas. PCE currently serves 78,000 accounts, and will serve up to 300,000 accounts when enrollment is completed in April 2017. PCE offers ECOplus 50% renewable energy and ECO100 100% renewable energy products.

Robust Response to Request for Renewable Energy
PCE launched and concluded its 2016 Request for Offers ("RFO") for renewable resources. With this RFO, PCE is expanding its purchase of clean, renewable energy for the residents and businesses of San Mateo County. PCE received a prolific response from a wide variety of projects, creating opportunities to procure cost-effective renewable energy for customers.

Launching in April 2017, SVCE will serve customers in Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill, Mountain View, Saratoga, Sunnyvale and the unincorporated parts of Santa Clara County.

Launch Set for April 2017
SVCE is preparing to launch service in April 2017 and customers will receive their first notifications in late January.

Hedging Supply Prices
In December, SVCE sought to lock supply prices with six different suppliers to meet 100% of its energy needs in 2017 and 2018, 80% in 2019, 65% in 2020 and 50% in 2021. Most of these efforts were successful, securing a cost-competitive energy supply for SVCE customers.

CCAs are forming in over 80 jurisdictions across California. This map highlights service area of fully operational CCAs as well as jurisdictions considering joining a CCA or creating their own.

» In December 2016, the San Jacinto City Council approved their CCA implementation Plan and submitted it to the CPUC. The City of San Jacinto will be serving retail electric service customers as San Jacinto Power.

» The City of Davis and Yolo County will begin serving customers in Fall 2017 or early 2018 as Valley Clean Energy Alliance.

» Hermosa Beach Choice Energy will begin serving customers in the City of Hermosa Beach in late 2017.

» Redwood Coast Energy Authority will begin serving the county of Humboldt; the cities of Arcata, Blue Lake, Eureka, Fortuna, Rio Dell, and Trinidad in May 2017.
CCAs Created by the Legislature

• 2000 Energy Crisis prompted interest in greater transparency and local control

• AB 117 (2002, Migden): enabled energy choice through local government-based entities

• SB 790 (2011, Leno): established a CCA ‘bill of rights’ and allowed CCAs to administer efficiency programs
How Community Choice Works

generation
buys cleaner energy sources

delivery
delivers energy, maintains the grid

customer
cleaner energy, local control and competitive rates
## Operating Programs

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>MCE</td>
<td>255,000</td>
<td>520 MW</td>
<td>55%</td>
<td>0 - 3%</td>
<td>2,102</td>
<td>2,743</td>
</tr>
<tr>
<td>Sonoma Clean Power</td>
<td>235,000</td>
<td>512 MW</td>
<td>43%</td>
<td>None</td>
<td>2,330</td>
<td>2,550</td>
</tr>
<tr>
<td>Lancaster Choice Energy</td>
<td>52,000</td>
<td>132 MW</td>
<td>35%</td>
<td>8%</td>
<td>590</td>
<td>595</td>
</tr>
<tr>
<td>CleanPowerSF</td>
<td>73,000</td>
<td>93 MW</td>
<td>35%</td>
<td>None</td>
<td>220</td>
<td>520</td>
</tr>
<tr>
<td>Peninsula Clean Energy</td>
<td>300,000</td>
<td>660 MW</td>
<td>50%</td>
<td>None</td>
<td>n/a</td>
<td>3,800</td>
</tr>
<tr>
<td>CalCCA Member Totals</td>
<td>915,000</td>
<td>1,917 MW</td>
<td>48% (avg)</td>
<td>1% (avg)</td>
<td>5,242</td>
<td>10,208</td>
</tr>
</tbody>
</table>
CCA Program Growth and Development
(Average Annual MW Served)

Cal CCA
California Community Choice Association

Growth rate projected in Dec. 2015 Business Plan

Completed phasing vs. projected phasing
### Programs Launching in 2017

<table>
<thead>
<tr>
<th>CalCCA Members</th>
<th>Customer Accounts</th>
<th>Annual Load (GWh)</th>
<th>Minimum RPS</th>
<th>Uses Unbundled RECs?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apple Valley Choice Energy</td>
<td>29,000</td>
<td>235*</td>
<td>35%</td>
<td>8%</td>
</tr>
<tr>
<td>Silicon Valley Clean Energy</td>
<td>243,000</td>
<td>2,600*</td>
<td>50%</td>
<td>None</td>
</tr>
<tr>
<td>Redwood Coast Energy Auth.</td>
<td>60,000</td>
<td>730*</td>
<td>37%</td>
<td>None</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>332,000</strong></td>
<td><strong>3,565</strong></td>
<td><strong>46% (avg)</strong></td>
<td><strong>&lt;1% (avg)</strong></td>
</tr>
</tbody>
</table>

*Represents a partial year due to enrollment process
Snapshot of CCA Portfolios in 2016
(or forecast for 2017 for new programs)

Panels:
- PG&E*
- MCE*
- SCP*
- LCE*
- CleanPowerSF**
- PCE**
- SVCE**

Energy Sources:
- Natural Gas
- Nuclear
- Large Hydro
- Renewable
- Unspecified

Percentage of Energy:
- PG&E*: 30%
- MCE*: 53%
- SCP*: 36%
- LCE*: 35%
- CleanPowerSF**: 40%
- PCE**: 50%
- SVCE**: 50%

- 59% renewable + carbon free

* indicates the energy source for each utility.
Building California Renewables

• Over $1 billion in construction to date
• Majority of spending on projects with project labor agreements
• Constructing renewables quickly
• Takes 3-4 years of operations to create a diverse long-term portfolio
# CCA Construction of New California Renewables as of January 2017

<table>
<thead>
<tr>
<th>Project</th>
<th>Size (MW)</th>
<th>Resource</th>
<th>Resource Provider/Project Name</th>
<th>Location</th>
<th>Service Start Date</th>
<th>Contract Length (Years)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MCE</strong></td>
<td>1</td>
<td>Solar</td>
<td>San Rafael Airport</td>
<td>San Rafael, Marin Co.</td>
<td>2012</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>1.6</td>
<td>Biogas</td>
<td>G2 Energy / Hay Road Landfill</td>
<td>Vacaville, Solano Co.</td>
<td>2013</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>4.8</td>
<td>Biogas</td>
<td>Genpower / Lincoln Landfill</td>
<td>Lincoln, Placer Co.</td>
<td>2013</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>1.9</td>
<td>Biogas</td>
<td>G2 Energy / Ostrom Road Landfill</td>
<td>Wheatland, Yuba Co.</td>
<td>2013</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>0.3</td>
<td>Solar</td>
<td>Rawson, Blum &amp; Leon / Cost Plus Plaza</td>
<td>Larkspur, Marin Co.</td>
<td>2016</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>0.5</td>
<td>Solar</td>
<td>REP Energy / Cooley Quarry</td>
<td>Novato, Marin Co.</td>
<td>2017</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>1.6</td>
<td>Biogas</td>
<td>Waste Management / Redwood Landfill</td>
<td>Novato, Marin Co.</td>
<td>2017</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>10.5</td>
<td>Solar</td>
<td>MCE / Solar One</td>
<td>Richmond, Contra Costa Co.</td>
<td>2017</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>20</td>
<td>Solar</td>
<td>Dominion / RE Kansas Solar</td>
<td>Stratford, Kings Co.</td>
<td>2015</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>23</td>
<td>Solar</td>
<td>Dominion / Cottonwood Solar</td>
<td>Stratford, Kings Co.</td>
<td>2015</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>30</td>
<td>Solar</td>
<td>Recurrent Energy / Tranquility 8</td>
<td>Tranquility, Fresno Co.</td>
<td>2018</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>42</td>
<td>Wind</td>
<td>Terra-Gen / Voyager Wind I II</td>
<td>Mojave, Kern County</td>
<td>2018</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>125</td>
<td>Wind</td>
<td>Terra-Gen / Los Banos Wind</td>
<td>Los Banos, Merced Co.</td>
<td>2018</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>40</td>
<td>Solar</td>
<td>First Solar / Little Bear Solar</td>
<td>Mendota, Fresno Co.</td>
<td>2020</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>80</td>
<td>Solar</td>
<td>EDF Renewables / Desert Harvest</td>
<td>Desert Center, Riverside County</td>
<td>2020</td>
<td>20</td>
</tr>
</tbody>
</table>

| **SCP** | 1         | Solar    | Cloverdale Soventix             | Cloverdale, Sonoma Co. | 2017              | 20                     |
|         | 1         | Solar    | Solar Millenium                 | Petaluma, Sonoma Co.   | 2017              | 20                     |
|         | 1         | Solar    | Petaluma Solar Millenium        | Petaluma, Sonoma Co.   | 2017              | 20                     |
|         | 12.5      | Solar    | Pristine Sun LLC                | Multiple sites, Sonoma County | 2017 | 20 |
|         | 70        | Solar    | Recurrent                      | Lemoore, Kings County  | 2016              | 20                     |
|         | 46        | Wind     | Golden Hills / NextEra          | Livermore, Alameda County | 2018 | 20 |

| **LCE** | 10        | Solar    | sPower / Western Antelope Dry Ranch| Lancaster, Los Angeles County | 2016 | 20 |
Customer Serving Rates

- All low-income ratepayers continue to receive discounts
- Preferred net metering rates
- Rates set to minimize impact of IOU fees and guard against rate shock
- Local boards made up of elected officials who are ratepayers
Customer Serving Programs

• Responsive to local needs
  – Low-income retrofits
  – Electric vehicle focus (incl. CARE customers)
  – Fuel switching

• Rapid development (3-12 months to deploy)

• Low cost to implement programs
### CCA Customer Program Elements (as of January 2017)

<table>
<thead>
<tr>
<th>CleanPowerSF</th>
<th>Lancaster Choice Energy</th>
<th>Peninsula Clean Energy</th>
<th>MCE</th>
<th>Sonoma Clean Power</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balanced Payment Plan</td>
<td>In development</td>
<td>✓</td>
<td></td>
<td>In development</td>
</tr>
<tr>
<td>Battery Storage Rate</td>
<td></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Customer Load Shifting</td>
<td></td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Demand Response</td>
<td></td>
<td></td>
<td>In development</td>
<td>In development</td>
</tr>
<tr>
<td>Electric Vehicle (EV) Rate</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>EV Bus Program</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EV Incentives</td>
<td></td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>EV Load Shifting</td>
<td></td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Energy Efficiency (EE)</td>
<td></td>
<td>In development</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Low-Income &amp; Multifamily EE</td>
<td></td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Feed-In Tariff</td>
<td>In development</td>
<td>In development</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Fuel Switching Gas to Electric</td>
<td></td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Low Income Solar Incentives</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Net Energy Metering</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>On Bill Repayment</td>
<td>In development</td>
<td></td>
<td>✓</td>
<td>In development</td>
</tr>
</tbody>
</table>
Regulatory and Legislative Issues

• CCAs must procure all energy and resource adequacy for customers

• CCA paradigm means there is a need for more vigilance to protect against IOU shifting cost recovery from generation to delivery
Thank you.
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1. Board Announcements (Discussion)

2. Public Open Time (Discussion)

3. Report from Chief Executive Officer (Discussion)

4. Consent Calendar (Discussion/Action)
   C.1 2.16.17 Meeting Minutes
   C.2 Approved Contracts Update

5. MCE FY 2017/18 Rates (Discussion/Action)

6. MCE FY 2017/18 Budget (Discussion/Action)

7. Power Purchase Agreement with sPower for MCE Solar One (Discussion/Action)

8. Green and Healthy Homes Initiative Presentation (Discussion)

9. Board Member & Staff Matters (Discussion)

10. Adjourn