



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

## Executive Committee Meeting Friday, March 5, 2021 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  
Meeting ID: 869 4588 8046  
Meeting Password: 357808

For Viewing Access Join Zoom Meeting:

<https://us02web.zoom.us/j/86945888046?pwd=clk2dXFKVEh0bk5Ba2dLUVhxQXg1QT09>

### Agenda Page 1 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 2.5.21 Meeting Minutes
  - C.2 Third Agreement with Hall Energy Law PC
  - C.3 Ninth Agreement with Braun Blaising Smith Wynne, P.C.
  - C.4 Sixth Agreement with Keyes & Fox, LLP
  - C.5 Eleventh Agreement with Niemela Pappas & Associates
  - C.6 Twelfth Agreement with Maher Accountancy
  - C.7 Second Agreement with EcoShift Consulting

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### C.8 Second Agreement with Freelance Media Buying

6. Electing Chair of Executive Committee (Discussion/Action)
7. Fiscal Year 2021/22 Budget (Discussion/Action)
8. Charles F. McGlashan Advocacy Award Nomination (Discussion/Action)
9. Prepayment, Joint Procurement, and Direct Debt (Discussion)
10. Legislative Update (Discussion)
11. Review Draft 3.18.21 Board Agenda (Discussion)
12. Committee Matters & Staff Matters (Discussion)
13. 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**

**Thursday, February 5, 2021**

**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  
 Tom Butt, City of Richmond  
 Barbara Coler, Town of Fairfax  
 Ford Greene, Town of San Anselmo  
 Kevin Haroff, City of Larkspur  
 Shanelle Scales-Preston, City of Pittsburg  
 Sally Wilkinson, City of Belvedere

**Staff  
& Others:** Martin Bond, Business Relationship Manager  
 Jesica Brooks, Assistant Board Clerk  
 Melissa Giles, Manager of Strategic Marketing and Communications  
 Darlene Jackson, Board Clerk  
 Vicken Kasarjian, Chief Operating Officer  
 Evelyn Reyes, Administrative Services Assistant  
 Garth Salisbury, Director of Finance  
 Enyonam Senyo-Mensah, Administrative Services Associate  
 Heather Shepard, Director of Public Affairs  
 Dawn Weisz, Chief Executive Officer

**1. Roll Call**

Chair Butt called the regular Executive Committee meeting to order at 12:15 p.m. with quorum established by roll call.

**2. Board Announcements (Discussion)**

Announcements were made by Chair Butt and Director Haroff.

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

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

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

CEO Dawn Weisz, reported the following:

- A joint request for proposal with several other CCAs to purchase long duration storage has had many responses. We expect to have a shortlist of projects by the end of next month. Power supply would be purchased through a Joint Powers Authority just formed by the participating CCAs, called Community Choice Power.
- Procurement and agency goals for 2021:
  - Deepen our transition away from fossil-based resource adequacy.
  - Focus on programs that help shift our load to the middle of the day and away from evening hours as this will help reduce reliance on non-renewable energy sources.
  - Focus on innovation with new technologies around energy storage, EV's, and Renewable Hydrogen to deepen our reduction of GHG emissions, while supporting customer needs.
  - Establish a fully functional MCE data warehouse and more comprehensive customer relationship management system.
  - Eliminate barriers that prevent MCE from maximizing our energy efficiency spending.
  - Deepen MCE's leadership on equity issues.

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

C.1 Approval of 12.4.20 Meeting Minutes

C.2 First Agreement with Montague DeRose and Associates

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

Action: It was M/S/C (Greene/Coler) to **approve Consent Calendar items C.1-C.2**. Motion carried by unanimous roll call vote.

**6. Charles F. McGlashan Advocacy Award Nomination (Discussion/Action)**

Action: Item pulled from the agenda and moved to March meeting.

**7. Fiscal Year 2020-21 Operating Fund Budget Update (Discussion)**

Garth Salisbury, Director of Finance, 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.

**DRAFT**

**8. Targeted Customer Cost Relief (Discussion)**

Heather Shepard, Director of Public Affairs and several MCE staff members presented this item and addressed questions from Committee members.

Chair Butt opened the public comment period and there were comments from Member of the Public, Dan Segedin.

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| Action: No action required. |
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**9. Review Draft 2.18.21 Board Agenda (Discussion)**

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

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

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

Comments were made by Director Birsan. Chair Butt announced that, due to his role as Board Chair, he is willing to relinquish his role as Executive Committee Chair to afford other interested parties an opportunity to serve.

**11. Adjournment**

Chair Butt adjourned the meeting at 2:09 p.m. to the next scheduled Executive Committee Meeting on March 5, 2021.

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Tom Butt, Chair

Attest:

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Dawn Weisz, Secretary



March 5, 2021

TO: MCE Executive Committee

FROM: Lindsay Saxby, Manager of Power Resources

RE: Third Agreement with Hall Energy Law PC (Agenda Item #05-C.2)

ATTACHMENT: Proposed Third Agreement with Hall Energy Law PC

Dear Executive Committee Members:

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**SUMMARY:**

Hall Energy Law PC provides legal services pertaining to: (a) new and existing power purchase agreements; (b) new and existing scheduling coordination and portfolio management agreements for energy, resource adequacy, and/or related products; (c) new and existing project development agreements, and; (d) review and counsel related to documents, contracts and master agreements for MCE's proposed non-recourse pre-payment program. Staff recommends creating a new agreement with Hall Energy Law PC in the amount of \$309,000 for Fiscal Year (FY) 2021/22 for continuation of these services.

**Fiscal Impacts:** Costs related to the referenced agreement are included in the Proposed FY 2021/22 Operating Fund Budget.

**Recommendation:** Approve the proposed Third Agreement with Hall Energy Law PC.

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

**THIRD AGREEMENT**  
**BY AND BETWEEN**  
**MARIN CLEAN ENERGY AND HALL ENERGY LAW PC**

**THIS THIRD AGREEMENT** ("Agreement") is made and entered into on **March 5, 2021** by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and HALL ENERGY LAW, an **Oregon Professional Corporation** with principal address at: 995 SW Hoffman Rd. West Linn, OR 97068 (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 **\$309,000**.

**4. TERM OF AGREEMENT:**

This Agreement shall commence on **April 1, 2021** ("Effective Date") and shall terminate on **March 31, 2022**, 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 **professional corporation** duly organized, validly existing and in good standing under the laws of the State of **Oregon**, (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. AUTO LIABILITY (REQUIRED IF CHECKED ☐).** Where the Services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said Services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000).

**6.3. 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.

**6.4. 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 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, 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 provided by or 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.** Unless otherwise expressly agreed to in writing by the Parties, any and all materials, information, or other intellectual property created, prepared, accumulated or developed by Contractor or any Contractor Party under this Agreement ("Intellectual Property"), including finished and unfinished inventions, processes, templates, documents, drawings, computer programs, designs, calculations, valuations, 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 MCE's respective customers. MCE shall have the exclusive right to use Intellectual Property in its sole discretion and without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide Intellectual Property to MCE or to any party MCE may designate upon written

request. Contractor may keep one file reference copy of Intellectual Property prepared for MCE solely for legal purposes and if otherwise agreed to in writing by MCE. In addition, Contractor may keep one copy of Intellectual Property if otherwise agreed to in writing by MCE.

- c) **Intellectual Property shall be owned by MCE upon its creation.** Contractor agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Intellectual Property.
- d) **Contractor's Pre-Existing Materials.** If, and to the extent Contractor retains any preexisting ownership rights ("Contractor's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, Contractor hereby grants MCE on behalf of its 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 Contractor or any Contractor Party for the sole purpose of using such 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, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the 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.

**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 Pre-Existing 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. This indemnity is expressly subject to the terms and limits of Contractor's professional liability insurance.

**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:

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.: (925) 378-6767

Notices shall be given to Contractor at the following address:

Contractor: Stephen Hall

Address: 3 Monroe Pkwy. Ste. P #406

Lake Oswego, OR 97035

Email Address: steve@hallenergylaw.com

Telephone No.: (503) 313-0755

**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                 |                              |                       |

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

**MODIFICATIONS TO STANDARD SHORT FORM**

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

**List sections affected:** Section 17: Indemnification

**Approved by MCE Counsel:**

DocuSigned by:  
*Michael Callahan*  
B1AE6120798543E...

**Date:** 2/18/2021

**EXHIBIT A**  
**SCOPE OF SERVICES**

Contractor will provide legal services to MCE as requested and directed by the COO, Manager of Power Resources, or Legal Counsel related to: (a) new and existing power purchase agreements; (b) new and existing scheduling coordination and portfolio management agreements for energy, resource adequacy, or related products; (c) new and existing project development agreements, and; (d) the review and counsel of documents, contracts and master agreements related to MCE's proposed non-recourse pre-payment program up to the maximum time/fees allowed under this Agreement. Services may also include transaction support in drafting, negotiations, dispute resolution, and appropriate implementation of power supply transactions.

**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:

Stephen Hall      \$595 per hour

Contractor shall bill monthly in .10-hour increments. Contractor services will be task-specific with MCE providing direction on tasks to be undertaken by letter, voice communication, or email.

In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$309,000** for the term of the Agreement.



March 5, 2021

TO: MCE Executive Committee

FROM: Shalini Swaroop, General Counsel

RE: Ninth Agreement with Braun Blaising Smith Wynne, P.C.  
(Agenda Item #05-C.3)

ATTACHMENT: Proposed Ninth Agreement with Braun Blaising Smith  
Wynne, P.C.

Dear Executive Committee Members:

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**SUMMARY:**

Braun Blaising Smith Wynne, P.C. (BBSW) has provided legal and regulatory assistance to MCE since 2013. Specifically, BBSW has provided assistance on the Renewable Portfolio Standard proceeding, microgrid proceedings, power outages, wildfires, transportation electrification, and other regulatory proceedings as requested. BBSW has also provided assistance on legal questions related to CCA and municipal utility issues and other legal questions as requested, particularly on regulatory rules around operations, such as the customer return bond posting with the California Public Utilities Commission. There is an ongoing need for the services provided by BBSW. Staff recommends approval of a Ninth Agreement with BBSW in the amount of \$175,000 for continuation of legal and regulatory services in Fiscal Year (FY) 2021/22.

**Fiscal Impacts:** Costs related to the referenced agreement are included in the Proposed FY 2021/22 Operating Fund Budget.

**Recommendation:** Approve the proposed Ninth Agreement with Braun Blaising Smith Wynne, P.C.

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**NINTH AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND BRAUN BLAISING SMITH WYNNE, P.C.**

**THIS NINTH AGREEMENT** ("Agreement") is made and entered into on **March 5, 2021** by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and **Braun Blaising Smith Wynne, P.C.**, a California professional corporation with principal address at: 555 Capitol Mall Suite 570, Sacramento, CA 95814 (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 **\$175,000**.

**4. TERM OF AGREEMENT:**

This Agreement shall commence on **April 1, 2021** ("Effective Date") and shall terminate on **March 31, 2022**, 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 professional corporation 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. AUTO LIABILITY (REQUIRED IF CHECKED ☐).** Where the Services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said Services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000).

**6.3. 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.

**6.4. 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 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, 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 provided by or 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.** Unless otherwise expressly agreed to in writing by the Parties, any and all materials, information, or other intellectual property created, prepared, accumulated or developed by Contractor or any Contractor Party under this Agreement ("Intellectual Property"), including finished and unfinished inventions, processes, templates, documents, drawings, computer programs, designs, calculations, valuations, 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 MCE's respective customers. MCE shall have the exclusive right to

use Intellectual Property in its sole discretion and without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide Intellectual Property to MCE or to any party MCE may designate upon written request. Contractor may keep one file reference copy of Intellectual Property prepared for MCE solely for legal purposes and if otherwise agreed to in writing by MCE. In addition, Contractor may keep one copy of Intellectual Property if otherwise agreed to in writing by MCE.

- c) **Intellectual Property shall be owned by MCE upon its creation.** Contractor agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Intellectual Property.
- d) **Contractor's Pre-Existing Materials.** If, and to the extent Contractor retains any preexisting ownership rights ("Contractor's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, Contractor hereby grants MCE on behalf of its 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 Contractor or any Contractor Party for the sole purpose of using such 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, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the 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.

**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 Pre-Existing 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) 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:

|                |                             |
|----------------|-----------------------------|
| 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.: | (925) 378-6767 |
|----------------|----------------|

Notices shall be given to Contractor at the following address:

|             |                |
|-------------|----------------|
| Contractor: | Scott Blaising |
|-------------|----------------|

|          |                             |
|----------|-----------------------------|
| Address: | 555 Capitol Mall, Suite 570 |
|----------|-----------------------------|

|                      |
|----------------------|
| Sacramento, CA 95814 |
|----------------------|

|                |                         |
|----------------|-------------------------|
| Email Address: | blaising@braunlegal.com |
|----------------|-------------------------|

|                |                |
|----------------|----------------|
| Telephone No.: | (916) 712-3961 |
|----------------|----------------|

**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                 |                              |                       |

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

**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**

Contractor will provide task-specific legal and regulatory services and assistance as requested and directed by MCE 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 hourly rate and the payment schedule as specified below:

|                                     |             |
|-------------------------------------|-------------|
| Senior Shareholder:                 | \$420       |
| Junior Shareholder:                 | \$360       |
| Senior Attorney                     | \$335       |
| Senior Associate:                   | \$310       |
| Junior Associate:                   | \$275       |
| Law Clerk:                          | \$165       |
| Of Counsel:                         | \$315-\$365 |
| Contract Associate (As Authorized): | \$310       |

Contractor shall bill in .10 hour increments on a monthly basis for all services rendered. In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$175,000** for the term of the Agreement.



March 5, 2021

TO: MCE Executive Committee

FROM: Shalini Swaroop, General Counsel

RE: Sixth Agreement with Keyes & Fox, LLP (Agenda Item #05-C.4)

ATTACHMENT: Proposed Sixth Agreement with Keyes & Fox, LLP

Dear Executive Committee Members:

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**SUMMARY:**

Keyes and Fox, LLP has provided legal and regulatory services for MCE since 2017. Specifically, Keyes & Fox, LLP 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 Calpine contract for billing and data services as well as the TRC contract for MCE's energy storage program.

There is an ongoing need for the services provided by Keyes & Fox, LLP. Staff recommends approval of a Sixth Agreement with Keyes & Fox, LLP in the amount of \$175,000 for continuation of legal and regulatory services in Fiscal Year (FY) 2021/22.

**Fiscal Impacts:** Costs related to this Agreement are included in the Proposed FY 2021/22 Operating Fund Budget.

**Recommendation:** Approve the Sixth Agreement with Keyes & Fox, LLP.

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

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

**THIS SIXTH AGREEMENT** ("Agreement") is made and entered into on **March 5, 2021** by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and KEYES AND FOX, LLP, a California limited liability partnership with principal address at: 580 California Street, 12th Floor, San Francisco, CA, 94104 (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 **\$175,000**.

**4. TERM OF AGREEMENT:**

This Agreement shall commence on **April 1, 2021** ("Effective Date") and shall terminate on **March 31, 2022**, 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 limited liability partnership 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 16 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. AUTO LIABILITY (REQUIRED IF CHECKED ☐).** Where the Services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said Services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000).

**6.3. 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.

**6.4. 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 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, 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 provided by or 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.** Unless otherwise expressly agreed to in writing by the Parties, any and all materials, information, or other intellectual property created, prepared, accumulated or developed by Contractor or any Contractor Party under this Agreement ("Intellectual Property"), including finished and unfinished inventions, processes, templates, documents, drawings, computer programs, designs, calculations, valuations, 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 MCE's respective customers. MCE shall have the exclusive right to

use Intellectual Property in its sole discretion and without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide Intellectual Property to MCE or to any party MCE may designate upon written request. Contractor may keep one file reference copy of Intellectual Property prepared for MCE solely for legal purposes and if otherwise agreed to in writing by MCE. In addition, Contractor may keep one copy of Intellectual Property if otherwise agreed to in writing by MCE.

- c) **Intellectual Property shall be owned by MCE upon its creation.** Contractor agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Intellectual Property.
- d) **Contractor's Pre-Existing Materials.** If, and to the extent Contractor retains any preexisting ownership rights ("Contractor's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, Contractor hereby grants MCE on behalf of its 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 Contractor or any Contractor Party for the sole purpose of using such 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, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the 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.

**10.2. EQUITABLE RELIEF.** Each Party acknowledges that a breach of this Section 9 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 Pre-Existing 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 18.

**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 14. 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 10.6(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 below) 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:

|                |                             |
|----------------|-----------------------------|
| 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.: | (925) 378-6767 |
|----------------|----------------|

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. 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                 |                              |                       |

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

**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**

Contractor will provide task-specific legal and regulatory services and assistance, including regulatory filings and advocacy at the California Public Utilities Commission (CPUC) and drafting and negotiating services agreements, 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          | \$330/hr                                     |
| Kevin Fox            | \$395/hr                                     |
| Sheridan Pauker      | \$350/hr and \$385/hr for transactional work |
| Tim Lindl            | \$320/hr                                     |
| Jake Schlesinger     | \$295/hr                                     |
| Scott Dunbar         | \$260/hr                                     |
| Julia Kantor         | \$240/hr                                     |
| Melissa Birchard     | \$235/hr                                     |
| Beren Artesinger     | \$225/hr                                     |
| Lilly McKenna        | \$265/hr                                     |
| Ann Springgate       | \$295/hr                                     |
| <b>Non-Attorneys</b> |  |
| Miriam Makhoun       | \$190/hr                                     |
| Justin Barnes        | \$185/hr                                     |
| Ben Inskeep          | \$150/hr                                     |
| Blake Elder          | \$125/hr                                     |
| Vannessa Luthringer  | \$100/hr                                     |
| Alicia Zaloga        | \$95/hr                                      |
| Heather DePouw       | \$105/hr                                     |
| Amanda Vanega        | \$185/hr                                     |

Contractor shall bill in .10 hour increments on a monthly basis for all services rendered. In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$175,000** for the term of the Agreement.



March 5, 2021

TO: MCE Executive Committee

FROM: Shalini Swaroop, General Counsel

RE: Eleventh Agreement with Niemela Pappas & Associates  
(Agenda Item #05-C.5)

ATTACHMENT: Proposed Eleventh Agreement with Niemela Pappas & Associates

Dear Executive Committee Members:

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**SUMMARY:**

Niemela Pappas & Associates has provided contract lobbyist services on behalf of MCE since 2012. These duties include setting up in-district meetings with state legislators, testifying on MCE's behalf in hearings in Sacramento, lobbying MCE's positions on bills and securing amendments, and connecting MCE staff with key Sacramento decisionmakers. Staff recommends creating a new agreement with Niemela Pappas & Associates in the amount of \$116,000 for Fiscal Year (FY) 2021/22 for continuation of these services.

**Fiscal Impacts:** Costs related to the referenced agreement are included in the Proposed FY 2021/22 Operating Fund Budget.

**Recommendation:** Approve the Eleventh Agreement with Niemela Pappas & Associates.

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**ELEVENTH AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND NIEMELA PAPPAS & ASSOCIATES**

**THIS ELEVENTH AGREEMENT** ("Agreement") is made and entered into on **March 5, 2021** by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and Niemela Pappas & Associates, a California corporation with principal address at: 1414 K St STE 270, Sacramento, CA 95814 (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 **\$116,000**.

**4. TERM OF AGREEMENT:**

This Agreement shall commence on **April 1, 2021** ("Effective Date") and shall terminate on **March 31, 2022**, 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 corporation 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. AUTO LIABILITY (REQUIRED IF CHECKED ☐).** Where the Services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said Services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000).

**6.3. 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.

**6.4. 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 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, 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 provided by or 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.** Unless otherwise expressly agreed to in writing by the Parties, any and all materials, information, or other intellectual property created, prepared, accumulated or developed by Contractor or any Contractor Party under this Agreement ("Intellectual Property"), including finished and unfinished inventions, processes, templates, documents, drawings, computer programs, designs, calculations, valuations, 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 MCE's respective customers. MCE shall have the exclusive right to use Intellectual Property in its sole discretion and without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide Intellectual Property to MCE or to any party MCE may designate upon written

request. Contractor may keep one file reference copy of Intellectual Property prepared for MCE solely for legal purposes and if otherwise agreed to in writing by MCE. In addition, Contractor may keep one copy of Intellectual Property if otherwise agreed to in writing by MCE.

- c) **Intellectual Property shall be owned by MCE upon its creation.** Contractor agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Intellectual Property.
- d) **Contractor's Pre-Existing Materials.** If, and to the extent Contractor retains any preexisting ownership rights ("Contractor's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, Contractor hereby grants MCE on behalf of its 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 Contractor or any Contractor Party for the sole purpose of using such 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, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the 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.

**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 Pre-Existing 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) 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:

|                |                             |
|----------------|-----------------------------|
| 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.: | (925) 378-6767 |
|----------------|----------------|

Notices shall be given to Contractor at the following address:

|             |              |
|-------------|--------------|
| Contractor: | Emily Pappas |
|-------------|--------------|

|          |                          |
|----------|--------------------------|
| Address: | 1414 K Street, Suite 270 |
|----------|--------------------------|

|                      |
|----------------------|
| Sacramento, CA 95814 |
|----------------------|

|                |                     |
|----------------|---------------------|
| Email Address: | pappas@npalobby.com |
|----------------|---------------------|

|                |                |
|----------------|----------------|
| Telephone No.: | (916) 661-5365 |
|----------------|----------------|

**20. 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                 |                              |                       |

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

**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

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

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

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

Contractor shall bill MCE monthly for all professional services rendered under this Agreement. A monthly retainer of \$9,412.50 will be paid by MCE to Contractor for each month of service beginning April 1, 2021 until the end of the Agreement. MCE will also pay an administrative fee for FPPC filings at the rate of \$75.00 per month, which will be added to the invoice of each monthly retainer.

In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$116,000** for the term of the Agreement.



March 5, 2021

TO: MCE Executive Committee

FROM: Garth Salisbury, Director of Finance & Treasurer

RE: Twelfth Agreement with Maher Accountancy (Agenda Item #05-C.6)

ATTACHMENT: Proposed Twelfth Agreement with Maher Accountancy

Dear Executive Committee Members:

**SUMMARY:**

On March 4, 2010 Maher Accountancy began providing MCE with general accounting services. Maher Accountancy continues to provide general accounting services, budget tracking, invoice processing, as well as employee payroll and employee benefit and accruals accounting services for MCE.

The proposed Twelfth Agreement would allow for Maher Accountancy to continue providing accounting services for a two-year term between April 1, 2021 and March 31, 2023. The proposed monthly fees amount to a not-to-exceed amount of \$299,920 for Year one, and \$314,320 for year two with additional negotiated amounts if MCE's growth in customer accounts or employees exceeds 15% in the second year of the contract.

The proposed cost of services and increases are based on MCE's overall growth in both customers and programs, which has required a dramatic increase in demand for accounting services of various types from the Contractor. Last year we amended the Maher Accountancy contract to recognize the need to track and account for Customer Programs activities, including the energy efficiency ("EE") program and the rollout of new programs, the development of a Customer Programs Management Platform that interfaces with the Contractor's accounting system, as well as assisting with reporting for the multiyear Building Efficiency Optimization grant from the California Energy Commission.

MCE increased its service territory in 2020 and anticipates the addition of over 100,000 customer accounts during the 2021-23 time frame of the proposed Twelfth Agreement. This growth has created a higher demand for accounting services: the growing customer base has increased complexity in revenue recognition; additional towns require extra tax compliance reporting; increased Net Energy Metering requires increases in reconciliation and cash out activities; and increases in staffing at MCE has increased transaction activities.

**Fiscal Impacts:** Costs related to the referenced agreement for the next fiscal year are included in the proposed FY 2021/22 Operating Fund Budget.

**Recommendation:** Approve the proposed Twelfth Agreement with Maher Accountancy.

**MARIN CLEAN ENERGY**  
**STANDARD SHORT FORM CONTRACT FOR VENDORS RECEIVING MCE DATA**

**TWELFTH AGREEMENT**  
**BY AND BETWEEN**  
**MARIN CLEAN ENERGY AND MAHER ACCOUNTANCY**

**THIS TWELFTH AGREEMENT** ("Agreement") is made and entered into on **March 5, 2021** by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and **MAHER ACCOUNTANCY**, a **California corporation** with principal address at: **1101 Fifth Avenue, San Rafael, CA 94901** (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 **\$614,240**.

**4. TERM OF AGREEMENT:**

This Agreement shall commence on **April 1, 2021** ("Effective Date") and shall terminate on **March 31, 2023**, 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 **corporation** 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. PERFORMANCE ASSURANCE; BONDING.** 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 bonding requirements of the California Contractors State License Board ("CSLB"), as may be applicable. Regardless of the specific Services provided, Contractor shall also maintain any payment and/or performance assurances as may be requested by MCE during the performance of the Services.

**5.6. SAFETY.** At all times during the performance of the Services, Contractor represents, warrants and covenants that it shall:

- (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 Contractor 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;
- (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 Contractor from time to time;
- (f) be responsible for initiating, maintaining, monitoring and supervising all safety precautions and programs in connection with the performance of the Agreement; and
- (g) monitor the safety of the job site(s), if applicable, during the performance of all Services to comply with all applicable federal, state, and local laws and to follow safe work practices.

**5.7. BACKGROUND CHECKS.**

- (a) Contractor hereby represents, warrants and covenants that any employees, members, officers, contractors, Subcontractors and agents of Contractor (each, a "Contractor Party," and, collectively, the "Contractor Parties") 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 perform the Services.
- (b) Notwithstanding the foregoing and to the extent permitted by applicable law, in no event shall Contractor 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 perform the Services, or at any time after the individual's date of, assignment to perform the Services, 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, Contractor 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, Contractor shall notify MCE if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Contractor shall also immediately prevent that employee, representative, or agent from performing any Services.

**5.8. FITNESS FOR DUTY.** Contractor 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 the Services properly and safely. Contractor shall, and shall cause its Subcontractors to, have policies in place that require their employees, contractors, subcontractors and agents to 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.

**5.9. QUALITY ASSURANCE PROCEDURES.** Contractor shall comply with the following requirements (the "Quality Assurance Procedures"): as described in **Exhibit A**. Additionally, Quality Assurance Procedures must include, but are not limited to: (i) industry standard best practices; (ii) procedures that ensure customer satisfaction; and (iii) any additional written direction from MCE.

**5.10. 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.

**5.11. ACCESS TO CUSTOMER SITES:** Contractor shall be responsible for obtaining any and all access rights for Contractor Parties, from customers and other third parties to the extent necessary to perform the Services. Contractor shall also procure any and all access rights from Contractor Parties, customers and other third parties in order for MCE and CPUC employees, representatives, agents, designees and contractors to inspect the Services.

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

**6.3. 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.

**6.4. 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.

**6.5. PRIVACY AND CYBERSECURITY LIABILITY (REQUIRED IF CHECKED ☐).** Contractor shall maintain 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.

## **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. 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, 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 provided by or 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.

"Confidential Information" under this Agreement shall have the same meaning as defined in the Marin Clean Energy Non-Disclosure Agreement between the Parties dated **April 1, 2018**.

**10.2. 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. Contractor shall comply with all applicable federal, state and local laws, rules, and regulations related to the use, collection, storage, and transmission of Personal Information.

**10.3. MCE DATA SECURITY MEASURES.** Prior to Contractor receiving any MCE Data, Contractor shall comply, and at all times thereafter continue to comply, in compliance with MCE's Data security policies set forth in MCE Policy 009 (available upon request) 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 **April 1, 2018**, and as set forth in MCE Policy 001 - Confidentiality. MCE's Security Measures and Confidentiality provisions require Contractor 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.

**10.4. CONTRACTOR DATA SECURITY MEASURES.** Additionally, Contractor 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 MCE Data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

**10.5. RETURN OF MCE DATA.** Promptly after this Agreement terminates, (i) Contractor shall securely destroy all MCE Data in its possession and certify the secure destruction in writing to MCE, and (ii) each Party shall return (or if requested by the disclosing Party, destroy) all other Confidential Information and property of the other (if any), provided that Contractor's attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

**10.6. 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.
- b) **Intellectual Property.** Unless otherwise expressly agreed to in writing by the Parties, any and all materials, information, or other intellectual property created, prepared, accumulated or developed by Contractor or any Contractor Party under this Agreement ("Intellectual Property"), including finished and unfinished inventions, processes, templates, documents, drawings, computer programs, designs, calculations, valuations, 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 MCE's respective customers. MCE shall have the exclusive right to use Intellectual Property in its sole discretion and without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide Intellectual Property to MCE or to any party MCE may designate upon written request. Contractor may keep one file reference copy of Intellectual Property prepared for MCE solely for legal purposes and if otherwise agreed to in writing by MCE. In addition, Contractor may keep one copy of Intellectual Property if otherwise agreed to in writing by MCE.
- c) **Intellectual Property shall be owned by MCE upon its creation.** Contractor agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Intellectual Property.
- d) **Contractor's Pre-Existing Materials.** If, and to the extent Contractor retains any preexisting ownership rights ("Contractor's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, Contractor hereby grants MCE on behalf of its 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 Contractor or any Contractor Party for the sole purpose of using such 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, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the 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.

**10.7. 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 or Personal Information, 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 Pre-Existing 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, 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:

|                |                             |
|----------------|-----------------------------|
| 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.: | (925) 378-6767 |
|----------------|----------------|

Notices shall be given to Contractor at the following address:

|             |            |
|-------------|------------|
| Contractor: | John Maher |
|-------------|------------|

|          |                              |
|----------|------------------------------|
| Address: | 1101 Fifth Avenue, Suite 200 |
|----------|------------------------------|

|                      |
|----------------------|
| San Rafael, CA 94901 |
|----------------------|

|                |                      |
|----------------|----------------------|
| Email Address: | jmaher@maher CPA.com |
|----------------|----------------------|

|                |                       |
|----------------|-----------------------|
| Telephone No.: | (415) 459-1249 ext. 1 |
|----------------|-----------------------|

**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                 |                              |                       |

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

**MODIFICATIONS TO STANDARD SHORT FORM**

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

**List sections affected:** Section 7 Removed

**Approved by MCE Counsel:**

DocuSigned by:  
*Michael Callahan*  
B1AE6120798543E...

**Date:** 2/22/2021

## 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:

### **Accounting and Transactional Support**

1. Maintain the general ledger by:
  - a. Posting:
    - i. Accounts receivable and accounts payable;
    - ii. Accrued revenue and expenses;
    - iii. Cash receipts and cash disbursements;
    - iv. Payroll.
  - b. Preparing or maintaining the following monthly analysis regarding general ledger account balances:
    - i. Reconciled cash activity and balances with statements from Authority's financial institution (i.e. bank statements);
    - ii. Reconciled customer data manager reports of customer activity and accounts receivable;
    - iii. Estimated customer revenue earned but not billed as of the end of the reporting period;
    - iv. Estimated electricity costs incurred but not yet billed as of the end of the reporting period;
    - v. Schedule of depreciation of capital assets;
    - vi. Aged schedule of accounts payable;
    - vii. Aged schedule of accounts receivable;
    - viii. Schedules of details regarding all remaining balance sheet accounts.
2. Manage accounts payable:
  - a. Contractor will utilize a cloud-based accounts payable document management system (bill.com) to provide documentation for management review, proper segregation of duties, and access to source data;
  - b. Contractor will ensure that required authorization is documented and that account coding is correct.
    - i. MCE staff will authorize approval of invoices and the release of payment by an independent payment service in order to provide an additional safeguard.
3. Maintain segregated account structure to enable regulatory accounting for Energy Efficiency program, maintenance of incentive payments, and budget reporting.
  - a. Provide monthly custom report tool in Microsoft Excel for Customer Programs team to map and budget expenses;
  - b. Assist with data and software migration relating to Customer Programs Project Management Platform tools, and allow for integration with accounting records.
4. Manage compliance with fiscal provisions of vendor contracts: Before submitting vendor invoices for management approval, Contractor will verify that a vendor invoice agrees with contract provisions regarding time periods, rates, and financial limits.
5. Process payroll and maintain compensated absence accounting records:
  - a. Submit and review of payroll data to ADP, or other payroll program equivalent that MCE may use.
  - b. Submit and review of retirement contributions to retirement plan administrator.
  - c. Submit and review of FSA plan and related contributions to plan administrator.

### **Budgeting**

6. Assist in development of entity budgets in collaboration with management and technical consultants.
7. Assist with budget compliance. Contractor will monitor budget available and will make timely suggestions for any necessary budget amendments.
8. Provide assistance with the development and maintenance of departmental budget management processes as needed.

### **Financial Reporting**

9. Prepare timely and accurate monthly financial reporting including:
  - a. Operating, Energy Efficiency, Local Renewable Energy Development and Renewable Energy Reserve Fund Budgetary Comparison Schedules (4);
  - b. MCE Monthly Compiled Financial Statements including an investment summary as required by MCE's Investment Policy;
  - c. MCE Monthly Financial Statements in Microsoft Excel;
  - d. Monthly YTD expenditure detail for each Department as needed.
10. File annual information returns such as form 1099/1096s.
11. File various compliance reports for state and local agencies, such as user taxes, energy surcharges, and state controller reports.

**Annual Audit**

12. Prepare annual financial statements and coordinate with independent auditor.
  - a. Prepare Note Disclosures and Management Discussion and Analysis Section.
  - b. Host independent auditors at Maher offices during testing period.
  - c. Act as liaison between auditors and MCE.

**Financial Controls**

13. Assist with creating and maintaining a system of financial controls including recommendations for segregation of duties and other control measures as needed.

**Online Portal**

14. Create and manage online portal for expense management. Provides centralized place to manage high level contract details, document actual vendor spending, provide department budget reporting with sub-budget tracking within the classification limits of the accounting system.

**Customer Programs Budget Portal**

15. Create specialized software system that will support Customer Programs Team by:
  - a. Tracking Program;
  - b. Tracking Fuel Type/sub Programs;
  - c. Tracking Program Year that is independent from Accounting date;
  - d. Building Custom Calendar, grouping to match various Grant periods;
  - e. Grouping of Programs by Manager or Funding with totals;
  - f. Enabling future tracking elements.
16. Integrate "Committed Funds" and current year "Reserved Funds" into budgets to provide a more complete view into available funds at the project & fuel level by:
  - a. Tracking Committed projects;
  - b. Reducing available budget funds;
  - c. Matching payments and closing out funds.
17. Provide ongoing support by:
  - a. Assisting program manager's review and reconciling their program data as well as setting up new budgets & programs;
  - b. Assisting with reconciling historical data to match California Public Utilities Commission ("CPUC") submissions;
  - c. Adjusting Accounts Payable process to capture this additional data as provided by vendors and program managers.

## 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:

### **Fiscal Year 2021/2022 Fees: \$257,920**

- General accounting services and payroll processing will be performed for \$241,920. Payment will be made in monthly installments of \$20,160, on or about the 15<sup>th</sup> of each month.
- Assistance with the annual audit will be performed for \$16,000 and will be payable at the conclusion of the audit.

### **Customer Programs Budget Portal 2021/2022 Fees: \$42,000**

- Monthly fees - \$3,500 per month, allocated across programs as follows:
  - 60%, or \$2,100 - CPUC funded Energy Efficiency programs
  - 15%, or \$525 - CPUC funded Low Income Families and Tenants program
  - 25%, or \$875 - MCE funded programs
- Upon written request by MCE, funds may shift within the Customer Programs Budget Portal in order to share the burden across programs.

### **Fiscal Year 2022/2023 Fees: \$265,120**

- General accounting services and payroll processing will be performed for \$249,120. Payment will be made in monthly installments of \$20,760, on or about the 15<sup>th</sup> of each month.
- Assistance with the annual audit will be performed for \$16,000 and will be payable at the conclusion of the audit.

### **Customer Programs Budget Portal 2022/2023 Fees: \$49,200**

- Monthly fees - \$4,100 per month, allocated across programs as follows:
  - 60%, or \$2,460 - CPUC funded Energy Efficiency programs
  - 15%, or \$615 - CPUC funded Low Income Families and Tenants program
  - 25%, or \$1,025 - MCE funded programs
- Upon written request by MCE, funds may shift within the Customer Programs Budget Portal in order to share the burden across programs.

Subject to the Events Triggering Fee Adjustment, (see below), the total cost to MCE for the services provided herein shall not exceed the maximum sum of **\$614,240** for the term of this Agreement.

### **Events Triggering Fee Adjustment:**

Contractor and MCE understand that should any of the following events occur in Fiscal Year 2022/2023, the fees for general accounting and payroll processing, as well as assistance with the annual audit, shall be renegotiated by mutual agreement of the parties:

- MCE increases its service area equivalent to 15% of its current size (as of 3/31/21);
- MCE increases its staff count by 15% of its current size (as of 3/31/21);
- An extenuating circumstance mutually agreed upon by MCE and Contractor to warrant an increase in fees.



March 5, 2021

TO: MCE Executive Committee

FROM: Jim Baak, Distributed Energy Resources Manager

RE: Second Agreement with EcoShift Consulting (Agenda Item #05 - C.7)

ATTACHMENTS: Proposed Second Agreement with Ecoshift Consulting

Dear Executive Committee Members:

**SUMMARY:**

Ecoshift Consulting has been providing consulting services to MCE since 2019 to support MCE's Energy Storage Program and other resiliency and behind-the-meter Distributed Energy Resources programs and projects. Continued consulting services are needed to support the planning, management, implementation and evaluation of MCE's Energy Storage Program. Consulting services are also needed to explore additional opportunities for developing a cohesive energy storage and distributed energy resources strategy.

**Fiscal Impacts:** The proposed second agreement shall not exceed \$150,000. Costs are included in the Proposed FY 2021/22 Customer Programs Budget.

**Recommendation:** Approve the proposed Second Agreement with Ecoshift Consulting.

**MARIN CLEAN ENERGY**  
**STANDARD SHORT FORM CONTRACT FOR VENDORS RECEIVING MCE DATA**

**SECOND AGREEMENT**  
**BY AND BETWEEN**  
**MARIN CLEAN ENERGY AND BLUE STRIKE ENVIRONMENTAL dba ECOSHIFT CONSULTING**

**THIS SECOND AGREEMENT** ("Agreement") is made and entered into on **March 5, 2021** by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and **BLUE STRIKE ENVIRONMENTAL dba ECOSHIFT CONSULTING**, a **California corporation** with principal address at: **126 Bonifacio Place, Monterey, CA 93940** (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 **\$150,000**.

**4. TERM OF AGREEMENT:**

This Agreement shall commence on **April 1, 2021** ("Effective Date") and shall terminate on **March 31, 2022**, 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 **corporation** 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. PERFORMANCE ASSURANCE; BONDING.** 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 bonding requirements of the California Contractors State License Board ("CSLB"), as may be applicable. Regardless of the specific Services provided, Contractor shall also maintain any payment and/or performance assurances as may be requested by MCE during the performance of the Services.
- 5.6. SAFETY.** At all times during the performance of the Services, Contractor represents, warrants and covenants that it shall:
- (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 Contractor 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;
  - (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 Contractor from time to time;
  - (f) be responsible for initiating, maintaining, monitoring and supervising all safety precautions and programs in connection with the performance of the Agreement; and
  - (g) monitor the safety of the job site(s), if applicable, during the performance of all Services to comply with all applicable federal, state, and local laws and to follow safe work practices.
- 5.7. BACKGROUND CHECKS.**
- (a) Contractor hereby represents, warrants and covenants that any employees, members, officers, contractors, Subcontractors and agents of Contractor (each, a "Contractor Party," and, collectively, the "Contractor Parties") 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 perform the Services.
  - (b) Notwithstanding the foregoing and to the extent permitted by applicable law, in no event shall Contractor 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 perform the Services, or at any time after the individual's date of, assignment to perform the Services, 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, Contractor 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, Contractor shall notify MCE if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Contractor shall also immediately prevent that employee, representative, or agent from performing any Services.

**5.8. FITNESS FOR DUTY.** Contractor 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 the Services properly and safely. Contractor shall, and shall cause its Subcontractors to, have policies in place that require their employees, contractors, subcontractors and agents to 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.

**5.9. QUALITY ASSURANCE PROCEDURES.** Contractor shall comply with the following requirements (the "Quality Assurance Procedures"). Additionally, Quality Assurance Procedures must include, but are not limited to: (i) industry standard best practices; (ii) procedures that ensure customer satisfaction; and (iii) any additional written direction from MCE.

**5.10. 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.

**5.11. ACCESS TO CUSTOMER SITES:** Contractor shall be responsible for obtaining any and all access rights for Contractor Parties, from customers and other third parties to the extent necessary to perform the Services. Contractor shall also procure any and all access rights from Contractor Parties, customers and other third parties in order for MCE and CPUC employees, representatives, agents, designees and contractors to inspect the Services.

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

**6.3. 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.

**6.4. 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.

**6.5. PRIVACY AND CYBERSECURITY LIABILITY (REQUIRED IF CHECKED ☐).** Contractor shall maintain 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.

## **7. FINANCIAL STATEMENTS:**

Contractor 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.

## **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. 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, 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 provided by or 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.

“Confidential Information” under this Agreement shall have the same meaning as defined in the Marin Clean Energy Non-Disclosure Agreement between the Parties dated **September 13, 2019**.

**10.2. 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. Contractor shall comply with all applicable federal, state and local laws, rules, and regulations related to the use, collection, storage, and transmission of Personal Information.

**10.3. MCE DATA SECURITY MEASURES.** Prior to Contractor receiving any MCE Data, Contractor shall comply, and at all times thereafter continue to comply, in compliance with MCE’s Data security policies set forth in MCE Policy 009 (available upon request) 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 **September 13, 2019**, and as set forth in MCE Policy 001 - Confidentiality. MCE’s Security Measures and Confidentiality provisions require Contractor 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.

**10.4. CONTRACTOR DATA SECURITY MEASURES.** Additionally, Contractor 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 MCE Data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

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

#### **10.6. 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.
- b) **Intellectual Property.** Unless otherwise expressly agreed to in writing by the Parties, any and all materials, information, or other intellectual property created, prepared, accumulated or developed by Contractor or any Contractor Party under this Agreement (“Intellectual Property”), including finished and unfinished inventions, processes, templates, documents, drawings, computer programs, designs, calculations, valuations, 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 MCE’s respective customers. MCE shall have the exclusive right to use Intellectual Property in its sole discretion and without further compensation to Contractor or to any other party. Contractor shall, at MCE’s expense, provide Intellectual Property to MCE or to any party MCE may designate upon written request. Contractor may keep one file reference copy of Intellectual Property prepared for MCE solely for legal purposes and if otherwise agreed to in writing by MCE. In addition, Contractor may keep one copy of Intellectual Property if otherwise agreed to in writing by MCE.
- c) **Intellectual Property shall be owned by MCE upon its creation.** Contractor agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE’s ownership in the Intellectual Property.
- d) **Contractor’s Pre-Existing Materials.** If, and to the extent Contractor retains any preexisting ownership rights (“Contractor’s Pre-Existing Materials”) in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, Contractor hereby grants MCE on behalf of its 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 Contractor or any Contractor Party for the sole purpose of using such 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, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the 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.

**10.7. 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 or Personal Information, 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 Pre-Existing 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, 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:

|                |                             |
|----------------|-----------------------------|
| 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.: | (925) 378-6767 |
|----------------|----------------|

Notices shall be given to Contractor at the following address:

|             |                |
|-------------|----------------|
| Contractor: | Chris Sentieri |
|-------------|----------------|

|          |                              |
|----------|------------------------------|
| Address: | 123 Bonifacio Place, Suite G |
|----------|------------------------------|

|                    |
|--------------------|
| Monterey, CA 93940 |
|--------------------|

|                |                    |
|----------------|--------------------|
| Email Address: | chris@ecoshift.com |
|----------------|--------------------|

|                |                  |
|----------------|------------------|
| Telephone No.: | 1 (831) 224-3130 |
|----------------|------------------|

**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                 |                              |                       |

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

**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**

Contractor will provide consulting services for MCE's Energy Storage Program and other resiliency programs and projects, as well as other behind-the-meter (BTM) Distributed Energy Resources (DER) as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement.

### **Task 1- Assessment of MCE Distributed Energy Resources and Resiliency Opportunities**

Contractor will provide an assessment of MCE resources (programs, service providers, MCE's existing Energy Storage Tariff, etc.). This assessment will: illuminate additional opportunities; identify barriers and obstacles; explore program funding and financing options; and create a set of actionable recommendations for developing a cohesive energy storage/DER strategy that leverages MCE's existing resources.

#### **Contractor tasks may include, but are not limited to, the following:**

- Review of relevant MCE resources, (plans and budgets, reports, data, pilots, programs, resources, rates and tariffs, infrastructure, etc.)
- Lead stakeholder engagement, including corresponding/meeting with staff, vendors, consultants, contractors - identify barriers, obstacles, and opportunities for creating value, synergy, and mutual benefits
- Assess dispatchable energy storage, DER and microgrid market conditions and emerging opportunities
- Assess software and data needs and infrastructure to support activities
- Provide gap analysis - identify critical path issues that must be addressed to unlock the full DER and microgrid value proposition
- Review and discuss findings with MCE staff

#### **Contractor deliverables may include, but are not limited to, the following:**

- Summary Report of Findings and Recommendations
- Agenda and Presentation for debrief meeting with MCE Staff

#### **MCE Tasks**

- Provide information about MCE's existing resources (programs, service providers, MCE's existing Energy Storage Tariff, etc.) for review at outset of project
- Facilitate discussion and/or correspondence with MCE staff and/or vendors
- Review and comment on Draft Summary Report of Findings and Recommendations

### **Task 2 – Support the Planning, Management & Implementation of MCE's Energy Storage Program**

Contractor will continue to assist with planning, management, implementation and evaluation of MCE's Energy Storage Program with Implementer & subcontractors.

#### **Contractor tasks may include, but are not limited to, the following:**

- Assist with evaluating potential additional value streams for the energy storage program
- Assist with reevaluation of MCE's financial offerings for program participants and partners, including but not limited to pay for performance, gap funding, and bridge funding levels (ongoing, iterative). Assist with evaluating financing opportunities and effectiveness
- Assist with setup & implementation of Enbala Concerto platform, including refining use-cases and evaluating potential new use cases
- Assist with on bill repayment (OBR) setup, if implemented
- Assist with evaluation of multifamily and/or tariff (NEM) related issues. Provide general technical assistance, as requested by MCE staff, including, but not limited to, OpenADR 2.0B issues and evaluating potential subcontractors and trade allies for the TRC contract
- Evaluate costs & benefits of MCE's Energy Storage Program and assist in refining customer value proposition for Energy Storage Program

### **Task 3 - On-call Strategic Support**

Contractor will support MCE on any related issues or efforts as directed by MCE staff, including, but not limited to, microgrids, Vehicle to Grid, and assistance preparing grant applications.

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

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

Contractor Hourly Rates

| Name                        | Title                   | Rate (per hour) |
|-----------------------------|-------------------------|-----------------|
| <b>Key Staff</b>            |                         |                 |
| Chris Sentieri              | Senior Manager          | \$185           |
| Ben Fordham                 | Senior Analyst          | \$125           |
| <b>Additional Staff</b>     |                         |                 |
| Kristin Cushman             | Chief Executive Officer | \$200           |
| Rico Tesio                  | Chief Operating Officer | \$195           |
| James Barismantov, Ph.D.    | Founder, Senior Advisor | \$225           |
| Alexander Gershenson, Ph.D. | Founder, Senior Advisor | \$225           |
| Additional Staff as Needed  | Junior Level Staff      | \$75            |

Budget and Estimated Hours by Project Task

| #     | Task  | Maximum Sum | Estimated Billable Hours<br>(billed as needed, not to exceed the maximum sum) |
|-------|---|-------------|---|
| 1     | Assessment of MCE Distributed Energy Resources and Resiliency Opportunities | \$20,000    | 120   |
| 2     | Energy Storage Program Setup & Implementation Assistance                    | \$65,000    | 400   |
| 3     | On-call Strategic Support, as needed and based on written proposals         | \$65,000    | 400   |
|       |   |             |   |
| Total |   | \$150,000   | 920   |

Contractor will bill monthly for all services rendered the prior month. 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.



March 5, 2021

TO: MCE Executive Committee

FROM: Melissa Giles, Manager of Strategic Marketing and Communications

RE: Second Agreement with Freelance Media Buying (Agenda Item #05-C.8)

ATTACHMENT: Second Agreement with Freelance Media Buying

Dear Executive Committee Members:

**BACKGROUND:**

Freelance Media Buying (FMB) is a strategic marketing, media buying and communications firm with offices in Sausalito, CA. FMB has provided consulting and media buying services for out of home, transit, TV, print, paid digital and social media advertisements as well as development of creative material for the placed media buys.

This is the second fiscal year that MCE would be working with FMB. In addition to MCE, FMB has successfully worked with other CCAs including CleanPowerSF, East Bay Community Energy (EBCE), and Silicon Valley Clean Energy (SVCE). Freelance Media Buying understands the unique challenges and opportunities relevant to CCAs and is well-positioned to help address these challenges and opportunities with effective advertising campaigns.

FMB is located within MCE's service area and is a woman-owned certified small business.

**SUMMARY:**

The proposed Second Agreement with Freelance Media Buying is a contract to support MCE's advertising campaigns for the 2021-2022 fiscal year.

The primary goal of this engagement is developing and executing strategic and metric-driving advertising campaigns under the Agreement as requested and directed by the MCE Strategic Manager of Marketing and Communications, up to the maximum time/fees allowed under this Agreement:

This contract would support budgeted activities including:

- Customer Awareness of who MCE is, our mission, value proposition, and benefits.
- Retention of existing customers to prevent opt outs.
- Increased engagement with existing customers and external stakeholders i.e., municipalities, legislators and policy makers.
- Enrollment in qualifying programs.
- Brand affinity, engagement and loyalty.
- Executing media plans, buys and creative materials for MCE Cares Campaign.
- Program and Strategic Initiatives specific marketing.
- Increased visibility and opportunities for thought leadership.
- Deepen engagement with diverse and disadvantaged communities.
- Other planned campaigns including educational and awareness advertising to support TOU transition and MCE peak demand management.
- Fairfield enrollment advertising.

Investing in on-going advertising for MCE is important as it will help us increase our visibility, build awareness to attract new community partners and customers to help expand our program participation. It also helps build word-of-mouth to refer new customers, which has a multiplying effect as those you gain or retain will help build word-of-mouth with others in the community and service areas.

For each Advertising Campaign, Contractor will:

- Prepare a written Advertising Campaign proposal that includes:
  - Developing a media flow chart.
  - Strategic Objective of the Advertising Campaign, examples include:
    - Raising brand awareness and visibility of MCE's role within its service area communities.
    - Increasing the number of customers participating in MCE energy services – Light Green 60% renewable energy and Deep Green 100% renewable energy.
    - Supporting other targeted programs and campaigns (e.g., energy storage, resiliency, etc.).
    - Metrics for measuring success of the Advertising Campaign.
    - Proposed start and end dates of the Advertising Campaign.
    - Description of the Advertising Campaign, including, demographic and/or geographic focus, proposed channels and media mix including frequency and/or number of ads.
    - Proposed cost, including Gross Media Costs and Subcontractor Costs
- Develop recommendations and ad buy budget for proposed advertising channels such as: digital advertising (social media, digital banners, transit stop/bus shelters, billboards, radio and cable TV)
  - Negotiate optimal rates with media outlets and recommendations on media placements.

- Develop creative material for placed media.
- Search Engine Marketing Support, key word search recommendations, A/B Testing (Randomized experiments with two variants, A and B., This can include copy, photo and creative changes to test which ads may perform better).
- Paid digital and social media advertising.
- After a proposal is approved by the MCE Strategic Manager of Marketing and Communications, Contractor will:
  - Design and develop creative content;
  - Negotiate and purchase media for all recommended channels;
  - Report Advertising Campaign results with in-depth analysis;
  - Provide ongoing recommendations for further optimization based on Advertising Campaign metrics; and
  - Provide invoice substantiation of media costs and subcontractor costs.

The proposed Second Agreement would be in place for the period April 1, 2021 through March 31, 2022.

Under the proposed Agreement, Freelance Media Buying would be compensated based on their time and materials. The full not-to-exceed contract value would be \$740,000 through March 31, 2022.

**Fiscal Impacts:** The expenditures related to the proposed Agreement are included in the approved FY 2021/22 budget.

**Recommendation:** Approve the First Agreement with Freelance Media Buying.

**MCE Staff involved:**

Melissa Giles – Manager Strategic Marketing & Communications  
 Ayaka Emoto – Marketing Manager  
 Nicole Busto – Marketing Manager  
 Noel Voskuil – Brand Design Manager

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**SECOND AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND CARRIE SOUZA D/B/A FREELANCE MEDIA BUYING**

**THIS SECOND AGREEMENT** ("Agreement") is made and entered into on **March 5, 2021** by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and **CARRIE SOUZA d/b/a FREELANCE MEDIA BUYING**, a **California sole proprietor** with principal address at: 518 Bonita St. #3, Sausalito, CA 94965 (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 **\$740,000**.

**4. TERM OF AGREEMENT:**

This Agreement shall commence on **April 1, 2021** ("Effective Date") and shall terminate on **March 31, 2022**, 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 sole proprietor 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 one million dollars (\$1,000,000) with a two million dollars (\$2,000,000) 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. AUTO LIABILITY (REQUIRED IF CHECKED ☒).** Where the Services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said Services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000).
- 6.3. 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.
- 6.4. 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 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, 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 provided by or 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.** Unless otherwise expressly agreed to in writing by the Parties, any and all materials, information, or other intellectual property created, prepared, accumulated or developed by Contractor or any Contractor Party under this Agreement ("Intellectual Property"), including finished and unfinished inventions, processes, templates, documents, drawings, computer programs, designs, calculations, valuations, 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 MCE's respective customers. MCE shall have the exclusive right to use Intellectual Property in its sole discretion and without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide Intellectual Property to MCE or to any party MCE may designate upon written request. Contractor may keep one file reference copy of Intellectual Property prepared for MCE solely for legal purposes and if otherwise agreed to in writing by MCE. In addition, Contractor may keep one copy of Intellectual Property if otherwise agreed to in writing by MCE.
- c) **Intellectual Property shall be owned by MCE upon its creation.** Contractor agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Intellectual Property.
- d) **Contractor's Pre-Existing Materials.** If, and to the extent Contractor retains any preexisting ownership rights ("Contractor's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, Contractor hereby grants MCE on behalf of its 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 Contractor or any Contractor Party for the sole purpose of using such 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, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the 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.

**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 Pre-Existing 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) 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:

|                |                             |
|----------------|-----------------------------|
| 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.: | (925) 378-6767 |
|----------------|----------------|

Notices shall be given to Contractor at the following address:

|             |              |
|-------------|--------------|
| Contractor: | Carrie Souza |
|-------------|--------------|

|          |                   |
|----------|-------------------|
| Address: | 518 Bonita St. #3 |
|----------|-------------------|

|  |                     |
|--|---------------------|
|  | Sausalito, CA 94965 |
|--|---------------------|

|                |                                 |
|----------------|---------------------------------|
| Email Address: | carrie@freelancemediabuying.com |
|----------------|---------------------------------|

|                |                |
|----------------|----------------|
| Telephone No.: | (415) 459-2323 |
|----------------|----------------|

**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"/> | Insurance Reduction/Waiver       |                              |                       |

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

**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

Contractor shall develop and execute strategic and metric-driving advertising campaigns (each, an Advertising Campaign) under the Agreement as requested and directed by the MCE Strategic Manager of Marketing and Communications, up to the maximum time/fees allowed under this Agreement:

For each Advertising Campaign:

- Contractor will prepare a written Advertising Campaign proposal (each, a Proposal) that includes:
  - Media flow chart;
  - Strategic Objective of the Advertising Campaign, examples include:
    - Raising brand awareness and visibility of MCE's role within its service area communities
    - Increasing the number of customers participating in MCE energy services – Light Green 60% renewable energy and Deep Green 100% renewable energy
    - Supporting other targeted programs and campaigns (e.g. energy storage, resiliency, etc.)
  - Metrics for measuring success of the Advertising Campaign
  - Proposed start and end dates of the Advertising Campaign
  - Description of the Advertising Campaign, including, for example:
    - Demographic and/or geographic focus
    - Proposed channels and media
    - Frequency or number of ads
  - Proposed cost, including Gross Media Costs and Subcontractor Costs (each as defined in Exhibit B)
- Once a Proposal is approved by the MCE Strategic Manager of Marketing and Communications, Contractor will:
  - Design and develop creative content;
  - Negotiate and purchase media for all recommended channels;
  - Report Advertising Campaign results with in-depth analysis;
  - Provide ongoing recommendations for further optimization based on Advertising Campaign metrics; and
  - Provide invoice substantiation of media costs and subcontractor costs.

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

For Services provided under this Agreement, MCE shall pay Contractor Gross Media Costs and Subcontractor Costs in accordance with the amount(s) and the payment schedule as set forth in the Proposal:

For purposes of this Agreement:

- **Gross Media Cost** is equal to Net Media Costs plus the Contractor Fee
  - Contractor Fee is equal to 15% of Gross Media Cost
  - Net Media Cost is equal to amounts paid by Contractor to media providers
- **Subcontractor Cost** is equal to amounts paid by Contractor to subcontractors plus the Contractor Fee
  - Contractor Fee is equal to 15% of amounts paid by Contractor to subcontractors

In no event shall the total cost to MCE for the total costs and fees provided herein exceed the **maximum sum of \$740,000** for the term of the Agreement.

**EXHIBIT C**  
**INSURANCE REDUCTION/WAIVER (if applicable)**

CONTRACTOR: Carrie Souza d/b/a Freelance Media Buying

CONTRACT TITLE: Second Agreement by and between Marin Clean Energy and Carrie Souza d/b/a Freelance Media Buying

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

|   | <i>Check Where<br/>Applicable</i>   | <i>Requested<br/>Limit Amount</i> | <i>MCE<br/>Use Only</i>  |
|---|-------------------------------------|-----------------------------------|--------------------------|
| Workers' Compensation Insurance*<br>*Sole Proprietors must provide<br>representation of their exempt status<br>below. | <input checked="" type="checkbox"/> |                                   | <input type="checkbox"/> |

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

Workers' Compensation Insurance requirement waived because Contractor does not have any employees, as attested in the statement below.

**WORKERS' COMPENSATION STATEMENT OF EXEMPTION**

By signing below, I notify MCE that I am a

☐ sole proprietor      ☐ other (explain): \_\_\_\_\_

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

Contractor Signature \_\_\_\_\_

Printed Name of Contractor \_\_\_\_\_

Date \_\_\_\_\_

Contract Manager Signature: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

Approved by: \_\_\_\_\_

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

## MCE Board Offices and Committees

### Board Offices:

Tom Butt, Chair  
Shanelle Scales-Preston, Vice Chair  
Garth Salisbury, Treasurer  
Vicken Kasarjian, Deputy Treasurer  
Dawn Weisz, Secretary

### Executive Committee

1. Tom Butt, Chair (*New Chair, TBD*)
2. Denise Athas
3. Edi Birsan
4. Barbara Coler (*interested in Chair role*)
5. Cindy Darling
6. Ford Greene (*interested in Chair role*)
7. Kevin Haroff (*interested in Chair role*)
8. Devin Murphy
9. Gabriel Quinto
10. Shanelle Scales-Preston
11. Sally Wilkinson

### Technical Committee

1. Ford Greene, Chair
2. Gina Dawson
3. John Gioia
4. Janelle Kellman
5. David Kunhardt
6. Katy Miessner
7. Devin Murphy
8. Teresa Onoda
9. Scott Perkins
10. Katie Rice

### Ad Hoc Contracts Committee – 2021

1. Ford Greene
2. Kevin Haroff
3. Scott Perkins
4. Holli Thier

### Ad Hoc Audit Committee - 2021

1. David Fong
2. Kevin Haroff
3. Sally Wilkinson

### Ad Hoc Bonding Committee – 2021

1. Edi Birsan
2. Ford Greene
3. Kevin Haroff
4. Sally Wilkinson



## MCE Executive Committee Overview and Scope

|                       |   |
|-----------------------|---|
| Current Membership:   | 11  |
| Current Members:      | <p>Tom Butt, City of Richmond (Chair)</p> <p>Denise Athas, City of Novato</p> <p>Edi Birsan, City of Concord</p> <p>Barbara Coler, Town of Fairfax</p> <p>Cindy Darling, City of Walnut Creek</p> <p>Ford Greene, Town of San Anselmo</p> <p>Kevin Haroff, City of City of Larkspur</p> <p>Devin Murphy, City of Pinole</p> <p>Gabriel Quinto, City of El Cerrito</p> <p>Shanelle Scales-Preston, City of Pittsburg</p> <p>Sally Wilkinson, City of Belvedere</p>                     |
| Membership Process:   | <p>MCE strives to assemble an Executive Committee comprised of at least one county representative and one city/town representative from each county in the MCE service area. Available seats on the Executive Committee are therefore first offered to any interested and applicable Board member whose county is not yet represented by one county and one city member. Interested members can be added at a meeting of the Board when "New Committee Members" is on the Agenda.</p> |
| Current meeting date: | First Fridays of each month at 12:15pm  |

### Scope

The scope of the MCE Executive Committee is to explore, discuss and provide direction or approval on general issues related to MCE including legislation, regulatory compliance, strategic planning, outreach and marketing, contracts with vendors, human resources, finance and budgeting, debt, rate-setting and agenda setting for the regular MCE Board meetings and annual Board retreat.

### Authority of Executive Committee

Executive Committee is authorized to make decisions regarding:

- Legislative positions outside of the Board-approved legislative plan
- Procurement pursuant to Resolution 2018-04 or its successor
- Compensation and evaluation of the CEO
- Ad hoc committees

- Honorary awards

The Executive Committee also serves to make recommendations to the Board regarding:

- The annual budget and budget adjustments
- Rate setting
- Entering into debt
- MCE Policies (such as Policy 013: Reserve Policy and Policy 014: Investment Policy)



March 5, 2021

TO: MCE Executive Committee

FROM: Garth Salisbury, Director of Finance & Treasurer  
Maira Strauss, Finance Manager

RE: Fiscal Year 2021/22 Budget (Agenda Item #07)

ATTACHMENTS: A. Proposed FY 2021/22 Operating Fund Budget  
B. Proposed FY 2021/22 Local Renewable Energy and Program Development Fund Budget  
C. Proposed FY 2021/22 Resiliency Fund Budget and Proposed FY2021/22 Energy Efficiency Program Fund Budget

Dear Executive Committee Members:

**SUMMARY:**

Before the end of every fiscal year (FY), MCE's staff presents proposed Budgets to the Board for consideration for MCE's Operating Fund, Energy Efficiency (EE) Program Fund, Local Renewable Energy and Program Development Fund (LREPDF) and the Resiliency Fund for the upcoming fiscal year. These Budgets authorize staff to:

1. Spend funds within the limits and contingencies set forth in each budget line item;
2. Fund MCE's Local Renewable Energy and Program Development Fund, Electric Vehicle and other customer programs;
3. Fund MCE's Resiliency Fund; and
4. Add to MCE's Operating Fund balances and reserves.

The attached proposed Budgets reflect MCE's projected revenue, expenditures and contingencies for FY 2021/22, and are anticipated to allow MCE to continue delivering a minimum of 60% renewable energy and a further goal of 90% greenhouse gas (GHG)-free energy to our customers. The proposed FY 2021/22 Operating Fund Budget is projected to result in an increase of **\$41,000,000** to MCE's net position at the end of the fiscal year, assuming continuation of the current rate schedule and market prices. If the Board decides

to fund the Targeted Customer Cost Relief program in the amount of **\$10,000,000**, the projected addition to the net position declines to **\$31,000,000**. The actual amount dedicated to the Cost Relief Program has not yet been decided by the Board and the final FY 2021/22 Operating Fund Budget will reflect that decision.

Staff requests that the Executive Committee review and discuss the proposed Budgets at its March 5, 2021 meeting and recommend to the full Board for approval at its March 18, 2021 meeting.

### **Operating Fund Budget Highlights:**

Attached is the Proposed FY 2021/22 Operating Fund Budget. For comparison purposes, FY 2021/22 is shown alongside the approved FY 2020/21 current year budget.

**Revenue – Electricity (+ \$38,000,000, 8.6% increase):** Sales volume (GWh) is projected to increase producing an additional \$38 million due to the additions of City of Vallejo and City of Pleasant Hill to MCE's service area and from sales of excess Resource Adequacy (RA). However, Net Electricity Revenue is adjusted downward by an assumed delinquency rate of 2% of Electricity Revenues. This delinquency adjustment represents over \$9.5 million and is three times what MCE normally sees in terms of non-payments of bills. However, it is consistent with what MCE has been experiencing during the pandemic and therefore a similar delinquency rate has been assumed throughout the entire 2021/22 fiscal year.

**Cost of energy (+\$41,000,000, 11% increase):** Cost of energy includes expenses associated with the purchase of energy, charges by the California Independent Systems Operator (CAISO) for MCE load, services performed by the CAISO, RA costs and other regulatory energy requirements necessary to meet the energy needs of our customers. Energy costs are anticipated to increase related to the need to serve the incremental load in Cities of Vallejo and Pleasant Hill and higher prices for system energy and RA.

**Personnel (+\$945,000, 8% increase):** This increase is primarily reflective of cost-of-living adjustments to salaries (1.8%), fully integrating the full year's costs of new FTE's added last year and the anticipated addition of four FTEs over the course of the fiscal year which would increase headcount from 69 to 73. Three of these potential additions would provide in-house staff support for MCE's call center which is currently outsourced to our Data Manager. It is anticipated that reducing reliance on the outsourced call center would reduce MCE's costs somewhat (see "Data Manager" below) and more importantly, allow more control, accuracy and quality assurance in messaging MCE's numerous customer programs and value proposition.

Overall, personnel costs represent 2.7% of the total Operating Fund Budget. Personnel costs are net of a \$1.1 million allocation of MCE staff time to Energy Efficiency Program and other grant program administration.

**Data Manager (+ \$440,000 7.6% increase):** This increase is reflective of the additional customers anticipated to be joining MCE as we expand service into City of Vallejo and City of Pleasant Hill. Our Data Manager charges on a net account basis so with these additional customer accounts being served fees charged by our data manager increases commensurately. However, some of these increased costs are offset by the savings we anticipate in the first year by moving some call center activities in-house (-\$225,000) in FY 2021/22.

**Legal and Policy Services (+\$80,000, 6.2% increase):** Legal counsel expenses support MCE's contracting, human resources, financial and regulatory activities including market restructuring issues. Certain legal counsel expenses are expected to be down slightly due to declines in legal costs related to PG&E exiting bankruptcy and changing counsel to more cost-effective firms. Additionally, CalCCA has taken on a number of the regulatory and policy issues on behalf of all CCAs in California thus reducing the expenses that were previously borne directly by MCE. These reductions in legal costs have been offset by additional costs to support/advise MCE's staff on issues related to employment law, storage technologies and financing matters such as the joint powers agreement for long duration storage, MCE's bonding activities, and complex contracting needs related to MCE's energy storage program.

**Communications Services (+\$528,000, 22% increase):** Communications and related services include the costs associated with advertising including print, online, and digital; printing and mailing customer notices including compliance notices for new communities and targeted programs and on-going engagement; maintaining the website; community outreach and sponsorships; and special events. In FY 2020/21 the approved budget included \$2.365 million in Communication Services expenses, but a significant amount of activity was deferred due to COVID-19. Costs for Communication Services are expected to be \$2.892 million in anticipation of a significant up-tick in customer engagement to increase program participation, to maintain and grow our account base, and provide comprehensive outreach and advertising to support MCE's newest communities. MCE is also investing in customer engagement campaigns targeting vulnerable customers with cost relief, financial assistance and resiliency support, to increase our diverse customer outreach and to promote our superior product mix and brand value proposition.

**Other services (+\$148,000, 8% increase):** Other services encompass expenses which are not captured in other budget categories, including information technology, certain consultants and other professional services. These expenses include consulting services related to development and implementation of a Customer Relationship Management (CRM) software that is being developed by the Technology and Analytics Department. In addition, the Power Resources Department has been managing a high number of contracts using manual and software-based solutions that are not integrated. An automated contract management platform is being developed and will be implemented to create efficiencies while insuring greater rigor in tracking, invoice validations and oversight.

**General and Administration (-\$236,000, 10% decrease):** General and administration costs include office supplies, data, travel, dues and subscriptions, support for California Community Choice Association (CalCCA), and other related expenses. Increased costs are associated increased regulatory and legislative activities, and budgeting additional Software as a Service (SaaS) and CRM software development for use by our Public Affairs Department, Customer Programs Department, and Legal and Policy Department.

**Finance and Contingency (+\$50,000, 4% increase):** Finance continues to be focused on enhancing MCE's credit ratings and liquidity, maximizing investment earnings/returns and managing credit risk across our platform with our renewable energy providers and numerous contractual counterparties and service providers. Finance will also be pursuing reducing our renewable energy costs through tax-exempt prepayment transactions and evaluating ways to reduce the cost of energy through third party credit intermediaries and direct project ownership.

Additionally, improved budgetary accuracy, discipline and accountability will continue to be a primary function of the Finance Department. We project MCE will be at or under budget for the current fiscal year in every budgetary line item. We will continue to tighten down the contingency number as a % of the budget. In the past a contingency of approximately 8-10% was added to each functional budget line item given the continued growth of the organization and the consequent difficulty to accurately budget costs. Last year we reduced the contingency number to 3.9% of the Operating Expense Budget. In FY 2021/22, staff is proposing that contingency be reduced to approximately 3.7% (\$1.25 million) of the Operating Expense Budget and that it once again be managed/allocated in Finance based upon actual outcomes and needs within the group budgets throughout the fiscal year.

#### **Non-Operating Revenue and Expense, Fund Transfer and Other Updates:**

**Grant income (-\$970,000, 58% decrease):** MCE receives grants from government and non-profit organizations to support certain activities connected to MCE's mission. Grant income varies year to year as grants can be "one time" or can be provided to MCE under multiple year agreements. A number of grants expired in the current fiscal year with others starting in the 2021/22 fiscal year. Included are:

1. \$416,500 for MCE's EV Ready Phase 2 Grant funded by the California Energy Commission. This grant was awarded to the Contra Costa Transit Authority (CCTA) to implement strategies in CCTA's EV Readiness Blueprint. MCE is partnering with CCTA on this grant to oversee the installation of Level 1 and Level 2 electric vehicle supply equipment (EVSE) in multi-family dwellings and public locations in underserved communities in Contra Costa County. MCE's portion of this three-year grant was funded at \$416,500/year for three years.
2. \$25,000 for MCE's Advanced Energy Rebuild Napa, in part funded by the Bay Area Air Quality Management District. This program provides

incentives for property owners who are rebuilding properties lost in the October 2017 and 2018 wildfires.

3. \$247,369 for MCE's Green & Healthy Homes Initiative (GHHI Marin) funded in part by the Marin Community Foundation. GHHI is a partnership of local nonprofits, governments, and utilities that deliver services and education to create healthy, safe and energy efficient homes.
4. \$750,000 for MCE's Resiliency Initiative. MCE received a grant from the Marin Community Foundation to support battery storage for social safety net non-profit organizations and affordable multifamily housing. This grant will be placed directly in the Resiliency Fund and appears in the Resiliency budget.

**Interest income (-\$1,000,000, 50% decrease):** The significant reduction in interest income is due to the precipitous drop in interest rates we have experienced since the beginning of the pandemic almost one year ago. Interest earned on our funds has declined from 2.4% to 0.6% since March of 2020. However, significantly lower interest earnings are offset somewhat by more invested capital as MCE adds to its Net Position and liquidity each year resulting in projected interest earnings of \$1 million.

**Targeted Cost Relief Program:** Included in our FY 2021/22 budget is a placeholder of \$10,000,000 to provide temporary energy bill support for our most vulnerable residential and small commercial customers. This program would help mitigate impacts of energy costs exacerbated by the effects of COVID-19 and recent PG&E exit fee increases in MCE's service area. The proposed Cost Relief Program could support up to 115,000 CARE/FERA residential customers and 42,000 small commercial customers for a 9-month period. If approved by your Board at the March 18<sup>th</sup> meeting, this program could launch in April, 2021.

### Energy Efficiency Program Fund

The Energy Efficiency Program Fund uses funding authorized by the California Public Utilities Commission (CPUC) to support multifamily, commercial, agricultural, industrial, single family and workforce development sub-programs. The Energy Efficiency Program Fund supports the activities of the Energy Efficiency Program and the Low-Income Families and Tenants (LIFT) Pilot Program. Both programs involve the reimbursement of eligible expenses by the CPUC and accordingly, revenues and expenses for these programs offset each other. MCE's LIFT Pilot Program will be ending in FY 2021/22. MCE filed an application to continue the program in November 2019 and expects to receive a decision from the CPUC in 2021. The funds awarded from the CPUC are relatively steady from \$8,665,000 in FY 2020/21 to \$8,614,000 in FY 2021/22.

### Local Renewable Energy and Program Development Fund

The Local Renewable Energy Development Fund (LREDF) is financed by a transfer from the Operating Fund equal to 50% of the 1¢/kWh premium for Deep Green service budgeted at \$1.1 million in FY 2021/22. These resources are used to plan and develop local renewable

energy projects including:

- **MCEv:** MCE's electric vehicle program (MCEv) promotes EV adoption through rebates for charging infrastructure at work places and multifamily dwellings, vehicle rebates for low income customers, and regional planning and permitting support.
- **Low-Income Solar Program:** The low-income solar program provides rebates for low-income solar installations. Expenditures primarily target residential single-family and multi-family rooftop installations.
- **Regional Midstream Heat Pump Water Heater Program:** MCE is partnering with other Bay Area CCAs, and the Bay Area Regional Energy Network to co-fund a program aimed at engaging regional water heater contractors to increase the adoption rate of electric, grid-enabled heat pump water heaters.

### **Resiliency Fund**

On November 21, 2019, your Board approved the creation of a Resiliency Fund with initial funding in the amount of \$3,000,000 and in March of 2020 the Board approve an additional \$3 million to be added during the FY 2020/21 fiscal year for a total funding level of \$6,000,000.

The creation of this fund was in large part a response to PG&E's Public Safety Power Shutoff (PSPS) events. These events significantly impact the safety, reliability, health and welfare of our customers, and disproportionately affect vulnerable populations. MCE is working to help strengthen our communities by piloting battery storage and small-scale microgrids to retain some essential power supply during PSPS events and other outages while minimizing the use of carbon-emitting generators and fossil-fuel technologies. MCE has already begun extensive outreach with Offices of Emergency Services, Public Health officials, and other community partners to identify the most critical sites and vulnerable communities to target for initial investments.

Staff anticipates that over \$1,250,000 of this fund will be spent as of the end of the current fiscal year as early stage programs are implemented. The remainder of the initial funding amount could be expended over the 2021/22 fiscal year with the goal of implementing 15 MWh of residential and commercial battery storage at some of our most impacted locations such as fire houses, community and senior centers, etc. Staff recommends an additional **\$1,000,000** of funding for FY 2021/22 from the Operating Fund and a transfer of a \$750,000 Marin Community Foundation grant to bring the total funding for the Resiliency Fund to \$7.75 million. The anticipated expenditures in the fund project a remaining balance of \$540,000 at the end of FY 2021/22.

**Potential Resiliency Fund Revolving Loan Program:** In an effort to site more batteries with less grant or "gap" funding out of current revenues, Staff recommends instituting a revolving loan program in an amount of \$4,000,000 funded out of existing MCE cash

reserves. This potential appropriation will be brought before the Board in April or May for discussion and consideration at that time.

**Fiscal Impacts:** The net impact of the Proposed Operating Fund Budget is a projected **\$41,000,000** contribution to MCE's net position during FY 2021/22 or an estimated **\$31,000,000** assuming a **\$10,000,000** Cost Relief Program. The proposed projections assume no change to MCE's current rates and are based on best available information regarding market prices for any unhedged power supply.

**POTENTIAL FY 2021/22 BUDGET IMPACTS:** A number of anticipated and unanticipated events could have a measurable effect on MCE's finances in the coming fiscal year. These include:

- 1) Power Cost Indifference Adjustment –PG&E has increased the PCIA costs for most vintages. While PCIA increases have not had measurable impacts on overall customer participation levels in the past, there is the possibility that these increases could have a negative effect on customer participation;
- 2) Time-of-Use Rate (voluntary and mandatory) implementation may result in lower peak time revenues;
- 3) Customer Energy Demand – As we experienced in late August and early September 2020, extreme weather events can have a significant impact on MCE's finances as energy demand can outpace our hedged energy supply;
- 4) Resource Adequacy Costs may end up being higher than anticipated due to market availability and/or due to regulatory changes that can diminish value of existing contracts.

**Recommendation:** Recommend approval of the proposed FY 2021/22 Operating Fund, Energy Efficiency Program Fund, Local Renewable Energy and Program Development Fund, and Resiliency Fund Budgets to the MCE Board of Directors.



**MCE Operating Fund**  
**Proposed Budget Fiscal Year 2021/22**  
**From April 1, 2021 through March 31, 2022**

|   | Fiscal Year<br>2020/21<br>Approved Budget | Fiscal Year<br>2021/22<br>Proposed Budget | Variance \$<br>(Under) Over | Variance %<br>(Under) Over | As % of Net<br>Electricity<br>Revenue |
|---|---|---|-----------------------------|----------------------------|---------------------------------------|
| <b>Energy Revenue</b>   |   |   |                             |                            |                                       |
| Revenue - Electricity   | \$ 448,518,000                            | \$ 493,501,000                            | 44,983,000                  | 10.0%                      |                                       |
| Uncollectible Accounts  | (2,909,000)                               | (9,545,000)                               | (6,636,000)                 | 228.1%                     |                                       |
| Revenue - Electricity (net)   | <b>445,609,000</b>                        | <b>483,956,000</b>                        | <b>38,347,000</b>           | <b>8.6%</b>                | <b>100.0%</b>                         |
| <b>Energy Expense</b>   |   |   |                             |                            |                                       |
| Cost of Energy  | 369,638,000                               | 410,657,000                               | 41,019,000                  | 11.1%                      | 84.9%                                 |
| <b>Net Energy Revenue</b>   | <b>75,971,000</b>                         | <b>73,299,000</b>                         | <b>(2,672,000)</b>          | <b>(3.5%)</b>              | <b>15.1%</b>                          |
| <b>Operating Expenses</b>   |   |   |                             |                            |                                       |
| Personnel   | 11,885,000                                | 12,830,000                                | 945,000                     | 8.0%                       | 2.7%                                  |
| Data Manager  | 5,780,000                                 | 6,220,000                                 | 440,000                     | 7.6%                       | 1.3%                                  |
| Technical and Scheduling Services                                   | 990,000                                   | 1,040,000                                 | 50,000                      | 5.1%                       | 0.2%                                  |
| Service fees - PG&E   | 2,126,000                                 | 2,372,000                                 | 246,000                     | 11.6%                      | 0.5%                                  |
| Legal and Policy Services   | 1,299,000                                 | 1,379,000                                 | 80,000                      | 6.2%                       | 0.3%                                  |
| Communication Services  | 2,365,000                                 | 2,893,000                                 | 528,000                     | 22.3%                      | 0.6%                                  |
| Other Services  | 1,865,000                                 | 2,013,000                                 | 148,000                     | 7.9%                       | 0.4%                                  |
| General and Administration  | 2,380,000                                 | 2,144,000                                 | (236,000)                   | (9.9%)                     | 0.4%                                  |
| Occupancy   | 1,008,000                                 | 995,000                                   | (13,000)                    | (1.3%)                     | 0.2%                                  |
| Finance and Contingency   | 1,200,000                                 | 1,250,000                                 | 50,000                      | 4.2%                       | 0.3%                                  |
| <b>Total Operating Expenses</b>                                     | <b>30,898,000</b>                         | <b>33,136,000</b>                         | <b>2,238,000</b>            | <b>7.2%</b>                | <b>6.8%</b>                           |
| <b>Operating Income</b>   | <b>45,073,000</b>                         | <b>40,163,000</b>                         | <b>(4,910,000)</b>          | <b>(10.9%)</b>             | <b>8.3%</b>                           |
| <b>Nonoperating Revenues</b>  |   |   |                             |                            |                                       |
| Grant Income  | 1,659,000                                 | 689,000                                   | (970,000)                   | (58.5%)                    | 0.1%                                  |
| Other Income  | -   | -   | -                           | -                          | -                                     |
| Interest Income   | 2,000,000                                 | 1,000,000                                 | (1,000,000)                 | (50.0%)                    | 0.2%                                  |
| <b>Total Nonoperating Revenues</b>                                  | <b>3,659,000</b>                          | <b>1,689,000</b>                          | <b>(1,970,000)</b>          | <b>(53.8%)</b>             | <b>0.3%</b>                           |
| <b>Nonoperating Expenses</b>  |   |   |                             |                            |                                       |
| Banking Fees and Financing Costs                                    | 218,000                                   | 220,000                                   | 2,000                       | 0.9%                       | 0.0%                                  |
| Grant Expenses  | 537,000                                   | 689,000                                   | 152,000                     | 28.3%                      | 0.1%                                  |
| Operating Fund Reserve  | -   | -   | -                           | -                          | -                                     |
| <b>Total Nonoperating Expenses</b>                                  | <b>755,000</b>                            | <b>909,000</b>                            | <b>154,000</b>              | <b>20.4%</b>               | <b>0.2%</b>                           |
| <b>Change in Net Position</b>                                       | <b>47,977,000</b>                         | <b>40,943,000</b>                         | <b>(7,034,000)</b>          | <b>(14.7%)</b>             | <b>8.5%</b>                           |
| Budgeted Net Position Beginning of Period                           | 163,297,000                               | 211,274,000                               | 47,977,000                  |                            |                                       |
| Change in Net Position  | 47,977,000                                | 40,943,000                                | (7,034,000)                 | (14.7%)                    | 8.5%                                  |
| <b>Budgeted Net Position End of Period</b>                          | <b>211,274,000</b>                        | <b>252,217,000</b>                        | <b>40,943,000</b>           |                            |                                       |
| <b>Capital Expenditures, Interfund Transfers &amp; Others</b>       |   |   |                             |                            |                                       |
| Capital Outlay  | 163,000                                   | 132,500                                   | (30,500)                    | (18.7%)                    | 0.0%                                  |
| Transfer to Resiliency Fund   | 3,000,000                                 | 1,000,000                                 | (2,000,000)                 | (66.7%)                    | 0.2%                                  |
| Transfer to LREPDF  | 2,430,000                                 | 1,100,000                                 | (1,330,000)                 | (54.7%)                    | 0.2%                                  |
| Budget Update Adjustments   | 10,777,000                                | -   | -                           | -                          | -                                     |
| Cost Relief Program   | -   | 10,000,000                                | -                           | -                          | 2.1%                                  |
| <b>Total Capital Expenditures, Interfund Transfers &amp; Others</b> | <b>16,370,000</b>                         | <b>12,232,500</b>                         | <b>-</b>                    | <b>-</b>                   | <b>2.5%</b>                           |
| <b>Budgeted Net Increase in Operating Fund Balance</b>              | <b>31,607,000</b>                         | <b>28,710,500</b>                         | <b>(2,896,500)</b>          | <b>(9.2%)</b>              | <b>5.9%</b>                           |



**MCE**  
**Local Renewable Energy & Program Development Fund**  
**Proposed Budget Fiscal Year 2021/22**  
**From April 1, 2021 to March 31, 2022**

|  | Fiscal Year<br>2020/21<br>Approved<br>Budget | Fiscal Year<br>2021/22<br>Proposed<br>Budget |
|--|--|--|
| <b>Revenue and Other Sources</b>         |  |  |
| Transfer from Operating Fund             | \$ 1,500,000                                 | \$ -   |
| Deep Green Transfer                      | 930,000                                      | 1,100,000                                    |
| <b>Total Revenue and Other Sources</b>   | <b>2,430,000</b>                             | <b>1,100,000</b>                             |
| <b>Expenditures and Other Uses</b>       |  |  |
| Local Pilot Programs                     | 2,850,000                                    | 1,500,000                                    |
| Low Income Solar Programs                | 190,000                                      | 190,000                                      |
| Regional Heat Pump Water Heater Program  | 300,000                                      | 300,000                                      |
| <b>Total Expenditures and Other Uses</b> | <b>3,340,000</b>                             | <b>1,990,000</b>                             |
| Net Increase (Decrease) in Fund Balance  | (910,000)                                    | (890,000)                                    |
| Fund Balance at Beginning of Period*     | 1,649,000                                    | 1,040,000                                    |
| Fund Balance at End of Period            | <b>740,000</b>                               | <b>150,000</b>                               |

\*Beginning balance for FY 2021/22 differs from budget FY 2020/21 ending balance due to delays in actual fund spending.



**MCE**  
**Resiliency Fund**  
**Proposed Budget Fiscal Year 2021/22**  
**From April 1, 2021 to March 31, 2022**

|   | Fiscal Year<br>2020/21<br>Approved<br>Budget | Fiscal Year<br>2021/22<br>Proposed<br>Budget |
|---|--|--|
| <b>Revenue and Other Sources</b>                    |  |  |
| Marin Community Foundation Grant                    | \$ -   | \$ 750,000                                   |
| Transfer from Operating Fund                        | 3,000,000                                    | 1,000,000                                    |
| <b>Total Revenue and Other Sources</b>              | <b>3,000,000</b>                             | <b>1,750,000</b>                             |
| <b>Expenditures and Other Uses</b>                  |  |  |
| Efforts Related to Marin Community Foundation Grant | -  | 750,000                                      |
| Resiliency Efforts                                  | 5,750,000                                    | 4,926,000                                    |
| <b>Total Expenditures and Other Uses</b>            | <b>5,750,000</b>                             | <b>5,676,000</b>                             |
| Net Increase (Decrease) in Fund Balance             | -  | 1,750,000                                    |
| Fund Balance at Beginning of Period*                | 2,750,000                                    | 4,466,000                                    |
| Fund Balance at End of Period                       | -  | <b>540,000</b>                               |

\*Beginning balance for FY 2021/22 differs from budget FY 2020/21 ending balance due to delays in actual fund spending.

**MCE**  
**Energy Efficiency Fund**  
**Proposed Budget Fiscal Year 2021/22**  
**From April 1, 2021 to March 31, 2022**

|  | Fiscal Year<br>2020/21<br>Approved<br>Budget | Fiscal Year<br>2021/22<br>Proposed<br>Budget |
|--|--|--|
| <b>Revenue and Other Sources</b>                             |  |  |
| Public Purpose Energy Efficiency Program                     | \$ 6,909,000                                 | \$ 7,564,000                                 |
| Public Purpose Low Income Families and Tenants Pilot Program | 1,756,000                                    | 1,050,000                                    |
| <b>Total Revenue And Other Sources</b>                       | <b>8,665,000</b>                             | <b>8,614,000</b>                             |
| <b>Expenditure and Other Uses</b>                            | -  |  |
| Public Purpose Energy Efficiency Program                     | 6,909,000                                    | 7,564,000                                    |
| Public Purpose Low Income Families and Tenants Pilot Program | 1,756,000                                    | 1,050,000                                    |
| <b>Total Expenditures and Other Uses</b>                     | <b>8,665,000</b>                             | <b>8,614,000</b>                             |
| <b>Net Increase (Decrease) In Fund Balance</b>               | -  | -  |



March 5, 2021

TO: MCE Executive Committee

FROM: Justin Marquez, Community Development Manager

RE: Charles F. McGlashan Advocacy Award Nominations (Agenda Item #08)

ATTACHMENT: Power Point Presentation of Nominees

Dear Executive Committee Members:

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**SUMMARY:**

The Charles F. McGlashan Advocacy Award was established in 2011 to recognize individuals and organizations who have demonstrated passion, dedication, and leadership on behalf of MCE. The annual award also honors and commemorates the life and legacy of environmental leadership left behind by former founding MCE Chairman Charles F. McGlashan.

Recipients of the award are recognized with a ceremony held at a regular meeting of the MCE Board of Directors. Recipients will also have their names inscribed on a plaque that shares other awardee names and is displayed outside the Charles McGlashan Room at the MCE office in San Rafael. The recipient will be recognized in MCE's e-newsletter, online blog, and social media.

It is the responsibility of the Executive Committee to review nominations and select which advocate(s) will be recognized with the Charles F. McGlashan Advocacy Award.

To date, the Charles F. McGlashan Advocacy Award has previously been awarded to:

- Barbara George of Women's Energy Matters (2011)
- The Mainstreet Moms (2012)
- Lea Dutton of the San Anselmo Quality of Life Commission (2013)
- Doria Robinson of Urban Tilt (2014)
- Constance Beutel of Benicia's Community Sustainability Commission (2015)

- Sustainable Napa County (2016)
- The El Cerrito Environmental Quality Committee (2017)
- Sustainable Lafayette (2018)
- Resilient Neighborhoods (2018)
- Verna Causby-Smith with EAH Affordable Housing (2018)
- Sustainable Rossmoor and the National Council for Jewish Women, Contra Costa Division (2019), and
- Gloria Castillo with Canal Alliance (2019)

With the effects of the ongoing COVID-19 global pandemic felt by our communities, it is humbling to see how many organizations and individuals participated as advocates and partners of MCE and our ongoing mission. Below are the 2020 nominees brought forward by MCE staff and Board Directors for the 2020 Charles F. McGlashan Award.

### **NOMINATIONS:**

This year's Charles F. McGlashan Advocacy Award nominations include the following individuals and organizations:

- Centers for Independent Living of Marin, Napa, Solano, and Contra Costa Counties & Vi Ibarra, Jointly
- Deborah Elliott, County of Napa
- Eco Performance Builders
- Fairfax Climate Action Committee
- San Anselmo Sustainability Commission
- San Rafael Chamber of Commerce, Green Business Committee

### Centers for Independent Living of Marin, Napa, Solano, and Contra Costa & Vi Ibarra

After recognizing the devastating impact of the 2019 fire season and power shutoffs on our medically vulnerable customers, MCE developed a pilot program to support our communities through energy resiliency. In March 2020, MCE's Executive Committee approved \$250,000 from the MCE Resiliency Fund for the purchase of high-quality, decentralized, off-grid lithium backup battery systems to support customers with critical medical needs which could become life-threatening without power. Together, our local Centers for Independent Living and Vi Ibarra from the Developmental Disabilities Council of Contra Costa conducted crucial outreach to identify, engage and evaluate eligible customers. These three partners wove together key resources to maximize the benefit to our mutual constituents. Special efforts were made by Vi Ibarra, who secured a Contra Costa County COVID-19-related contractor to carry-out the delivery of batteries to those most vulnerable, to ensure medically vulnerable residents could remain safe at home, with backup power during an outage, thus reducing the potential of infection in public resiliency sites. Together, these partners worked to deliver the batteries at no-cost to the recipients as a clean turnkey solution for energy resiliency while minimizing the need for emitting, polluting, fossil fuel generators in MCE's communities.

### Deborah Elliott, County of Napa

As Napa County's Environmental Resource Specialist, Deborah has been, and continues to be, instrumental to MCE's work throughout Napa County. She serves as a key liaison between multiple MCE staff across various departments, helping connect Napa residents and businesses to important services and programs including the Advanced Energy Rebuild Napa Program, Bay Area Regional Energy Network, MCE's Energy Storage Program, MCEv Charging, MCE's Low-Income Families and Tenants Pilot, and recent FEMA Building Resilient Infrastructure and Communities (BRIC) applications among others. Deborah frequently goes above and beyond her role as MCE's Napa County liaison, working extra hours, weekends, and holidays to keep projects on time, and working with MCE staff to meet state and federal funding application deadlines. Her passion for climate action and sustainability is vital and has been critical to MCE achieving its mission throughout the County of Napa's communities.

### Eco Performance Builders

Eco Performance Builders (EPB) is a home performance contracting company based in Concord, CA working to decarbonize Bay Area homes through energy efficiency retrofits and installations. Throughout 2020 they have been a multidimensional partner with MCE as we pursue our mutual goals. For MCE's Yeti Battery Program, Eco-Performance Builders was essential to unloading and distributing these batteries. For MCE's Workforce Education & Training Program, EPB has been an early adopter of the program design through their early engagement. They've registered to become a participating contractor in the WE&T program, ready to help newly trained job seekers get their foot in the door to transition into the green-economy. For our Heat Pump Water Heater (HPWH) Program, EPB donated time and expertise to create a video for MCE, showcasing a HPWH installation to educate others in the industry.

### Fairfax Climate Action Committee (CAC)

In early 2020, the Town Council approved and provided seed-funding for the CAC to move forward with the design of a battery storage system (10kWh) for the Pavilion (the largest Town public building) which could be combined with its roof solar panels and potentially other technology (EV integration) for a proposed microgrid system. Once constructed, the microgrid could be used to power most Town operations and serve the community during PG&E PSPS events and/or other power shutdowns and disasters. The CAC microgrid subcommittee has been working with MCE staff on this program and hopes to apply for CPUC's Self-Generation Incentive Program (SGIP) funding. Drawdown Marin recently selected this project as one of the top resilient community solutions. The battery storage system should be in place in early 2021; if SGIP funding is granted the microgrid should be operational late 2021. The CAC is currently updating the Town's Climate Action Plan (CAP) working with the Marin Climate & Energy Partnership (MCEP) to include strategies/actions to meet the 2030 carbon neutrality goal. CAC continues to advocate for decreasing Fairfax's GHG emissions by, among its other initiatives, engaging the broader Fairfax community through surveys, holding monthly community conversations, and speaking at the Town Council meetings. Two councilmembers are now members of CAC, which provides a direct route to the Town Council to achieve

Fairfax's aggressive climate action goals.

#### San Anselmo Sustainability Commission

As part of the San Anselmo Climate Action Plan, and in partnership with MCE, the Town has set a goal to increase participation in MCE's Deep Green program to reduce greenhouse gas emissions. Currently, only 6.6% of Town accounts are enrolled in Deep Green, and the town hopes to increase that to 20%. In 2020, The Sustainability Commission challenged the Town of Fairfax to a competition to see which town could achieve the highest increase in participation. The Sustainability Commission created a webpage on the Town's website dedicated to this campaign. During November of 2020, they organized to have three MCE Deep Green Banners to be displayed in San Anselmo's downtown area encouraging residents and businesses to opt up to Deep Green. Additionally, San Anselmo has regularly had youth commissioners serve on the Commission. Since 2013, San Anselmo has had at least one youth member, and since 2015 two youth members. The Youth Commissioners regularly attend meetings, offer insights from their point of view, coordinate with activities going on in the local high school, and have volunteered to create social media materials expanding the viewpoint of the Commission and encouraging civic engagement among young people in the community.

#### San Rafael Chamber of Commerce, Green Business Committee (GBC)

The San Rafael Chamber of Commerce Green Business Committee (GBC), a working group of the 650-member Chamber, has been active for 10 years in the promotion and education of sustainability-driven businesses and green economic development in Marin County. As the most active green business working group in the County's largest and most active Chamber, the GBC plays a large role in addressing many pressing environmental and climate challenges for the Marin County business community. Some initiatives and priorities of the GBC in 2020 included promoting MCE's Deep Green 100% renewable option for customers, promoting MCE's free EV charging stations at MCE's San Rafael parking structure, offering free energy efficiency audits for local chamber members (an average \$2,000 annual savings), and participating in creating city and county climate action plans, which promote programs, GHG migration, encourage businesses toward electrification of fleets, distributed solar, and feed-in tariff projects.

**Fiscal Impacts:** None

#### **Recommendation:**

Select the 2020 winner(s) of the Charles F. McGlashan Advocacy Award to be presented at a future meeting of the MCE Board of Directors. Due to the large number of nominations made to the annual McGlashan Award, staff is deferring to the Executive Committee for final recommendations.



# Nominations for the 2020 Charles F. McGlashan Advocacy Award



# Charles F. McGlashan Advocacy Award

*...to recognize individuals and organizations who have demonstrated passion, dedication, and leadership on behalf of MCE... also honors and commemorates the life and legacy of environmental leadership left behind by former founding MCE Chairman Charles F. McGlashan.*



# The 2020 Charles F. McGlashan Advocacy Award Nominees

- Centers for Independent Living of Marin, Napa, Solano, and Contra Costa Counties & Vi Ibarra, Jointly
- Deborah Elliott, County of Napa
- Eco Performance Builders
- Fairfax Climate Action Committee
- San Anselmo Sustainability Commission
- San Rafael Chamber of Commerce, Green Business Committee

## Centers for Independent Living of Marin, Napa, Solano, and Contra Costa & Vi Ibarra, Jointly

*"In partnership, MCIL, DSLC, and ILRSCC conducted crucial outreach about MCE's Yeti Battery Program, engaged and vetted eligible customers, and wove together resources to maximize the benefit to our mutual constituents. A special recognition is made for Vi Ibarra from the Developmental Disabilities Council of Contra Costa County, who secured a COVID-19-related contractor to take on the responsibility for delivering these batteries to medically vulnerable customers."*



## Deborah Elliott, Napa County

*“Deborah has been a key colleague for MCE staff for several years; she has remained a key contact and a true partner for all aspects of MCE including the implementation of the BayREN, Advanced Energy Rebuild Napa, Electric Vehicle programs, and Energy Storage Programs.”*



Deborah Elliott, Napa County's  
Environmental Resource Specialist

# Eco Performance Builders

*"EPB is passionate about decarbonizing the built environment while improving indoor air quality and reducing greenhouse gases through residential electrification. Throughout 2020, they were a multidimensional partner with MCE as we pursue Workforce Education and Training, Heatpump Water Heater, and Yeti Battery Programs."*



# Fairfax Climate Action Committee

*"In early 2020, the Town Council approved and provided seed-funding for the CAC to move forward with the design of a battery storage system (10kWh) for the Pavilion (the largest Town public building) which could be combined with its roof solar panels and potentially other technology (EV integration) for a proposed microgrid system."*



# San Anselmo Sustainability Commission

*“As part of the San Anselmo Climate Action Plan, and in partnership with MCE, the Town has set a goal to increase participation in MCE's Deep Green service to reduce greenhouse gas emissions. Currently at 7% enrollment in Deep Green, the Town's goal continues to be to increase overall enrollment to 20%.”*



TURN GREEN THIS  
HOLIDAY SEASON!

SWITCH UP  
TO DEEP GREEN!



CHOOSE 100%  
RENEWABLE ENERGY!



# San Rafael Chamber of Commerce

"The San Rafael Chamber of Commerce Green Business Committee (GBC), a working group of the 650-member Chamber, has been active for 10 years in the promotion and education of sustainability-driven businesses and green economic development in Marin County. They continue to promote and champion MCE's Deep Green service."



Staff Recommendation

Select the 2020 McGlashan  
Advocacy Award Winners

# Thank You

**Justin Marquez** | [jmarquez@mcecleanenergy.org](mailto:jmarquez@mcecleanenergy.org)  
Community Development Manager



**MCE** | My community.  
My choice.



March 5, 2021

TO: Executive Committee

FROM: Vicken Kasarjian, COO  
Garth Salisbury, Director of Finance  
Michael Callahan, Senior Policy Counsel

RE: Prepayment, Joint Procurement, and Direct Debt (Agenda Item #09)

Dear Executive Committee:

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## SUMMARY:

MCE has taken many steps over the last two years to strengthen our financial position including meeting our Reserve Policy/Liquidity goals and subsequently increasing them, establishing and funding an Operating Fund Reserve, pursuing a third credit rating with S&P Global, and a \$40 million line of credit with J.P. Morgan Chase Bank. As MCE matures as a leading provider of renewable and greenhouse-gas-free (GHG-free) energy, it is critical to utilize all of the available tools to reach our goals of providing 85% renewable energy and 95% GHG-free energy by 2029. Additionally, our mandates continue to evolve within our service area as we invest in and promote energy efficiency, electric vehicle (EV) adoption, local solar generation, battery storage and most recently, system resiliency/microgrids.

MCE is currently undertaking three major initiatives to enhance procurement optionality and financial strength by reducing costs. These initiatives are: (1) Prepayment; (2) Joint Procurement; and (3) Direct Debt. Staff would like to take this opportunity to update the Executive Committee on these initiatives including an overview of the distinct goals and risk profiles of each.

## Prepayment Initiative and Conduit JPA:

In March of 2020 Staff presented to the Technical Committee the concept of a tax-exempt prepayment transaction as a strategy to reduce the cost of certain of our renewable energy contracts. At that time Staff recommended and the Technical Committee approved starting the process to put a transaction together which

would be brought back to the full Board for approval once the terms and necessary documents were in near final form.

Municipal energy prepayment transactions have been utilized in the United States since the early 1990s primarily for natural gas. Tax-exempt entities such as municipal electric utilities and CCA's in California can prepay for a supply of electricity or natural gas and finance the prepayment with tax-exempt bonds.<sup>1</sup> The savings from the transactions are generated from the difference in borrowing costs between the taxable corporation that "supplies" the commodity and the tax-exempt service provider that is pre-paying for the commodity. In MCE's case the commodity being supplied is electricity through selected Power Purchase Agreements (PPAs) that MCE has entered into to supply our customers with renewable energy. The bonds issued to finance the prepayment are "non-recourse" to MCE and MCE would not be responsible for repaying the bonds. If the proposed MCE transaction is completed, it will be the first non-recourse prepayment transaction completed to supply 100% renewable energy.

The selected PPAs would be assigned or "novated" to a highly-rated bank to allow for the prepayment. After the novation of the selected PPA's, MCE would still receive all of the energy, renewable energy credits ("RECs" or "attributes") and benefits to MCE's Power Content Label from each PPA. The tax-exempt municipal bonds issued to finance the prepayment would be issued through a single purpose conduit issuer. MCE is in the process of creating a Joint Powers Authority with three other CCAs to serve as a conduit issuer to reduce the costs of each prepayment and expand the CCA brand in the bond markets. Creating our own JPA conduit issuer is significantly less expensive than using one of the existing conduits that have been set up to facilitate non-recourse tax-exempt transactions. As discussed above, the bonds issued through the Conduit JPA would be "non-recourse" to MCE, would not be guaranteed by MCE or affect our credit ratings or balance sheet. The bonds would be secured and guaranteed by the bank that receives the prepayment. Staff will bring the formation of the JPA conduit and MCE's participation in the JPA to the Executive Committee and the Board for consideration in April.

The projected savings from participating in the Prepayment Transaction are after all transactional and professional costs are paid with proceeds from the sale of the bonds. Through a municipal energy prepayment transaction, the cost of the energy from the selected PPAs could be reduced by 8-10% which could represent a savings of \$2-3 million annually depending upon (1) market conditions at the time of the prepayment; and (2) the size and number of the contracts included in the transaction.

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<sup>1</sup> Tax exempt prepayment transactions are allowed under IRS Regulations and Congress enacted legislation specifically allowing the transactions (National Energy Policy Act of 2005; Section 1327).

### **Joint Procurement Initiative:**

On October 15, 2020, nine CCAs including MCE issued a joint Request for Offers (RFO) for long-duration energy storage projects. The participating CCAs are planning to contract with the long-duration storage project(s) through California Community Power ("CCP"), a new procurement Joint Powers Authority (JPA) comprised initially of these nine CCAs. CCP is intended to serve as a vehicle for joint procurement among CCAs into the future. MCE's participation in this JPA was discussed and recommended for Board approval at the November 6, 2020 ExCom meeting and was approved by the full Board at the November 19, 2020 meeting.

Publicly owned utilities (POUs) in California have relied on JPAs to carry out joint procurement for over 40 years. The Northern California Power Agency (NCPA) and the Southern California Public Power Authority (SCPPA) provide a range of procurement activities on behalf of POUs. CCP is modeled on the structure of NCPA and SCPPA.

California has a large and growing need for reliability resources with the retirement of natural gas plants and Diablo Canyon Nuclear Power Plant. There is historical precedent for state-ordered procurement when needs arise. At times, this procurement has been conducted by the utility on behalf of CCAs, with costs allocated to CCAs. By forming CCP, CCAs are taking a leadership role in procuring long-duration storage to help meet reliability needs for their communities and the state. CCAs expect to jointly procure additional projects in the future. MCE's participation in a given project will depend on an analysis of the costs and benefits and will be subject to review and approval of the Board.

### **Direct Debt Initiative:**

MCE is creating a new pathway to take on direct ownership of energy resources or other cost-effective assets. Today, MCE procures energy resources exclusively through supply contracts with project developers or owners. MCE may benefit from having the option to purchase generation or storage assets outright, or take an ownership share in an asset, and to be in a position to do so quickly if an opportunity develops. Owning assets will only be considered if: (1) it presents a more cost-effective alternative to a standard PPA; (2) asset ownership affords synergies with MCE's objectives (e.g. resiliency, GHG free energy, etc.); or (3) it presents additional measurable advantages in terms of operational efficiency. MCE would likely finance such a purchase by borrowing in the United States capital markets through the issuance of tax-exempt bonds. Our ability to issue tax-exempt debt to finance an ownership interest in a facility is a distinct advantage MCE has over investor-owned utilities and direct access providers.

If MCE decided to issue debt to purchase an ownership interest in or to finance the construction of a generating or storage asset, it would be direct recourse debt issued by MCE and guaranteed by MCE. The Board has approved MCE taking a number of important steps to be in a position to quickly access the capital markets through a tax-exempt offering of our own direct debt. These first steps include hiring a Financial Advisor (FA) and Bond Counsel and developing a Debt Policy and Bond Indenture. MCE has retained an FA and Bond Counsel, is currently in the process of finalizing a Debt Policy and is in the early stages of creating a Bond Indenture.

Finally, before MCE actually issues direct recourse debt to the public, MCE will conduct a detailed review for approval with the Board to explore why owning an interest in a project directly is advantageous to MCE and why assuming the cost and responsibility of issuing debt is the most cost effective alternative.

**Fiscal Impacts:** Each initiative is expected to reduce costs to MCE over the long term. The specific impacts will vary based on commercial opportunities.

**Recommendation:** For discussion.



# 2021 Legislative Update

MCE Executive Committee - March 5, 2021

# Introductions

- Stephanie Chen, Senior Policy Counsel
- Emily Pappas, Niemela Pappas & Assoc.
- Jaime Minor, Niemela Pappas & Assoc.

# MCE's Legislative Advocacy

- Board-approved policy guidelines
  - Support CCA in California
  - Reduce GHG Emissions
  - Promote Local Economic and Workforce Benefits
  - Advocate on Behalf of CCA Customers
- Strong relationships with legislators

# MCE's Legislative Advocacy

Victories – SB 790 (2012): CCA Bill of Rights

Defeating Roadblocks:

- AB 976 (Bradford/CCUE, 2012): Prevent key contractors from working for CCAs--VETOED
- AB 2145 (Bradford/IBEW, 2014): Tried to change CCAs to opt-out—FAILED in Senate
- AB 56 (E Garcia, 2019): Would have changed procurement to a central entity

# Legislative Process & MCE Engagement

- Interim: In District Relationship Building
- Bill Introduction
- Support/Opposition
- Committee Hearings
- Floor Votes
- Second House
- Governor's Desk

# 2021 Session Preview

- COVID Impacts on Legislative Process
  - Truncated timing, lobbying via zoom
- Budget: Windfall then drop in revenue
- Recall
- Reliability, Wildfire prevention, PSPS

# Bill Highlights - Opportunities

- SB 612 (Portantino + 14) – PCIA
- AB 843 (Aguilar-Curry) – Bioenergy Program
- SB 18 (Skinner) - Green Hydrogen
- SB 99 (Dodd) - Community Energy Resilience
- SB 45 (Portantino)/AB 1500 (E Garcia) – \$5.5 & \$6.7 Billion Resilience Bonds

# 2021 Legislation to Monitor Carefully

## Central Procurement:

- AB 1161 (E. Garcia)– State Agency Procurement
- AB 1088 (Mayes)– IOU exit of retail procurement

## Resource Adequacy/Storage:

- SB 529 (Herzberg): PUC authority/RA Spot bill
- SB 733 (Hueso): Bulk Storage

# Getting Involved

- Local support
- Provide your local expertise
- Join MCE meetings with legislators

# Thank You

Stephanie Chen, Senior Policy Counsel  
[schen@mcecleanenergy.org](mailto:schen@mcecleanenergy.org)





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

**DRAFT**

**Board of Directors Meeting  
Thursday, March 18, 2021  
7:00 P.M.**

The Board of Directors 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. Board of Director Members will be teleconferencing into the Board of Directors 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:

For Viewing Access Join Zoom Meeting:

<https://us02web.zoom.us/j/84781591169?pwd=d2R4dFRqZzFaOFU3RGlhUDFBWUFuUT09>

Dial: 1-669-900-9128  
Webinar ID: 847 8159 1169  
Meeting Password: 376527

**Agenda Page 1 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 2.18.21 Meeting Minutes
  - C.2 Approved Contracts for Energy Update
6. Fiscal Year 2021/22 Budget (Discussion/Action)
7. Targeted Customer Cost Relief (Discussion/Action)

## Agenda Page 2 of 2

8. Resolution Supporting Electric Vehicles (Discussion/Action)
9. Joint Procurement, Prepayment, and Direct Debt (Discussion)
10. Power Supply Overview (Discussion)
11. Customer Engagement Update (Discussion)
12. Board Matters & Staff Matters (Discussion)
13. 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.