



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

## **Agenda Page 1 of 2**

### **Executive Committee Meeting Friday, December 4, 2020 12:15 P.M.**

The Executive Committee Meeting will be conducted pursuant to the provisions of the Governor's [Executive Order](#) N-29-20 (March 17, 2020) which suspends certain requirements of the Ralph M. Brown Act. Executive Committee Members will be teleconferencing into the Executive Committee Meeting.

**Members of the public who wish to observe the meeting may do so telephonically via the following teleconference call-in number and meeting ID:**

**Dial: 1-669-900-9128  
Webinar ID: 854 8113 6527  
Meeting Passcode: 914007**

**For Viewing Access Join Zoom Meeting:**  
<https://us02web.zoom.us/j/85481136527?pwd=VElraHlDdW5Xa1MwQVQvNUxxUzRDdz09>

#### **OPEN SESSION**

Roll Call/Quorum  
Public Open Time (Discussion)

#### **CLOSED SESSION**

Conference with Labor Negotiator  
Agency Designated Representative: Board Chair  
Unrepresented Employee: Chief Executive Officer  
Public Employee Performance Evaluation: Chief Executive Officer

**Resume OPEN SESSION**

## **Agenda Page 2 of 2**

- 1.** Roll Call/Quorum
- 2.** Board Announcements (Discussion)
- 3.** Public Open Time (Discussion)
- 4.** Report from Chief Executive Officer (Discussion)
- 5.** Consent Calendar (Discussion/Action)
  - C.1 Approval of 11.6.20 Meeting Minutes
  - C.2 Second Agreement with Franklin Energy Services, LLC
  - C.3 Fifth Agreement with The Energy Alliance Association
  - C.4 Second Amendment to the Fourth Agreement with Recurve Analytics, Inc.
  - C.5 Third Agreement by and Between Marin Clean Energy and Strategic Energy Innovations
  - C.6 First Amendment to the Fifth Agreement with Keys and Fox, LLP
- 6.** Letter of Support for Revenue-Neutral Carbon Fee and Dividend Program (Discussion)
- 7.** Prepayment Joint Powers Authority (Discussion)
- 8.** Committee Matters & Staff Matters (Discussion)
- 9.** Adjourn

DISABLED ACCOMMODATION: If you are a person with a disability which requires an accommodation, or an alternative format, please contact the Clerk of the Board at (925) 378-6732 as soon as possible to ensure arrangements for accommodation.

**DRAFT**

**MCE EXECUTIVE COMMITTEE MEETING MINUTES**  
**Friday, November 6, 2020**  
**12:15 P.M.**

The Executive Committee Meeting was conducted pursuant to the provisions of the Governor's Executive Order N-29-20 (March 17, 2020) which suspends certain requirements of the Ralph M. Brown Act. Committee Members, staff and members of the public were able to participate in the Committee Meeting via teleconference.

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**Present:** Denise Athas, City of Novato  
Edi Birsan, City of Concord  
Lisa Blackwell, Town of Danville  
Tom Butt, City of Richmond  
Barbara Coler, Town of Fairfax  
Kevin Haroff, City of Larkspur  
Bob McCaskill, City of Belvedere  
Elizabeth Patterson, City of Benicia  
Shanelle Scales-Preston, City of Pittsburg  
Kate Sears, County of Marin  
Renata Sos, Town of Moraga

**Absent:** Ford Greene, Town of San Anselmo

**Staff  
& Others:** Jessica Brooks, Assistant Board Clerk  
Michael Callahan, Senior Policy Counsel  
John Dalessi, Pacific Energy Advisors  
Leanne Hoadley, Manager of Community & Customer Engagement  
Darlene Jackson, Board Clerk  
Vicken Kasarjian, Chief Operating Officer  
Sol Phua, Administrative Services Assistant  
Evelyn Reyes, Administrative Services Assistant  
Garth Salisbury, Director of Finance & Treasurer  
Dawn Weisz, Chief Executive Officer

**1. Roll Call**

Chair Butt, called the regular Executive Committee meeting to order at 12:16 p.m. with quorum established by roll call.

**2. Board Announcements (Discussion)**

There were none.

**3. Public Open Time (Discussion)**

**DRAFT**

There were no speakers.

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

CEO, Dawn Weisz, reported the following:

- Orientation for the new MCE Board representation from the City of Vallejo, Katy Miessner, will take place on Thursday, November 12<sup>th</sup>.
- MCE continues to offer free charging at our San Rafael office parking lot.
- MCE has won the Special Districts 2020 Technology Innovation Award in the Citizens Category for our work moving our public meetings to digital format via Zoom! The awards ceremony will take place on December 15th at 11 am. Our very own Enyo Senyo-Mensah, has been selected to accept the award on behalf of MCE due to the instrumental part she played in the process of moving MCE and its work to a public meeting digital format via Zoom!

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

- C.1 Approval of 10.2.20 Meeting Minutes
- C.2 First Amendment of the First Agreement with EV Charging Pros

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

**Action: It was M/S/C (Sears/Patterson) to approve Consent Calendar items C.1 and C.2. Motion carried by unanimous roll call vote. (Absent: Directors Birsan and Greene).**

**6. Receive Applicant Analysis and Consider Recommending Resolution 2020-03 for the Board of Directors to Approve the City of Fairfield as an MCE Member for a 2022 Enrollment (Discussion/Action)**

Leanne Hoadley, Manager of Community & Customer Engagement and John Dalessi, Pacific Energy Advisors, presented this item and addressed questions from Committee members.

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

**Action: It was M/S/C (Patterson/Haroff) to recommend the MCE Board of Directors approve the City of Fairfield as a member of MCE, and take all necessary actions to finalize membership for service in 2022. Motion carried by unanimous roll call vote. (Absent: Director Greene).**

**7. CCA Joint Powers Authority (Discussion/Action)**

Michael Callahan, Senior Policy Counsel and, Garth Salisbury, Director of Finance & Treasurer presented this item and addressed questions from Committee members.

**DRAFT**

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

Action: It was M/S/C (Sears/Haroff) to **recommend the MCE Board of Directors authorize MCE to form a new Procurement Joint Powers Authority with other CCAs.** Motion carried by unanimous roll call vote. (Absent: Director Greene).

**8. Resolution No. 2020-04 Rescinding Resolution No. 2018-03 and Delegating Energy Procurement Authority (Discussion/Action)**

Vicken Kasarjian, Chief Operating Officer, presented this item and addressed questions from Committee members.

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

Action: It was M/S/C (Sears/Coler) to **recommend the MCE Board of Directors, pending language adjustment, adopt proposed Resolution 2020-04 Rescinding Resolution 2018-03 and Delegating Energy Procurement Authority.** Motion carried by unanimous roll call vote. (Absent: Director Greene).

**9. Policy 016: Operating Reserve Fund (Discussion/Action)**

Garth Salisbury, Director of Finance & Treasurer, presented this item and addressed questions from Committee members.

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

Action: It was M/S/C (Sears/Coler) to **recommend adoption of Policy 016: Operating Reserve Fund by the MCE Board of Directors.** Motion carried by unanimous roll call vote. (Absent: Director Greene).

**10. Authority to Enter into Financial Security Instruments for Compliance (Discussion/Action)**

Michael Callahan, Senior Policy Counsel and Garth Salisbury, Director of Finance & Treasurer, presented this item and addressed questions from Committee members.

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

Action: It was M/S/C (Sears/Coler) to **recommend the MCE Board of Directors authorize MCE to enter into Financial Security Instruments as needed to maintain compliance with Public Utilities Code Section 394.25(e) with notice for increases.** Motion carried by unanimous roll call vote. (Absent: Directors, Athas and Greene).

**11. Review Draft 11.19.20 Board Agenda (Discussion)**

**DRAFT**

Dawn Weisz, Chief Executive Officer, presented this item and addressed questions from Committee members.

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

Action: No action required.
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**12. Committee & Staff Matters (Discussion)**

There were none.

**13. Adjournment**

Chair Butt adjourned the meeting at 2:50 p.m. to the next scheduled Executive Committee Meeting on December 3, 2020.

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Tom Butt, Chair

Attest:

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Dawn Weisz, Secretary



December 4, 2020

TO: MCE Executive Committee

FROM: Michelle Nochisaki, Customer Programs Manager

RE: Second Agreement with Franklin Energy Services, LLC (Agenda Item #05 C.2)

ATTACHMENTS: Proposed Second Agreement with Franklin Energy Services, LLC

Dear Executive Committee Members:

**SUMMARY:** The proposed Second Agreement with Franklin Energy Services, LLC (Franklin) would provide MCE with continued energy efficiency services, focused on the implementation and expansion of MCE's Home Energy Savings program.

The CPUC's approval of MCE's Energy Efficiency Business Plan Application authorizes MCE to provide energy efficiency services to the single-family residential sector. MCE has contracted with Franklin since May of 2019 to implement the Home Energy Savings Program. The Home Energy Savings program currently provides virtual home assessments and energy saving kits to participating customers. The proposed Second Agreement would offer an expanded measure list that includes no-cost contractor home modifications for qualifying participants. The comprehensive offering is designed to allow for deeper energy savings, greater benefits to customers and better coordination with other regional programs—ensuring that all income brackets within MCE's service area have access to energy efficiency opportunities.

Under the proposed Second Agreement, Franklin would deliver a comprehensive direct install program to moderate income single family customers, which will serve as an entry point into MCE programs and offer a comprehensive approach to energy efficiency in the residential sector. Franklin would also work with MCE to develop a statewide technical workpaper in order to support the energy efficiency savings for residential envelope measures in accordance with the California Public Utilities Commission (CPUC) requirements.

The duration of the proposed Second Agreement would be from contract execution through December 31, 2021. The maximum cost to MCE would be not to exceed \$1,768,800, with \$1,220,000 allocated to customer incentives.

**Fiscal Impacts:** Expenditures related to the proposed Second Agreement with Franklin would be funded from energy efficiency program funds allocated by the CPUC.

**Recommendation:** Approve the Second Agreement with Franklin Energy Services, LLC.



**MARIN CLEAN ENERGY  
ENERGY EFFICIENCY PROGRAMS STANDARD SHORT FORM CONTRACT**

**SECOND AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND FRANKLIN ENERGY SERVICES, LLC**

**THIS SECOND AGREEMENT** ("Agreement") is made and entered into this day **December 4, 2020** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and FRANKLIN ENERGY SERVICES, LLC, hereinafter referred to as "Implementer."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the services described in **Exhibit A**;

**WHEREAS**, Implementer is a third-party program implementer that will implement the contracted-for energy efficiency program by delivering a residential single-family, direct install program ("Program");

**WHEREAS**, Implementer 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:**

Implementer agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof. "Services" shall mean all of the services described in **Exhibit A**, and any other work performed by Implementer pursuant to the Agreement and any related purchase orders.

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

**4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$1,768,800**.

**5. TERM OF AGREEMENT:**

This Agreement shall commence on **January 1, 2021**, and shall continue, unless terminated earlier in accordance with the terms of this Agreement, until **December 31, 2021** Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Implementer.

**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 Implementer's obligations under paragraph 17 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Implementer's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Implementer 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 Implementer for any services provided during any time that insurance was not in effect and until such time as the Implementer provides adequate evidence that Implementer has obtained the required coverage.

### **6.1 GENERAL LIABILITY**

The Implementer 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 Implementer in order to perform said services, Implementer 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 Implementer 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 Implementer 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 Implementer must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Implementer 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 Implementer has segregated amounts in a special insurance reserve fund or Implementer's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon.

**6.5 PRIVACY AND CYBERSECURITY LIABILITY.** Privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs) of at least \$1,000,000 US per occurrence.

Implementer shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Implementer 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:**

Implementer 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. Implementer and/or any permitted subcontractor understands and agrees that Implementer 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 Implementer 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 Implementer hires a subcontractor under this Agreement, Implementer shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Implementer under this Agreement and shall require subcontractor to name Implementer as additional insured under this Agreement. It shall be Implementer'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 Implementer of any of its duties or obligations under this Agreement. Implementer shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. Implementer's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Implementer. 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 Implementer and may not be transferred or assigned without the express prior written consent of MCE.

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

Implementer 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 Implementer's premises or, at MCE's option, Implementer shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Implementer shall refund any monies erroneously charged. Implementer 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 Implementer, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to Implementer for such work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to Implementer or to any other party. Implementer shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Implementer may keep file reference copies of all documents prepared for MCE.

#### **12. TERMINATION:**

- A. If Implementer 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 ten (10) business days' written notice to the party involved.
- B. Implementer 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 Implementer 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 20 Invoices; Notices.
- D. In the event of termination not the fault of Implementer, Implementer 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). Notwithstanding anything contained in this Section 12, in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Services. Implementer shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12, Implementer shall have delivered to MCE any and all reports, drawings, documents and deliverables prepared for MCE before the effective date of such cancellation or termination.
- E. This Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such CPUC order or directive. MCE may also terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.
- F. Upon MCE's termination of this Agreement for any reason, Implementer shall, and shall cause each Implementer Party to, bring the Services to an orderly conclusion as directed by MCE. Implementer and each Implementer Party shall vacate the worksite but shall not remove any material, plant or equipment thereon without the approval of MCE. MCE, at its option, may take possession of any portion of the Services paid for by MCE.

#### **13. AMENDMENT:**

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

**14. ASSIGNMENT OF PERSONNEL:**

The Implementer 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. GOVERNING LAW AND VENUE:**

This Agreement shall be governed by the internal laws of the State of California, with reference to its conflict of laws principles. In the event of any litigation to enforce or interpret any terms of this Agreement, such action shall be brought in a Superior Court of the State of California located in Marin County (or if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Northern District of California), and the parties hereby submit to the exclusive jurisdiction of such courts.

**16. DISPUTES:**

Either Party may give the other Party written notice of any dispute which has not been resolved at a working level. Any dispute that cannot be resolved between Implementer's contract representative and MCE's contract representative by good faith negotiation efforts shall be referred to Legal Counsel of MCE and an officer of Implementer for resolution. Within 20 calendar days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If MCE and Implementer cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and Implementer shall have the right to pursue all rights and remedies that may be available at law or in equity. In particular, Implementer shall have right to request arbitration or mediation to resolve the dispute and MCE shall be required to participate in arbitration or mediation in good faith. All negotiations and any mediation agreed to by the Parties are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.

**17. REPRESENTATIONS; WARRANTIES; INDEMNIFICATION:**

**17.1 LICENSING.** At all times during the performance of the Services, Implementer represents, warrants and covenants that it has and shall, and shall cause each Implementer Party to obtain and maintain, at its sole cost and expense, all required licenses and registrations required for the operation of its business and the performance of the Services. Implementer shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.

**17.2 PERFORMANCE ASSURANCE; BONDING.** At all times during the performance of the Services, Implementer providing any direct installation services represents, warrants and covenants that it has and shall, and shall cause each Implementer Party, obtain and maintain, at its sole cost and expense, all bonding requirements of the California State License Board, as may be applicable. Regardless of the specific Services provided, Implementer shall also maintain any payment and/or performance assurances as may be requested by MCE during the performance of the Services.

**17.3 GOOD STANDING.** Implementer represents and warrants that (a) it is a **non-profit organization** duly organized, validly existing and in good standing under the laws of the State of **California** and (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.

**17.4 SAFETY.** During the term of this Agreement, Implementer continuously represents, warrants and covenants that it shall, and shall cause each Implementer Party to:

- (a) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;
- (b) abide by all applicable MCE security procedures, rules and regulations and cooperate with MCE security personnel whenever on MCE's property;
- (c) abide by MCE's standard safety program contract requirements as may be provided by MCE to Implementer from time to time;
- (d) provide all necessary training to its employees, and require subcontractors to provide training to their employees, about the safety and health rules and standards required under this Agreement; and
- (e) have in place an effective Injury and Illness Prevention Program that meets the requirements all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code. Additional safety requirements (including MCE's standard safety program contract requirements) are set forth elsewhere in the Agreement, as applicable, and in MCE's safety handbooks as may be provided by MCE to Implementer from time to time.

**17.5 BACKGROUND CHECKS.**

(a) Implementer hereby represents, warrants and certifies that any personnel of Implementer or Implementer Party having or requiring access to MCE's assets, premises, customer property ("Covered Personnel") shall have successfully passed background screening on each such individual, prior to receiving access, which screening may include, among other things to the extent applicable to the Services, a screening of the individual's educational background, employment history, valid driver's license, and court record for the seven (7) year period immediately preceding the individual's date of assignment to the project.

(b) Notwithstanding the foregoing and to the extent permitted by applicable law, in no event shall Implementer permit any Covered Personnel to have one or more convictions during the seven (7) year period immediately preceding the individual's date of assignment to the project, or at any time after the individual's date of, assignment to the project, for any of the following ("Serious Offense"): (i) a "serious felony," similar to those defined in California Penal Code Sections 1192.7(c) and 1192.8(a), or a successor statute, or (ii) any crime involving fraud (such as, but not limited to, crimes covered by California Penal Code Sections 476, 530.5, 550, and 2945, California Corporations Code 25540), embezzlement (such as, but not limited to, crimes covered by California Penal Code Sections 484 and 503 et seq.), or racketeering (such as, but not limited to, crimes covered by California Penal Code Section 186 or the Racketeer Influenced and Corrupt Organizations("RICO") Statute (18 U.S.C. Sections 1961-1968)).

(c) To the maximum extent permitted by applicable law, Implementer shall maintain documentation related to such background and drug screening for all Covered Personnel and make it available to MCE for audit if required pursuant to the audit provisions of this Agreement.

(d) To the extent permitted by applicable law, Implementer shall notify MCE if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Implementer will also immediately prevent that employee, representative, or agent from performing any Services.

**17.6 FITNESS FOR DUTY.** Implementer shall ensure that all Covered Personnel report to work fit for their job. Covered Personnel may not consume alcohol while on duty and/or be under the influence of drugs or controlled substances that impair their ability to perform their work properly and safely. Implementer shall, and shall cause its subcontractors to, have policies in place that require their employees report to work in a condition that allows them to perform the work safely. For example, employees should not be operating equipment under medication that creates drowsiness.

**17.7 INDEMNIFICATION.** Implementer 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 from any and all claims and losses to anyone who may be injured or damaged by reason of Implementer's negligence, recklessness or willful misconduct in the performance of this Agreement, provided, however, that if such liability is caused by the negligence, recklessness or willful misconduct of both MCE and Implementer, then Implementer's indemnification obligation shall be limited to the proportional extent that such liabilities arise from Implementer's negligence, recklessness or willful misconduct.

**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. Implementer 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 Implementer shall comply with any and all applicable federal, state and local laws, regulations and resolutions (including, but not limited to all CPUC policies and guidance for energy efficiency programs, 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
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All other notices shall be given to MCE at the following location:

Contract Manager:	Troy Nordquist
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MCE Address:	1125 Tamalpais Avenue
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San Rafael, CA 94901
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Email Address:	contracts@mcecleanenergy.org
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Telephone No.:	(415) 464-6027
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Notices shall be given to Implementer at the following address:

Implementer:	Jake Tisinger
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Address:	300 Frank H. Ogawa Plaza, Suite 620
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Oakland, CA 94612
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Email Address:	jtisinger@builditgreen.org
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Telephone No.:	(510) 590-3360, Ext.132
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**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.

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

**22. DATA COLLECTION AND OWNERSHIP REQUIREMENTS:**

**22.1. DEFINITION OF "MCE DATA".** "MCE Data" shall mean all data or information provided by or on behalf of MCE, including but not limited to, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manual's, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to Implementer as MCE may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Implementer. MCE Data shall also include all data and materials provided by or made available to Implementer by MCE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors.

"Confidential Information" under this Agreement shall have the same meaning as defined in the Marin Clean Energy Non-Disclosure Agreement between the parties dated **December 11, 2019**.

**22.2. DEFINITION OF “PERSONAL INFORMATION”.** “Personal Information” includes but is not limited to the following: personal and entity names, e-mail addresses, addresses, phone numbers, any other public or privately-issued identification numbers, IP addresses, MAC addresses, and any other digital identifiers associated with entities, geographic locations, users, persons, machines or networks. Implementer shall comply with all applicable laws, rules, and regulations related to the use, collection, storage, and transmission of Personal Information.

**22.3. MCE DATA SECURITY MEASURES.** Prior to Implementer receiving any MCE Data, Implementer shall comply, and at all times thereafter continue to comply, in compliance with MCE’s Data security policies set forth in MCE Policy 009 and MCE’s Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy (“Security Measures”) and pursuant to MCE’s Confidentiality provisions in Section 5 of the Marin Clean Energy Non-Disclosure Agreement between the parties dated **December 2019**. MCE’s Security Measures and Confidentiality provisions require Implementer to adhere to reasonable administrative, technical, and physical safeguard protocols to protect the MCE’s Data from unauthorized handling, access, destruction, use, modification or disclosure.

**22.4. IMPLEMENTER DATA SECURITY MEASURES.** Additionally, Implementer shall, at its own expense, adopt and continuously implement, maintain and enforce reasonable technical and organizational measures, consistent with the sensitivity of Personal Information and Confidential Information including, but not limited to, measures designed to (1) prevent unauthorized access to, and otherwise physically and electronically protect, the Personal Information and Confidential Information, and (2) protect MCE content and data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

**22.5. RETURN OF MCE DATA.** Promptly after this Agreement or a Statement of Work terminates or expires, and for each completed Statement of Work (i) Implementer will securely destroy all MCE Data in its possession with respect to each terminated or expired Statement of Work and certify the secure destruction in writing to MCE, and (ii) each party will return (or if requested by the disclosing party, destroy) all other Confidential Information and property of the other (if any) with respect to each terminated or expired Statement of Work, provided that Implementer’s attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

**22.6. OWNERSHIP AND USE RIGHTS.**

- a) **MCE Data.** Unless otherwise expressly agreed to by the Parties, MCE shall retain all of its rights, title and interest in MCE’s Data.
- b) **Program Intellectual Property.** Unless otherwise expressly agreed to by the Parties, any and all materials, information, or other work product first created, prepared, accumulated or developed by Implementer or any Implementer Party under this Agreement with Program funds (“Program Intellectual Property”), including inventions, processes, templates, documents, drawings, computer programs, designs, calculations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be owned by MCE on behalf and for the benefit of their respective customers.
- c) **Program Intellectual Property will be owned by MCE upon its creation.** Implementer agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE’s ownership in the Program Intellectual Property.
- d) **Implementer’s Pre-Existing Materials.** If, and to the extent Implementer retains any preexisting ownership rights (“Implementer’s Pre-Existing Materials”) in any of the materials furnished or used to create, develop, and prepare the Program Intellectual Property, Implementer hereby grants MCE and the Program Participants on behalf of their respective customers and the CPUC for governmental and regulatory purposes an irrevocable, assignable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of Implementer or any Implementer Party for the sole purpose of using such Program Intellectual Property for the conduct of MCE’s business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Implementer shall retain all of its rights, title and interest in Implementer’s Pre-Existing Materials. Any and all claims to Implementer’s Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Program Intellectual Property must be expressly disclosed to MCE prior to performing any Services under this Agreement.

Implementer’s Pre-Existing Materials include:

- Green Point Rated (GPR) and associated system components and curriculum
- Energy and Electrification Assessment tool
- Climate Calculator
- Energy and Water calculator.
- Implementer’s Desktop Review Tools

- Healthy Home Connect
- California Multifamily Existing Building training content

## **22.7 BILLING, ENERGY USE, AND PROGRAM TRACKING DATA.**

- Implementer shall comply with and timely cooperate with all CPUC directives, activities, and requests regarding the Program and Project evaluation, measurement, and verification ("EM&V"). For the avoidance of doubt, it is the responsibility of Implementer to be aware of all CPUC requirements applicable to the Services of this Agreement.
- Implementer shall make available to MCE upon demand, detailed descriptions of the program, data tracking systems, baseline conditions, and participant data, including financial assistance amounts.
- Implementer shall make available to MCE any revisions to Implementer's program theory and logic model ("PTLM") and results from its quality assurance procedures, and comply with all MCE EM&V requirements, including reporting of progress and evaluation metrics.

## **23. WORKFORCE STANDARDS:**

At all times during the term of the Agreement, Implementer shall comply with, and shall cause all Implementer Parties to comply with, the workforce qualifications, certifications, standards and requirements set forth in this Section 23 ("Workforce Standards"). The Workforce Standards shall be included in their entirety in Implementer's Final Implementation Plan. Final Implementation Plan shall mean as it is defined in the deliverables for the Services listed in Exhibit A. Prior to commencement of any Services, once per calendar year, and at any other time as may be requested by MCE, Implementer shall provide all documentation necessary to demonstrate to MCE's reasonable satisfaction that Implementer has complied with the Workforce Standards.

**23.1 HVAC STANDARDS.** For any non-residential project pursuant to this Agreement installing, modifying or maintaining a Heating Ventilation and Air Conditioning ("HVAC") system or component with incentives valued at \$3,000 or more, Implementer shall ensure that each worker or technician involved in the project, including all employees and agents of its subcontractors, meets at least one of the following workforce criteria:

- Completed an accredited HVAC apprenticeship;
- Is enrolled in an accredited HVAC apprenticeship;
- Completed at least five years of work experience at the journey level as defined by the California Department of Industrial Relations, Title 8, Section 205, of the California Code of Regulations, passed a practical and written HVAC system installation competency test, and received credentialed training specific to the installation of the technology being installed; or
- Has a C-20 HVAC contractor license issued by the California Contractor's State Licensing Board.

This standard shall not apply where the incentive is paid to any manufacturer, distributor, or retailer of HVAC equipment, unless the manufacturer, distributor, or retailer installs or contracts for the installation of the equipment.

**23.2 ADVANCED LIGHTING CONTROLS STANDARDS.** For any non-residential project pursuant to this Agreement involving installation, modification, or maintenance of lighting controls with incentives valued at \$2,000 or more, Implementer shall ensure that all workers or technicians involved in the project, including those of its subcontractors are certified by the California Advanced Lighting Controls Training Program ("CALTP"). This requirement shall not apply where the incentive is paid to a manufacturer, distributor, or retailer of lighting controls unless the manufacturer, distributor, or retailer installs or contracts for installation of the equipment.

## **24. FINANCIAL STATEMENTS:**

Implementer shall deliver financial statements on an annual basis or as may be reasonably requested by MCE from time to time. Such financial statements or documents shall be for the most recently available audited or reviewed period and prepared in accordance with generally-accepted accounting principles. MCE shall keep such information confidential if requested by Implementer, except as provided by law and to provision to the CPUC may be required from time to time under confidentiality procedures, where applicable.

## **25. QUALITY ASSURANCE PROCEDURES:**

Implementer shall comply with the following requirements (the "Quality Assurance Procedures"): ***[Quality Assurance Procedures defined in Program Implementation Plan developed by Implementer]***

Additionally, Quality Assurance Procedures must include, but are not limited to: (i) industry standard best practices; and (ii) procedures that ensure Measure functionality, customer satisfaction, and that the Minimum Qualifications are satisfied.

## **26. COORDINATION WITH OTHER PROGRAM ADMINISTRATORS:**



Implementer shall coordinate with other Program Administrators, including investor-owned utilities and local government agencies authorized by the CPUC to implement CPUC-directed energy efficient programs, administering energy efficiency programs in the same geographic area as MCE. These other Program Administrators include: Pacific Gas and Electric Company and Bay Area Regional Energy Network. The CPUC may develop further rules related to coordination between Program Administrators in the same geographic area, and any Implementer is required to comply with such rules.

## **27. ACCESS TO CUSTOMER SITES:**

Implementer shall be responsible for obtaining any and all access rights from customers and other third parties to the extent necessary to perform the Services. Implementer shall also procure any and all access rights from Implementer Parties, customers and other third parties in order for MCE and CPUC employees, representatives, designees and contractors to inspect the Services.

## **28. MEASUREMENT AND VERIFICATION REQUIREMENTS, INCLUDING GUIDELINES ABOUT NORMALIZED METERED ENERGY CONSUMPTION ("NMEC") DESIGN REQUIREMENTS:**

Implementer shall:

1. Only enroll customers that qualify for Program services.
2. Comply with current policies, procedures, and other required documentation as required by MCE;
3. Report Customer Participation Information to MCE.
4. Work with MCE's evaluation team to define Program-specific data collection and evaluability requirements, and in the case of NMEC which independent variables shall be normalized.

Throughout the Term, MCE may identify new net lifecycle energy savings estimates, net-to- gross ratios, effective useful lives, or other values that may alter Program Net Lifecycle Energy Savings, as defined in Exhibit A, if applicable. Implementer shall use modified values upon MCE's request, provided MCE modifies Implementer's Program budget and/or overall Program net lifecycle Energy Savings consistent with the requested change. MCE will determine any budget increases or decreases in its sole discretion.

For Programs claiming to-code savings: Implementer shall comply with Applicable Law and work with MCE to address elements in its Program designs and Implementation Plans, such as:

1. Identifying where to-code savings potential resides;
2. Specifying which equipment types, building types, geographic allocations, and/or customer segments promise cost-effective to-code savings;
3. Describing the barriers that prevent code-compliant equipment replacements;
4. Explaining why natural turnover is not occurring within certain markets or for certain technologies; and
5. Detailing the program interventions that would effectively accelerate equipment turnover.

## **29. 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.

## **30. 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.

## **31. COUNTERPARTS:**

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

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

**APPROVED BY**  
**Marin Clean Energy:**

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

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

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

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

**IMPLEMENTER:**

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

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

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

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**MODIFICATIONS TO ENERGY EFFICIENCY STANDARD SHORT FORM**

☒ **Standard Short Form Content Has Been Modified**

**List sections affected:** Section 12, Section 17.7, Sections 22.6 (b) and (d)

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

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

## EXHIBIT A

### SCOPE OF SERVICES (required)

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

Implementer shall offer the following services at no cost to participants:

- Target moderate-income (200-400% Federal poverty level) single-family property owners and tenants, who have property owner's permission, with high utility bills in MCE's service area for participation in the Program;
- Ship up to 2,000 Health and Energy Savings Kits to interested participants;
- Provide up to 1,000 virtual energy assessments to interested participants;
- Connect interested participants who complete a virtual energy assessment to qualified trade allies that will install deep retrofits in the homes of selected Program participants.

Program will be available to all single-family property owners and tenants with a moderate household income within MCE's service area. Prior to Program launch, Implementer will modify the Program Implementation Plan ("PIP") and Manual to include deeper home modification measures, address how to coordinate with tenant's property owner and how to protect tenants in case of eviction and rent increases by property owner should eviction or rent increase occur due to tenant's participation in the Program.

Implementer will perform the following tasks.

#### Task 1: Program Design

Implementer will update the PIP, Program Handbook, and any other necessary program-related documents within 40 days of Agreement signature to reflect changes to the program delivery process and trade ally requirements, and to align with the Summary of Program Design and CPUC requirements.

PIP will include:

- Documentation of roles and responsibilities;
- Required administrative and program processes and procedures (reporting, invoicing procedures);
- IT goals;
- Quality Assurance and Control methods;
- Internal training plan; and
- Marketing & Outreach efforts and how these will complement MCE's existing and proposed outreach strategies.

Program Handbook will continue to be updated as needed throughout the Program cycle, and will include:

- Procedures for documenting Program participant eligibility and completing the Program enrollment process;
- Program process outline and steps involved;
- Health and Safety Protocols;
- Testing and assessing procedures and required certifications, as appropriate;
- Installation specifications and field verification standards for Program measures including handling of hazardous materials (e.g. asbestos and lead safe practices);
- Best practices and requirements to develop referrals to the Program;
- Tracking, reporting, and invoicing procedures;
- Dispute resolution process including details on consumer protection policies;
- Contractor qualifications and eligibility requirements.

#### Deliverables:

- Within 40 days of Agreement signature, Implementer will update:
  - PIP;
  - Program Handbook;
  - Other as-needed Program-related documentation.

#### Task 2: Program Management

- A. Customer Service Support.** Implementer will provide a live customer support team to respond to Program participant inquiries and requests, provide Program support, connect Program participants to participating trade allies, and connect Program participants to additional program resources. The customer support team will be available from 8:30 a.m.–5:00 p.m. PST Monday through Friday and will monitor Program emails submitted to [mce-energyingsavings@Franklinenergy.com](mailto:mce-energyingsavings@Franklinenergy.com).
- B. Trade Ally Engagement.** Implementer will onboard initial trade allies and provide a single point of contact for each participating trade ally by holding a minimum of two check-in calls per month, as-needed office visits, and support with technical Program questions, and mentoring in the field.
- C. Monthly Reporting.** Implementer will ensure all data collected from customers and participating trade allies

is shared with MCE's team on an ongoing basis to ensure systems are tested, new data points are added and formatted as needed, and energy savings and payment information is accurate and complete. Implementer will intake all program assessment questions and CPUC-required data points, and submit monthly reports and invoices to MCE. Implementer will work with MCE as needed to complete the Annual Budget Advice Letter ("ABAL") process. MCE and Implementer will outline any additional and/or ad hoc reporting as needed throughout the Program year.

- D. Coordination with Investor Owned Utilities ("IOUs") /Bay Area Regional Energy Network ("BayREN").** Implementer will coordinate with IOUs, BayREN and other Program implementers as necessary within MCE's service territory to ensure timely, accurate, and consistent access to data. Upon MCE's request, Implementer will assist MCE with tasks and deliverables as they relate to development of Joint Cooperation Memos. Implementer's activities in Task 2D include: meeting preparation and attendance; coordination across internal teams at MCE, and/or IOUs; research; analysis; writing; and editing.
- E. Program Closeout.** If Program is terminated, upon termination of the Program, Implementer will package all project and participant data into a Zip folder and securely transfer it to MCE. Implementer will complete a final Program closeout report and submit it to MCE within 2 business weeks of written notification by MCE of Program termination.

**Deliverables:**

- Customer service support;
- Participating contractor engagement;
- Initial trade ally onboarding;
- Mentoring trade allies in the field;
- Monthly reporting to MCE;
- Coordination with IOUs/BayREN;
- Program closeout (if Program is terminated).

**Task 3: Health and Energy Savings Kits**

After potential participants fill out the Home Energy Savings Program online form, Implementer will screen each potential participant to determine Program eligibility and ship up to 2,000 Health and Energy Savings Kits directly to customers' homes. The number of Health and Energy Savings Kits delivered will depend on the number of potential participants who fill out the online form and each potential participant's eligibility. Eligibility requirements will be defined in the PIP, and will be based on income level, home location, and feasibility of deep retrofitting.

**Deliverables:**

- Shipment of up to 2,000 Health and Energy Saving Kits.

**Task 4: Application Platform Support**

Implementer will collect and maintain data to assist in the avoidance of customer's accessing two ratepayer funded benefits, and complete routine improvements to the application platform that receives and securely stores and transfers all data and documents required for the Program. After release updates, there will be an initial coordination effort to identify, address, and resolve application submission and data collection bugs. Implementer will continue to address ongoing bugs and optimize ongoing data collection processes.

**Deliverables:**

- Ongoing Program platform support.

**Task 5: Quality Assurance and Control**

Implementer will:

**A. Quality Assurance.**

- Review all initial applications submitted to the Program;
- Coordinate with potential Program participants about incomplete applications;
- Ensure Program applications are accurate and complete;

**B. Quality Control.**

- Test for safety;
- Coordinate return visits as needed;
- Conduct and complete field inspections, which will include full reviews of all field work, for the first 5 projects submitted per trade ally
- Conduct and complete field inspections for 10 percent of projects submitted per trade ally after the first 5 projects;
- Increase field inspection quality control to ensure safe, quality, and complete installations.

**Deliverables:**

- Continued completion of all tasks listed above in Quality Assurance and Quality Control.

**Task 6: Marketing and Outreach**

Implementer will:

- Update marketing plan and present updated plan to MCE for MCE approval;
- Complete marketing and outreach campaign to drive interest in the Program;
- Adjust marketing and outreach strategies as needed in coordination with MCE to ensure the Program is maximally enrolled to meet targets;
- Coordinate with local governments, property owners, participating trade allies, and other single-family program implementers as needed to identify good candidates for the Program.

Tactics and timelines will be incorporated into the updated Marketing Plan provided by Implementer to MCE for approval.

**Deliverables:**

- Marketing and outreach to be defined in the updated Marketing Plan, but will include all or some of the following:
  - Generate Leads;
  - Track Leads;
  - Build the Customer referral program;
  - Design Digital and Print Ads;
  - Develop Printing and Postage for direct mail;
  - Update Website and Social Ads;
  - Write, edit and distribute Program-related Blog Posts and Press Releases.

**Task 7: Virtual Assessments**

Implementer will offer a virtual assessment to recipients of Health and Energy Savings Kits to assess the existing conditions of their homes, identify electrification opportunities, and determine feasibility of deep retrofits.

**Deliverables:**

- Up to 1,000 Virtual assessments, 1-2 hours each

**Task 8: Work Paper Development**

As directed by MCE, Implementer will undertake the tasks summarized in the following table to develop a statewide work paper that encompasses the combination of, at minimum, the following measures for residential single-family homes: air sealing and duct sealing, and adding attic insulation and increased duct insulation. The work will follow and meet the requirements as documented in both the California Technical Forum (CalTF) Statewide "Measure Development and QA/QC Guidelines," Version 2.0; and the California Investor Owned Utilities "Statewide Deemed Workpaper Rulebook," Version 3.0; or the equivalent revised guidance documents.

**Work Paper Development Tasks**

Work Paper Development Tasks
<b>Literature and Data Resources Search</b> Impact evaluation reports, technical reference manuals (TRM), prior work papers, Residential Appliance Saturation Survey (RASS) data, existing building simulation models, field studies with test data, relevant interval meter datasets, etc.
<b>Detailed Scope and Timeline Development</b> Based on the literature search results, Implementer will determine if any field testing is needed (should field tests be needed, Implementer will prepare a separate field test plan and budget proposal). The tentative list of building envelope measures that will be included in this work paper include: <ul style="list-style-type: none"> <li>• Air sealing (stand-alone and combined with other measures)</li> <li>• Duct sealing (combined only, since there is an existing statewide work paper for the measure already and parameters from that work paper will be reflected in the proposed scope)</li> <li>• Adding attic insulation (combined only, since there is an existing statewide work paper for the measure already and parameters from that work paper will be reflected in the proposed scope)</li> <li>• Burying exposed attic ducts under insulation (stand-alone and combined with other measures)</li> </ul> <p><b>Targeted Sector:</b> Residential</p> <p><b>Building Type:</b> Single family</p> <p><b>Vintages:</b> Existing only; decision on existing vintages to include will depend on the literature search results</p> <p><b>Climate Zones:</b> All 16 California climate zones</p> <p><b>HVAC System Types:</b> central split-system air conditioning (AC) with natural gas furnace, central split-system heat pump, natural gas furnace only, Database for Energy Efficient Resources (DEER) weighted HVAC systems—TBD</p> <p>Thermostat control profiles—TBD</p>

**Deemed Values Development**

Fulfill the detailed work scope plan, including all simulation modeling and internal QA/QC reviews

**Statewide Work Paper and Ex Ante Data (EAD) Workbook**

- Develop the work paper narrative and populate EAD fields using CalTF's statewide templates and Style Guide.
- Follow and meet all the requirements found in both the eTRM Statewide Measure Development and QA/QC Guidelines, Version 2.0, and the California Investor Owned Utilities Statewide Deemed Workpaper Rulebook, Version 3.0.
- Support CalTF's technical work paper review, provide supporting information and data, resolve issues, answer questions, and make required revisions. Upon final CalTF technical review work paper acceptance, support MCE's submittal of the work paper to the California Public Utility Commission staff's work paper review process.
- Support the CPUC work paper review process, provide CalTF technical review findings and resolutions, answer questions, provide supporting data, collaborate with the CPUC review contractors to resolve issues, and make required revisions needed for final work paper approval.

**Deliverables:**

- Completed workpaper to MCE in or before June 2021.

**Staff**

Key staff who will support the Program include:

- Jacob Tisinger—Program Management
- Justin Kjeldsen—Program Management
- Isai Reyes—Project Management, Quality Assurance
- Brett Bishop—Trade Ally Engagement, Quality Control
- Russell Bayba—Trade Ally Engagement, Quality Control
- Leonel Campoy—Engineering
- Melissa Carlson—Marketing
- Jennifer Clark—Marketing
- Lisa Miller—Information Management
- Alexandra Strand—Information Management
- Jamie Arias—Information Management
- Dylan Gold—Information Management, Quality Assurance
- Belia Victoria—Customer Care Center
- Karen Olivares—Customer Care Center

The list of key staff members above is subject to change. Should a staff member need to be replaced, Implementer shall ensure that a staff member who has comparable experience serves as the replacement, and MCE shall be notified of the staffing change in writing within two weeks.

**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

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

**2021 Implementation Invoice Schedule**

Milestone and Deliverables	Payment	Estimated Delivery Date	
<b>Program Delivery</b>			
<b>1: Program Design</b>	Time & Materials	Monthly	Monthly
<b>2: Program Management</b> <i>Deliverables:</i> <ul style="list-style-type: none"> <li>Customer service support</li> <li>Contractor engagement</li> <li>Monthly reporting and invoicing</li> <li>Coordination with implementers and IOUs</li> <li>Program closeout (if applicable)</li> </ul>	Time & Materials  Estimate: \$18,650 per month Total NTE for Task 2: \$223,800	Monthly	
<b>3: Health and Energy Savings Kits</b>	Included in incentive budget		
<b>4: Application Platform Support</b> <ul style="list-style-type: none"> <li>Data security</li> <li>Bug fixes</li> <li>Application processing</li> <li>Ongoing system improvements</li> </ul> Enrollment and assessment updates	\$5,000 per month Total NTE for Task 4: \$60,000	Monthly	
<b>5: Quality Assurance and Control</b> <ul style="list-style-type: none"> <li>QA: Application review</li> <li>QC: Field inspections: <ul style="list-style-type: none"> <li>Safety testing</li> <li>Travel</li> </ul> </li> <li>Correction return visit coordination</li> </ul>	QA: \$125 each QC: \$800 each Total NTE for Task 5: \$165,000	QA: Per unit, Billed Monthly QC: Per unit, Billed Monthly	
<b>6: Marketing and Outreach</b> <ul style="list-style-type: none"> <li>Lead generation</li> <li>Design and printing</li> <li>Customer referral program</li> <li>Website updates</li> </ul>	Time & Materials  Estimate: \$5,000 per month Total NTE for Task 6: \$60,000	Monthly	
<b>7: Virtual Assessments</b>	Included in incentive budget, outlined below		
<b>Total NTE for Program Delivery</b>	<b>\$508,800</b>	<b>Final Delivery: December 31, 2021</b>	
<b>Work Paper Development</b>			
<b>8: Work Paper Development</b> <ul style="list-style-type: none"> <li>Internal Team Kickoff w/Client</li> <li>Detailed Scope and Timeline</li> <li>Deemed Values Development</li> <li>Statewide Work Paper and Ex Ante Data Workbook</li> <li>Bi-Weekly Status Memo</li> </ul>	Time & Materials Total NTE: \$40,000	Monthly	
<b>Total Implementation</b>	<b>\$548,800</b>		

**Incentive Budget**

Measure	Payment
Water Conservation Kit	\$6-\$10/ea - NTE \$6,000
Energy Conservation Kit	\$155 to \$190/ea - NTE \$260,000
Energy Advisor Virtual Audit	\$125/ea - NTE \$125,000
Smart Thermostat (only for customers who did not receive a kit)	Prices vary pending brand & model

Added Roof Insulation	Per sq. ft. rate varies pending final R-value
Combustion Appliance Safety Only (part of duct sealing procedure)	\$100/ea - NTE \$150,000
Duct Sealing	Final rate TBD pending final leakage % metric
Gas Furnace - AFUE 95 with ECM	Prices vary pending brand & model
Heat Pump 17 SEER 9.4 HSPF Two-speed fan	Prices vary pending brand & model
Heat Pump Water Heater UEF=3.31	Prices vary pending brand & mode
Small Tankless Water Heater	Prices vary pending brand & mode
Smart DHW Circulating Pump	Prices vary pending brand & mode
Storage DHW Heater 40 Gallon	Prices vary pending brand & mode
Thermostatic Shower Valve Elec DHW	Prices vary pending brand & mode
Tubspout Thermostatic Shut-off Elec DHW	Prices vary pending brand & mode
<b>Measure</b>	<b>Payment</b>
Fuel Sub Heat Pump Water Heater (Solar PV Customer)	Prices vary pending brand & mode
Fuel Sub Heat Pump HVAC (Solar PV Customer)	Prices vary pending brand & mode
<b>Total Incentive Budget</b>	<b>\$1,220,000</b>

**Overall Budget for 2021 Program**

Implementation	Total
Program Delivery	\$508,800
Work Paper Development	\$40,000
Incentives	\$1,220,000
<b>Total</b>	<b>\$1,768,800</b>

**Implementer Key Staff Rates:**

- Jacob Tisinger—(Senior Program Manager) \$160/hr
- Justin Kjeldsen—(Pacific Regional Director) \$165/hr
- Isai Reyes—(Senior Project Associate) \$85/hr
- Brett Bishop—(Director of Contract Services)\$165/hr
- Russell Bayba—(Senior Technical Services Manager) \$125/hr
- Leonel Campoy—(Engineering Manager) \$101.50/hr
- Melissa Carlson—(Marketing Manager) \$90/hr
- Jennifer Clark—(Senior Marketing Specialist) \$90/hr
- Lisa Miller—(IT Project Manager) \$160/hr
- Alexandra Strand—(IT Project Manager) \$160/hr
- Jamie Arias—(System Support Analyst) \$100/hr
- Dylan Gold—(System Support Manager) \$160/hr
- Belia Victoria—(Customer Care Center Supervisor) \$80/hr
- Karen Olivares—(Customer Care Specialist) \$80/hr

The list of key staff members above is subject to change. Should a staff member need to be replaced, Implementer shall ensure that a staff member who has comparable experience at the same hourly rate serves as the replacement, and MCE shall be notified of the staffing change in writing within two weeks.

Contractor will bill MCE monthly for work completed for the previous month based on the number of hours and materials expended and the deliverables provided according to the 2021 Implementation Invoice Schedule above. Each month, Contractor will provide an itemized invoice that includes specific hours and materials expended per Task within the Program for the previous month, however MCE will not be obligated to pay the applicable fees unless and until MCE has accepted the work delivered during the invoiced month.

Implementer shall bill MCE monthly. In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$1,768,800** for the term of the Agreement.





December 4, 2020

TO: MCE Executive Committee

FROM: Jenn Kreutzer, Customer Programs Manager

RE: Proposed Fifth Agreement with The Energy Alliance Association  
(Agenda Item #05 C.3)

ATTACHMENTS: Proposed Fifth Agreement with TEAA

Dear Executive Committee Members:

**SUMMARY:**

The proposed Fifth Agreement with The Energy Alliance Association (TEAA) would provide a continuation of services to MCE for implementation of the commercial energy efficiency program in 2021.

**Background**

MCE has contracted with TEAA for support of its commercial energy efficiency program since March 2017. In December 2019, the Executive Committee approved the Fourth Agreement with TEAA to continue services through 2020. TEAA is currently the top-performing contractor in MCE's commercial energy efficiency program, and a key driver in achieving program impacts.

TEAA is compensated on a pay-for-performance basis, at \$0.22 per net kWh saved, and \$0.80 per net therm saved. The proposed Fifth Agreement includes savings goals of 1,727,273 net kWh and 25,000 net therms. The not to exceed contract value is \$400,000.

**Fiscal Impacts:** Expenditures related to the proposed Fifth Agreement would be funded completely from the energy efficiency program funds allocated by the CPUC.

**Recommendation:** Approve the Fifth Agreement with TEAA.

**MARIN CLEAN ENERGY  
ENERGY EFFICIENCY PROGRAMS STANDARD SHORT FORM CONTRACT**

**FIFTH AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND THE ENERGY ALLIANCE ASSOCIATION (TEAA)**

**THIS FIFTH AGREEMENT** ("Agreement") is made and entered into this day **December 4, 2020** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and THE ENERGY ALLIANCE ASSOCIATION (TEAA), hereinafter referred to as "Implementer."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the services described in **Exhibit A**;

**WHEREAS**, Implementer is a third-party program implementer that will implement the contracted-for energy efficiency program ("Program");

**WHEREAS**, Implementer 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:**

Implementer agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof. "Services" shall mean all of the services described in **Exhibit A**, and any other work performed by Implementer pursuant to the Agreement and any related purchase orders.

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

**4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$400,000**.

**5. TERM OF AGREEMENT:**

This Agreement shall commence on **January 1, 2021**, and shall continue, unless terminated earlier in accordance with the terms of this Agreement, until **March 31, 2022**. 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 Implementer.

**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 Implementer's obligations under paragraph 17 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Implementer's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Implementer 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 Implementer for any services provided during any time that insurance was not in effect and until such time as the Implementer provides adequate evidence that Implementer has obtained the required coverage.

### **6.1 GENERAL LIABILITY**

The Implementer 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 Implementer in order to perform said services, Implementer 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 Implementer 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 Implementer 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 Implementer must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Implementer 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 Implementer has segregated amounts in a special insurance reserve fund or Implementer's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon.

**6.5 PRIVACY AND CYBERSECURITY LIABILITY.** Privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs) of at least \$1,000,000 US per occurrence.

Implementer shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Implementer 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:**

Implementer 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. Implementer and/or any permitted subcontractor understands and agrees that Implementer 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 Implementer 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 Implementer hires a subcontractor under this Agreement, Implementer shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Implementer under this Agreement and shall require subcontractor to name Implementer as additional insured under this Agreement. It shall be Implementer'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 Implementer of any of its duties or obligations under this Agreement. Implementer shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. Implementer's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Implementer. 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 Implementer and may not be transferred or assigned without the express prior written consent of MCE.

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

Implementer 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 Implementer's premises or, at MCE's option, Implementer shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Implementer shall refund any monies erroneously charged. Implementer 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 Implementer, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to Implementer for such work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to Implementer or to any other party. Implementer shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Implementer may keep file reference copies of all documents prepared for MCE.

#### **12. TERMINATION:**

- A. If Implementer 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. Implementer 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 Implementer 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 20 Invoices; Notices.
- D. In the event of termination not the fault of Implementer, Implementer 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). Notwithstanding anything contained in this Section 12, in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Services. Implementer shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12, Implementer shall have delivered to MCE any and all reports, drawings, documents and deliverables prepared for MCE before the effective date of such cancellation or termination.
- E. This Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such CPUC order or directive. MCE may also terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.
- F. Upon MCE's termination of this Agreement for any reason, Implementer shall, and shall cause each Implementer Party to, bring the Services to an orderly conclusion as directed by MCE. Implementer and each Implementer Party shall vacate the worksite but shall not remove any material, plant or equipment thereon without the approval of MCE. MCE, at its option, may take possession of any portion of the Services paid for by MCE.

#### **13. AMENDMENT:**

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

**14. ASSIGNMENT OF PERSONNEL:**

The Implementer 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. GOVERNING LAW AND VENUE:**

This Agreement shall be governed by the internal laws of the State of California, with reference to its conflict of laws principles. In the event of any litigation to enforce or interpret any terms of this Agreement, such action shall be brought in a Superior Court of the State of California located in Marin County (or if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Northern District of California), and the parties hereby submit to the exclusive jurisdiction of such courts.

**16. DISPUTES:**

Either Party may give the other Party written notice of any dispute which has not been resolved at a working level. Any dispute that cannot be resolved between Implementer's contract representative and MCE's contract representative by good faith negotiation efforts shall be referred to Legal Counsel of MCE and an officer of Implementer for resolution. Within 20 calendar days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If MCE and Implementer cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and Implementer shall have the right to pursue all rights and remedies that may be available at law or in equity. In particular, Implementer shall have right to request arbitration or mediation to resolve the dispute and MCE shall be required to participate in arbitration or mediation in good faith. All negotiations and any mediation agreed to by the Parties are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.

**17. REPRESENTATIONS; WARRANTIES; INDEMNIFICATION:**

**17.1 LICENSING.** At all times during the performance of the Services, Implementer represents, warrants and covenants that it has and shall, and shall cause each Implementer Party to obtain and maintain, at its sole cost and expense, all required licenses and registrations required for the operation of its business and the performance of the Services. Implementer shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.

**17.2 PERFORMANCE ASSURANCE; BONDING.** At all times during the performance of the Services, Implementer providing any direct installation services represents, warrants and covenants that it has and shall, and shall cause each Implementer Party, obtain and maintain, at its sole cost and expense, all bonding requirements of the California State License Board, as may be applicable. Regardless of the specific Services provided, Implementer shall also maintain any payment and/or performance assurances as may be requested by MCE during the performance of the Services.

**17.3 GOOD STANDING.** Implementer represents and warrants that (a) it is a **corporation** duly organized, validly existing and in good standing under the laws of the State of **California** and (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.

**17.4 SAFETY.** During the term of this Agreement, Implementer continuously represents, warrants and covenants that it shall, and shall cause each Implementer Party to:

- (a) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;
- (b) abide by all applicable MCE security procedures, rules and regulations and cooperate with MCE security personnel whenever on MCE's property;
- (c) abide by MCE's standard safety program contract requirements as may be provided by MCE to Implementer from time to time;
- (d) provide all necessary training to its employees, and require subcontractors to provide training to their employees, about the safety and health rules and standards required under this Agreement; and
- (e) have in place an effective Injury and Illness Prevention Program that meets the requirements all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code. Additional safety requirements (including MCE's standard safety program contract requirements) are set forth elsewhere in the Agreement, as applicable, and in MCE's safety handbooks as may be provided by MCE to Implementer from time to time.

**17.5 BACKGROUND CHECKS.**

(a) Implementer hereby represents, warrants and certifies that any personnel of Implementer or Implementer Party having or requiring access to MCE's assets, premises or customer property ("Covered Personnel") shall have successfully passed background screening on each such individual, prior to receiving access, which screening may include, among other things to the extent applicable to the Services, a screening of the individual's educational background, employment history, valid driver's license, and court record for the seven (7) year period immediately preceding the individual's date of assignment to the project.

(b) Notwithstanding the foregoing and to the extent permitted by applicable law, in no event shall Implementer permit any Covered Personnel to have one or more convictions during the seven (7) year period immediately preceding the individual's date of assignment to the project, or at any time after the individual's date of, assignment to the project, for any of the following ("Serious Offense"): (i) a "serious felony," similar to those defined in California Penal Code Sections 1192.7(c) and 1192.8(a), or a successor statute, or (ii) any crime involving fraud (such as, but not limited to, crimes covered by California Penal Code Sections 476, 530.5, 550, and 2945, California Corporations Code 25540), embezzlement (such as, but not limited to, crimes covered by California Penal Code Sections 484 and 503 et seq.), or racketeering (such as, but not limited to, crimes covered by California Penal Code Section 186 or the Racketeer Influenced and Corrupt Organizations("RICO") Statute (18 U.S.C. Sections 1961-1968)).

(c) To the maximum extent permitted by applicable law, Implementer shall maintain documentation related to such background and drug screening for all Covered Personnel and make it available to MCE for audit if required pursuant to the audit provisions of this Agreement.

(d) To the extent permitted by applicable law, Implementer shall notify MCE if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Implementer will also immediately prevent that employee, representative, or agent from performing any Services.

**17.6 FITNESS FOR DUTY.** Implementer shall ensure that all Covered Personnel report to work fit for their job. Covered Personnel may not consume alcohol while on duty and/or be under the influence of drugs or controlled substances that impair their ability to perform their work properly and safely. Implementer shall, and shall cause its subcontractors to, have policies in place that require their employees report to work in a condition that allows them to perform the work safely. For example, employees should not be operating equipment under medication that creates drowsiness.

**17.7 INDEMNIFICATION.** Implementer 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 Implementer'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. Implementer 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 Implementer shall comply with any and all applicable federal, state and local laws, regulations and resolutions (including, but not limited to all CPUC policies and guidance for energy efficiency programs, 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
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All other notices shall be given to MCE at the following location:

Contract Manager:	Troy Nordquist
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MCE Address:	1125 Tamalpais Avenue
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San Rafael, CA 94901
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Email Address:	contracts@mcecleanenergy.org
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Telephone No.:	(415) 464-6027
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Notices shall be given to Implementer at the following address:

Implementer:	Katie Moore
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Address:	1400 N. Dutton Ave, Ste 17
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Santa Rosa, CA 95401
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Email Address:	katie@teaa.net
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Telephone No.:	(707) 542-3171
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**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.

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

**22. DATA COLLECTION AND OWNERSHIP REQUIREMENTS:**

**22.1. DEFINITION OF "MCE DATA".** "MCE Data" shall mean all data or information provided by or on behalf of MCE, including but not limited to, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manual's, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to Implementer as MCE may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Implementer. MCE Data shall also include all data and materials provided by or made available to Implementer by MCE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors.

"Confidential Information" under this Agreement shall have the same meaning as defined in the Marin Clean Energy Non-Disclosure Agreement between the parties dated **March 9, 2017** ("MCE NDA").

**22.2. DEFINITION OF “PERSONAL INFORMATION”.** “Personal Information” includes but is not limited to the following: personal and entity names, e-mail addresses, addresses, phone numbers, any other public or privately-issued identification numbers, IP addresses, MAC addresses, and any other digital identifiers associated with entities, geographic locations, users, persons, machines or networks, and “personal information” as defined in Section 1798.140(o)(1) of the California Civil Code.. Implementer shall comply with all applicable laws, rules, and regulations related to the use, collection, storage, and transmission of Personal Information.

**22.3. DATA SECURITY MEASURES.** Prior to Implementer receiving any MCE Data, Implementer shall comply, and at all times thereafter continue to comply, in compliance with MCE’s data security policies set forth in MCE Policy 009 and MCE’s Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy (“Security Measures”) and pursuant to MCE’s Confidentiality provisions in Section 5 of the MCE NDA. MCE’s Security Measures and Confidentiality provisions require Implementer to adhere to reasonable administrative, technical, and physical safeguard protocols to protect the MCE’s Data from unauthorized handling, access, destruction, use, modification or disclosure.

**22.4. IMPLEMENTER DATA SECURITY MEASURES.** Additionally, Implementer shall, at its own expense, adopt and continuously implement, maintain and enforce reasonable technical and organizational measures, consistent with the sensitivity of Personal Information and Confidential Information including, but not limited to, measures designed to (1) prevent unauthorized access to, and otherwise physically and electronically protect, the Personal Information and Confidential Information, and (2) protect MCE content and data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

**22.5. RETURN OF MCE DATA.** Promptly after this Agreement or a Statement of Work terminates or expires, and for each completed Statement of Work (i) Implementer will securely destroy all MCE Data in its possession with respect to each terminated or expired Statement of Work and certify the secure destruction in writing to MCE, and (ii) each party will return (or if requested by the disclosing party, destroy) all other Confidential Information and property of the other (if any) with respect to each terminated or expired Statement of Work, provided that Implementer’s attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

**22.6. OWNERSHIP AND USE RIGHTS.**

- a) **MCE Data.** Unless otherwise expressly agreed to by the Parties, MCE shall retain all of its rights, title and interest in MCE’s Data.
- b) **Program Intellectual Property.** Unless otherwise expressly agreed to by the Parties, any and all materials, information, or other work product created, prepared, accumulated or developed by Implementer or any Implementer Party under this Agreement with Program funds (“Program Intellectual Property”), including inventions, processes, templates, documents, drawings, computer programs, designs, calculations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be owned by MCE on behalf and for the benefit of their respective customers.
- c) **Program Intellectual Property will be owned by MCE upon its creation.** Implementer agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE’s ownership in the Program Intellectual Property.
- d) **Implementer’s Pre-Existing Materials.** If, and to the extent Implementer retains any preexisting ownership rights (“Implementer’s Pre-Existing Materials”) in any of the materials furnished to be used to create, develop, and prepare the Program Intellectual Property, Implementer hereby grants MCE and the Program Participants on behalf of their respective customers and the CPUC for governmental and regulatory purposes an irrevocable, assignable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of Implementer or any Implementer Party for the sole purpose of using such Program Intellectual Property for the conduct of MCE’s business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. For the avoidance of doubt, Implementer shall retain all of its rights, title and interest in Implementer’s proprietary calculator titled “TEAA Proprietary Excel Calculator” used in the performance of this Agreement. Unless otherwise expressly agreed to by the Parties, Implementer shall retain all of its rights, title and interest in Implementer’s Pre-Existing Materials. Any and all claims to Implementer’s Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Program Intellectual Property must be expressly disclosed to MCE prior to performing any Services under this Agreement. Any such Pre-Existing Material that is modified by work under this Agreement is owned by MCE.

**22.7 BILLING, ENERGY USE, AND PROGRAM TRACKING DATA.**



- a) Implementer shall comply with and timely cooperate with all CPUC directives, activities, and requests regarding the Program and Project evaluation, measurement, and verification ("EM&V"). For the avoidance of doubt, it is the responsibility of Implementer to be aware of all CPUC requirements applicable to the Services of this Agreement.
- b) Implementer shall make available to MCE upon demand, detailed descriptions of the program, data tracking systems, baseline conditions, and participant data, including financial assistance amounts.
- c) Implementer shall make available to MCE any revisions to Implementer's program theory and logic model ("PTLM") and results from its quality assurance procedures, and comply with all MCE EM&V requirements, including reporting of progress and evaluation metrics.

### **23. WORKFORCE STANDARDS:**

At all times during the term of the Agreement, Implementer shall comply with, and shall cause all Implementer Parties to comply with, the workforce qualifications, certifications, standards and requirements set forth in this Section 23 ("Workforce Standards"). The Workforce Standards shall be included in their entirety in Implementer's Final Implementation Plan. Final Implementation Plan shall mean as it is defined in the deliverables for the Services listed in Exhibit A. Prior to commencement of any Services, once per calendar year thereafter, and at any other time as may be requested by MCE, Implementer shall provide all documentation necessary to demonstrate to MCE's reasonable satisfaction that Implementer has complied with the Workforce Standards.

**23.1 HVAC STANDARDS.** For any non-residential project pursuant to this Agreement installing, modifying or maintaining a Heating Ventilation and Air Conditioning ("HVAC") system or component with incentives valued at \$3,000 or more, Implementer shall ensure that each worker or technician involved in the project, including all employees and agents of its subcontractors, meets at least one of the following workforce criteria:

- a) Completed an accredited HVAC apprenticeship;
- b) Is enrolled in an accredited HVAC apprenticeship;
- c) Completed at least five years of work experience at the journey level as defined by the California Department of Industrial Relations, Title 8, Section 205, of the California Code of Regulations, passed a practical and written HVAC system installation competency test, and received credentialed training specific to the installation of the technology being installed; or
- d) Has a C-20 HVAC contractor license issued by the California Contractor's State Licensing Board.

This standard shall not apply where the incentive is paid to any manufacturer, distributor, or retailer of HVAC equipment, unless the manufacturer, distributor, or retailer installs or contracts for the installation of the equipment.

**23.2 ADVANCED LIGHTING CONTROLS STANDARDS.** For any non-residential project pursuant to this Agreement involving installation, modification, or maintenance of lighting controls with incentives valued at \$2,000 or more, Implementer shall ensure that all workers or technicians involved in the project, including those of its subcontractors are certified by the California Advanced Lighting Controls Training Program ("CALTP"). This requirement shall not apply where the incentive is paid to a manufacturer, distributor, or retailer of lighting controls unless the manufacturer, distributor, or retailer installs or contracts for installation of the equipment.

### **24. FINANCIAL STATEMENTS:**

Implementer shall deliver financial statements on an annual basis or as may be reasonably requested by MCE from time to time. Such financial statements or documents shall be for the most recently available audited or reviewed period and prepared in accordance with generally-accepted accounting principles. MCE shall keep such information confidential if requested by Implementer, except as provided by law and to provision to the CPUC may be required from time to time under confidentiality procedures, where applicable.

### **25. QUALITY ASSURANCE PROCEDURES:**

Implementer shall comply with the Quality Assurance Procedures identified in Exhibit A. Additionally, Quality Assurance Procedures must include, but are not limited to: (i) industry standard best practices; and (ii) procedures that ensure Measure functionality, customer satisfaction, and that the Minimum Qualifications are satisfied.

### **26. COORDINATION WITH OTHER PROGRAM ADMINISTRATORS:**

Implementer shall coordinate with other Program Administrators, including investor-owned utilities and local government agencies authorized by the CPUC to implement CPUC-directed energy efficient programs, administering energy efficiency programs in the same geographic area as MCE. These other Program Administrators include: Pacific Gas and Electric Company and Bay Area Regional Energy Network. The CPUC may develop further rules related to coordination between Program Administrators in the same geographic area, and any Implementer is required to comply with such rules.

**27. ACCESS TO CUSTOMER SITES:**

Implementer shall be responsible for obtaining any and all access rights from customers and other third parties to the extent necessary to perform the Services. Implementer shall also procure any and all access rights from Implementer Parties, customers and other third parties in order for MCE and CPUC employees, representatives, designees and contractors to inspect the Services.

**28. MEASUREMENT AND VERIFICATION REQUIREMENTS, INCLUDING GUIDELINES ABOUT NORMALIZED METERED ENERGY CONSUMPTION ("NMEC") DESIGN REQUIREMENTS:**

Implementer shall:

1. Only enroll customers that qualify for Program services.
2. Comply with current policies, procedures, and other required documentation as required by MCE;
3. Report Customer Participation Information to MCE.
4. Work with MCE's evaluation team to define Program-specific data collection and evaluability requirements, and in the case of NMEC which independent variables shall be normalized.

Throughout the Term, MCE may identify new net lifecycle energy savings estimates, net-to-gross ratios, effective useful lives, or other values that may alter Program Net Lifecycle Energy Savings, as defined in Exhibit A, if applicable. Implementer shall use modified values upon MCE's request, provided MCE modifies Implementer's Program budget and/or overall Program net lifecycle Energy Savings consistent with the requested change. MCE will determine any budget increases or decreases in its sole discretion.

For Programs claiming to-code savings: Implementer shall comply with Applicable Law and work with MCE to address elements in its Program designs and Implementation Plans, such as:

1. Identifying where to-code savings potential resides;
2. Specifying which equipment types, building types, geographic allocations, and/or customer segments promise cost-effective to-code savings;
3. Describing the barriers that prevent code-compliant equipment replacements;
4. Explaining why natural turnover is not occurring within certain markets or for certain technologies; and
5. Detailing the program interventions that would effectively accelerate equipment turnover.

**29. 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.

**30. 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.

**31. COUNTERPARTS:**

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

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

**APPROVED BY**

**Marin Clean Energy:**

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

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

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

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

**IMPLEMENTER:**

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

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

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

**MODIFICATIONS TO ENERGY EFFICIENCY STANDARD SHORT FORM**

☒ **Standard Short Form Content Has Been Modified**

**List sections affected:** Section 22.6(d)

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

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

## **EXHIBIT A**

### **SCOPE OF SERVICES (required)**

Implementer will provide the following program implementation services as requested and directed by MCE staff for MCE's nonresidential energy efficiency program, up to the maximum time/fees allowed under this Agreement.

#### **Program overview**

**Timeline: January 1, 2021 through December 31, 2021**

Implementer will implement (the "Program"), as outlined in Appendix A. This scope of work summarizes requirements and expectations of Implementer as an implementer of MCE's commercial energy efficiency program, covering administration, project development, evaluation, promotion of commercial energy efficiency programs, and coordination with other program implementers who work alongside Implementer.

#### **Task 1: Maintenance of a pre-qualified products catalog**

**Timeline for completion: Initial version on January 17th, updates as needed**

Implementer will maintain in coordination with MCE, a pre-qualified products catalog that will include approved products and/or measures for inclusion in the Program. This catalog will be revised and/or updated as required by CPUC rules, MCE direction, and/or input from Implementer. Vendors who participate in the Program will utilize approved equipment, and Implementer will conduct regular review of vendor pricing. Implementer will provide a comprehensive product portfolio which includes lighting, HVAC, refrigeration, water heating, and controls measures such as occupancy sensors and PTAC controls.

#### **Task 2: Management Plan of Customer Incentives, Rebates and Project Pricing**

**Timeline for completion: Ongoing**

Implementer will develop a management plan of its project portfolio to deliver projects using both Deemed and Customized, and meter-based (normalized metered energy consumption or "NMEC") savings strategies to achieve the targeted average customer incentive payment rate.

The average customer incentive payments at the portfolio level for Implementer are to be at \$.27/kWh (net first year energy savings), and \$1.50/therm (net first year energy savings). Average incentive rates are subject to change as directed by MCE and noticed to Implementer.

All projects with anticipated customer incentive payments of over \$10,000 are to be sent to MCE staff for review prior to installation. If these projects are not approved in writing by MCE before installation MCE cannot guarantee the payment of the Implementer's quoted customer incentive or Implementer's performance fees.

Implementer shall conduct a due diligence review of all quoted and invoiced pricing from participating vendors who install projects at customer facilities. Implementer's review and project verification shall include vetting: (i) the project specifications, (ii) the products used, (iii) equipment pricing, which may include requesting wholesale price sheets for comparisons, and (iv) the net first year energy savings calculated for the project. Projects where equipment price is beyond 140% of distributor/wholesale pricing shall be questioned by Implementer, and may not be covered by MCE incentives. Implementer is expected to act as an advocate for the customer, advocating for lower costs wherever possible.

For all project leads that are generated by MCE or Implementer and have an anticipated incentive of over \$2,000, a minimum of two (2) competitive bids must be received for the project.

Acceptable claims types may include deemed calculations and custom calculations. Once available to the Program as an approved savings methodology and when MCE deems appropriate, meter-based savings may also be used as the basis for savings claims.

#### **Task 3: Qualify and Manage Vendors**

**Timeline for completion: Ongoing**

Implementer must perform vendor qualification, training, and management using existing processes. Implementer's screening of vendors includes an application, verification of California contractor's license, and verification of insurance (general liability, auto, workers' compensation) coverage. Enrolled vendors receive support and training, including an initial one-on-one training with Implementer as well as ongoing support. Program vendors may be assigned individual projects, and/or they may bring in their own project leads.

Implementer will also provide support to customers or facilities managers who opt to self-install a project or otherwise complete a project without a vendor's involvement.

Quality Assurance: Implementer will inspect 100 percent of completed projects. If any vendor receives a poor customer satisfaction review or unsatisfactory inspection results from a project, they may be suspended from Program participation.

**Task 4: Coordinate with other Programs and/or Contractors****Timeline for completion: Ongoing**

At the direction of MCE, Implementer will coordinate and cooperate with other energy efficiency programs and/or other Program contractors to streamline Program delivery, reduce customer confusion, and align measures and customer incentives as directed by MCE. This may result in a request by MCE to limit scope of services (by geographic area served, or targeted measures), or to focus services in specific areas.

**Task 5: Program Operations****Timeline for completion: Ongoing**

Implementer will employ a customer engagement program strategy which leverages direct customer outreach, contractor-sourced customer enrollment, and referrals. The key elements are listed below in chronological order:

- Lead Generated
- Customer Contact Sequence
  - Introductions
  - Discuss efficiency program details
  - Schedule a site visit
  - Complete Access Agreement form (TBD)
- Site Visit
  - Perform detailed audit/survey
  - Obtain copy of utility bill
  - Determine building type and usage data
  - Obtain customer objectives, areas of concern/importance
  - Discuss Program details and respond to questions
- Generate Proposal
  - Data entry
  - Obtain pricing
  - Generate written proposal
- Presentation of Proposal to Customer
- Installation
- Verification
- Monthly reporting

**Task 6: MCE & CPUC Reporting****Timeline for completion: Ongoing through March 31, 2022**

Implementer will submit application paperwork to MCE in accordance with MCE's current reporting practices. Such Monthly Reporting documentation will include:

- Monthly Invoice
- Monthly Reporting (MCE's mandatory sections), Running totals of projects and a Monthly Report
- Scanned project paperwork as required by MCE program managers.

Reporting practices will change as MCE launches a project management platform, for which Implementer will use a tailored portal to enter in new project details, which will be updated through various project stages through to the final invoicing and payment. The platform will capture key project details based on Implementer's input, which MCE staff will then use for reporting needs. In addition, Contractor will report the quarterly data to external reviewers, which covers:

- Claims
- Contract Claim
- Contact Info
- Custom Measures
- Deemed Measures
- Program Cost
- Site claims
- Site-PII Claims
- Water Measures

**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

For program implementation services provided under this Agreement, MCE shall pay Implementer a performance fee for net kWh savings claimed with the CPUC, in accordance with the following payment schedule:

<b>2021 Implementation Budget for services delivered between January 1 and December 31, 2021</b>				
<i>Cost Item</i>	<i>Unit Cost</i>	<i>Unit</i>	<i>Quantity</i>	<i>Estimated Total Cost (NTE)</i>
Program Performance Fees* per net kWh saved	\$0.22	kWh	1,727,273	\$380,000
Program Performance Fees* per net therm saved	\$0.80	therm	25,000	\$20,000
Total Contract (NTE)				\$400,000
*Performance fees will be invoiced and paid on a monthly basis, with an annual true-up to account for revisions to final savings claims, based on MCE, EM&V and/or CPUC review. This payment is predicated upon substantial progress or completion, as applicable, of the Tasks set forth in Exhibit A. Customer rebates and incentives will be paid at average rates of \$0.27/kWh and \$1.50/therm saved				

Implementer shall bill MCE monthly. In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$400,000** for the term of the Agreement.



December 4, 2020

TO: MCE Executive Committee

FROM: Joey Lande, Manager of Customer Programs

RE: Proposed Second Amendment to the Fourth Agreement with Recurve Analytics, Inc. (Agenda Item #05 C.4)

ATTACHMENTS: A. Proposed Second Amendment to the Fourth Agreement with Recurve Analytics, Inc.  
B. First Amendment to the Fourth Agreement with Recurve Analytics, Inc.  
C. Fourth Agreement with Recurve Analytics, Inc.

Dear Executive Committee Members:

**SUMMARY:**

The proposed Second Amendment to the Fourth Agreement with Recurve Analytics, Inc. is a contract for services that provide meter-based energy efficiency savings assessments. At the core of the service is a subscription for a web-based platform, which uses advanced metering infrastructure (AMI) data, customer data, project data and weather data to accurately monitor impacts, analyze baseline and retrofit conditions, and target customers for program participation. Together, these services enable the deployment of pay-for-performance (P4P) energy efficiency programs, and the evaluation of programs with impacts that can be measured at the meter.

P4P programs such as those enabled by Recurve's platform allow for market-based solutions to drive program results, which support MCE's goal of scalable program impacts. In addition, Recurve's platform will be used to conduct measurement and verification of other projects, programs or events. For example, in 2020, Recurve's platform demonstrated significant value in quantifying the impacts of COVID-19 on specific customer groups. Recurve's services enable the Customer Programs team to analyze savings claims from implementers, and also generate new data (e.g. measurement of peak load reduction) to quantify program and customer impacts.

The proposed Second Amendment to the Fourth Agreement with Recurve includes a not-to-exceed contract value of \$345,000 in 2021. This is an increase of \$87,000 over the 2020 contract value, and is primarily due to an expansion of MCE's Single Family Comprehensive Program, which will add roughly 100,000 customers to the Program in 2021. The addition of this cohort increases the costs for Recurve's software subscription service and data analytics.

**Fiscal Impacts:** Expenditures related to the proposed Second Amendment to the Fourth Agreement with Recurve Analytics, Inc. would be funded from MCE's energy efficiency programs budget allocated by the California Public Utilities Commission (CPUC).

**Recommendation:** Approve the proposed Second Amendment to the Fourth Agreement with Recurve Analytics, Inc.



## **SECOND AMENDMENT TO FOURTH AGREEMENT BY AND BETWEEN MARIN CLEAN ENERGY AND RECURVE ANALYTICS, LLC**

This SECOND AMENDMENT is made and entered into on December 4, 2020, by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and RECURVE ANALYTICS, LLC (hereinafter referred to as "Contractor").

### RECITALS

WHEREAS, MCE and Contractor entered into an agreement on December 6, 2019, and amended on July 24, 2020, to provide upgrades to and use of Recurve Meter Platform and the RecurveOS Operations Platform for implementing MCE's energy savings programs services ("Agreement"); and

WHEREAS, Section 4 and Exhibit B to the Agreement provided for Contractor to be compensated in an amount not to exceed \$242,000 for the energy savings programs services described within the scope therein; and

WHEREAS the parties desire to amend the Agreement to increase the contract amount by \$361,000 for total consideration not to exceed \$603,000; and

WHEREAS, Exhibit A to the Agreement, as amended, specified the tasks Contractor will complete for the energy savings programs services as described in the scope therein; and

WHEREAS, the parties desire to further amend the Agreement to modify the scope of the Agreement; and

WHEREAS, Exhibit B to the Agreement, as amended, specified the fees and payment schedule for the tasks Contractor will complete for the energy savings programs services as described in the scope therein; and

WHEREAS, the parties desire to further amend the Agreement to modify the fee schedule of the Agreement.

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

### AGREEMENT

1. The deliverable under Task 4 of Exhibit A is hereby amended to read as follows:

*Deliverable for Tasks 4a-4c is ongoing support which will include:*

- 4a: Check-ins with Program Managers, third-party implementers, and ad-hoc requests;*
- 4b: Ad-hoc requests for meter-based analytics on specific customer groups or the addition of features or queriable fields within MCE dashboard;*
- 4c: Related work on the integration, acquisition or distribution of data.*

2. Exhibit B is hereby removed and replaced in its entirety to read as follows:

For services provided under this Agreement, MCE shall pay Contractor in accordance with the fee schedule specified below:

**Licensing Fees and Payment Schedule for Tasks 1-4 in 2020**

<b>Task</b>	<b>Completion Timeline (Estimates)</b>	<b>Fees</b>	<b>Invoice Timing</b>
Task 1: Recurve Demand Flexibility Platform	<b>On-going activities</b>	<b>\$60,000 fixed annual fee (\$5,000/month)</b> <ul style="list-style-type: none"> <li>- One platform instance sized for up to 1,000,000 meters with 15 GB DB RAM</li> </ul>	<b>Monthly</b>
Task 2: Fleet Management Software	<b>On-going activities</b>	<b>\$4,000/month</b> <ul style="list-style-type: none"> <li>- Includes 25 monthly Routine Support Hours as defined in Task 4a</li> <li>- Includes 10,000 vCPU hours per month. Contractor will provide notice to MCE of any potential overage, before the 10,000 vCPU hour allocation is exceeded. Overage of the 10,000 vCPU limit will first be deducted from available vCPU hours allocated in the Resource Planner listed in Task 3 (67,900). If no more hours are available in Task 3, overage to be billed on a pay-as-you-go basis (billed at \$1.18/vCPU hour).</li> </ul> <p><b>Add-ons will be billed to MCE once selected as indicated below:</b></p> <p><b>\$1,000/month – 3<sup>rd</sup> Party Platform Add On</b></p> <ul style="list-style-type: none"> <li>- Billed monthly beginning with month of deployment</li> </ul> <p><b>\$5,000/month – Ledger Add On</b></p> <ul style="list-style-type: none"> <li>- Billed monthly upon program launch</li> </ul> <p><b>\$1,000/month – Comparison Group Add On</b></p> <ul style="list-style-type: none"> <li>- Billed monthly upon comparison group deployment</li> </ul>	<b>Monthly</b>
Task 3: Resource Planner Software	<b>On-going activities</b>	<b>\$55,000 – Software License</b> <ul style="list-style-type: none"> <li>- Includes 67,900 vCPU hours</li> <li>- MCE approved overage billed at \$1.18/vCPU hour</li> </ul>	<b>Annual, approved overages billed as incurred</b>

Task 4a: Routine Support	<b>On-going activities</b>	<b>25 hours per month included in Task 2 fees</b> - MCE approved overage billed at hourly rate	<b>Approved Overages billed Monthly</b>
Task 4b: Resource Planner Support	On demand activities	- Standard hourly rates apply	<b>Monthly</b>
Task 4c: Infrastructure Support	On demand activities	<b>25 hours per month included in Task 2 fees</b> - MCE approved overage billed at hourly rate	<b>Approved Overages billed Monthly</b>
Total 2020 Contract Budget		<b>Not to Exceed \$258,000</b>	

**Licensing Fees and Payment Schedule for Tasks 1-4 in 2021**

<b>Task</b>	<b>Completion Timeline (Estimates)</b>	<b>Fees</b>	<b>Invoice Timing</b>
Task 1: Recurve Demand Flexibility Platform	<b>On-going activities</b>	<b>\$60,000 fixed annual fee (\$5,000/month)</b> - One platform instance sized for up to 1,000,000 meters with 15 GB DB RAM	<b>Monthly</b>
Task 2: Fleet Management Software	<b>On-going activities</b>	<b>\$204,000 (1x Fleet Manager \$4,000, 1x 3<sup>rd</sup> Party Platform \$1,000, 2x Comparison Group \$10,000, 2x payment ledger \$2,000) (\$17,000/month)</b>  - Includes 25 monthly Routine Support Hours as defined in Task 4a - Includes 10,000 vCPU hours per month. Contractor will provide notice to MCE of any potential overage, before the 10,000 vCPU hour allocation is exceeded. Overage of the 10,000 vCPU limit will first be deducted from available vCPU hours allocated in the Resource Planner listed in	<b>Monthly</b>

		Task 3 (67,900). If no more hours are available in Task 3, overage to be billed on a pay-as-you-go basis (billed at \$1.18/vCPU hour).	
Task 3: Resource Planner Software	<b>On-going activities</b>	<b>\$45,000</b> <ul style="list-style-type: none"> <li>- Includes 67,900 vCPU hours MCE approved overage billed at \$1.18/vCPU hour</li> </ul>	<b>One-time Annual payment to be included in January 2021 invoice.</b>
Task 4a: Routine Support	<b>On-going activities</b>	<b>25 hours per month included in Task 2 fees</b> <ul style="list-style-type: none"> <li>- MCE approved overage billed at hourly rate</li> </ul>	<b>Approved overages billed Monthly</b>
Task 4b: Resource Planner Support	On demand activities	<b>\$34,500 (150 hours)</b> <ul style="list-style-type: none"> <li>- <b>Standard hourly rates apply</b></li> </ul>	<b>Hourly rate to be billed Monthly</b>
Task 4c: Infrastructure Support	On demand activities	<b>Overage only</b> <ul style="list-style-type: none"> <li>- <b>MCE approved overage billed at hourly rates</b></li> </ul>	<b>Monthly</b>
Total 2021 Contract Budget		<b>Not to Exceed \$345,000</b>	

**Rate schedule for all hourly work performed (Task 4)**

<b>Title</b>	<b>Personnel</b>	<b>Hourly Rate</b>
Lead Project Consultant	Adam Scheer	\$230
Senior Policy Consultant	Carmen Best	\$230
Product Manager	Alyssa Byers	\$200
Software Engineer	Vikhyati Singh	\$200

Senior Software Engineer	Dave Yeager	\$220
Senior Software Engineer	Phil Ngo	\$220
Senior Software Engineer	Arpan Kotecha	\$220
Senior Software Engineer	Steve Suffian	\$220

Personnel named above is subject to change. Should a staff member need to be replaced, Contractor shall ensure that a staff member with comparable experience serves as the replacement, and MCE shall be notified of the staffing change in writing within one week.

Upon written request of the Contractor, and written approval of MCE Customer Programs Manager, funds may shift between Tasks to accomplish the scope of services outlined in this Agreement.

Contractor shall bill MCE monthly pursuant to the invoice schedule listed above and based on the number of hours expended per Task for the previous month (if applicable). Contractor shall provide itemized invoices each month to MCE which are then subject to MCE approval. MCE shall not be obligated to pay unless and until MCE approves of each itemized invoice in writing.

In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$603,000** for the term of the Agreement.

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

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

MARIN CLEAN ENERGY:

CONTRACTOR:

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

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

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

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

MARIN CLEAN ENERGY:

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

Chairperson

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

## FIRST AMENDMENT TO FOURTH AGREEMENT BY AND BETWEEN MARIN CLEAN ENERGY AND RECURVE ANALYTICS, LLC

This FIRST AMENDMENT is made and entered into on July 24, 2020, by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and RECURVE ANALYTICS, LLC (hereinafter referred to as "Contractor").

### RECITALS

WHEREAS, MCE and Contractor entered into an agreement on December 6, 2019, to provide upgrades to and use of Recurve Meter Platform and the RecurveOS Operations Platform for implementing MCE's energy savings programs services ("Agreement"); and

WHEREAS, Section 5 of the Agreement stated the Agreement shall terminate on December 31, 2020; and

WHEREAS, the parties desire to amend the Agreement to extend the time of the Agreement; and

WHEREAS, Exhibit A to the Agreement specified the tasks Contractor will complete for the energy savings programs services as described in the scope therein; and

WHEREAS, the parties desire to amend the Agreement to modify the scope of work of the Agreement; and

WHEREAS, Exhibit B to the Agreement specified the fees and payment schedule for the tasks Contractor will complete for the energy savings programs services as described in the scope therein; and

WHEREAS, the parties desire to amend the Agreement to modify the fee schedule of the Agreement.

NOW, THEREFORE, the parties agree to modify Section 5 and Exhibits A and B as set forth below.

### AGREEMENT

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

#### **TIME OF AGREEMENT:**

This Agreement shall commence on **December 6, 2019**, and shall terminate on **December 31, 2021**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

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

Contractor will assist MCE with evaluating and reporting site-based, normalized meter energy consumption ("NMEC") from an existing conditions baseline.

#### **The Recurve Platform and Contractor Services – Work Packages**

##### **Task 1. Recurve Demand Flexibility Platform**

Description: Recurve's Demand Flexibility Platform comprises modules for ingesting and formatting data; deployment and maintenance of application infrastructure; and configuration and deployment of data warehouse infrastructure. Each platform instance is hosted on an individually configured Amazon Web Services cloud-hosted Postgres DB (a relational database management system) with one of three

standard sizing configurations to accommodate larger datasets. Platform is continuously deployed in accordance with the terms of the software license agreement described below.

*Deliverable: Contractor will deploy and maintain the application infrastructure, configure and deploy the data warehouse infrastructure, and continue to deploy the platform for the term of the Agreement.*

### **Task 2: Fleet Manager Software License**

**Description:** Recurve's Fleet Management Software Module provides an interface for tracking deployed programs. The application configures and executes the running of the algorithms of the OpenEEmeter, including CalTRACK hourly and daily methods. The Fleet Manager Module includes a configurable user interface and supports a limited number of custom, downloadable tables generated from Fleet Manager data warehouses. Subject to MCE's written request, the Fleet Manager module can be extended to include support for third-party Remote Portfolios, on-demand project qualification screening, comparison groups, as well as Ledger for calculating and accounting for payable savings for pay-for-performance programs as well as filing claims with regulatory bodies. Monthly allocation of virtual central processing unit (vCPU) hours provided for routine calculations required for savings measurements. Contractor will provide notice to MCE of any potential overage before the vCPU hour allocation is exceeded. MCE-approved overage will be deducted from Task 3 allocation or billed on a pay-as-you-go basis, as directed by MCE.

*Deliverable: Contractor will provide a monthly allocation of hours to calculate savings measurements using Recurve's Fleet Management Software Module.*

### **Task 3: Resource Planner Software License**

**Description:** Recurve's Resource Planner Software Module supports custom analysis of large datasets. The Recurve Demand Flexibility Platform configures parallelized virtual servers to perform complex calculations within large datasets that are loaded into data warehouses for reporting, filtering, and visualization within a customizable data visualization interface. MCE will pay the annual fee for the Resource Planner Software License which provides for an allotted number of vCPU hours and additional pricing for any overages on the vCPU hours consumed by running an analysis. Contractor will provide notice to MCE of any potential overage before the vCPU hour allocation is exceeded and MCE must approve all overages.

*Deliverable: Contractor will update data in Planner Software, then analyze large Advanced Metering Infrastructure datasets using Recurve's Resource Planner Software Module, and perform complex calculations within large datasets using Recurve Demand Flexibility Platform in order to create a data visualization interface that will support MCE's understanding of customers' load shapes, energy consumption patterns, and fit for specific programs or interventions.*

### **Task 4: Support**

#### **a: Routine Support**

**Description:** Contractor provides discounted support for routine tasks, such as loading data, adjusting platform settings to meet client requests, or hosting periodic client check-in meetings. This support package is bundled with the Fleet Manager Software License with 25 support hours per month available to Tasks 2 and 4. Contractor will provide notice to MCE of any hours which exceed the support hour monthly allocation. Exhibit B identifies additional support hours purchased by MCE. Any overage of the included and purchased support hours is billed at a standard hourly rate, and requires MCE pre-approval.

#### **b: Resource Planner Support**

**Description:** Contractor's data scientists can provide support for a variety of types of custom analysis. These include impact evaluations, customer targeting analytics, backcasting of existing projects and programs, comparison group development, and more. Discounted support can be pre-purchased or billed

at standard rates on a pay-as-you-go basis. Contractor will provide this Task 4b support upon purchase by MCE.

**c: Integration Support**

Description: Contractor's data engineers can set up automated data infrastructure that supports ongoing data sharing requirements. This may include Green Button or "Share my Data" integrations, including through-service providers such as Calpine or UtilityAPI; Salesforce or other CRM integrations; and others. This support can be pre-purchased at discounted rates or billed on a pay-as-you-go basis. Contractor will provide this Task 4c support upon purchase by MCE.

*Deliverable for Tasks 4a-4c: Initial expectations include data integration with Calpine's data output, as well as on-going client support up to 25 hours per month. Contractor will provide notice to MCE when the rolling average of non-routine monthly support costs exceeds \$2,000/month.*

**Additional Terms**

Contractor will maintain and support the Deliverables and services to ensure solid and reliable connectivity and access by MCE and their users and that the Deliverables and services perform and operate with in accordance with the specifications and as set forth in this Exhibit and the other terms and conditions of this Agreement. Contractor will promptly repair or replace, without any additional charge, the Deliverables or any portion thereof, that have any bugs, defects or errors (collectively, "**Errors**").

Availability:

Contractor will provide services on a 24 x 7 x 365 basis with an uptime guarantee of 98% as calculated on a monthly basis, excluding a Maintenance Window (defined below) of up to 120 minutes. Contractor will schedule any service upgrades or maintenance between 12:00 am and 4:00 am Pacific Standard Time on Saturday ("Maintenance Window").

If Contractor fails to meet the availability obligations above, then MCE will receive the credits specified below:

Service Availability	Credit (against monthly fee for affected Cloud Service)
98% or greater	0%
97% – 97.9%	5%
96% – 96.9%	10%
95% – 95.9%	15%
94% – 94.9%	30%
Less than 94%	100%

Error Correction:

In the event that MCE reports to Contractor any Error (the Severity Level to be reasonably determined by MCE), Contractor will respond to such reports as follows:

**"Severity Level 1"** is an emergency condition which makes the use or continued use of any one or more functions of the Deliverables impossible or significantly impaired. The condition requires an immediate solution that is not already available to MCE.



**“Severity Level 2”** is, other than any Severity Level 1 problem, any condition which makes the use or continued use of any one or more functions of the Deliverables difficult and which MCE cannot reasonably circumvent or avoid on a temporary basis without the expenditure of significant time or effort.

**“Severity Level 3”** is, other than any Severity Level 1 Problem or Severity Level 2 Problem, any limited problem condition which is not critical in that no loss of MCE data occurs and which MCE can reasonably circumvent or avoid on a temporary basis without the expenditure of significant time or effort.

**“Severity Level 4”** is, other than any Severity Level 1 Problem, Severity Level 2 Problem or Severity Level 3 Problem, a minor problem condition or Documentation error which MCE can easily circumvent or avoid. Additional requests for new feature suggestions, which are defined as new functionality in existing Deliverables, are also classified as Severity Level 4.

**Response Times:**

Contractor will respond to and resolve an Error, depending on the Severity Level, within the time frames set forth in the chart below, starting from the time MCE notifies Contractor of the Error.

<b>Severity Level</b>	<b>Assignment Time</b>	<b>Initial Response Time</b>	<b>Workaround Time</b>	<b>Resolution Time</b>
Severity Level 1 Problem	Immediate	Within 30 minutes	4 hours	24 hours
Severity Level 2 Problem	Immediate	Within 30 minutes	1 day	4 days
Severity Level 3 Problem	One Hour	Within 1 day	3 days	One week
Severity Level 4 Problem	One Hour	Within 1 day		One week

**Maintenance Services:**

Contractor will provide MCE with maintenance services to maintain:

- (a) the functionality of the services, as described in herein and Documentation;
- (b) the functionality of the services in accordance with the warranties set forth herein, including but not limited to, the Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth herein and the Documentation;
- (c) the access availability of the services to Authorized Users, where such availability is equal to or greater than the Service Level set forth herein; and,
- (d) the compatibility of the services with the then-current version and the three prior versions of Internet Explorer, Mozilla Firefox, Google Chrome, and any other internet browser described herein.

The Services Fees shall be inclusive of the fees for maintenance services.

“Documentation” means all user manuals, handbooks, training material, requirements, and other written or electronic materials Contractor makes available for, or that result from use of, the services.

**Required Notice of Upgrades and Maintenance:**

Unless otherwise provided for herein, Contractor shall provide no less than thirty (30) calendar day's prior written notice to MCE of all Major Platform Upgrades, including but not limited to new versions that

will provide a staging environment to MCE. Such written notice including a detailed description of all upgrades to be performed. For Emergency Maintenance, Contractor shall provide as much prior notice as commercially practicable to MCE and shall provide a detailed description of all maintenance performed no greater than one (1) calendar day following the implementation of the Emergency Maintenance.

Option to Revert Services:

Notwithstanding MCE's acceptance of the upgrades, Contractor shall revert services back to a prior release or version where MCE: (i) discovers that the upgrades adversely affect MCE's ability to use the services; and, (ii) provides Contractor with written notice requesting Contractor revert services to a prior build or version. Contractor shall reintroduce the prior release or version of services into production within one (1) business day of its receipt of MCE's notice.

Option to Upgrade to New Version:

Should Contractor supply to any other customer a new version of the services, MCE shall have the option to upgrade to the new version of the services at no cost provided that MCE is current in payment of Services Fees. As used herein, services shall consider a "New Version" if it utilizes similar functionality for similar applications, regardless of whether there is a code, language or platform change.

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

For services provided under this Agreement, MCE shall pay Contractor in accordance with the fee schedule specified below:

**Licensing Fees and Payment Schedule for Tasks 1-4**

<b>Task</b>	<b>Completion Timeline (Estimates)</b>	<b>Fees</b>	<b>Invoice Timing</b>
Task 1: Recurve Demand Flexibility Platform	<b>On-going activities</b>	<b>\$60,000 fixed annual fee (\$5,000/month)</b> <ul style="list-style-type: none"> <li>- One platform instance sized for up to 1,000,000 meters with 15 GB DB RAM</li> </ul>	<b>Monthly</b>
Task 2: Fleet Management Software	<b>On-going activities</b>	<b>\$4,000/month</b> <ul style="list-style-type: none"> <li>- Includes 25 monthly Routine Support Hours as defined in Task 4a</li> <li>- Includes 10,000 vCPU hours per month. Contractor will provide notice to MCE of any potential overage, before the 10,000 vCPU hour allocation is exceeded. Overage of the 10,000 vCPU limit will first be deducted from available vCPU hours allocated in the Resource Planner listed in Task 3 (67,900). If no more</li> </ul>	<b>Monthly</b>

		<p>hours are available in Task 3, overage to be billed on a pay-as-you-go basis (billed at \$1.18/vCPU hour).</p> <p><b>Add ons will be billed to MCE once selected as indicated below:</b></p> <p><b>\$1,000/month – 3<sup>rd</sup> Party Platform Add On</b></p> <ul style="list-style-type: none"> <li>- Billed monthly beginning with month of deployment</li> </ul> <p><b>\$5,000/month – Ledger Add On</b></p> <ul style="list-style-type: none"> <li>- Billed monthly upon program launch</li> </ul> <p><b>\$1,000/month – Comparison Group Add On</b></p> <ul style="list-style-type: none"> <li>- Billed monthly upon comparison group deployment</li> </ul>	
Task 3: Resource Planner Software	<b>On-going activities</b>	<p><b>\$55,000 – Software License</b></p> <ul style="list-style-type: none"> <li>- Includes 67,900 vCPU hours</li> </ul> <p>MCE approved overage billed at \$1.18/vCPU hour</p>	<b>Annual, approved overages billed as incurred</b>
Task 4a: Routine Support	<b>On-going activities</b>	<p><b>25 hours per month included in Task 2 fees</b></p> <ul style="list-style-type: none"> <li>- MCE approved overage billed at hourly rate</li> </ul>	<b>Approved Overages billed Monthly</b>
Task 4b: Resource Planner Support	On demand activities	- Standard hourly rates apply	<b>Monthly</b>
Task 4c: Infrastructure Support	On demand activities	<p><b>25 hours per month included in Task 2 fees</b></p> <ul style="list-style-type: none"> <li>- MCE approved overage billed at hourly rate</li> </ul>	<b>Approved Overages billed Monthly</b>
Total 2020 Contract Budget		<b>Not to Exceed \$242,000</b>	

**Rate schedule for all hourly work performed (Task 4)**

<b>Title</b>	<b>Personnel</b>	<b>Hourly Rate</b>
Lead Project Consultant	Adam Scheer	\$230
Senior Policy Consultant	Carmen Best	\$230

Product Manager	Alyssa Byers	\$200
Software Engineer	Vikhyati Singh	\$200
Senior Software Engineer	Dave Yeager	\$220
Senior Software Engineer	Phil Ngo	\$220
Senior Software Engineer	Arpan Kotecha	\$220
Senior Software Engineer	Steve Suffian	\$220

Contractor shall bill pursuant to the invoice schedule listed above. In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$242,000** for the term of the Agreement.


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

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

MARIN CLEAN ENERGY:

DocuSigned by:  
Vicken Kasanjian  
By: ACC4B8FA2E834F3...  
Date: 7/28/2020

CONTRACTOR:

  
By: McGee Young  
Date: July 24, 2020

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**FOURTH AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND RECURVE ANALYTICS, LLC**

**THIS FOURTH AGREEMENT** ("Agreement") is made and entered into this day **December 6, 2019** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and RECURVE ANALYTICS, LLC, hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services; upgrades to and use of the Recurve Meter Platform and the RecurveOS Operations Platform (including any services, websites (including hosting), solutions, platforms, and products that Contractor makes available under or in relation to the foregoing, including the software, equipment, technology, and services necessary for Contractor to provide the foregoing), development of custom configuration for implementing MCE's energy savings programs, and additional services as set forth in **Exhibit A**;

**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. Contractor will deliver the services and Deliverables in accordance with the milestone schedule in **Exhibit A**. Unless otherwise mutually agreed pursuant to Milestone 1 in **Exhibit A**, MCE will evaluate each Deliverable (including any upgrades to the services) and accept or reject it within 15 business days after receipt. If MCE does not accept or reject or request more time to evaluate the Deliverable within that time period, the Deliverable is deemed accepted. Contractor will fix rejected Deliverable within 10 business days after receiving notice of rejection from MCE ("Correction Period"). This process shall be repeated until MCE provides Contractor with written notice of its acceptance of a Deliverable ("Acceptance"). "Deliverables" means all intellectual property or other work product developed by Contractor for MCE under this Agreement, including Exhibit A, or as part of the services. Subject to MCE's payment of applicable fees, Contractor grants MCE a non-exclusive, worldwide, unlimited, fully-paid, right to access and use of the services for its business purposes during the term stated in this Agreement.

**Business continuity.** Contractor will be responsible for establishing, implementing, testing, and maintaining an effective business continuity program, which includes disaster recovery and crisis management procedures, in order to provide continuous access to, and support for, the Services. Contractor must at all times back up, archive and maintain duplicate or redundant systems that (i) are located at a secure physical location (other than the location of primary system(s) used to provide the Services), (ii) are updated and tested at least annually, and (iii) can fully recover the Services on a daily basis. On request, Contractor will provide MCE with an overview of Contractor's business continuity program and promptly respond to MCE's inquiries in connection with that business continuity program.

**2. MCE DATA AND MATERIALS:**

MCE grants Contractor a nonexclusive, revocable license to copy and use MCE Materials provided to it as necessary to perform services. MCE retains all right, title, and interest in and to MCE Materials and related intellectual property. Contractor will not: (i) sublicense the right to use MCE Materials; (ii) modify the MCE Materials; and (iii) will not distribute the MCE Materials. "MCE Materials" means tangible or intangible materials (including related intellectual property, documentation, methodologies, know how, processes, techniques, ideas, concepts, technologies, and data) provided by or on behalf of MCE to Contractor to perform the services. MCE Materials include modifications to, or derivative works of, the foregoing materials and any data entered into any Contractor database as part of the services.

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

The fees and payment schedule for furnishing services under this Agreement shall be based on the milestone schedule which is attached hereto as Exhibit A and the rate schedule which is attached hereto as Exhibit B and by this reference incorporated herein. The services will be provided on a fixed fee or time and material fee basis, as specified in Exhibit A. Said fees shall remain in effect for the entire term of the Agreement. MCE will pay the applicable fees after MCE's Acceptance of the applicable Deliverable.

Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Unless otherwise specified in Exhibit A, Contractor shall invoice MCE monthly. 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 and Acceptance by MCE 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 **\$242,000**.

**5. TIME OF AGREEMENT:**

This Agreement shall commence on January 1, 2020 and shall continue, unless terminated earlier in accordance with the terms of this Agreement, until December 31, 2020. 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. 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. The policy must cover infringement of third party proprietary rights (e.g., copyright, patent, trademark).

**6.5 PRIVACY AND CYBERSECURITY LIABILITY.** Privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs) of at least \$1,000,000 US per occurrence.

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. Except for Contractor's cloud infrastructure providers, 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', including Contractor's cloud infrastructure providers, compliance with all of 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. Approved subcontractors and required insurances as of the date hereof are set forth in **Exhibit C**.

**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, such consent will not be unreasonably withheld.

**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 annually, or as required by law, 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 data (including performance data, metered savings calculation data and other data generated as a result of MCE's use of the services) reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement ("Work Product") shall become the sole property of MCE upon payment to Contractor for such work. MCE shall have the exclusive right to use such Work Product in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide such data, 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. Except for MCE's Work Product, unless otherwise specifically agreed in writing by the parties, Contractor shall retain ownership of and all subsequent rights in its proprietary systems, software, or other intellectual property developed by Contractor and utilized in the course of this Agreement.

**12. TERMINATION:**

- 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. NO SUBSTITUTION 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. REPRESENTATIONS; WARRANTIES; INDEMNIFICATION:**

**16.1** Contractor continuously represents and warrants:

- (a) It has full rights and authority to enter into, perform under, and grant the rights in, this Agreement;
- (b) Its performance will not violate any agreement or obligation between it and any third party;
- (c) Deliverables and Work Product (including any data generated as a result of the services) will be true and accurate and conform to their documentation and specifications in Exhibit A;
- (d) Services will be performed professionally and be of high grade, nature, and quality;
- (e) Services, Work Product, and Deliverables will not: (i) infringe any third party patent, copyright, trademark, trade secret, or other proprietary right, or (ii) contain viruses or other malicious code that will degrade or infect any Deliverables, products, services, software, or MCE's network or systems; and
- (f) Contractor will comply with all applicable laws, including data protection laws.

Further, Contractor continuously represents and warrants that the Deliverables will not require, as a condition of use, modification, or distribution by MCE: (1) disclosure or distribution of the Deliverables in source code form, (2) a license to a third party to make derivative works of the Deliverables, or (3) redistribution of the Deliverables at no charge.

**16.2** If Contractor fails to meet its warranty obligations in Sections 16.1(b), (c) or (d), Contractor will correct such deficiency within thirty (30) days to MCE's reasonable satisfaction. If Contractor is unable to cure such deficiency within such time, MCE may terminate all or a portion of this Agreement by giving thirty (30) calendar days' written notice to Contractor. Such notice shall be sent by registered mail or by email to the email address listed in Section 19 Invoices; Notices.

**16.3 Indemnification.** Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, (each a "MCE Indemnified Party"), 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. Additionally, Contractor will defend, indemnify, and hold MCE Indemnified Parties harmless from and against all Claims to the extent such Claims arise out of or relate to:

- (a) Contractor's breach of Section 16.1, 16.4 and Section 24,
- (b) Contractor's infringement, misuse, or misappropriation of third-party intellectual property or proprietary rights, or
- (c) Contractor's non-compliance with applicable laws, rules, or regulations.

"Claim(s)" means any and all (1) third-party claims, actions, demands, lawsuits, or proceedings and (2) damages, costs (including reasonable fees of attorneys and other professionals), or liabilities of any kind (including any fine, penalty, judgement or order issued by a governmental, regulatory or judicial body), in each case arising out of that third party claim, action, demand, lawsuit, or proceeding.

Contractor will have no liability under this Agreement or otherwise to the extent a Claim is based upon: (1) use of the Application in combination with software, hardware or technology not provided by Contractor, if infringement would have been avoided in the absence of the combination; (2) modifications to the Application not made by Contractor, if infringement would have been avoided by the absence of the modifications; or (3) use of any version other than a current release of the Application, if infringement would have been avoided by use of a current release and provided that Contractor notifies MCE that the new release is available and necessary to avoid an infringement claim.

**16.4** Contractor shall, at its expense, adopt and continuously implement, maintain and enforce reasonable technical and organizational measures, consistent with the sensitivity of Personal Information (as defined below), including, but not limited to, measures designed to (1) prevent unauthorized access to, and otherwise physically and electronically protect, the Services and Personal Information, and (2) protect Customer content and data against accidental, unauthorized or unlawful access, disclosure, alteration, loss, or destruction. At Contractor's cost, Contractor will maintain a valid certification under the



International Organization for Standardization standard ISO 27001 or similar audit as may be approved or required by Customer ("Contractor Certification"). Contractor will promptly provide to Customer upon Customer's request and at least annually (i) a full copy of the Contractor Certification and report on which the Contractor Certification is based, and (ii) a current certification and report applicable to each cloud infrastructure provider(s) identified on the cover page ("CIP") under Service Organization Controls (SOC) 2 Type 2 or the International Organization for Standardization standard ISO 27001. The Contractor Certification will cover all Services, except cloud infrastructure services provided by CIP(s) other than Contractor. Contractor will only use cloud infrastructure providers that are approved subcontractors via the approval process in Section 8 of this Agreement, in providing Services and will notify Customer at least 90 days before it changes, or undertakes any plan to change, the cloud infrastructure provider and at least 30 days before any change in location of any Customer content or data. Contractor warrants that its software is tested against OWASP Top 10 Most Critical Web Application Security Risks at least semiannually and will provide confirmation of such testing upon request and at least annually. Without limiting Contractor's obligations under this Agreement, with respect to Personal Data, on becoming aware of any Security Incident (as defined below), Contractor will: (1) immediately notify MCE of the Security Incident (in any case no later than forty-eight (48) hours after becoming aware of the Security Incident; (2) promptly investigate or perform required assistance in the investigation of the Security Incident and provide MCE with detailed information about the Security Incident; and (3) promptly take all commercially reasonable steps to mitigate the effects of the Security Incident, at Contractor's cost. "Personal Information" has the meaning set forth under applicable law. "Security Incident" means any: (1) accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Information transmitted, stored, or otherwise processed by Contractor or its Subcontractors; or (2) security vulnerability related to Contractor's handling of Personal Information.

**16.5** In addition to all other remedies available to MCE,

- (a) if use of services or Deliverables under this Agreement is enjoined or injunction is threatened, Contractor, at its expense, will notify MCE and immediately
  - (i) procure for MCE the right to continue using such services and Deliverables, or
  - (ii) replace or modify such services and Deliverables so that they are noninfringing and useable to MCE's satisfaction.

If Contractor does not comply with this Section 16.4, then in addition to any amounts reimbursed under this Section 16, Contractor will refund all amounts paid by MCE for infringing services and Deliverables and pay reasonable costs to transition Services to a new supplier.

**16.6 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, CONTRACTOR DOES NOT WARRANT THAT THE APPLICATION WILL MEET MCE'S NEEDS OR REQUIREMENTS OR THAT THE PROVISION OF THE APPLICATION WILL BE UNINTERRUPTED OR THAT THE APPLICATION WILL BE AVAILABLE AT ANY PARTICULAR TIME OR ERROR-FREE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, FURTHER, CONTRACTOR DOES NOT WARRANT THAT ALL ERRORS IN THE APPLICATION ARE CORRECTABLE OR WILL BE CORRECTED. MCE acknowledges that, notwithstanding the taking by Contractor of security precautions, use of, or connection to, the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Application and MCE Data. Accordingly, Contractor cannot and does not guaranty the privacy, security, integrity or authenticity of any information so transmitted over or stored in any system connected to the Internet or that any security precautions taken will be adequate or sufficient.

#### **17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:**

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

#### **18. COMPLIANCE WITH APPLICABLE LAWS:**

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

**19. INVOICES; NOTICES**

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

Email Address: invoices@mcecleanenergy.org

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

Contract Manager: Troy Nordquist

MCE Address: 1125 Tamalpais Avenue

San Rafael, CA 94901

Email Address: contracts@mcecleanenergy.org

Telephone No.: (415) 464-6027

Notices shall be given to Contractor at the following address:

Contractor: Matt Golden, Chief Executive Officer

Address: 364 Ridgewood Avenue




Mill Valley, CA 94901

Email Address: matt@recurve.com

Telephone No.: (415) 902-4546

**20. ACKNOWLEDGEMENT OF EXHIBITS**

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

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

**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. CONFIDENTIALITY AND DATA PROTECTION**

Information shared under this Agreement is confidential information subject to the Marin Clean Energy Non-Disclosure Agreement between the parties dated October 5, 2018.

**25. LIMITATION ON LIABILITY**

EXCEPT FOR CONTRACTOR'S INDEMNIFICATION OBLIGATIONS HEREIN OR A BREACH OF CONFIDENTIALITY AND PRIVACY INCLUDING FINES IMPOSED BY REGULATORS AS A RESULT OF SUCH BREACH, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNT PAID BY MCE HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR ANY LIMITED REMEDY HEREUNDER.


**26. EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES**


EXCEPT FOR CONTRACTOR'S INDEMNIFICATION OBLIGATIONS HEREIN OR A BREACH OF CONFIDENTIALITY AND PRIVACY INCLUDING FINES IMPOSED BY REGULATORS AS A RESULT OF SUCH BREACH, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR ANY LIMITED REMEDY HEREUNDER.

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

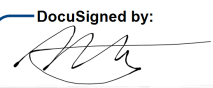
**APPROVED BY**

Marin Clean Energy:

By:   
 Title: CEO  
 Date: 12-6-19

By:   
 Chairperson  
 Date: 12-6-2019

**CONTRACTOR:**

DocuSigned by:  
  
 By: 0C8F4AE0323C4D6...  
 Name: Matt Golden  
 Date: 12/10/2019

**MODIFICATIONS TO STANDARD SHORT FORM**

☒ Standard Short Form Content Has Been Modified

List sections affected: Sections 1, 2, 3, 5, 6, 11, 14, 16, 24, 25, & 26

Approved by MCE Counsel:

DocuSigned by:  
  
0CC3FD724F79482...

Date: 12/10/2019

## EXHIBIT A

### SCOPE OF SERVICES (required)

Contractor will assist MCE with evaluating and reporting site-based, normalized meter energy consumption ("NMEC") from an existing conditions baseline.

#### The Recurve Platform and Contractor Services – Work Packages

##### Task 1. Metered Savings Package

**Description:** The metered savings package provides MCE with unlimited tracking of projects with a single extracting, transforming and loading (ETL) process. Contractor will calculate metered savings for MCE on a monthly basis through the Recurve meter platform. Metered savings calculations will follow methodological guidance specified in CalTRACK 2.0 methods guidance ([www.CalTRACK.org](http://www.CalTRACK.org)). Contractor will work with aggregators, implementers and MCE to match buildings to their meters to ensure that efficiency calculations properly reflect implemented projects. MCE will be able to view historical metered savings as well as normal year metered savings for each tracked project in each program portfolio. This will allow MCE to track any number of programs and any number of meters:

- NMEC *Metered Savings Program Tracking and Normal Weather Year Analytics* based on daily and hourly methods.
- Guarantee compliance assessment of each project with CalTRACK NMEC methodology by offering *Recurve Scorecard*, which contains the results of a comprehensive audit of the methodology.
- *Deploy and provide access to data warehouse tables* containing Recurve Platform assets in a concise, complete, accessible and query-ready format.
- Ensure that all choices and assumptions made as updates to or customizations of NMEC methods are *documented and publicly available*.
- *Track historical changes to savings estimates* as results are updated in response to data corrections, bug fixes, or methodological updates.
- *Includes baseline load profiles, CalTRACK modeled counterfactuals, and energy savings resource curves (savings profiles)*

Contractor will maintain the following security, data transfer, and visualization elements:

- Dashboard views and visualizations of daily and hourly energy savings for all programs and projects being metered.
- Accommodated and continually maintained permissioned dashboard access.
- Maintain permissioned data download capabilities.
- Drill-down capabilities by project to view performance details.
- Outlier detection and record flagging.
- Unlimited cohort filtering capability by metadata provided during ETL, project performance, or model metrics.
- Load shape and resource curve visualization and 8760 downloads

##### Task 2: Program Management

**Description:** Contractor will provide MCE a program management platform to support its Single-Family Comprehensive program. The program management platform includes support for tracking aggregator portfolios, segmenting cohorts within portfolios, customizing kWh to MMBTU conversions, setting thresholds for project uncertainty, creating remote portfolios for sharing with third parties, loading custom portfolio valuation functions, creating payment recommendations, reporting non-routine events and project eligibility changes, and flagging outliers. This package includes support for one aggregator within this program.

Contractor will serve as a data-pass through entity for MCE on request. Contractor will make AMI data and project and program performance data available on request to third party aggregators and/or implementers.

Contractor will be tasked with tracking payments and savings achieved within the Single-Family Comprehensive Program, and providing monthly and quarterly reports, both to the MCE's Single Family Comprehensive Implementer and to MCE for reporting purposes to the CPUC.

Third party aggregators must be able to submit projects (and portfolios of projects) that meet the criteria established by MCE. The Recurve third party support module allows aggregators to submit projects with the appropriate metadata that will be needed to calculate payable savings (e.g., project dates and locations, customer account numbers). In addition, Third-party aggregators value visibility into the performance of their portfolios of projects. The Third-party support module will provide portfolio-aggregated savings results to aggregators upon approval by MCE. An optional Reporting-only module can be made available to third parties who need access to limited savings reporting data, such as contractors or regulators.

**Task 3: Analytics**

**Description:** Contractor will provide additional support based on specific use cases and needs for data analysis. These are grouped into broad categories described below and priced based primarily on the size of the program. Analytics can be ordered a la carte and are generally one-time deliverables.

**Analytics Options:**

- **Program planning** - This is a dedicated statistical analysis designed to help Program Administrators and their implementers properly size NMEC programs in order to achieve the CPUC's stated goal of 25% Fractional Savings Uncertainty at the 90% confidence level. This analysis typically takes into account model fit (CVRMSE) for planned participant base, the number of projects anticipated, and the expected savings depth (savings as a percentage of building usage). Always billed at Medium Portfolio rate.
- **Comparison Group Development** - This analytics package can be applied to any program as a step towards a savings claim to support a quasi-experimental program design. Drawing from a broad population of customers, Contractor will perform a load shape matching analysis to identify the best non-participants for comparison at an individual customer-level.
- **Savings Claim Assessment** - Programs with at least one year of implementation can submit savings claims under NMEC. Even if these programs have been using proprietary or non-standard methods (or no methods) to track savings, Contractor can provide an NMEC analysis that meets CPUC guidelines to avoid custom review. When coupled with Comparison Group Development, Contractor will conduct a difference of differences calculation between the normalized metered savings of the treatment group and the comparison group, which adjusts the "gross" metered savings for exogenous factors observed in the comparison group.
- **Portfolio Optimization** - To increase cost effectiveness, most NMEC programs are leaning on customer targeting through AMI data analytics as a core intervention strategy. This analytics package is built to test various program optimization strategies on past programs. This package computes a number of usage characteristics from customers' pre-program AMI data and assesses how each feature correlates with metered savings performance and cost-effectiveness. Contractor can automatically identify the best 1-dimensional and 2-dimensional targeting strategies for any program backcast, and provide recommendations for future program optimization strategies.
- **Customer Targeting** - MCE can assist third parties in the identification of cost-effective savings potential via AMI-data derived customer targeting parameters and has offered these services as part of their recent third party program solicitations. This analytics package takes AMI data on an unlimited number of customers and computes a host of targeting features that can be utilized by MCE and its implementers to actively recruit high potential customers.

**Task 4: Support**

Contractor will provide ongoing support for MCE's data analysis, program administration, and regulatory reporting needs. For routine support, Contractor will bill a monthly support fee that will include a monthly check in call, data processing, and other ad hoc needs up to 10 hours per month. Contractor will be available for special projects billed at time and materials rates. Special programs will include:

- 1) Supporting the Measurement and Verification (M&V) of MCE's Strategic Energy Management models on an NMEC basis, in nonresidential programs and/or other site specific NMEC projects. Both types of projects will generate site specific NMEC savings claims.
- 2) Developing filters and other data analytics tools to screen customers fitting specific profiles, such as residential versus non-residential, geographical location, rate schedule, and other factors using data from MCE's 4013 data.

**Additional Terms**

Contractor will maintain and support the Deliverables and services to ensure solid and reliable connectivity and access by MCE and their users and that the Deliverables and services perform and operate with in accordance with the specifications and as set forth in this Exhibit and the other terms and conditions of this Agreement. Contractor will promptly repair or replace, without any additional charge, the Deliverables or any portion thereof, that have any bugs, defects or errors (collectively, "**Errors**").

**Availability:**

Contractor will provide services on a 24 x 7 x 365 basis with an uptime guarantee of 98% as calculated on a monthly basis, excluding a Maintenance Window (defined below) of up to 120 minutes. Contractor will schedule any service upgrades or maintenance between 12:00 am and 4:00 am Pacific Standard Time on Saturday ("Maintenance Window").

If Contractor fails to meet the availability obligations above, then MCE will receive the credits specified below:

Service Availability	Credit (against monthly fee for affected Cloud Service)
98% or greater	0%
97% – 97.9%	5%
96% – 96.9%	10%
95% – 95.9%	15%
94% – 94.9%	30%
Less than 94%	100%

#### Error Correction:

In the event that MCE reports to Contractor any Error (the Severity Level to be reasonably determined by MCE), Contractor will respond to such reports as follows:

**"Severity Level 1"** is an emergency condition which makes the use or continued use of any one or more functions of the Deliverables impossible or significantly impaired. The condition requires an immediate solution that is not already available to MCE.

**"Severity Level 2"** is, other than any Severity Level 1 problem, any condition which makes the use or continued use of any one or more functions of the Deliverables difficult and which MCE cannot reasonably circumvent or avoid on a temporary basis without the expenditure of significant time or effort.

**"Severity Level 3"** is, other than any Severity Level 1 Problem or Severity Level 2 Problem, any limited problem condition which is not critical in that no loss of MCE data occurs and which MCE can reasonably circumvent or avoid on a temporary basis without the expenditure of significant time or effort.

**"Severity Level 4"** is, other than any Severity Level 1 Problem, Severity Level 2 Problem or Severity Level 3 Problem, a minor problem condition or Documentation error which MCE can easily circumvent or avoid. Additional requests for new feature suggestions, which are defined as new functionality in existing Deliverables, are also classified as Severity Level 4.

#### Response Times:

Contractor will respond to and resolve an Error, depending on the Severity Level, within the time frames set forth in the chart below, starting from the time MCE notifies Contractor of the Error.

Severity Level	Assignment Time	Initial Response Time	Workaround Time	Resolution Time
Severity Level 1 Problem	Immediate	Within 30 minutes	4 hours	24 hours
Severity Level 2 Problem	Immediate	Within 30 minutes	1 day	4 days
Severity Level 3 Problem	One Hour	Within 1 day	3 days	One week
Severity Level 4 Problem	One Hour	Within 1 day		One week

#### Maintenance Services:

Contractor will provide MCE with maintenance services to maintain:

- (a) the functionality of the services, as described in herein and Documentation;
- (b) the functionality of the services in accordance with the warranties set forth herein, including but not limited to, the Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth herein and the Documentation;
- (c) the access availability of the services to Authorized Users, where such availability is equal to or greater than the Service Level set forth herein; and,
- (d) the compatibility of the services with the then-current version and the three prior versions of Internet Explorer, Mozilla Firefox, Google Chrome, and any other internet browser described herein.

The Services Fees shall be inclusive of the fees for maintenance services.

"Documentation" means all user manuals, handbooks, training material, requirements, and other written or electronic materials Contractor makes available for, or that result from use of, the services.

Required Notice of Upgrades and Maintenance:

Unless otherwise provided for herein, Contractor shall provide no less than thirty (30) calendar day's prior written notice to MCE of all Major Platform Upgrades, including but not limited to new versions that will provide a staging environment to MCE. Such written notice including a detailed description of all upgrades to be performed. For Emergency Maintenance, Contractor shall provide as much prior notice as commercially practicable to MCE and shall provide a detailed description of all maintenance performed no greater than one (1) calendar day following the implementation of the Emergency Maintenance.

Option to Revert Services:

Notwithstanding MCE's acceptance of the upgrades, Contractor shall revert services back to a prior release or version where MCE: (i) discovers that the upgrades adversely affect MCE's ability to use the services; and, (ii) provides Contractor with written notice requesting Contractor revert services to a prior build or version. Contractor shall reintroduce the prior release or version of services into production within one (1) business day of its receipt of MCE's notice.

Option to Upgrade to New Version:

Should Contractor supply to any other customer a new version of the services, MCE shall have the option to upgrade to the new version of the services at no cost provided that MCE is current in payment of Services Fees. As used herein, services shall consider a "New Version" if it utilizes similar functionality for similar applications, regardless of whether there is a code, language or platform change.

**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

For services provided under this Agreement, MCE shall pay Contractor in accordance with the rates specified below:

**Licensing Fees and Payment Schedule for Tasks 1-4**

Task	Completion Timeline (Estimates)	Fees	Invoice Timing
Task 1: Metered Savings Package	On-going activities	\$60,000 fixed annual fee (\$5,000/month)	Monthly
Task 2: Program Management	On-going activities	\$72,000 fixed annual fee (\$6,000/month)	Monthly
Task 3: Analytics	On-going activities	Estimated not to exceed \$60,000 (by task, on request), billed per the following schedule: <ul style="list-style-type: none"> <li>• Small Portfolio (up to 2,000 meters) - \$20,000</li> <li>• Medium Portfolio (from 2,001 to 10,000 meters) - \$40,000</li> <li>• Large Portfolio (from 10,001 to 50,000 meters) - \$55,000</li> <li>• Huge Portfolio (greater than 50,000 meters) - by negotiation</li> </ul>	As needed
Task 4: Support	On-going activities	\$25,000 fixed annual fee (\$2,083.33 per month) \$25,000 flex (billed hourly)	Monthly
Total 2020 Contract Budget		Not to Exceed \$242,000	

**Rate schedule for all hourly work performed (Task 4)**

Title	Personnel	Hourly Rate
Lead Project Consultant	McGee Young	\$230
Senior Policy Consultant	Carmen Best	\$230
Product Manager	Alyssa Byers	\$200
Senior Data Scientist	Hassan Shaban	\$220
Data Scientist	Vikhyati Singh	\$200
Senior Software Engineer	Dave Yeager	\$220
Senior Software Engineer	Phil Ngo	\$220
Senior Software Engineer	Arpan Kotecha	\$220
Senior Software Engineer	Steve Suffian	\$220

Contractor shall invoice MCE upon receiving MCE's written Acceptance of the completed Deliverable in a given task. For Deliverables that are billed at an hourly rate, Contractor shall bill on a monthly basis for the hours performed on the applicable Deliverable after Acceptance. In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$242,000** for the term of the Agreement.



**APPROVED SUBCONTRACTORS**

The following list of subcontractors are approved by MCE as of the date hereof and includes the insurances required for each approved subcontractor:

Subcontractor	Provide and Maintain the following insurances to Contractor
Salesforce and Google	Insurance not required but subject to Section 8 indicating that Contractor shall be solely responsible for ensuring its subcontractors' compliance with all of the terms and conditions of this Agreement.



December 4, 2020

TO: MCE Executive Committee

FROM: Jennifer Green, Manager of Customer Programs

RE: Third Agreement by and Between Marin Clean Energy and Strategic Energy Innovations (Agenda Item #05 C.5)

ATTACHMENT: Proposed Third Agreement by and Between Marin Clean Energy and Strategic Energy Innovations

Dear Executive Committee Members:

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**SUMMARY:** The proposed Third Agreement by and Between MCE and SEI would allow SEI to provide MCE with a pathway for qualified job seekers ("Trainees") from high quality training programs to on-the-job training opportunities with energy industry contractors ("Contractors"). SEI would manage Trainee development with educational partners, and coordinate the on-the-job training opportunities with Contractors currently participating in MCE's energy efficiency programs.

**BACKGROUND:**

In 2018, the California Public Utilities Commission ("CPUC") approved MCE's Energy Efficiency Business Plan ("Plan"), which included \$2.4M for the development and administration of Workforce Education and Training (WE&T) programs over 10 years. The Plan states, "Skilled workers ensure that efficiency gains are met and that health and safety issues are addressed, even for those customers not participating in the program. Marketing, education, and outreach activities increase the demand for skilled labor in the region. Increase in skilled labor creates spillover benefits for the whole community, not just program participants." <sup>i</sup>

With adequate staffing to pursue a robust WE&T program (Program), in 2019 MCE prepared a Request for Qualifications for a workforce training component, and received responses from five qualified vendors. To initiate the WE&T program, MCE contracted with an existing MCE EE program partner, the Association for Energy Affordability (AEA); to date, MCE and AEA have developed the contractor training portion of the Program. AEA will continue to provide energy efficiency

and electrification training to contractors and their staff for the duration of the Program. In addition to participating in workforce education, those industry contractors who qualify will be able to provide on-the-job training to job seekers at no cost to the contractor. In this case, the contractor becomes a potential employer.

In 2020, MCE re-released the RFQ to solicit additional partners to develop and implement the Trainee portion of the program, which will combine energy efficiency and electrification education for job seekers and a 160-hour paid on-the-job training program for up to 20 participants in 2021. As a result, MCE selected SEI, an industry expert with extensive experience in program development and administration, providing human resource and employment tools to disadvantaged communities and workers, and an interest in working collectively with Program partners, to provide services in support of the Plan including:

- Working with local experts to align, leverage, influence, and enhance existing training programs and markets in the MCE service area.
- Offer stackable credential programs that provide workers with a broad spectrum of transferable skills that qualify them for a variety of green jobs.
- Provide onramps for workers of varying levels of experience and ambition.

Each of these goals are included within the Plan and SEI's scope of work.

SEI's scope of work would include: Coordinate communication among all Program partners, including AEA, MCE, energy trade educators, and Program participants (Trainees and potential employers); manage all aspects of the on-the-job training program for Trainees, and; provide instructional and curriculum design to energy trade educators.

The proposed agreement would be active through December 31, 2021 and the not to exceed contract value is \$268,650.

**Fiscal Impacts:** Expenditures related to the proposed Third Agreement would be funded entirely from the energy efficiency program funds allocated by the CPUC.

**Recommendation:** Approve the Proposed Third Agreement by and between Marin Clean Energy and Strategic Energy Innovations

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<sup>i</sup> Marin Clean Energy's Energy Efficiency Business Plan, p.114

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**THIRD AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND STRATEGIC ENERGY INNOVATIONS**

**THIS THIRD AGREEMENT** ("Agreement") is made and entered into on **December 4, 2020** by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and STRATEGIC ENERGY INNOVATIONS, a California non-profit with principal address at: 899 Northgate Drive, San Rafael, CA (hereinafter referred to as "Contractor") (each, a "Party," and, together, the "Parties").

**RECITALS:**

**WHEREAS**, MCE desires to retain Contractor to provide the services described in **Exhibit A** attached hereto and by this reference made a part hereof ("Services");

**WHEREAS**, Contractor desires to provide the Services to MCE;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the Services in accordance with the terms and conditions of this Agreement. "Services" shall also include any other work performed by Contractor pursuant to this Agreement.

**2. 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 ("Term"). Contractor shall provide MCE with Contractor's 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 ninety (90) days will not be reimbursable. The final invoice must be submitted within thirty (30) days of completion of the stated scope of services or termination of this Agreement. MCE will process payment for undisputed invoiced amounts within thirty (30) days.

**3. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the Services to be provided herein exceed the maximum sum of **\$268,650**.

**4. TERM OF AGREEMENT:**

This Agreement shall commence on **December 5, 2020** ("Effective Date") and shall terminate on **December 31, 2021**, unless earlier terminated pursuant to the terms and conditions set forth in Section 12.

**5. REPRESENTATIONS; WARRANTIES; COVENANTS:**

**5.1. CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor represents, warrants and covenants that (a) it is a **non-profit** duly organized, validly existing and in good standing under the laws of the State of **California**, (b) it has full power and authority and all regulatory authorizations required to execute, deliver and perform its obligations under this Agreement and all exhibits and addenda and to engage in the business it presently conducts and contemplates conducting, (c) it is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder, (d) it is qualified and competent to render the Services and possesses the requisite expertise to perform its obligations hereunder, (e) the execution, delivery and performance of this Agreement and all exhibits and addenda hereto are within its powers and do not violate the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, (f) this Agreement and each exhibit and addendum constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, and (g) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

**5.2. COMPLIANCE WITH APPLICABLE LAW:** At all times during the Term and the performance of the Services, Contractor shall comply with all applicable federal, state and local laws, regulations, ordinances and resolutions ("Applicable Law")

**5.3. LICENSING.** At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all required permits, licenses, certificates and registrations required for the operation of its business and the performance of the Services. Contractor shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.

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

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

## **6. INSURANCE:**

At all times during the Term and the performance of the Services, Contractor shall maintain the insurance coverages set forth below. All such insurance coverage 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, directors, officers, and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of Services. Certificate(s) of insurance must be current as of the Effective Date, and shall remain in full force and effect through the Term. If scheduled to lapse prior to termination date, certificate(s) of insurance must be automatically updated before final payment may be made to Contractor. Each certificate of insurance shall provide for thirty (30) days' advance written notice to MCE of any cancellation or reduction in coverage. Insurance coverages shall be payable on a per occurrence basis only, except those required by Section 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing in this Section 6 shall be construed as a limitation on Contractor's indemnification obligations in Section 17 of this Agreement.

Should Contractor fail to provide and maintain the insurance required by this Agreement, in addition to any other available remedies at law or in equity, MCE may suspend payment to the Contractor for any Services provided during any period of time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required insurance coverage.

**6.1. GENERAL LIABILITY.** The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than **two million dollars (\$2,000,000) with a four million dollar (\$4,000,000)** aggregate limit. "Marin Clean Energy" 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. WORKERS' COMPENSATION.** The Contractor acknowledges that 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, it shall comply with this requirement and 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 Services.

**6.3. PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☐).** Contractor shall maintain professional liability insurance with 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 that Contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon. Coverages required by this subsection may be provided on a claims-made basis with a "Retroactive Date" prior to the Effective Date. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond termination of this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Effective Date, Contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after termination of this Agreement.

## **7. RESERVED**

## **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 expressly identified herein in Exhibit A. If Contractor hires a subcontractor under this Agreement (a "Subcontractor"), Subcontractor shall be bound by all applicable terms and conditions of this Agreement, and Contractor shall ensure the following:

**8.1.** Subcontractor shall comply with the following terms of this Agreement: Sections 9, 10, Exhibit A.

**8.2.** Subcontractor shall provide, maintain and be bound by the representations, warranties and covenants of Contractor contained in Section 5 hereof at all times during the Term of such subcontract and its provision of Services.

**8.3.** Subcontractor shall comply with the terms of Section 6 above, including, but not limited to providing and maintaining insurance coverage(s) identical to what is required of Contractor under this Agreement, and shall name MCE as an additional insured under such policies. Contractor shall collect, maintain, and promptly forward to MCE current evidence of such insurance provided by its Subcontractor. Such evidence of insurance shall be included in the records and is therefore subject to audit as described in Section 9 hereof.

**8.4.** Subcontractor shall be contractually obligated to indemnify the MCE Parties (as defined in Section 17 hereof) pursuant to the terms and conditions of Section 17 hereof.

**8.5. Subcontractors shall not be permitted to further subcontract any obligations under this Agreement.**

Contractor shall be solely responsible for ensuring its Subcontractors' compliance with the terms and conditions of this Agreement made applicable above and to collect and maintain all documentation and current evidence of such compliance. Upon request by MCE, Contractor shall promptly 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'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 monies to any Subcontractor.

**9. RETENTION OF RECORDS AND AUDIT PROVISION:**

Contractor shall keep and maintain on a current basis full and complete records and documentation pertaining to this Agreement and the Services, whether stored electronically or otherwise, including, but not limited to, valuation records, accounting records, documents supporting all invoices, employees' time sheets, receipts and expenses, and all customer documentation and correspondence (the "Records"). MCE shall have the right, during regular business hours, to review and audit all Records during the Term 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 request 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.

**10. DATA, CONFIDENTIALITY AND INTELLECTUAL PROPERTY:**

**10.1. OWNERSHIP AND USE RIGHTS.**

- a) **MCE Data.** Unless otherwise expressly agreed to in writing by the Parties, MCE shall retain all of its rights, title and interest in MCE's Data. "MCE Data" shall mean all data or information provided by MCE, including but not limited to, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to Contractor as MCE may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Contractor. MCE Data shall also include all data and materials made available to Contractor by MCE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors.
- b) **Intellectual Property.** Contractor will retain copyright and ownership of pre-existing curriculum materials and program resources ("Contractor Materials", listed in Exhibit C), including the pre-existing materials that are modified and adapted for MCE purposes ("Modified Contractor Materials") and for those materials newly created and developed for MCE ("New Materials") during the course of this Agreement. Contractor hereby grants to MCE a perpetual, non-exclusive, irrevocable, royalty free, transferable, no-charge license to use, display, modify, excerpt, and reproduce the Modified Contractor Materials and New Materials ("License") as reasonably necessary for MCE to receive the benefit of Contractor's Services. Neither party may use the Modified Contractor Materials or New Materials that include the name or logo of the other party without obtaining that parties' written permission. Contractor further agrees to provide MCE with any updates to the Modified Contractor Materials and New Materials which shall be subject to the License terms. Contractor will ensure and make available the latest versions and all updates to the Modified Contractor Materials and New Materials, as well as provide MCE the tracking and reporting of updates and distribution of such materials during and beyond the term of the Agreement. Beyond the term of the Agreement, Contractor Materials will be provided for a nominal license fee to be agreed to by the parties, but Modified Contractor Materials and New Materials will continue to be offered at no cost to Training Service Providers. Upon termination of this Agreement, Contractor agrees to provide MCE with electronic copies of all Modified Contractor Materials and New Materials created under this Agreement. For clarity, notwithstanding any terms in this Agreement or any confidentiality agreements between the parties, MCE has no obligation to delete or return the Modified Contractor materials and new Materials.

**10.2. EQUITABLE RELIEF.** Each Party acknowledges that a breach of this Section 10 would cause irreparable harm and significant damages to the other Party, the degree of which may be difficult to ascertain. Accordingly, each Party agrees that MCE shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of MCE Data, in addition to any other rights and remedies that it may have at law or otherwise; and Contractor shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of Contractor's Materials, in addition to any other rights and remedies that it may have at law or otherwise.

**11. FORCE MAJEURE:**

A Party shall be excused for failure to perform its obligations under this Agreement if such obligations are prevented by an event of Force Majeure (as defined below), but only for so long as and to the extent that the Party claiming Force Majeure ("Claiming Party") is actually so prevented from performing and provided that (a) the Claiming Party gives written notice and full particulars of such Force Majeure to the other Party (the "Affected Party") promptly after the occurrence of the event relied on, (b) such notice includes an estimate of the expected duration and probable impact on the performance of the Claiming Party's obligations under this Agreement, (c) the Claiming Party furnishes timely regular reports regarding the status of the Force Majeure, including updates with respect to the data included in Section 10 above during the continuation of the delay in the Claiming Party's performance, (d) the suspension of such obligations sought by Claiming Party is of no greater scope and of no longer duration than is required by the

Force Majeure, (e) no obligation or liability of either Party which became due or arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the Force Majeure; (f) the Claiming Party shall exercise commercially reasonable efforts to mitigate or limit the interference, impairment and losses to the Affected Party; (g) when the Claiming Party is able to resume performance of the affected obligations under this Agreement, the Claiming Party shall give the Affected Party written notice to that effect and promptly shall resume performance under this Agreement. "Force Majeure" shall mean acts of God such as floods, earthquakes, fires, orders or decrees by a governmental authority, civil or military disturbances, wars, riots, terrorism or threats of terrorism, utility power shutoffs, strikes, labor disputes, pandemic, or other forces over which the responsible Party has no control and which are not caused by an act or omission of such Party.

## **12. TERMINATION:**

- 12.1.** If the Contractor fails to provide in any manner the Services required under this Agreement, otherwise fails to comply with the terms of this Agreement, violates any Applicable Law, makes an assignment of any general arrangement for the benefit of creditors, files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it, otherwise becomes bankrupt or insolvent (however evidenced), or becomes unable to pay its debts as they fall due, then MCE may terminate this Agreement by giving five (5) business days' written notice to Contractor.
- 12.2.** 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 Party and be sent by registered mail or by email to the email address listed in Section 19.
- 12.3.** In the event of termination not the fault of the Contractor, the Contractor shall be paid for Services performed up 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). Notwithstanding anything contained in this Section 12, in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Agreement. Contractor shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12, Contractor shall have delivered to MCE any and all Intellectual Property (as defined in Section 10.1(b)) prepared for MCE before the effective date of such termination.
- 12.4.** MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.
- 12.5.** Without limiting the foregoing, if either Party's activities hereunder become subject to law or regulation of any kind, which renders the activity illegal, unenforceable, or which imposes additional costs on such Party for which the parties cannot mutually agree upon an acceptable price modification, then such Party shall at such time have the right to terminate this Agreement upon written notice to the other Party with respect to the illegal, unenforceable, or uneconomic provisions only, and the remaining provisions will remain in full force and effect.
- 12.6.** Upon termination of this Agreement for any reason, Contractor shall and shall cause each Contractor Party to bring the Services to an orderly conclusion as directed by MCE and shall return all MCE Data (as defined in Section 10.1(a) above) and Intellectual Property to MCE.
- 12.7.** Notwithstanding the foregoing, this Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such order or directive.
- 12.8.** Notwithstanding any provision herein to the contrary, Sections 2, 3, 8.4, 9, 10, 12, 15, 16, 17, 18, 19, 20, 21, 22, 24, and Exhibit B of this Agreement shall survive the termination or expiration of this Agreement.

## **13. 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.

## **14. AMENDMENT; NO WAIVER:**

This Agreement may be amended or modified only by written agreement of the Parties. 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.

## **15. DISPUTES:**

Either Party may give the other Party written notice of any dispute which has not been resolved at a working level. Any dispute that cannot be resolved between Contractor's contract representative and MCE's contract representative by good faith negotiation efforts shall be referred to Legal Counsel of MCE and an officer of Contractor for resolution. Within 20 calendar days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If MCE and Contractor cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and Contractor shall have the right to pursue all rights and remedies that may be available at law or in equity. All negotiations and any mediation agreed to by the Parties are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.

## **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:**

To the fullest extent permitted by Applicable Law, Contractor shall indemnify, defend, and hold MCE and its employees, officers, directors, representatives, and agents ("MCE Parties"), harmless from and against any and all actions, claims, liabilities, losses, costs, damages, and expenses (including, but not limited to, litigation costs, attorney's fees and costs, physical damage to or loss of tangible property, and injury or death of any person) arising out of, resulting from, or caused by: a) the negligence, recklessness, intentional misconduct, fraud of all Contractor Parties; b) the failure of a Contractor Party to comply with the provisions of this Agreement or Applicable Law; or c) any defect in design, workmanship, or materials carried out or employed by any Contractor Party.

**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 MCE's Joint Powers Agreement, MCE 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. No Contractor Party shall have rights and nor shall any Contractor Party make any claims, take any actions, or assert any remedies against any of MCE's constituent members in connection with 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:

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Email Address:           invoices@mcecleanenergy.org

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

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Contract Manager:   Troy Nordquist

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MCE Address:           1125 Tamalpais Avenue

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San Rafael, CA 94901

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Email Address:       contracts@mcecleanenergy.org

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Telephone No.:       (925) 378-6767

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Notices shall be given to Contractor at the following address:

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Contractor:           Emily Courtney

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Address:               899 Northgate Drive, Suite 410

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San Rafael, CA 94903

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Email Address:       emily@seiinc.org

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Telephone No.:       (415) 507-2183

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**20. ENTIRE AGREEMENT; ACKNOWLEDGMENT OF EXHIBITS:**

This Agreement along with the attached Exhibits marked below constitutes the entire Agreement between the Parties. 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 shall govern.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>	<u>MCE'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services		
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment		
<u>EXHIBIT C.</u>	<input checked="" type="checkbox"/>	SEI Pre-Existing Contractor Materials		

**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. INDEPENDENT CONTRACTOR:**

Contractor is an independent contractor to MCE hereunder. Nothing in this Agreement shall establish any relationship of partnership, joint venture, employment or franchise between MCE and any Contractor Party. Neither MCE nor any Contractor Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided for herein.

**23. TIME:**

Time is of the essence in this Agreement and each and all of its provisions.

**24. THIRD PARTY BENEFICIARIES:**

The Parties agree that there are no third-party beneficiaries to this Agreement either express or implied.

**25. FURTHER ACTIONS:**

The Parties agree to take all such further actions and to execute such additional documents as may be reasonably necessary to effectuate the purposes of this Agreement.

**26. PREPARATION OF AGREEMENT:**

This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and this Agreement shall not be construed against either Party as a result of the manner in which this Agreement was prepared, negotiated or executed.

**27. COUNTERPARTS:**

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

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

**APPROVED BY**

**Marin Clean Energy:**

**CONTRACTOR:**

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

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

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

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

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

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**MODIFICATIONS TO STANDARD SHORT FORM**

☒ **Standard Short Form Content Has Been Modified**

**List sections affected:** Section 6, Section 10.1, Section 10.2

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

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

## EXHIBIT A SCOPE OF SERVICES

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

### **Timeline: December 4 , 2020-December 31, 2021**

Contractor will provide the following implementation services as requested and directed by MCE staff for MCE's Workforce Education and Training Program ("Program").

Tasks included in this scope are:

1. Collaboration and coordination with MCE and Program partners.
2. Management of on-the-job trainee program.
3. Instructional design and support for training programs.
4. Project management.

The Program aims to create a supportive pathway for individuals from high quality training programs ("Trainee(s)") into energy industry employment ("Potential Employer(s)"). There are two distinct, simultaneous portions of the Program: the Trainee portion and the Potential Employer portion. Contractor will help manage and oversee the Trainee portion of the Program.

### **Task 1: Collaboration and Coordination with MCE and Program Partners**

Contractor will help manage collaboration among program partners ("Partners") which currently include MCE, the Association for Energy Affordability ("AEA"), training providers ("Training Provider(s)"), wrap-around service providers, and Potential Employers.

Deliverables:

- Conduct regular, as needed check-ins between Contractor and AEA to coordinate on-the-job trainee program;
- Develop and manage regular, as needed check-ins among all Training Providers and Contractor to coordinate training and continued support efforts;
- Conduct regular, as needed check-ins between MCE and Contractor to: update MCE on status of Task 1 ongoing activities , discuss any areas of concern, request input from MCE.

### **Task 2: Management of On-the-Job Trainee Program**

Contractor will work with Potential Employers to manage the on-the-job trainee program, and will serve as the employer of record, HR manager, and manager of on-the-job training program for Trainees.

As on-the-job training program manager, Contractor will support the on-the-job trainee program by completing the following subtasks:

- Work with pre-vetted Potential Employers to identify positions for Trainees (Vetting of Potential Employers to be provided by AEA).
- Develop a scope of work for each Trainee position by identifying the key skills and roles Potential Employers are seeking in each Trainee position.
- Develop collateral for Trainee positions so that the positions are marketable to Trainees.
- With assistance as-needed from Partners, develop a Trainee Participation Agreement/Offer Letter.
- Collect required documents from Trainees including resumes, signed Trainee Participation Agreement, and hiring paperwork; conduct initial Trainee candidate interviews.
- Coordinate with the Potential Employers to determine Potential Employer's ideal role in the hiring process. Facilitate Potential Employers' selection process by providing: resume and cover letters of Trainee candidates.
- Match Trainees with individual Potential Employers.
- Support Trainee candidates with soft skills development, including building the Trainee candidates' resumes, skills, experience talking points, and ability to build industry relationships.
- Serve as the employer of record for the Trainees once Trainee candidates are hired as Trainees. As employer of record, Contractor takes on the Human Resources and legal responsibility for the Trainees.
  - The budget for this Task, discussed in Exhibit B, includes costs associated with trainee payroll, taxes, insurance, timecard service fees, background checks and fingerprinting, and travel costs for required on-the-job Trainee program events and trainings should events and trainings become necessary.
  - Contractor shall also process hiring paperwork, pay the Trainees over the course of their on-the-job training, send out employment letters and notices, and address any and all Human Resources issues that arise.
- Coordinate with Training Providers and wrap-around service providers to support Trainees on a personalized basis by providing continued, as needed services such as: assistance with expunging a criminal record, assistance with securing a driver's license, assistance improving English language skills,

providing job site transportation support, connecting Trainees with food and housing security services, and/or providing Trainees with professional clothing, tools, and footwear that are required for the Trainee to participate in the Program.

**Deliverables:**

- Support 20 Trainees with paid employment for an average of 160 hours for each Trainee at \$18/hour.

**Task 3: Instructional Design and Support for Training Service Providers**

Contractor will work with MCE, AEA, and selected Training Service Providers to review curriculum provided by Training Service Providers and identify opportunities for continuous improvement. Contractor will collaborate with Training Providers faculty/instructors to enhance the quality of academic programming and training through two curriculum improvement projects with Contractor staff time, leveraging pre-existing curriculum, grants for faculty time for curriculum improvement, and support for faculty implementation of academic projects through co-instruction.

**Deliverable:**

- Oversee at least two curriculum improvement projects to completion.

**Task 4: Project Management**

**In the middle** of each month, Contractor will provide a monthly status report to MCE staff that include Program accomplishments, status of Task completion, and descriptions of each expense and hours spent the previous month.

**Deliverables:**

- Monthly status reports.

## 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:

Task 1 budget: \$47,937  
 Task 2 budget: \$184,346  
 Task 3 budget: \$29,536  
 Task 4 budget: \$6,825

### Budget Breakdown by Year

Task		2020	2021
Collaboration and Coordination with MCE and Program Partners	1	\$ 9,313	\$38,624
Management of On-the-Job Trainee Program	2	\$ 5,072	\$179,274
Instructional Design and Support for Training Service Providers	3	\$9,017	\$20,519
Project Management	4	\$ 1,365	\$ 5,460
<b>Budget by Year</b>		<b>\$24,767</b>	<b>\$243,877</b>
<b>Total Budget</b>		<b>\$268,644</b>	

### Contractor Staff Rates

Title	Rate
Executive Director	\$215
Deputy Director	\$198
Program Director	\$178
Accounting Director	\$178
Operations Director	\$178
Program Manager	\$159
Accounting Manager	\$159
Operations Manager	\$159
Associate Program Manager	\$133
Associate Accounting Manager	\$133
Associate Operations Manager	\$133
Project Coordinator	\$118
Accounting Coordinator	\$118
Operations Coordinator	\$118
Associate Project Coordinator	\$98
Accounting Associate	\$98
Operations Associate	\$98
Non-Profit Leadership Fellow	\$87

Contractor will bill MCE monthly based on the number of hours and materials expended for the previous month. Contractor will provide an itemized invoice that includes specific hours and materials expended per Task within the Program for the previous month, however MCE will not be obligated to pay the invoice unless and until MCE has reviewed and accepted the monthly status report provided by Contractor at the beginning of each month, and confirmed that the hours and materials itemized in the invoice matches the work described in the monthly status reports. In no event shall the total cost to MCE for the services provided herein exceed the **maximum sum of \$268,650** for the term of the Agreement.

**EXHIBIT C**  
**SEI Pre-Existing Contractor Materials**

The training materials below have been developed by and are exclusively owned by the Consultant.

1. Home Energy Assessment (SEI copyright 10/21/13)
2. Home Water Assessment (SEI copyright 11/20/13)
3. School Energy Assessment (SEI copyright 2/7/13)
4. School Water Assessment (SEI copyright 1/29/13)
5. Low Flow Toilet Assessment (SEI copyright 10/6/14)
6. School Transportation Assessment (SEI copyright 11/5/14)
7. Eco Audit (SEI copyright 4/24/13)
8. School Solar Analysis (SEI copyright 10/9/13)
9. Home Solar Analysis (SEI copyright 9/10/14)
10. Solar USB Charger (SEI copyright 2/12/15)
11. Solar Water Heating (SEI copyright 5/1/15)
12. Aquaponics (SEI copyright 10/28/15)
13. Watersheds & Public Water Systems (SEI copyright 7/24/15)
14. Biomimicry (SEI copyright 10/30/15)
15. Engineering Aquatic Ecosystems (SEI copyright 9/21/15)
16. Climate Change (SEI copyright 12/1/18)
17. Air Quality (SEI copyright 3/3/2020)
18. Sustainability Certificates: Energy (SEI copyright 1/15/13), Green Building (SEI copyright 1/29/13), Green Transportation (SEI copyright 4/11/13), Energy Auditing (SEI copyright 10/29/13), Solar (SEI copyright 11/9/15), Sustainable Enterprise (SEI copyright 10/23/13), and Zero Net Energy (SEI copyright 1/3/16)
19. Energy Conservation Competition Resources: Competition Launch Lesson Plan (High school & Elementary), Student Team Competition Intro Lesson PowerPoint, Competition Participation Guide, SEI Walk-Through Audit Guide, Energy Conservation Action Plan Template, Competition Action Ideas, and PowerPoint Template Energy Competition Presentation to School Community (SEI copyright 2/20/15)
20. The Energy Challenge Resources: Energy Challenge Participant Portal (English/Spanish), Challenge 1: Energy, People, & the Planet (English/Spanish), Challenge 2: Energy Around Me Scavenger Hunt (English/Spanish), Challenge 3: Energy Conservationist (English/Spanish), Challenge 4: Saving Energy in my Community (English/Spanish), Conservation Campaign Toolkit including: social media graphics, action planning templates, & energy saving tips (SEI copyright 7/1/20)
21. Earth Day Campaign Contest Resources: Campaign Launch Lesson Teacher Guide, Teacher Introduction Lesson Powerpoint, Earth Day Campaign Participant Guide, Student Slides for Sustainability Topics, Campaign Planning Guide, Pledge Form for Students, Earth Day Campaign Rubric, Distance Learning Curriculum (air quality, energy auditing, transportation, waste, and water conservation guides) (SEI copyright 7/1/20)
22. Guides: Energy Conservation Guide (SEI copyright 10/17/13), School Zero Waste Guide (SEI copyright 6/26/15), School Sustainability Policy (SEI copyright 9/18/14), and Sustainability Fair Guide (SEI copyright 10/24/13), and Water Conservation Guide (SEI copyright 2/1/16)
23. Distance Learning Curriculum: Introduction to Climate Change (SEI copyright 6/1/20), Introduction to Energy Auditing (SEI copyright 6/1/20), Renewable Energy (Hydro Power) (SEI

copyright 6/1/20), Air Quality (SEI copyright 6/1/20), Air Quality Science 101 Curriculum (SEI copyright 6/1/20), Waste Analysis 101 Curriculum (SEI copyright 6/1/20), Solar Design 101 Curriculum (SEI copyright 6/1/20), Water Conservation Specialist 101 Curriculum (SEI copyright 6/1/20), Transportation Analyst 101 Curriculum (SEI copyright 6/1/20), Energy Consulting 101 Curriculum, (SEI copyright 6/1/20)

24. Elementary & Middle School Resources: School Energy Audit Grades 4-8 (SEI copyright 4/3/12), Protect Your Climate Grade 4-5 (SEI copyright 7/19/12), Sustainability Curriculum Grades K-1 (SEI copyright 7/31/14), and Sustainability Curriculum Grades 2-3 (SEI copyright 10/17/15), Climate Change Curriculum Grades 4-5 (SEI copyright 6/30/20), Waste and the 4 R's Curriculum Grades 4-5 (SEI copyright 6/30/20), Exploring Water Curriculum Grades 4-5 (SEI copyright 6/30/20), Food and Agriculture Curriculum Grades 4-5 (SEI copyright 6/30/20), and Exploring Solar Energy Curriculum Grades 4-5 (SEI copyright 6/30/20)
25. Innovations in Green Technology, Energy and Environmental Design, and Sustainable Urban Planning Courses: CTE Energy, Environment, & Utilities courses (SEI copyright 8/15/15)
26. SEI Energy & Solar Monitoring Tool (SEI copyright 8/19/13)
27. Making the Financial Case for Sustainability Investments (SEI copyright 5/31/13)
28. Sustainable Practices Certificate Program (SEI copyright 4/25/2008)
29. Energy Innovation Center Tour Guide (SEI copyright 2/3/2014)
30. Clean Energy Technology Management Certificates and Degree (SEI copyright 5/5/2012)
31. Solar Installation and Integration Course (SEI copyright 7/9/2008)
32. Introduction to Clean Energy Concepts Course (SEI copyright 2/9/2010)
33. Solar Design, Estimation and Sales Course (SEI copyright 3/17/2010)
34. West Valley College Green Building and Energy Auditing Courses (SEI copyright 11/9/2009)
35. Internship Administration Resources: Community Partner Agreement Template, Internship Application Cover Page, Internship Job Description Template, Internship Candidate Interview Script and Questions, Professionalism in the Workplace Presentation, Internship Scope Template, Internship Orientation Presentation, Introduction to Energy Systems Training Presentation, Intern Timecard System User Guide, Intern Poster Template (SEI copyright 7/1/20)



December 4, 2020

TO: MCE Executive Committee

FROM: Shalini Swaroop, General Counsel

RE: First Amendment to the Fifth Agreement with Keyes & Fox, LLP  
(Agenda Item #5 - C.6)

ATTACHMENTS: A. Draft First Amendment to Fifth Agreement with Keyes & Fox, LLP  
B. Fifth Agreement with Keyes & Fox, LLP

Dear Executive Committee Members:

**SUMMARY:**

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

MCE staff has prepared the First Amendment to the Fifth Agreement with Keyes & Fox, LLP adding \$70,000 to continue the above services with a new maximum cost not to exceed \$220,000.

**Fiscal Impacts:** Costs related to this Agreement are included in the FY 2020/2021 Operating Fund Budget that was approved by the Board of Directors at its meeting on March 19, 2020.

**Recommendation:** Approve the First Amendment to the Fifth Agreement with Keyes & Fox, LLP.



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

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This FIRST AMENDMENT is made and entered into on November 24, 2020, by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and KEYES & FOX, LLP (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and Contractor entered into an agreement to provide regulatory filings and advocacy before the CPUC, and general legal services as directed by MCE staff dated March 6, 2020 ("Agreement"); and

WHEREAS, Section 4 and Exhibit B to the Agreement provided for Contractor to be compensated in an amount not to exceed \$150,000 for the regulatory filings and advocacy before the CPUC, and general legal services described within the scope therein; and

WHEREAS the parties desire to amend the Agreement to increase the contract amount by \$70,000 for total consideration not to exceed \$220,000.

NOW, THEREFORE, the parties agree to modify Section 4 and Exhibit B as set forth below.

AGREEMENT

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

**MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$220,000**.

2. The last sentence of Exhibit B is hereby amended to read as follows:

**In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of \$220,000 for the term of the Agreement.**

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

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

MARIN CLEAN ENERGY:

CONTRACTOR:

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

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

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

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

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

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

**THIS FIFTH AGREEMENT** ("Agreement") is made and entered into this day **March 6, 2020** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and KEYES & FOX, LLP, hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services: regulatory filings and advocacy before the CPUC, and general legal services;

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

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

**1. SCOPE OF SERVICES:**

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

**2. FURNISHED SERVICES:**

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

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

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

**4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$150,000**.

**5. TIME OF AGREEMENT:**

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

**6. INSURANCE AND SAFETY:**

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

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

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

**6.1 GENERAL LIABILITY**

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

**6.2 AUTO LIABILITY**

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

**6.3 WORKERS' COMPENSATION**

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

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

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

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

**7. NONDISCRIMINATORY EMPLOYMENT:**

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

**8. SUBCONTRACTING:**

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

**9. ASSIGNMENT:**

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

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

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

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

#### **11. WORK PRODUCT:**

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

#### **12. TERMINATION:**

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

#### **13. AMENDMENT:**

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

#### **14. ASSIGNMENT OF PERSONNEL:**

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

#### **15. JURISDICTION AND VENUE:**

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

#### **16. INDEMNIFICATION:**

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

#### **17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:**

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

#### **18. COMPLIANCE WITH APPLICABLE LAWS:**

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

**19. INVOICES; NOTICES**

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

Email Address: invoices@mcecleanenergy.org

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

Contract Manager: Troy Nordquist

MCE Address: 1125 Tamalpais Avenue

San Rafael, CA 94901

Email Address: contracts@mcecleanenergy.org

Telephone No.: (415) 464-6027

Notices shall be given to Contractor at the following address:

Contractor: Tim Lindl

Address: 580 California Street, 12<sup>th</sup> Fl

San Francisco, CA 94104

Email Address: tlindl@keyesfox.com

Telephone No.: (510) 314-8385

**20. ACKNOWLEDGEMENT OF EXHIBITS**

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

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services	<div style="border: 1px solid black; padding: 2px; display: inline-block;">DS tl</div>
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment	<div style="border: 1px solid black; padding: 2px; display: inline-block;">DS tl</div>

**21. SEVERABILITY**

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


**22. COMPLETE AGREEMENT**

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

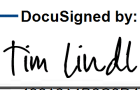
**23. COUNTERPARTS**

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

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

**APPROVED BY****Marin Clean Energy:**By: Title: CEODate: 3-6-20By: 

Chairperson

Date: 3-6-20**CONTRACTOR:**By: Name: Tim LindlDate: 3/9/2020**MODIFICATIONS TO STANDARD SHORT FORM**☐ Standard Short Form Content Has Been Modified**List sections affected:** \_\_\_\_\_

\_\_\_\_\_

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

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

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

**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

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

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

Contractor shall bill in 0.10-hour increments on a monthly basis for all services rendered. In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$150,000** for the term of the Agreement.





December 4, 2020

TO: Executive Committee

FROM: Dawn Weisz, Chief Executive Officer  
Michael Callahan, Senior Policy Counsel

RE: Letter of Support for Revenue-Neutral Carbon Fee and  
Dividend Program (Agenda Item #06)

ATTACHMENT: Letter of Support for Revenue-Neutral Carbon Fee and  
Dividend Program

Dear Executive Committee:

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## SUMMARY:

MCE has prepared a letter of support for federal legislation to initiate a socially just fee on the carbon content of fossil fuels. This letter will be used in advocacy with MCE's federal congressional delegation to support new legislation in 2021. A carbon fee would be likely to accelerate the achievement of MCE's mission to reduce energy-related greenhouse gas emissions.

**Background:** A carbon fee is consistent with MCE's legislative guidelines allowing support for tools to reduce greenhouse gas emissions (GHG).<sup>1</sup> Three legislative proposals that include similar policies are in process in 2020, which will sunset at year-end so a new bill will need to be introduced in the 117<sup>th</sup> Congress:

- **H.R. 763** (Deutsch) called the "Energy Innovation & Carbon Dividend Act" with 82 co-sponsors.<sup>2</sup>
- **S. 2284** (Coons & Feinstein) "The Climate Action Rebate Act"<sup>3</sup>
- **S. \_\_\_\_** (Durbin) "America's Clean Future Fund Act"<sup>4</sup>

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<sup>1</sup> MCE Legislative Policy Guidelines.

<sup>2</sup> [energyinnovationact.org](https://energyinnovationact.org).

<sup>3</sup> <https://www.coons.senate.gov/news/press-releases/sens-coons-and-feinstein-rep-panetta-introduce-bill-to-price-carbon-pollution-invest-in-infrastructure-randd-and-working-families>.

<sup>4</sup> <https://www.durbin.senate.gov/newsroom/press-releases/durbin-introduces-bill-to-fund-a-clean-climate-future>.

As opposed to state-by-state strategies, a federal carbon fee is intended to create economy-wide changes. These changes are intended to reallocate resources away from greenhouse gas (GHG) emitting activities and provide a powerful market-based strategy to address climate change.

**Carbon Fee and Dividend Program:** A carbon fee and dividend program is intended to place a fee on the production of fossil fuels at their source. It would internalize the costs of impairing our air quality, public health, and climate to the industries driving that harm. The fee on carbon would be likely to steer broad change in behavior as businesses and people seek cleaner and cheaper alternatives. The economy would be likely to move more quickly, with stronger incentives, to reduce fossil fuel consumption. The revenues from the fee are intended to be distributed, as a dividend, equally among all Americans.

**Equity and Environmental Justice:** One of the key components of the approach in H.R. 763 and the other referenced bills is the affirmative impact of the dividend on consumer empowerment and equal treatment under the law.<sup>5</sup> It is expected that the bottom two-thirds of U.S. households would receive greater dividends than they pay in fees.<sup>6</sup> Americans in disadvantaged communities, where polluting industries and relatively low incomes are concentrated and exacerbate health impacts, would also receive a larger benefit in terms of cleaner air. Equity and environmental justice impacts should be the central focus of any federal carbon fee.

**Global Impact and Border Adjustments:** Over 40 countries have adopted some form of carbon pricing. The global impact of adoption of a carbon tax in the U.S. could be significant. A border adjustment is a feature of H.R. 763 whereby (1) the effect on U.S. exporters is neutralized against foreign competition, and (2) international companies seeking to sell products in the U.S. would pay a carbon content tariff at the border if they do not already have a similar carbon fee at home.<sup>7</sup> This helps protect countries with carbon fees from competition with countries without carbon fees. Additionally, other countries would be motivated to collect their own carbon taxes rather than pay at the U.S. border. A U.S. carbon pricing policy with border adjustment would protect America and encourage other nations to internalize the costs of GHG emissions economy-wide.

**Fiscal Impact:** MCE does not anticipate a direct fiscal impact.

**Recommendation:** Discussion item only.

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<sup>5</sup> <https://citizensclimatelobby.org/dividend-delivery-study>.

<sup>6</sup> <https://citizensclimatelobby.org/household-impact-study>.

<sup>7</sup> <https://www.carbontax.org/issues/border-adjustments>.



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

December 4, 2020

The Honorable Congressman  
Washington, DC 20515

**Re: Revenue-Neutral Carbon Fee and Dividend Program - Support**

Dear Congressman:

I am the Chair of the Board of Directors for Marin Clean Energy, the local government agency that provides renewable energy to over one million people in Solano, Napa, Contra Costa, and Marin Counties.

I am reaching out to encourage you to take up and pass legislation to initiate a socially just fee on the carbon content of fossil fuels, to be distributed to all Americans, similar to proposals in the current Congress, for adoption in the new Congress in 2021.

Three legislative proposals close to realizing this policy are in process in 2020, which will sunset at year-end so a new bill will need to be introduced in the 117<sup>th</sup> Congress:

- **H.R. 763** (Deutsch) called the “Energy Innovation & Carbon Dividend Act” with 82 co-sponsors.<sup>1</sup>
- **S. 2284** (Coons & Feinstein) “The Climate Action Rebate Act”<sup>2</sup>
- **S. \_\_\_\_** (Durbin) “America’s Clean Future Fund Act”<sup>3</sup>

The impacts of climate change are being felt around the world, including through the droughts, fires, and broad ecological changes in California. The science of climate change is showing we need to move more quickly than we thought in the past.

**Carbon Fee and Dividend Program**

A carbon fee and dividend program is intended to place a fee on the production of fossil fuels at their source. It would internalize the costs of impairing our air quality, public health, and climate to the industries driving that harm. The fee on carbon would be likely to steer broad change in behavior as businesses and people seek cleaner and cheaper alternatives. The economy would be likely to move more quickly, with stronger incentives, to reduce fossil fuel consumption. The revenues from the fee

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<sup>1</sup> [energyinnovationact.org](https://energyinnovationact.org).

<sup>2</sup> <https://www.coons.senate.gov/news/press-releases/sens-coons-and-feinstein-rep-panetta-introduce-bill-to-price-carbon-pollution-invest-in-infrastructure-randd-and-working-families>.

<sup>3</sup> <https://www.durbin.senate.gov/newsroom/press-releases/durbin-introduces-bill-to-fund-a-clean-climate-future>.

are intended to be distributed, as a dividend, equally among all Americans.

### **Equity and Environmental Justice**

One of the key components of the approach in H.R. 763 and the other referenced bills is the affirmative impact of the dividend on consumer empowerment and equal treatment under the law.<sup>4</sup> It is expected that the bottom two-thirds of U.S. households will receive greater dividends than they pay in fees.<sup>5</sup> Americans in disadvantaged communities, where polluting industries and relatively low incomes are concentrated and exacerbate health impacts, would also receive a larger benefit in terms of cleaner air. Equity and environmental justice impacts should be the central focus of any federal carbon fee.

### **Global Impact and Border Adjustments**

Over 40 countries have adopted some form of carbon pricing. The global impact of adoption of a carbon tax in the U.S. could be significant. A border adjustment is a feature of H.R. 763 whereby (1) the effect on U.S. exporters is neutralized against foreign competition, and (2) international companies seeking to sell products in the U.S. would pay a carbon content tariff at the border if they do not already have a similar carbon fee at home.<sup>6</sup> This helps protect countries with carbon fees from competition with countries without carbon fees. Additionally, under a carbon fee, other countries would be likely to be motivated to collect their own carbon taxes rather than pay at the U.S. border. A U.S. carbon pricing policy with border adjustment would protect America and encourage other nations to internalize the costs of GHG emissions economy-wide.

Thank you very much for your consideration and all your hard work on behalf of our region during this challenging time. Please let me know if there is anyone else on your staff who I should reach out to and don't hesitate to contact me for further details. My contact information is below.

Sincerely,

Kathrin Sears  
Chair, MCE Board of Directors

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<sup>4</sup> <https://citizensclimatelobby.org/dividend-delivery-study>.

<sup>5</sup> <https://citizensclimatelobby.org/household-impact-study>.

<sup>6</sup> <https://www.carbontax.org/issues/border-adjustments>.