



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

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Executive Committee Meeting Friday, December 3, 2021 12:15 P.M.

This Meeting will be conducted via teleconference pursuant to the requirements of [Assembly Bill No. 361](#). By using teleconference for this meeting, MCE continues to promote social distancing measures recommended by local officials.

Members of the public who wish to observe the Meeting and/or offer public comment 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/89864757828?pwd=WkJkdTNLb3NNenppWGpSZUJpQVFvZz09>

Dial: 1-669-900-9128
Meeting ID: 898 6475 7828
Meeting Password: 343328

OPEN SESSION
Roll Call/Quorum
Public Open Time (Discussion)

CLOSED SESSION
Conference with Labor Negotiator
Agency Designated Representative: Board Chair
Unrepresented Employee: Chief Executive Officer

Resume OPEN SESSION

1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)

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5. Consent Calendar (Discussion/Action)
 - C.1 Approval of 11.5.21 Meeting Minutes
 - C.2 Third Agreement with Franklin Energy Services, LLC
 - C.3 Third Agreement with Pacific Energy Advisors, Inc.
 - C.4 Fifth Agreement with Recurve Analytics, Inc.
 - C.5 Assembly Bill No. 361: New Teleconferencing Legislation
Resolution No. 2021-10 Authorizing Continued Remote
Teleconference Meetings for the Board of Directors and Every
Committee of the Board of Directors Pursuant to Government
Code Section 54953(e)
6. Charles F. McGlashan Advocacy Award Nominations (Discussion/Action)
7. Letter Regarding California Public Utilities Commission Ratesetting
Proceeding for Solar Customers (Discussion/Action)
8. Review Draft 12.16.21 Board Agenda (Discussion)
9. Committee Matters & Staff Matters (Discussion)
10. Adjourn

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

DRAFT**MCE EXECUTIVE COMMITTEE MEETING MINUTES**

Friday, November 5, 2021

12:15 P.M.

The Executive Committee Meeting was conducted pursuant to the requirements of [Assembly Bill No. 361](#) (September 16, 2021) which allows a public agency to use teleconferencing during a Governor-proclaimed state of emergency without meeting usual [Ralph M. Brown Act](#) teleconference requirements. Committee Members, staff and members of the public were able to participate in the Committee Meeting via teleconference.

Present: Denise Athas, City of Novato
 Tom Butt, City of Richmond
 Barbara Coler, Town of Fairfax
 Cindy Darling, City of Walnut Creek
 Ford Greene, Town of San Anselmo
 Kevin Haroff, City of Larkspur, Committee Chair
 Devin Murphy, City of Pinole
 Gabriel Quinto, City of El Cerrito
 Maureen Toms, City of Pinole
 Brad Wagenknecht, County of Napa
 Sally Wilkinson, City of Belvedere

Absent: Edi Birsan, City of Concord
 Shanelle Scales-Preston, City of Pittsburg

Staff

& Others: Jesica Brooks, Assistant Board Clerk
 Stephanie Chen, Senior Policy Counsel
 Darlene Jackson, Board Clerk
 Vicken Kasarjian, Chief Operating Officer
 Justin Kudo, Senior Strategic Analysis & Rates Manager
 Ami Kundaria, Administrative Services Assistant
 Evelyn Reyes, Administrative Services Assistant
 Garth Salisbury, Director of Finance & Treasurer
 Enyonam Senyo-Mensah, Administrative Services Associate
 Dawn Weisz, Chief Executive Officer

1. Roll Call

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

2. Board Announcements (Discussion)

There were no comments.

3. Public Open Time (Discussion)

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

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CLOSED SESSION

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

The Committee adjourned to Closed Session at 12:20 p.m. and reconvened at 12:47 p.m. The Committee took no action.

4. Report from Chief Executive Officer (Discussion)

CEO, Dawn Weisz, reported the following:

- Reminder to Committee members to submit names for McGlashan Advocacy Award nomination. Original deadline of 11/5 has been extended to 11/12
- A CCA in Baldwin Park, CA is moving forward on a planned return of customers to utility service
- Community Power Coalition met to discuss Workforce Education & Training with training partners, RichmondBUILD and Rising Sun
 - Rising Sun will offer three training cohorts in 2022 training up to 120 job seekers with 10-12 weeks of hands on, industry-certified training plus 12 months of full wraparound supportive services
- CalCCA will be holding its Annual Retreat virtually on December 1st. Board members are invited to participate, and should notify staff by November 10th if they would like to attend.

5. Consent Calendar (Discussion/Action)

C.1 Approval of 10.1.21 Meeting Minutes

C.2 Assembly Bill No. 361: New Teleconferencing Legislation Resolution No. 2021-09 Authorizing Continued Remote Teleconference Meetings for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code Section 54953(e)

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

Action: C.1 - It was M/S/C (Coler/Darling) to **approve the 10.1.21 Meeting Minutes**. Motion carried by roll call vote. (Abstain: Directors Greene and Toms. Absent: Directors Birsan and Scales-Preston).

Agenda Item C.2 was pulled for discussion.

Action: C.2 – It was M/S/C (Toms/Coler) to **adopt proposed Resolution No. 2021-09 Authorizing Continued Remote Teleconference Meetings for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code Section 54953(e)**. Motion carried by unanimous roll call vote. (Absent: Directors Birsan and Scales-Preston).

DRAFT**6. 2021 MCE Climate Action Leadership Award Nomination (Discussion/Action)**

Stephanie Chen, Senior Policy Counsel, presented this item and addressed questions from Committee members.

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

Action: It was M/S/C (Wagenknecht/Athas) to **approve staff's recommendation to present the 2021 Climate Action Leadership Award to Assemblymember Cecilia Aguiar-Curry at an upcoming Board meeting.** Motion carried by unanimous roll call vote. (Absent: Directors Birsan and Scales-Preston).

7. Proposed MCE Rate Adjustment (Discussion/Action)

Garth Salisbury, Director of Finance & Treasurer, and Justin Kudo, Senior Strategic Analysis & Rates Manager, presented this item and addressed questions from Committee members.

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

Action: It was M/S/C (Butt/Darling) to recommend that the MCE Board authorize staff to:

1. Adjust system average rates on or after January 1, 2022 to achieve a 2% discount relative to PG&E's generation rates, subject to a minimum rate increase of \$0.003/kWh and a maximum increase of \$0.01/kWh.
2. Enact a flexible rate program for customers in the City of Fairfield effective from March 1, 2022 through December 31, 2022, which refunds customers on the 2021 and 2022 PCIA vintages the difference between these vintages and the next highest vintage.

Motion carried by unanimous roll call vote. (Absent: Directors Birsan and Scales-Preston).

8. Review Draft 11.18.21 Board Agenda (Discussion)

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

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

Action: No action required.

9. Committee & Staff Matters (Discussion)

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There were none.

10. Adjournment

Chair Haroff adjourned the meeting at 2:15 p.m. to the next scheduled Executive Committee Meeting on December 3, 2021.

Kevin Haroff, Chair

Attest:

Dawn Weisz, Secretary



December 3, 2021

TO: MCE Executive Committee

FROM: Michelle Nochisaki, Customer Programs Manager

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

ATTACHMENTS: Proposed Third Agreement with Franklin Energy Services, LLC

Dear Executive Committee Members:

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

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

Under the proposed Third Agreement, Franklin would deliver a comprehensive direct install program to moderate income single family customers, which will serve as an entry point into MCE programs and offer a comprehensive approach to energy efficiency and electrification in the residential sector.

The duration of the proposed Third Agreement would be from contract execution

through December 31, 2023. The maximum cost to MCE would be not to exceed \$4,150,780, with \$2,950,780 allocated to customer incentives.

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

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

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT
THIRD AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND FRANKLIN ENERGY SERVICES, LLC**

THIS THIRD AGREEMENT ("Agreement") is made and entered into on _____ by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and FRANKLIN ENERGY SERVICES, LLC, a Delaware limited liability company with principal address at: 102 North Franklin Street, Port Washington, WI 53074 (hereinafter referred to as "Implementer") (each, a "Party," and, together, the "Parties").

RECITALS:

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

WHEREAS, Implementer 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:

Implementer 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 Implementer pursuant to this Agreement. In connection with Implementer's provision of the Services, MCE agrees to make available to Implementer all pertinent data and records for review.

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"). Implementer shall provide MCE with Implementer's Federal Tax I.D. number prior to submitting the first invoice. Implementer is responsible for billing MCE in a timely and accurate manner. Implementer shall email invoices to MCE on a monthly basis for any Services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 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 **\$4,150,780**.

4. TERM OF AGREEMENT:

This Agreement shall commence on **January 1, 2022** ("Effective Date") and shall terminate on **December 31, 2023**, unless earlier terminated pursuant to the terms and conditions set forth in Section 12.

5. REPRESENTATIONS; WARRANTIES; COVENANTS:

5.1. IMPLEMENTER REPRESENTATIONS AND WARRANTIES. Implementer represents, warrants and covenants that (a) it is a limited liability company duly organized, validly existing and in good standing under the laws of the State of **Delaware**, (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to engage in the business it presently conducts and contemplates conducting, (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, and (d) it is qualified and competent to render the Services and possesses the requisite expertise to perform its obligations hereunder.

5.2. COMPLIANCE WITH APPLICABLE LAW. At all times during the Term and the performance of the Services, Implementer shall comply with all applicable federal, state and local laws, regulations, ordinances and resolutions affecting Services that it provides under this Agreement ("Applicable Law").

5.3. LICENSING. At all times during the performance of the Services, Implementer 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. Implementer shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.

5.4. NONDISCRIMINATORY EMPLOYMENT. Implementer shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, gender identity, age or condition of disability. Implementer understands and agrees that Implementer is bound by and shall comply with the applicable 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, Implementer, if providing any direct installation services, represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all bonding requirements of the California Implementers State License Board ("CSLB"), as may be applicable.

5.6. SAFETY. At all times during the performance of the Services, Implementer 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 provided to Implementer by MCE in writing, and cooperate with MCE security personnel whenever on MCE's property;
- c) abide by MCE's reasonable standard safety program contract requirements as may be provided by MCE to Implementer from time to time in writing;
- 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 of all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code. Additional safety requirements (including MCE's standard safety program contract requirements) are set forth elsewhere in the Agreement, as applicable, and in MCE's safety handbooks as may be provided by MCE to Implementer from time to time in writing;
- 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) Implementer hereby represents, warrants and covenants that any personnel of Implementer or any Implementer subcontractor (each, a "Implementer Party," and, collectively, the "Implementer Parties") having or requiring access to MCE's assets, premises, or customer property ("Covered Personnel") shall have successfully passed background screening on each such individual, prior to receiving access, which screening may include, among other things to the extent applicable to the Services, a screening of the individual's educational background, employment history, valid driver's license, and court record for the seven (7) year period immediately preceding the individual's date of assignment to perform the Services.
- b) Notwithstanding the foregoing and to the extent permitted by applicable law, in no event shall Implementer permit any Covered Personnel to have one or more convictions during the seven (7) year period immediately preceding the individual's date of assignment to 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, Implementer shall maintain documentation related to such background and drug screening for all Covered Personnel and if permitted by law, make it available to MCE for audit if required pursuant to the audit provisions of this Agreement, subject to a non-disclosure agreement protecting such information as confidential.
- d) To the extent permitted by applicable law, Implementer shall notify MCE if Implementer has knowledge that any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Implementer shall also immediately prevent that employee, representative, or agent from performing any Services.

5.8. FITNESS FOR DUTY. Implementer shall ensure that all Covered Personnel report to work fit for their job. Covered Personnel may not consume alcohol while on duty and/or be under the influence of drugs or controlled substances that impair their ability to perform the Services properly and safely. Implementer shall, and shall cause its Subcontractors to, have policies in place that require their employees 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. Implementer shall comply with the Quality Assurance Procedures. "Quality Assurance Procedures" means: (i) industry standard best practices; (ii) procedures that ensure customer satisfaction and (iii) the requirements identified by Implementer in the Implementation Plan as required in Exhibit A.

5.10. ASSIGNMENT OF PERSONNEL. The Implementer shall not substitute any personnel for those specifically named in Exhibit A, unless personnel with substantially equal or better qualifications and experience are provided, and MCE shall be notified of the staffing change in writing within two weeks after any such substitution.

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

6. INSURANCE:

At all times during the Term and the performance of the Services, Implementer 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 Implementer. Each certificate of insurance shall provide for thirty (30) days' advance written notice to MCE of any cancellation. Implementer will provide 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.

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

Should Implementer 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 Implementer for any Services provided during any period of time that insurance was not in effect and until such time as the Implementer provides adequate evidence that Implementer has obtained the required insurance coverage.

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

6.3. WORKERS' COMPENSATION. The Implementer 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 Implementer 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. INTENTIONALLY OMITTED

6.5. PRIVACY AND CYBERSECURITY LIABILITY. Implementer 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. INTENTIONALLY OMITTED.

8. SUBCONTRACTING:

The Implementer shall not subcontract nor assign any portion of the work required by this Agreement without prior, written approval of MCE, except for any subcontract work expressly identified herein in Exhibit A. If Implementer hires a subcontractor under this Agreement (a "Subcontractor"), Subcontractor shall comply with the following:

- 8.1.** Subcontractor shall comply with the following terms of this Agreement: Sections 9, 10.1, 10.2, 10.4, 10.7, and Exhibit A, as applicable to the services to be performed by such Subcontractor.
- 8.2.** Subcontractor shall provide, maintain and be bound by the representations, warranties and covenants of Implementer contained in Section 5 hereof (only as, and if, applicable to the services to be provided by Subcontractor, and as may be modified to be applicable to Subcontractor, including with respect to Section 5.1(a) 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 Implementer under this Agreement, and shall name MCE as an additional insured under such policies. Implementer 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.

Implementer 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, Implementer shall promptly forward to MCE evidence of the same. Nothing contained in this Agreement or otherwise stated between the Parties shall create any legal or contractual relationship between MCE and any Subcontractor, and no subcontract shall relieve Implementer of any of its duties or obligations under this Agreement. Implementer's obligation to pay its Subcontractors is an independent obligation from MCE's obligation to make payments to Implementer. As a result, MCE shall have no obligation to pay or to enforce the payment of any monies to any Subcontractor.

9. RETENTION OF RECORDS AND AUDIT PROVISION:

Implementer 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"). Provided that MCE has agreed in writing to confidentiality terms acceptable to Implementer to protect the confidentiality of such 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 Implementer's premises or, at MCE's option, Implementer shall provide all records within a maximum of thirty (30) days upon receipt of written request from MCE. Implementer shall refund any monies erroneously charged. Implementer shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

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 Implementer as MCE may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Implementer. MCE Data shall also include all data and materials provided by or made available to Implementer by MCE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors.

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

- 10.2. DEFINITION OF "PERSONAL INFORMATION".** "Personal Information" includes but is not limited to the following: personal names, e-mail addresses, addresses, phone numbers, any other public or privately-issued identification numbers, IP addresses, MAC addresses, and any other digital identifiers associated with entities, geographic locations, users, persons,

machines or networks. Implementer shall comply with all applicable 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 Implementer receiving any MCE Data, Implementer shall comply, and at all times thereafter continue to comply, 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") as provided to Implementer in writing in advance of the execution of this Agreement, and pursuant to MCE's Confidentiality provisions in Section 5 of the Marin Clean Energy Non-Disclosure Agreement between the parties dated **December 11, 2019**, and as set forth in MCE Policy 001 - Confidentiality. MCE's Security Measures and Confidentiality provisions require Implementer to adhere to reasonable administrative, technical, and physical safeguard protocols to protect the MCE's Data from unauthorized handling, access, destruction, use, modification or disclosure.

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

10.5. RETURN OF MCE DATA. Promptly after this Agreement terminates, (i) Implementer shall securely destroy all MCE Data in its possession and, upon the written request of MCE, 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). Notwithstanding the foregoing, Implementer may retain whatever MCE Data or Confidential Information is necessary to exercise any of Implementer's surviving rights or obligations hereunder.

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 Data.
- b) **Intellectual Property.** Unless otherwise expressly agreed to in writing by the Parties, any and all materials, information, or other intellectual property first created, prepared, accumulated or developed by Implementer or any Implementer Party under this Agreement with MCE funds ("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. Implementer may keep file reference copies of all Intellectual Property and all documents prepared by Implementer for MCE so long as MCE Data is not included.
- c) **Intellectual Property shall be owned by MCE upon its creation.** Implementer agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Intellectual Property.
- d) **Implementer's Pre-Existing Materials.** If, and to the extent, Implementer incorporates any preexisting ownership rights ("Implementer's Pre-Existing Materials") in any of the materials furnished or used to create, develop, and prepare the Intellectual Property, Implementer hereby grants MCE on behalf of its customers, and the CPUC for governmental and regulatory purposes, an irrevocable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, license to use any such Implementer's Pre-Existing Materials 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, Implementer shall retain all of its rights, title and interest in Implementer's Pre-Existing Materials, including improvements thereto and derivatives thereof. Any and all claims to Implementer'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.

Implementer's Pre-Existing Materials include:

- Green Point Rated (GPR) and associated system components and curriculum
- Energy and Electrification Assessment tool
- Climate Calculator
- Energy and Water calculator.
- Implementer's Desktop Review Tools
- Healthy Home Connect
- California Multifamily Existing Building training content
- NGAGE™ system software, including Efficiency Manager™, Efficiency Contact™, and Efficiency Clipboard™

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 seek 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 Implementer shall have the right to seek immediate equitable relief to enjoin any unauthorized use or disclosure of Implementer's Pre-Existing Materials or Implementer Confidential Information, in addition to any other rights and remedies that it may have at law or otherwise.

11. FORCE MAJEURE:

Implementer shall be excused for failure to perform Services herein if such Services are prevented by acts of God, strikes, labor disputes or other forces over which Implementer has no control.

12. TERMINATION:

12.1. If the Implementer fails to provide in any manner the Services required under this Agreement, or otherwise fails to comply with the terms of this Agreement or violates any Applicable Law which applies to its performance hereunder, then MCE may terminate this Agreement by giving ten (10) business days' written notice to Implementer, provided that Implementer does not cure such default within such ten (10) day period after receipt of notice from MCE.

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 Implementer, the Implementer 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 Services. Implementer shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12, Implementer shall have delivered to MCE any and all Intellectual Property (as defined in Section 10.1(b)) prepared for MCE that MCE has paid for 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. INTENTIONALLY OMITTED.

12.6. Upon termination of this Agreement for any reason, Implementer shall and shall cause each Implementer Party to bring the Services to an orderly conclusion as directed by MCE.

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

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, Implementer shall indemnify, defend, and hold MCE and its employees, officers, and agents ("MCE Parties"), harmless from and against any and all liabilities (including, but not limited to, reasonable litigation costs, attorney's fees and costs) from any and all claims and losses to anyone who may be injured or damaged by reason of Implementer's negligence, recklessness, or willful misconduct in its performance of this Agreement, provided however, that if such liability is caused by the negligence, recklessness or willful misconduct of both MCE and Implementer, then Implementer's indemnification obligation shall be limited to the proportional extent that such liabilities arise from Implementer's negligence, recklessness or willful misconduct.

EXCEPT WITH REGARD TO IMPLEMENTER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL IMPLEMENTER BE LIABLE HEREUNDER FOR ANY PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL OR SIMILAR DAMAGES UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

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 Implementer Party shall have rights, nor shall any Implementer 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 Implementer at the following address:

Implementer:	Jake Tisinger
Address:	300 Frank H. Ogawa Plaza Oakland, California 94612
Email Address:	jtisinger@franklinenergy.com
Telephone No.:	(510) 285-6228

With a copy to: Franklin Energy Services, LLC

Attn: Legal Department

102 N. Franklin Street

Port Washington, WI 53074

(262) 284-3838

legal@franklinenergy.com

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>IMPLEMENTER'S INITIALS</u>	<u>MCE'S INITIALS</u>
<u>EXHIBIT A.</u>	X	Scope of Services		
<u>EXHIBIT B.</u>	X	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:

Implementer 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 Implementer Party. Neither MCE nor any Implementer 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. INTENTIONALLY OMITTED.

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:

IMPLEMENTER:

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: 1, 5.1, 5.2, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 6, 7, 8, 8.1, 8.2, 8.5, 9, 10.2, 10.3, 10.5, 10.6, 10.7, 11, 12.1, 12.3, 12.5, 12.6, 15, 17, 23

Approved by MCE Counsel: _____

Date: _____

EXHIBIT A SCOPE OF SERVICES

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

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

Implementer shall offer the following services to Program participants:

- No cost health and energy savings kits, electrification assessments, and home upgrades to an estimated 450 (and up to 500) customers per year (home upgrades include the delivery of measures included in the Incentive Budget table set forth in Exhibit B).
- Target moderate-income single-family property owners and tenants, who have property owner's permission, with high utility bills in MCE's service area for participation in the Program;

Implementer will perform the following tasks in accordance with the Energy Efficiency Program Terms listed below.

Task 1: Program Design

Implementer will update the Implementation Plan ("IP"), Program Handbook, and any other necessary program-related documents within 40 days of Agreement execution date to reflect changes to the program delivery process and trade ally requirements, and to align with this Program Design and CPUC requirements.

Final IP will include:

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

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

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

Deliverables:

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

Task 2: Program Management

- A. Customer Service Support.** Implementer will provide a live customer support team to respond to Program participant inquiries and requests, provide Program support, connect Program participants to participating trade allies, and connect Program participants to additional program resources. The customer support team will be available from 8:30 a.m.–5:00 p.m. PST Monday through Friday and will monitor Program emails submitted to mce-energysavings@Franklinenergy.com.
- B. Trade Ally Engagement.** Implementer will onboard initial trade allies and provide a single point of contact for each participating trade ally by holding a minimum of two check-in calls per month, as-needed office visits, and support with technical Program questions, and mentoring in the field. Implementer will manage the trade allies, relevant contracts and is responsible for all aspects of home upgrade delivery to Program participants.
- C. Monthly Reporting.** Implementer will ensure all data collected from customers and participating trade allies is shared with MCE's team on an ongoing basis to ensure systems are tested, new data points are added and formatted as needed, and energy savings and payment information is accurate and complete. Implementer will intake all Program assessment questions and CPUC-required data points, and submit monthly reports and invoices to MCE. Implementer will work with

MCE as needed to complete the Biannual Budget Advice Letter ("BBAL") process. MCE and Implementer will outline any additional and/or ad hoc reporting as needed throughout the Program year.

- D. Coordination with Investor Owned Utilities ("IOUs") /Bay Area Regional Energy Network ("BayREN").** Implementer will coordinate with IOUs, BayREN, other Program implementers, and/or local government agencies authorized by the CPUC to implement CPUC-directed energy efficient programs, administering energy efficiency programs in the same geographic area as MCE as necessary within MCE's service territory to ensure timely, accurate, and consistent access to data. The CPUC may develop further rules related to coordination between Program Administrators in the same geographic area, and any Implementer Party is required to comply with such rules. Upon MCE's request, Implementer will assist MCE with tasks and deliverables as they relate to development of Joint Cooperation Memos. Implementer's activities in Task 2D include: meeting preparation and attendance; coordination across internal teams at MCE, and/or IOUs; research; analysis; writing; and editing.
- E. Program Closeout.** If Program is terminated, upon termination of the Program, Implementer will package all project and participant data into a Zip folder and securely transfer it to MCE. Implementer will complete a final Program closeout report and submit it to MCE within 2 business weeks of written notification by MCE of Program termination.

Deliverables:

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

Task 3: Health and Energy Savings Kits

After participants enroll into the Home Energy Savings Program, Implementer will screen each potential participant to determine Program eligibility; if found to be eligible, Implementer will install a health and energy savings kit (either a Water Savings kit or Energy Savings kit) ("Kit") directly in customers' homes. The number of Kits delivered will depend on the number of potential participants who complete the enrollment form and are determined to be eligible by Implementer. Eligibility requirements will be defined in the IP, and will include income level threshold, home location within MCE service territory, and feasibility of certain home upgrade measures.

Deliverables:

- Installation of up to 500 Kits annually.

Task 4: Application Platform Support

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

Deliverables:

- Ongoing Program platform support.

Task 5: Quality Assurance and Control

Implementer will:

- A. Quality Assurance.**
 - Review all initial applications submitted to the Program;
 - Coordinate with trade ally and/or potential Program participants about incomplete applications;
 - Ensure Program applications are accurate and complete;
 - Ensure data is formatted to meet ongoing reporting criteria updates requested by MCE.
- B. Quality Control.**
 - Test home for combustion safety;
 - Test installed home upgrade measures for quality installation;
 - Coordinate return visits as needed;
 - Conduct and complete field inspections, which will include full reviews of all field work, for the first 5 projects submitted per trade ally;
 - Conduct and complete field inspections for up to 10 percent of home upgrade projects submitted per trade ally after the first 5 projects;
 - Increase field inspection quality control as needed to ensure safe, quality, and complete installations.

Deliverables:

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

Task 6: Marketing and Outreach

Implementer will:

- Update marketing plan and present updated plan to MCE for MCE approval within 40 days of execution date;
- Complete marketing and outreach campaign to drive interest in the Program;
- Adjust marketing and outreach strategies as needed in coordination with MCE to ensure the Program is maximally enrolled to meet savings, customers served and budget targets;
- Coordinate with local governments, property owners, participating trade allies, and other single-family program implementers as needed to identify good candidates for the Program;
- Coordinate and complete canvassing activity in accordance with the MCE Home Energy Savings Canvassing Protocols.

Tactics and timelines will be incorporated into the updated Marketing Plan provided by Implementer within 40 days of execution date to MCE for approval. The Marketing Plan will be approved within two weeks of receipt; MCE may request two additional rounds of edits to the Marketing Plan after it is received.

Deliverables:

- Marketing and outreach to be defined in the updated Marketing Plan, but will include all or some of the following:
 - Generate Leads;
 - Track Leads;
 - Build the Customer referral program;
 - Design Digital and Print Ads;
 - Develop Printing and Postage for direct mail;
 - Update Website and Social Ads;
 - Write, edit and distribute Program-related Blog Posts and Press Releases (frequency to be determined in the Marketing Plan);
 - Conduct canvassing activity in accordance with MCE Home Energy Savings Canvassing Protocols;
 - Design, deliver, and maintain results of customer satisfaction surveys.

Task 7: Electrification Assessments

Implementer will offer an electrification assessment to Program participants to assess the existing conditions of their homes, identify electrification opportunities, and determine feasibility of home upgrades.

Deliverables:

- Up to 500 electrification assessments

Staff

Key staff who will support the Program include:

- Jacob Tisinger—Program Management
- Justin Kjeldsen—Program Management
- Isai Reyes—Project Management, Quality Assurance
- Brett Bishop—Trade Ally Engagement, Quality Control
- Brian McLaughlin—Trade Ally Engagement, Quality Control
- Leonel Campoy—Engineering
- Danna Perry—Marketing
- Lisa Miller—Information Management
- Delfino Quezada—Customer Care Center

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

Energy Efficiency Program Terms

The terms below shall apply to all Implementer Parties providing Services under the Program.

1. BILLING, ENERGY USE, AND PROGRAM TRACKING DATA:

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

2. WORKFORCE STANDARDS:

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

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

Implementer shall:

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

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

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

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

EXHIBIT B
FEES AND PAYMENT SCHEDULE

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

2022-2023 Implementation Invoice Schedule

Milestone and Deliverables	Payment	Estimated Delivery Date
Program Delivery		
1: Program Design	Time & Materials	Within 40 days of Agreement Execution Date
2: Program Management Deliverables: <ul style="list-style-type: none"> • Customer service support • Manage the delivery of home upgrade installation to Program participants • Participating contractor engagement • Initial trade ally onboarding • Mentoring trade allies in the field • Monthly reporting and invoicing to MCE • Coordination with implementers and IOUs/BayREN • Program closeout (if applicable) 	Time & Materials Estimate: \$25,833 per month Total Annual NTE for Task 2: \$310,000	Monthly
3: Health and Energy Savings Kits	Included in incentive budget	
4: Application Platform Support <ul style="list-style-type: none"> • Data security • Bug fixes • Application processing • Ongoing system improvements • Enrollment and assessment updates 	\$5,000 per month Total Annual NTE for Task 4: \$60,000	Monthly
5: Quality Assurance and Control <ul style="list-style-type: none"> • QA Deliverables: <ul style="list-style-type: none"> • Review all initial applications submitted to the Program; • Coordinate with trade ally and/or potential Program participants about incomplete applications; • Ensure Program applications are accurate and complete; • Ensure data is formatted to meet ongoing reporting criteria updates requested by MCE. • QC Deliverables: <ul style="list-style-type: none"> • Test home for combustion safety; • Test installed home upgrade measures for quality installation; • Coordinate return visits as needed; • Conduct and complete field inspections, which will include full reviews of all field work, for the first 5 projects submitted per trade ally; • Conduct and complete field inspections for up to 10 percent of home upgrade projects submitted per trade ally after the first 5 projects; • Increase field inspection quality control as needed to ensure safe, quality, and complete installations. 	QA: \$130.75 each QC: \$836 each Total Annual NTE for Task 5: \$80,000	QA: Per unit, Billed Monthly QC: Per unit, Billed Monthly
6: Marketing and Outreach <ul style="list-style-type: none"> • Lead generation and tracking • Design digital and print ads • Develop printing and postage for direct mail • Building customer referral program 	Time & Materials Estimate: \$12,500 per month Total Annual NTE for Task 6:	Monthly

<ul style="list-style-type: none"> Website and social ads updates Canvassing Design, deliver and maintain results of customer satisfaction surveys 	\$150,000	
7: Electrification Assessments	Included in incentive budget with NTE \$62,500 annually	
Total 2022 NTE for Program Delivery	\$600,000	Final Delivery for 2022: December 31, 2022
Total 2023 NTE for Program Delivery	\$600,000	Final Delivery for 2023: December 31, 2023

Incentive Budget

Home Upgrade Measure	Payment
Electrification Assessment	\$125/ea (Annual NTE \$62,500)
Water Conservation Kit	\$37/ea
Energy Conservation Kit	\$348/ea
Central Air Conditioner	Specified in BBAL
Bathroom Fan LED Lighting Fixture	Specified in BBAL
Duct Sealing – Medium Leakage	Specified in BBAL
Duct Sealing – High Leakage	Specified in BBAL
Home Upgrade Measure	Payment
Fuel Sub Mini-Split Heat Pump	Specified in BBAL
Fuel Sub Central HVAC Heat Pump	Specified in BBAL
Fuel Sub Heat Pump Water Heater	Specified in BBAL
Heat Pump	Specified in BBAL
Furnace	Specified in BBAL
Smart Thermostat (only for customers who did not receive a kit)	Specified in BBAL
Attic Insulation	Specified in BBAL
Small Tankless Water Heater	Specified in BBAL
Heat Pump Water Heater	Specified in BBAL
Natural Gas Storage Water Heater	Specified in BBAL
Residential Pipe Wrap	Specified in BBAL
Low Flow Showerhead w/integral Thermostatic Shower Valve	Specified in BBAL

Wall Insulation w/wall patch & paint	Specified in BBAL
Window Replacement	Specified in BBAL
Deep-Buried-Ducts	Specified in BBAL
Combustion Appliance Safety	Specified in BBAL
Permits	Specified in BBAL
HERS Inspection	Specified in BBAL
Brushless Fan Motor Replacement	Specified in BBAL
MERV13 Air Filters	Specified in BBAL
Total Incentive Budget	\$2,950,780

Overall Budget for 2022-2023 Program

Implementation	Total
Program Delivery	\$1,200,000
Incentives	\$2,950,780
Total	\$4,150,780

Implementer Key Staff Rates:

- Jacob Tisinger—(Senior Program Manager) \$160/hr
- Justin Kjeldsen—(Pacific Regional Director) \$165/hr
- Isai Reyes—(Project Specialist) \$85/hr
- Brett Bishop—(Director of Contract Services) \$165/hr
- Brian McLaughlin—(Senior Technical Services Manager) \$125/hr
- Leonel Campoy—(Engineering Manager) \$101.50/hr
- Danna Perry—(Marketing Manager) \$90/hr
- Lisa Miller—(IT Project Manager) \$160/hr
- Delfino Quezada—(Customer Care Center Supervisor) \$80/hr

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

Implementer will bill MCE monthly for work completed for the previous month based on the number of hours and materials expended and the deliverables provided according to the 2022-2023 Implementation Invoice Schedule above. Each month, Implementer will provide an itemized invoice that includes specific hours and materials expended per Task within the Program for the previous month, however MCE will not be obligated to pay the applicable fees unless MCE has approved the work and payments contained in the invoice. Notwithstanding anything herein to the contrary, and for the avoidance of doubt, MCE shall pay all undisputed invoiced amounts within thirty (30) days after receipt of an invoice.

Implementer shall bill MCE monthly. **In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of \$4,150,780 for the term of the Agreement.**



December 3, 2021

TO: MCE Executive Committee

FROM: Lindsay Saxby, Director of Power Resources

RE: Third Agreement with Pacific Energy Advisors, Inc. (Agenda Item #05 C.3)

ATTACHMENTS: A. Proposed First Amendment to the Second Agreement with Pacific Energy Advisors, Inc.
B. Second Agreement with Pacific Energy Advisors, Inc.

Dear Executive Committee Members:

Summary:

On October 8, 2018, the MCE Technical Committee approved the Second Agreement with Pacific Energy Advisors, Inc for advisory services and technical support. The services provided to MCE under this proposed First Amendment to the Second Agreement with Pacific Energy Advisors, Inc. ("Amendment") will continue the specialized technical and operational support for MCE, as well as advisory services covering a wide range of MCE functions. The services provided through this Amendment and previous agreements have been central to the agency's functions, and there is an ongoing need for the provision of these services.

The proposed Amendment will provide continuation of technical and advisory services to MCE, based on current needs of the agency. The proposed scope of services includes the core functions summarized below, along with other functions detailed in the attached proposed Agreement:

- a) Maintain annual and long-term sales forecast
- b) Maintain financial model
- c) Rate setting
- d) Electric supply and risk management services

- e) Renewable Portfolio Standard Compliance Program Services
- f) Resource Adequacy Compliance Program Services
- g) General Regulatory Support

Key contract provisions:

- The term of the proposed Amendment will be three (3) years, starting on January 1, 2022. This term will allow MCE to demonstrate to financial partners that MCE's technical team is fully engaged and committed for a significant time period.
- Throughout the term of the Amendment, Contractor's total billings for services would not change and stay as not to exceed \$0.11 per MWh of MCE's electricity load in any calendar month.

Fiscal Impacts:

Annual costs under the proposed Amendment are estimated to be \$627,000 based on MCE's expected annual load of 5.7 million megawatt hours. The costs that occur in the 2021/22 Fiscal Year are included in the FY 2021/22 budget and costs that occur in future fiscal years will be accounted for in future budgets.

Recommendation:

Approve the proposed First Amendment to the Second Agreement with Pacific Energy Advisors, Inc.

FIRST AMENDMENT TO SECOND AGREEMENT BY AND BETWEEN MARIN CLEAN ENERGY AND PACIFIC ENERGY ADVISORS, INC

This FIRST AMENDMENT is made and entered into on December 3, 2021, by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and PACIFIC ENERGY ADVISORS, INC (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and Contractor entered into an agreement on October 9, 2018, to provide technical support and advisory services to MCE ("Agreement"); and

WHEREAS, Section 5 of the Agreement stated the Agreement shall terminate on December 31, 2021;

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

WHEREAS, Exhibit A to the Agreement specified the tasks Contractor will complete for the technical support and advisory services as described in the scope therein; and

WHEREAS the parties desire to amend the Agreement to modify the scope of work of the Agreement

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

AGREEMENT

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

TERM OF AGREEMENT:

This Agreement shall commence on **January 1, 2019** and shall terminate on **December 31, 2024**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

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

(a) Maintain Annual and Long Term Sales Forecast:

- Prepare and maintain MCE ("Marin Clean Energy") customer and electric sales forecasts including forecast of: 1) monthly enrolled accounts, megawatt hours ("MWh") and megawatts ("MW") by load profile group; and 2) monthly coincident peak MW and hourly MW for the MCE system.
- Update forecasts biannually and more frequently as necessary; monitor accuracy of load forecast on monthly basis; consider adjustment if variance exceeds threshold of 5% mean absolute percentage error (MAPE).

(b) Maintain Financial Model (pro forma)

- Maintain pro forma financial model of monthly income/expense projections, cash flow and cash balances.
- Update pro forma model monthly; monitor accuracy of financial projections on monthly basis; assist in reconciling budget variances.
- Prepare forecast of power supply and other expenses for annual budget and assist in preparation of annual budget for MCE program in cooperation with MCE staff.
- Coordinate with MCE and its financial advisors with regard to matters that may impact MCE's financial standing, debt levels, electric rates, annual budget, resource planning and other key concerns.
- Perform membership expansion analyses, stress tests, and other scenario analyses to support MCE decision-making.

(c) Ratesetting

- Collaborate with staff and MCE Board in regards to rate changes and need for new rate designs or options
- Monitor realized rate revenue vs. projections to identify need for rate changes.

(d) Electric Supply and Risk Management Services:

- Annually, prepare/update resource plans, including ten year load and resource projections.
- Maintain record of all energy and capacity contracts in Contractors' deal capture/energy risk management system.
- Maintain load and resource balance models to monitor supply/demand balances and quantify open positions and market risk exposures; Identify incremental electric procurement needs consistent with MCE risk management policies, portfolio content policies, and applicable regulatory requirements.
- Support solicitation of required energy and capacity products — assist in preparing and reviewing requisite solicitation documents, participate in supplier/developer communications, provide analytical support during proposal/bid evaluation, and other related, as-needed activities. Such support will include activities associated with MCE's annual Open Season process as well as certain as-needed solicitation processes that may be required to address specific resource needs.
- Measure portfolio risk and prepare portfolio risk reports for MCE Risk Oversight Committee.
- Support energy contract negotiations, including: 1) contracts that may be necessary to supply existing MCE customers with requisite energy products; and 2) contracts that may be necessary to supply additional customers within new member jurisdictions (due to MCE membership expansion) during the Time of Agreement.
- Assist in preparing reports related to electric supply (e.g., data management and reporting activities required under California's Power Source Disclosure Program, including Power Content Label development and review); such support may also entail regulatory liaison activities required to successfully complete applicable reports.
- Assist in administering MCE's ongoing Feed-In Tariff program, including renewable energy certificate processing and advising on program design.
- Assist in validating periodic invoices received by MCE's scheduling coordinator/primary electric service provider.
- Monitor energy market activities, including pricing trends related to market energy, renewable energy and capacity.
- Maintain/manage relationships with qualified suppliers of requisite energy products: participate in periodic calls, email exchanges and other communications on behalf of MCE.

(e) RPS Compliance Program Services:

- Assist with management of renewable energy portfolio per state/program standards; prepare RPS compliance filings and serve as MCE's liaison with pertinent regulatory agencies for matters related to RPS compliance; maintain working knowledge of currently applicable RPS guidelines, including pertinent reporting requirements.
- Assist with management of MCE's WREGIS account and various subaccounts, including report preparation, certificate transfer review and retirement (to facilitate mandatory and regulatory compliance), generator registration (for Feed-In Tariff projects under contract with MCE) and other account management activities.

(f) Resource Adequacy Compliance Program Services:

- Manage resource adequacy compliance activities per state/program standards; prepare year ahead/month-ahead peak demand forecast and resource adequacy compliance demonstration filings.
- Coordinate activities required to "balance" MCE's resource adequacy portfolio, including the identification of capacity deficiencies and coordination of excess capacity sales with qualified buyers.

(g) General Regulatory Support:

- Provide technical expertise, analysis and advice in relation to pertinent regulatory proceedings. Such services shall entail periodic reviews and editorial support during comment/brief drafting as well as coordination with MCE staff/advisors on such matters.
- Update Implementation Plan as necessary to address changes to MCE membership. Assist management in evaluation of new energy policies that may impact MCE's business.

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

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

MARIN CLEAN ENERGY:

CONTRACTOR:

By: _____

By: _____

Date: _____

Date: _____

By: _____

Date: _____

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**SECOND AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND PACIFIC ENERGY ADVISORS, INC.**

THIS SECOND AGREEMENT ("Agreement") is made and entered into this day **October 9, 2018** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and PACIFIC ENERGY ADVISORS, INC., hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: technical support and advisory services to MCE as described in Exhibit A;

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

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

1. SCOPE OF SERVICES:

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

2. FURNISHED SERVICES:

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

3. FEES AND PAYMENT SCHEDULE; INVOICING:

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

4. MAXIMUM COST TO MCE:

Pursuant to Exhibit B, Contractor's total billings shall not exceed **\$0.11 per MWh** in any calendar month.

5. TIME OF AGREEMENT:

This Agreement shall commence on **January 1, 2019**, and shall terminate on **December 31, 2021**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

6. INSURANCE AND SAFETY:

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

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

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

6.1 GENERAL LIABILITY

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

6.2 AUTO LIABILITY

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

6.3 WORKERS' COMPENSATION

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

6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☒)

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

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

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

9. ASSIGNMENT:

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

10. RETENTION OF RECORDS AND AUDIT PROVISION:

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

Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

11. WORK PRODUCT:

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to Contractor for such work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for MCE. Notwithstanding the foregoing, MCE shall not obtain or retain any rights in or ownership to any of Contractor's systems, documents, and/or intellectual property developed, produced, discovered, or created by Contractor before the execution of this Agreement or in connection with services performed outside of this Agreement.

12. TERMINATION:

- A. Either party may terminate this Agreement for the failure to comply with the terms of this Agreement and/or the violation of any ordinance, regulation or other law which applies to the performance of obligations under this Agreement by giving five (5) business days' written notice to the other party. The written notice shall specify the date of termination. In the event MCE terminates this Agreement under this paragraph, the Contractor shall perform no further work or service(s) under the Agreement as of the date of termination unless the notice of termination authorizes such further work. MCE shall pay the Contractor within thirty (30) days after receiving any invoice after the date of termination for all non-objected to services performed by the Contractor in accordance herewith through the date of termination. The MCE shall not unreasonably object to any services performed by the Contractor in accordance herewith through the date of termination.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control (including acts or failures to act by the MCE).
- C. Either party hereto may terminate this Agreement for any reason by giving one hundred twenty (120) calendar days' written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 20 Invoices; Notices. The written notice shall specify the date of termination. The MCE shall pay the Contractor within thirty (30) days after receiving any invoice after the date of termination for all non-objected to services performed by the Contractor in accordance herewith through the date of termination. The MCE shall not unreasonably object to any services performed by the Contractor in accordance herewith through the date of termination.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).

13. AMENDMENT:

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

14. ASSIGNMENT OF PERSONNEL:

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

15. JURISDICTION AND VENUE:

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

16. INDEMNIFICATION:

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

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no

rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

18. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement. Copies of any of the above-referenced local laws and resolutions may be secured from the MCE's contact person referenced in paragraph 19. Invoices; Notices below.

19. DEFINITIONS:

"CAISO" means the California Independent System Operator, or its successor.

"CCA Service" means Community Choice Aggregation Service which permits cities, counties or a joint powers agency whose governing boards have elected to acquire their electric power needs, hereinafter referred to as Community Choice Aggregators (CCA), to provide electric services to utility end-use customers located within their service area(s) as set forth in California Public Utilities Code Section 366.2 and other Commission directives.

"MCE" means the Marin Clean Energy program.

"RA" means Resource Adequacy.

"RE" means renewable energy.

"REC" means renewable energy certificate or renewable energy credit.

"RPS" means the California Renewable Portfolio Standards program.

20. INVOICES; NOTICES

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall include a summary of technical support and advisory services and be submitted by email to:

Email Address:	invoices@mcecleanenergy.org
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All other notices shall be given to MCE at the following location:

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

Contractor:	John Dalessi
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Address:	1839 Iron Point Road, Ste. 120
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	Folsom, CA 95630
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Email Address:	John@pacificea.com
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Telephone No.:	(916) 936-3301
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21. ACKNOWLEDGEMENT OF EXHIBITS

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

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

22. SEVERABILITY

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

23. COMPLETE AGREEMENT

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

24. COUNTERPARTS

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


24. PERFORMANCE AND PAYMENT BOND (REQUIRED IF CHECKED ☐)

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

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

APPROVED BY

Marin Clean Energy:

By: 
CEO

Date: 10-9-18

CONTRACTOR:

By: 

Name: John Dalesi

Date: 10-9-18

MODIFICATIONS TO STANDARD SHORT FORM

☒ Standard Short Form Content Has Been Modified

List sections affected: Section 4: Maximum Cost to MCE, Section 11: Work Product, Section 12: Termination, Section 16: Indemnification, Section 18: Compliance with Applicable Laws, Section 19: Definitions

Approved by MCE Counsel: _____

Date: _____

EXHIBIT A
SCOPE OF SERVICES (required)

(a) Maintain Annual and Long Term Sales Forecast:

- Prepare and maintain MCE ("Marin Clean Energy") customer and electric sales forecasts including forecast of: 1) monthly enrolled accounts, megawatt hours ("MWh") and megawatts ("MW") by load profile group; and 2) monthly coincident peak MW and hourly MW for the MCE system.
- Update forecasts biannually and more frequently as necessary; monitor accuracy of load forecast on monthly basis; consider adjustment if variance exceeds threshold of 5% mean absolute percentage error (MAPE).

(b) Maintain Financial Model (pro forma)

- Maintain pro forma financial model of monthly income/expense projections, cash flow and cash balances.
- Update pro forma model monthly; monitor accuracy of financial projections on monthly basis; assist in reconciling budget variances.
- Prepare forecast of power supply and other expenses for annual budget and assist in preparation of annual budget for MCE program in cooperation with MCE staff.
- Coordinate with MCE and its financial advisors with regard to matters that may impact MCE's financial standing, debt levels, electric rates, annual budget, resource planning and other key concerns.
- Perform membership expansion analyses, stress tests, and other scenario analyses to support MCE decision-making.

(c) Ratesetting

- Annually, develop proposed MCE rate schedules; perform cost of service modeling; PG&E benchmarking; billing determinant (e.g., TOU energy) forecast; present and proposed rate revenue forecast.
- Collaborate with staff and MCE Board in regards to rate changes and need for new rate designs or options.
- Monitor realized rate revenue vs. projections to identify need for rate changes.

(d) Electric Supply Management:

- Annually, prepare/update resource plans, including ten year load and resource projections.
- Maintain record of all energy and capacity contracts in Contractors' deal capture/energy risk management system.
- Maintain load and resource balance models to monitor supply/demand balances and quantify open positions and market risk exposures; Identify incremental electric procurement needs consistent with MCE risk management policies, portfolio content policies, and applicable regulatory requirements.
- Support solicitation of required energy and capacity products – assist in preparing and reviewing requisite solicitation documents, participate in supplier/developer communications, provide analytical support during proposal/bid evaluation, and other related, as-needed activities. Such support will include activities associated with MCE's annual Open Season process as well as certain as-needed solicitation processes that may be required to address specific resource needs.
- Measure portfolio risk and prepare portfolio risk reports for MCE Risk Oversight Committee.
- Support energy contract negotiations, including: 1) contracts that may be necessary to supply existing MCE customers with requisite energy products; and 2) contracts that may be necessary to supply additional customers within new member jurisdictions (due to MCE membership expansion) during the Time of Agreement.
- Assist in preparing reports related to electric supply (e.g., data management and reporting activities required under California's Power Source Disclosure Program, including Power Content Label development and review); such support may also entail regulatory liaison activities required to successfully complete applicable reports.
- Assist in administering MCE's ongoing Feed-In Tariff program, including invoice validation and renewable energy certificate processing.
- Assist in validating periodic invoices received by MCE's scheduling coordinator/primary electric service provider.
- Monitor energy market activities, including pricing trends related to market energy, renewable energy and capacity.
- Maintain/manage relationships with qualified suppliers of requisite energy products: participate in periodic calls, email exchanges and other communications on behalf of MCE.

(e) Manage RPS compliance program:

- Manage renewable energy portfolio per state/program standards; prepare RPS compliance filings and serve as MCE's liaison with pertinent regulatory agencies for matters related to RPS compliance; maintain working knowledge of currently applicable RPS guidelines, including pertinent reporting requirements.
- Manage MCE's WREGIS account and various subaccounts, including report preparation, certificate transfer review and retirement (to facilitate mandatory and regulatory compliance), generator registration (for Feed-In Tariff projects under contract with MCE) and other account management activities. Provide support during

Green-e certified product (MCE's Deep Green and Local Sol products, as examples) audits, including data gathering and analysis, reporting and liaison activities with MCE's selected auditor(s) and Green-e Energy staff.

(f) Manage Resource Adequacy compliance program:

- Manage resource adequacy portfolio per state/program standards; prepare year ahead/month-ahead peak demand forecast and resource adequacy compliance demonstration filings.
- Coordinate activities required to "balance" MCE's resource adequacy portfolio, including the identification of capacity deficiencies and coordination of excess capacity sales with qualified buyers.

(g) Regulatory Support:

- Provide technical expertise, analysis and advice in relation to pertinent regulatory proceedings. Such services shall entail periodic reviews and editorial support during comment/brief drafting as well as coordination with MCE staff/advisors on such matters.
- Update Implementation Plan as necessary to address changes to MCE membership.
- Assist management in evaluation of new energy policies that may impact MCE's business.

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:

During the Term, the following fees shall apply:

All services reflected in Exhibit A shall be billed to MCE by Contractor on a monthly basis at a rate of \$0.11 per megawatt hour of MCE electricity usage, as determined by MCE's Data Management Services provider and reflected in MCE's monthly T+12 CAISO settlement statements.

The service fees defined above are based on the assumption that annual customer electricity usage will approximate 5.2 million megawatt hours. If annual MCE electricity usage is projected to deviate from this assumption by more than 20%, MCE and Contractor will work in good faith to adjust the aforementioned rate in consideration of related impacts to Contractor's cost of service.

In no event shall the total cost to MCE for the services provided herein exceed the maximum rate of \$0.11 per MWh on a monthly basis for the term of the Agreement.



December 3, 2021

TO: MCE Executive Committee

FROM: Joey Lande, Manager of Customer Programs

RE: Proposed Fifth Agreement with Recurve Analytics, Inc. (Agenda Item #05 C.4)

ATTACHMENT: Proposed Fifth Agreement with Recurve Analytics, Inc.

Dear Executive Committee Members:

SUMMARY:

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

P4P programs such as those enabled by Recurve's platform allow for market-based solutions to drive program results, which support MCE's goal of scalable program impacts. In addition, Recurve's platform will be used to conduct measurement and verification of other projects, programs or events. For example, MCE leverages Recurve's services to evaluate Strategic Energy Management projects. Recurve's services enable the Customer Programs team to both analyze savings claims and also generate new data (e.g. quantification of peak load reduction) to optimize program and customer impacts.

The proposed Fifth Agreement with Recurve is a two year contract and includes annual not-to-exceed contract values of \$277,900 in 2022 and \$286,237 in 2023, for a total not-to-exceed contract value of \$564,137.

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

Recommendation: Approve the proposed Fifth Agreement with Recurve Analytics, Inc.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT
FIFTH AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND RECURVE ANALYTICS, INC.**

THIS FIFTH AGREEMENT ("Agreement") is made and entered into on _____ by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and RECURVE ANALYTICS, INC., a Delaware corporation with principal address at: 364 Ridgewood Avenue, Mill Valley, California 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. Contractor will deliver the services and Deliverables in accordance with the milestone schedule in **Exhibit A**. Unless otherwise mutually agreed pursuant to Milestone 1 in **Exhibit A**, MCE will evaluate each Deliverable (including any upgrades to the services) and accept or reject it within 15 business days after receipt. If MCE does not accept or reject or request more time to evaluate the Deliverable within that time period, the Deliverable is deemed accepted. Contractor will fix rejected Deliverable within 10 business days after receiving notice of rejection from MCE ("Correction Period"). This process shall be repeated until MCE provides Contractor with written notice of its acceptance of a Deliverable ("Acceptance"). "Deliverables" means all intellectual property or other work product developed by Contractor for MCE under this Agreement, including Exhibit A, or as part of the services. Subject to MCE's payment of applicable fees, Contractor grants MCE a non-exclusive, worldwide, unlimited, fully-paid, right to access and use of the services for its business purposes during the term stated in this Agreement.

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

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

2. FEES AND PAYMENT SCHEDULE; INVOICING:

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

Contractor shall provide MCE with Contractor's Federal Tax I.D. number prior to submitting the first invoice. Unless otherwise specified in **Exhibit B**, Contractor shall invoice monthly. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE on a monthly basis for any Services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond ninety (90) days will not be reimbursable. The final invoice must be submitted within thirty (30) days of completion and Acceptance by MCE of the stated scope of services or termination of this Agreement.

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 **\$564,137**.

4. TERM OF AGREEMENT:

This Agreement shall commence on **January 1, 2022** ("Effective Date") and shall terminate on **December 31, 2023**, unless earlier terminated pursuant to the terms and conditions set forth in Section 12.

5. REPRESENTATIONS; WARRANTIES; COVENANTS:

5.1 REPRESENTATIONS AND WARRANTIES. Contractor continuously represents and warrants:

- (a) It is a corporation duly organized, validly existing and in good standing under the laws of the State of **Delaware**;
- (b) It has full power and authority and all regulatory authorizations required to execute, deliver, perform its obligations, and grant the rights under this Agreement and all exhibits and addenda and to engage in the business it presently conducts and contemplates conducting;
- (c) Its performance will not violate any agreement or obligation between it and any third party;
- (d) 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;
- (e) Deliverables and Work Product (including any data generated as a result of the services) will be true and accurate and conform to their documentation and specifications in Exhibit A;
- (f) Services will be performed professionally and be of high grade, nature, and quality;
- (g) Services, Work Product, and Deliverables will not: (i) infringe any third-party patent, copyright, trademark, trade secret, or other proprietary right, or (ii) contain viruses or other malicious code that will degrade or infect any Deliverables, products, services, software, or MCE's network or systems;
- (h) This Agreement and each exhibit and addendum constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;
- (i) 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; and
- (j) At all times during the Term and the performance of the Services, Contractor shall comply with all applicable federal, state and local laws, including data protection laws, regulations, ordinances and resolutions ("Applicable Law").

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

5.2 WARRANTY OBLIGATIONS. If Contractor fails to meet its warranty obligations in Sections 5.1(c), (e) or (f), Contractor will correct such deficiency within thirty (30) days to MCE's reasonable satisfaction. If Contractor is unable to cure such deficiency within such time, MCE may terminate all or a portion of this Agreement by giving thirty (30) calendar days' written notice to Contractor. Such notice shall be sent by registered mail or by email to the email address listed in Section 19 Invoices; Notices.

5.3 PERSONAL INFORMATION SAFETY MEASURES. Contractor shall, at its expense, adopt and continuously implement, maintain and enforce reasonable technical and organizational measures, consistent with the sensitivity of Personal Information (as defined below), including, but not limited to, measures designed to (1) prevent unauthorized access to, and otherwise physically and electronically protect, the Services and Personal Information, and (2) protect Customer content and data against accidental, unauthorized or unlawful access, disclosure, alteration, loss, or destruction. At Contractor's cost, Contractor will maintain a valid certification under the International Organization for Standardization standard ISO 27001 or similar audit as may be approved or required by Customer ("Contractor Certification"). Contractor will promptly provide to Customer upon Customer's request and at least annually (i) a full copy of the Contractor Certification and report on which the Contractor Certification is based, and (ii) a current certification and report applicable to each cloud infrastructure provider(s) identified on the cover page ("CIP") under Service Organization Controls (SOC) 2 Type 2 or the International Organization for Standardization standard ISO 27001. The Contractor Certification will cover all Services, except cloud infrastructure services provided by CIP(s) other than Contractor. Contractor will only use cloud infrastructure providers that are approved subcontractors via the approval process in Section 8 of this Agreement, in providing Services and will notify Customer at least 90 days before it changes, or undertakes any plan to change, the cloud infrastructure provider and at least 30 days before any change in location of any Customer content or data. Contractor warrants that its software is tested against OWASP Top 10 Most Critical Web Application Security Risks at least semiannually and will provide confirmation of such testing upon request and at least annually. Without limiting Contractor's obligations under this Agreement, with respect to Personal Data, on becoming aware of any Security Incident (as defined below), Contractor will: (1) immediately notify MCE of the Security Incident (in any case no later than forty-eight (48) hours after becoming aware of the Security Incident; (2) promptly investigate or perform required assistance in the investigation

of the Security Incident and provide MCE with detailed information about the Security Incident; and (3) promptly take all commercially reasonable steps to mitigate the effects of the Security Incident, at Contractor's cost. "Personal Information" has the meaning set forth under applicable law. "Security Incident" means any: (1) accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Information transmitted, stored, or otherwise processed by Contractor or its Subcontractors; or (2) security vulnerability related to Contractor's handling of Personal Information.

5.4 ADDITIONAL REMEDIES. In addition to all other remedies available to MCE,

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

If Contractor does not comply with this Section 5.4, then in addition to any amounts reimbursed under this Section 5, Contractor will refund all amounts paid by MCE for infringing services and Deliverables and pay reasonable costs to transition Services to a new supplier.

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

5.6 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.

5.7 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.

5.8 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.

5.9 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.

5.10 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.

5.11 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.

5.12 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.

5.13 NO SUBSTITUTION 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.

5.14 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 dollars (\$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. 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. 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. The policy must cover infringement of third-party proprietary rights (e.g., copyright, patent, trademark).

6.5 PRIVACY AND CYBERSECURITY LIABILITY. 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. Except for Contractor's cloud infrastructure providers, 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, and Exhibit A.

8.2 Subcontractor shall provide, maintain and be bound by the representations, warranties and covenants of Contractor contained in Section 5 hereof (as may be modified to be applicable to Subcontractor with respect to Section 5.1(a) 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', including Contractor's cloud infrastructure providers, compliance with all of 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. Approved subcontractors and required insurances as of the date hereof are set forth in **Exhibit C**.

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 annually, or as required by law, 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 26, 2021**.

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 26, 2021**, 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. Notwithstanding the foregoing or anything else herein, Recurve shall retain all rights, title and interest in all of Recurve's existing Intellectual Property, even if such Intellectual Property is incorporated into the deliverables provided by Recurve pursuant to this contract.
- 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 10.6(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 10.6(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, such consent will not be unreasonably withheld.

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:**

Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, (each a "MCE Indemnified Party"), harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. Additionally, Contractor will defend, indemnify, and hold MCE Indemnified Parties harmless from and against all Claims to the extent such Claims arise out of or relate to:

- (a) Contractor's breach of Section 5.1, 5.3 and Section 10.3,
- (b) Contractor's infringement, misuse, or misappropriation of third-party intellectual property or proprietary rights, or
- (c) Contractor's non-compliance with applicable laws, rules, or regulations.

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

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

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:	Matt Golden
Address:	364 Ridgewood Avenue Mill Valley, California 94901
Email Address:	matt@recurve.com
Telephone No.:	(415) 902-4546

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>	X	Scope of Services		
<u>EXHIBIT B.</u>	X	Fees and Payment		
<u>EXHIBIT C.</u>	X	Approved Subcontractors		

21 SEVERABILITY:

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

22 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.

28 LIMITATION OF LIABILITY:

EXCEPT FOR CONTRACTOR'S INDEMNIFICATION OBLIGATIONS HEREIN OR A BREACH OF CONFIDENTIALITY AND PRIVACY INCLUDING FINES IMPOSED BY REGULATORS AS A RESULT OF SUCH BREACH, IN NO EVENT SHALL THE AGGREGATE

LIABILITY OF EITHER PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNT PAID BY MCE HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR ANY LIMITED REMEDY HEREUNDER.

29 EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES:

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

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

APPROVED BY

MARIN CLEAN ENERGY:

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: **1:** Scope of Services, **2:** Fees and Payment Schedule; Invoicing, **5:** Representations; Warranties; Covenants; **8:** Subcontracting, **9:** Retention of Records and Audit Provisions, **13:** Assignment, **17:** Indemnification, **28:** Limitation of Liability (added), **29:** Exclusion of Consequential and Related Damages (added)

Approved by MCE Counsel: _____

Date: _____

EXHIBIT A SCOPE OF SERVICES

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

The Recurve Platform and Contractor Services – Work Packages

Task 1. Recurve Demand Flexibility Platform

Description: Recurve's Demand Flexibility Platform comprises modules for ingesting and formatting data; deployment and maintenance of application infrastructure; and configuration and deployment of data warehouse infrastructure. Each platform instance is hosted on an individually configured Amazon Web Services cloud-hosted Postgres DB (a relational database management system) with one of three standard sizing configurations to accommodate larger datasets. Platform is continuously deployed in accordance with the terms of the software license agreement described below.

Deliverable: Contractor will continue to deploy the platform for the term of the Agreement.

Task 2: Fleet Manager Software License

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

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

Task 3: Resource Planner Software License

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

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

Task 4: Support

a: Routine Support

Description: Contractor provides discounted support for routine tasks, such as loading data, adjusting platform settings to meet client requests, or hosting periodic client check-in meetings. This support package is bundled with the Fleet Manager Software License with 10 support hours per month available to Tasks 2 and 4. Contractor will request and receive pre-approval from MCE to bill for any hours which exceed the support hour monthly allocation. Exhibit B identifies additional support hours purchased by MCE. Any overage of the included and purchased support hours is billed at a standard hourly rate of \$230 per hour, and requires MCE pre-approval.

b: Resource Planner Support

Description: Contractor's data scientists can provide support for a variety of types of custom analysis. These include impact evaluations, SEM energy model reviews, customer targeting analytics, backcasting of existing projects and programs, comparison group development, and more. Discounted support can be pre-purchased or billed at standard rates on a pay-as-you-go basis. Contractor will provide this Task 4b support upon purchase by MCE.

c: Integration Support

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

Deliverable for Tasks 4a-4c: Includes data integration with Calpine's data output, potential migration to MCE's data warehouse, potential integration with MCE's Customer Relationship Management (CRM) software, as well as on-going client support up to 10 hours per month.

Additional Terms

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

Availability:

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

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

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

Error Correction:

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

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

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

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

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

Response Times:

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

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

Maintenance Services:

Contractor will provide MCE with maintenance services in order to maintain:

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

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

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

Required Notice of Upgrades and Maintenance:

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

Option to Revert Services:

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

Option to Upgrade to New Version:

Should Contractor supply to any other customer a new version of the services, MCE shall have the option to upgrade to

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

EXHIBIT B
FEES AND PAYMENT SCHEDULE

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

Licensing Fees and Payment Schedule for Tasks 1-4 for 2022

Task	Completion Timeline (Estimates)	Fees	Invoice Timing
Task 1: Recurve Demand Flexibility Platform	On-going activities	\$60,000 fixed annual fee (\$5,000/month) <ul style="list-style-type: none"> - One platform instance sized for up to 1,000,000 meters with 15 GB DB RAM 	Monthly
Task 2: Fleet Management Software	On-going activities	\$120,000 (1x Fleet Manager \$2,000, 1x 3rd Party Platform \$1,000, 2x Comparison Group \$2,000, 1x payment ledger \$5,000) (\$10,000/month) <ul style="list-style-type: none"> - Includes 10 monthly Routine Support Hours as defined in Task 4a - Includes 3,000 vCPU hours per month. Contractor will provide notice to MCE of any potential overage, before the 3,000 vCPU hour allocation is exceeded. Overage of the 3,000 vCPU limit will be deducted from available vCPU hours allocated in the Resource Planner listed in Task 3 (67,900). 	Monthly
Task 3: Resource Planner Software	On-going activities	\$45,000 <ul style="list-style-type: none"> - Includes 67,900 vCPU hours - If additional hours are needed, Contractor will notify MCE of the need, then request pre-approval of MCE CP team before billing additional hours. 	One-time Annual payment to be included in the January 2022 invoice.

Task 4a: Routine Support	On-going activities	10 hours per month included in Task 2 fees - MCE approved overage billed at hourly rate of \$230	Approved overages billed Monthly
Task 4b: Resource Planner Support	On demand activities	\$52,900 (230 hours) - Standard hourly rate of \$230 per hour apply	Hourly rate to be billed Monthly
Task 4c: Infrastructure Support	On demand activities	Overage only - MCE approved overage billed at hourly rate \$230 per hour	Monthly
Total 2022 Contract Budget		Not to Exceed \$277,900	

Licensing Fees and Payment Schedule for Tasks 1-4 for 2023

Task	Completion Timeline (Estimates)	Fees	Invoice Timing
Task 1: Recurve Demand Flexibility Platform	On-going activities	\$61,800 fixed annual fee (\$5,150/month) - One platform instance sized for up to 1,000,000 meters with 15 GB DB RAM	Monthly
Task 2: Fleet Management Software	On-going activities	\$123,600 (1x Fleet Manager \$2,060, 1x 3rd Party Platform \$1,030, 2x Comparison Group \$2,060, 1x payment ledger \$5,150) (\$10,300/month) - Includes 10 monthly Routine Support Hours as defined in Task 4a - Includes 3,000 vCPU hours per month. Contractor will provide notice to MCE of any potential overage, before the 3,000 vCPU hour allocation is exceeded. Overage of the 3,000 vCPU limit will be deducted from available vCPU hours allocated in the Resource Planner listed in Task 3 (67,900).	Monthly

Task 3: Resource Planner Software	On-going activities	\$46,350 <ul style="list-style-type: none"> - Includes 67,900 vCPU hours - If additional hours are needed, Contractor will notify MCE of the need, then request pre-approval of MCE CP team before billing additional hours. 	One-time Annual payment to be included in the January 2023 invoice.
Task 4a: Routine Support	On-going activities	10 hours per month included in Task 2 fees <ul style="list-style-type: none"> - MCE approved overage billed at hourly rate of \$236.90 	Approved overages billed Monthly
Task 4b: Resource Planner Support	On demand activities	\$54,487 (230 hours) <ul style="list-style-type: none"> - Standard hourly rate of \$236.90 per hour apply 	Hourly rate to be billed Monthly
Task 4c: Infrastructure Support	On demand activities	Overage only <ul style="list-style-type: none"> - MCE approved overage billed at hourly rate \$236.90 per hour 	Monthly
Total 2023 Contract Budget		Not to Exceed \$286,237	

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

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

In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$564,137** for the term of the Agreement.

EXHIBIT C
APPROVED SUBCONTRACTORS

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

Subcontractor	Provide and Maintain the Following Insurances to Contractor
Salesforce and Google	Insurance not required but subject to Section 8 indicating that Contractor shall be solely responsible for ensuring its subcontractors' compliance with all of the terms and conditions of this Agreement.
Steve Kromer	<p>Subcontractor shall maintain the following insurance requirements as set forth in Section 6, including:</p> <ul style="list-style-type: none"> - a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit; - comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00). <p>Subcontractor is not required to maintain professional liability or cybersecurity insurance; however, as set forth in Section 8, Contractor shall be solely responsible for ensuring its subcontractor's compliance with all of the terms and conditions of this Agreement.</p>



December 3, 2021

TO: MCE Executive Committee

FROM: Catalina Murphy, Legal Counsel

RE: Assembly Bill No. 361: New Teleconferencing Legislation
Resolution No. 2021-10 Authorizing Continued Remote
Teleconference Meetings for the Board of Directors and
Every Committee of the Board of Directors Pursuant to
Government Code Section 54953(e) (Agenda Item #05 C.5)

ATTACHMENTS: A. Proposed Resolution No. 2021-10 Authorizing Continued
Remote Teleconference Meetings for the Board of Directors
and Every Committee of the Board of Directors Pursuant to
Government Code Section 54953(e)
B. Resolution No. 2021-08 Delegating Authority to Executive
Committee to Adopt Findings Pursuant to Government
Code Section 54953(e)

MCE Executive Committee:

SUMMARY:

Assembly Bill (AB) No. 361 (Rivas), signed by Governor Gavin Newsom on September 16, 2021, amends the Brown Act¹ to allow a local agency to continue using teleconferencing during a state-proclaimed state of emergency without meeting certain Brown Act teleconference requirements.

On October 7, 2021, your Board, by Resolution 2021-07, made a finding that the Governor designated a state of emergency and that the state of emergency continued to directly impact the ability of board members to meet safely in person. This finding allowed for meetings to be held via teleconference. At that same meeting, by Resolution 2021-08, your Board delegated the authority to the Executive Committee to reconsider this finding every 30 days, per the requirements of AB 361. The last time the Executive Committee reconsidered this

¹ Gov. Code, §§ 54950 et seq.

finding was on November 5, 2021, by approving Resolution 2021-09 to continue remote teleconference meetings for the next 30 days.

Given the continued emergency-state of the Covid-19 pandemic, there is an ongoing need for continuing to hold teleconference meetings for the MCE Board of Directors, MCE Executive Committee, and MCE Technical Committee. Therefore, to continue holding teleconference meetings for the next 30 days, the Executive Committee must make the following findings by majority vote:

1. The Executive Committee has reconsidered the circumstances of the state of emergency, as designated by the Governor.
2. The Executive Committee finds that one or both of the following circumstances still exists:
 - a. The state of emergency continues to directly impact the ability of members to meet safely in person; or
 - b. State or local officials continue to impose or recommend measures to promote social distancing.

Staff recommends adopting proposed Resolution No. 2021-10 Authorizing Continued Remote Teleconference Meetings for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code Section 54953(e), which makes the subsequent required AB 361 findings for authorizing remote teleconference meetings for the next 30 days.

Fiscal Impacts: None.

Recommendation:

Adopt proposed Resolution No. 2021-10 Authorizing Continued Remote Teleconference Meetings for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code Section 54953(e).

RESOLUTION NO. 2021-10

A RESOLUTION OF THE EXECUTIVE COMMITTEE OF MARIN CLEAN ENERGY AUTHORIZING CONTINUED REMOTE TELECONFERENCE MEETINGS FOR THE BOARD OF DIRECTORS AND EVERY COMMITTEE OF THE BOARD OF DIRECTORS PURSUANT TO GOVERNMENT CODE SECTION 54953(e)

WHEREAS, Marin Clean Energy (“MCE”) is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act, constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code, as amended and supplemented (the “Act”); and

WHEREAS, MCE members include the following communities: the County of Marin, the County of Contra Costa, the County of Napa, the County of Solano, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the City of Concord, the Town of Corte Madera, the Town of Danville, the City of El Cerrito, the Town of Fairfax, the City of Lafayette, the City of Larkspur, the City of Martinez, the City of Mill Valley, the Town of Moraga, the City of Napa, the City of Novato, the City of Oakley, the City of Pinole, the City of Pittsburg, the City of Pleasant Hill, the City of San Ramon, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Vallejo, the City of Walnut Creek, and the Town of Yountville; and

WHEREAS, MCE is subject to various provisions of the California Government Code; and

WHEREAS, Government Code section 54953(e), as amended by Assembly Bill No. 361, allows legislative bodies to hold open meetings by teleconference without reference to otherwise applicable requirements in Government Code section 54953(b)(3), so long as the legislative body complies with certain requirements, there exists a declared state of emergency, and one of the following circumstances is met:

1. State or local officials have imposed or recommended measures to promote social distancing.
2. The legislative body is holding the meeting for the purpose of determining whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
3. The legislative body has determined that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

WHEREAS, the Governor of California proclaimed a state of emergency pursuant to Government Code section 8625 on March 4, 2020; and

WHEREAS, the MCE Board of Directors previously adopted Resolution No. 2021-07 finding that the requisite conditions exist for the MCE Board of Directors, MCE Executive Committee, and MCE Technical Committee to conduct teleconference meetings under California Government Code section 54953(e); and

WHEREAS, Government Code section 54953(e)(3) requires the legislative body adopt certain findings every 30 days by majority vote to continue holding open meetings by teleconference without reference to otherwise applicable requirements in Government Code section 54953(b)(3); and

WHEREAS, the MCE Board of Directors previously adopted Resolution No. 2021-08 delegating authority to the MCE Executive Committee to adopt certain findings every 30 days in accordance with Government Code section 54953(e), for continued remote teleconference meetings for the Board of Directors and any committee of the Board of Directors;

WHEREAS, the MCE Executive Committee previously adopted Resolution No. 2021-09 on November 5, 2021, finding the need to continue to hold MCE public meetings for the next 30 days by teleconference, as is consistent with Government Code Section 54953(e); and

WHEREAS, the MCE Executive Committee desires to continue holding MCE public meetings by teleconference consistent with Government Code section 54953(e).

NOW, THEREFORE, BE IT RESOLVED by the MCE Executive Committee:

- A. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.
- B. The Executive Committee hereby finds and declares the following, as required by Government Code section 54953(e)(3):
 1. The Executive Committee has reconsidered the circumstances of the state of emergency declared by the Governor pursuant to his or her authority under Government Code section 8625;
 2. The state of emergency continues to directly impact the ability of members of the MCE Board of Directors and members of every committee of the Board of Directors to meet safely in person; and
 3. State and local officials have imposed or recommended measures to promote social distancing.

PASSED AND ADOPTED by the MCE Executive Committee on this 3rd day of December, 2021, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Napa				
City of American Canyon				
City of Belvedere				
City of Calistoga				
City of Concord				
City of El Cerrito				
Town of Fairfax				
City of Larkspur				
City of Napa				
City of Novato				
City of Pinole				
City of Pittsburg				
City of Richmond				
Town of San Anselmo				
City of St. Helena				
City of Walnut Creek				
Town of Yountville				

CHAIR, MCE

Attest:

SECRETARY, MCE

RESOLUTION NO. 2021-08

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY DELEGATING AUTHORITY TO EXECUTIVE COMMITTEE TO ADOPT FINDINGS PURSUANT TO GOVERNMENT CODE SECTION 54953(e)

WHEREAS, Marin Clean Energy (“MCE”) is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act, constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code, as amended and supplemented (the “Act”); and

WHEREAS, MCE members include the following communities: the County of Marin, the County of Contra Costa, the County of Napa, the County of Solano, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the City of Concord, the Town of Corte Madera, the Town of Danville, the City of El Cerrito, the Town of Fairfax, the City of Lafayette, the City of Larkspur, the City of Martinez, the City of Mill Valley, the Town of Moraga, the City of Napa, the City of Novato, the City of Oakley, the City of Pinole, the City of Pittsburg, the City of Pleasant Hill, the City of San Ramon, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Vallejo, the City of Walnut Creek, and the Town of Yountville; and

WHEREAS, MCE is subject to various provisions of the California Government Code; and

WHEREAS, Government Code section 54953, as amended by Assembly Bill No. 361, allows legislative bodies to continue to hold open meetings by teleconference without reference to otherwise applicable requirements in Government Code section 54953(b)(3), so long as certain findings are adopted by the legislative body every 30 days under Government Code Section 5493(e); and

WHEREAS, from time to time, the Board of Directors delegates certain rights and responsibilities to the Executive Committee; and

WHEREAS, the Executive Committee meets more frequently than the Board of Directors and will be better able to adopt certain findings every 30 days in accordance with Government Code section 54953(e) to allow the Board of Directors and any Committee of the Board of Directors to continue holding open meetings by teleconference; and

WHEREAS, the Board of Directors shall not be divested of any such authority as described herein, but shall retain and may exercise such authority at such times as it may deem necessary and proper, at its sole discretion.

NOW, THEREFORE, BE IT RESOLVED by the MCE Board of Directors:


- A. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.
- B. The Board of Directors hereby delegates the following authority:
1. The Executive Committee is hereby authorized to adopt certain findings every 30 days in accordance with Government Code section 54953(e), for continued remote teleconference meetings for the Board of Directors and any committee of the Board of Directors.

PASSED AND ADOPTED by the MCE Board of Directors on this 7th day of October, 2021, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin	X			
Contra Costa County	X			
County of Napa	X			
County of Solano				X
City of American Canyon	X			
City of Belvedere				X
City of Benicia	X			
City of Calistoga	X			
City of Concord	X			
Town of Corte Madera	X			
Town of Danville	X			
City of El Cerrito	X			
Town of Fairfax	X			
City of Lafayette	X			
City of Larkspur	X			
City of Martinez	X			
City of Mill Valley				X
Town of Moraga				X
City of Napa	X			
City of Novato	X			
City of Oakley				X
City of Pinole	X			
City of Pittsburg	X			

City of Pleasant Hill				X
City of San Ramon				X
City of Richmond	X			
Town of Ross	X			
Town of San Anselmo	X			
City of San Pablo				X
City of San Rafael	X			
City of Sausalito	X			
City of St. Helena	X			
Town of Tiburon	X			
City of Vallejo	X			
City of Walnut Creek				X
Town of Yountville	X			


DocuSigned by:


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CHAIR, MCE

Attest:

DocuSigned by:


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SECRETARY, MCE



December 3, 2021

TO: MCE Executive Committee

FROM: Sebastian Conn, Community Development Manager, Public Affairs

RE: Charles F. McGlashan Advocacy Award Nominations (Agenda Item #06)

ATTACHMENTS: No Attachments

Dear Executive Committee Members:

Summary:

The Charles F. McGlashan Advocacy Award was established 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, or advocates, will be recognized with the Charles F. McGlashan Advocacy Award.

Below is a list of Charles F. McGlashan Advocacy Award recipients, to date:

- 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 Tilth (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)
- Gloria Castillo with Canal Alliance (2019)
- Marin Center for Independent Living (MCIL), Disability Services Legal Center (DSLCL), the Independent Living Resources of Solano and Contra Costa (ILRSCC), and Vi Ibarra from the Developmental Disabilities Council of Contra Costa County (2020)
- Deborah Elliott with County of Napa (2020)
- Fairfax Climate Action Committee (2020)

2021 Nominations:

This year's Charles F. McGlashan Advocacy Award nominations include:

- Sustainable Contra Costa
- Joe Scerbo of Gentec Services
- Marin Biomass Collective
- Dr. Itoco Garcia, Superintendent of Sausalito Marin City School District, with Leslie Alden, Marin community advocate

Sustainable Contra Costa

Sustainable Contra Costa has been an instrumental partner in helping connect community members to MCE's services and programs since 2018. Sustainable Contra Costa's youth leadership branch, Sustainable Leadership in Action, which is comprised of 60 high school and college youth, is encouraging businesses and residents to opt up to MCE's Deep Green 100% renewable energy service as part of its gamified campaign, Cleaner Contra Costa Challenge, to encourage sustainable living.

The Sustainable Leaders in Action team also promoted MCE's 2021 #BecauseOfYouth social media campaign and hosted green career pathway conversations with local youth leaders. Sustainable Contra Costa's commitment to empowering the next generation of climate advocates aligns with MCE's efforts to amplify the work of local youth leaders who organize and engage with sustainability and climate action.

Joe Scerbo

Joe Scerbo of Gentec Services is a local electrical contractor who has gone above and beyond to support the training and development of emerging electrical workers. Joe trained the first MCE-funded Rising Sun cohort of job seekers which focused on basic electrification systems. He also provided instruction for Rising Sun's pre-apprenticeship program and donated materials to create demos that helped participants develop electrical-related competency.

After the workforce development training was completed, Joe hired three program graduates - including two women. Women are vastly underrepresented in the electrical industry, making these hires incredibly important to diversifying the workforce. These three hires are now working on local Bay Area projects, including electric vehicle supply equipment installations. The well-paying job placements offered by Joe Scerbo are helping community members support their families and bolster the local green industry.

Marin Biomass Collective

The Marin Biomass Collective supports MCE's interest in developing local biomass resources, creating closed-loop waste stream systems, investing in local infrastructure, reducing fire risk, and diversifying our power supply portfolio.

MCE joined the Marin Biomass Collective as a project partner in their grant application to the Governor's Office of Planning and Research (OPR) to fund the "Marin Biomass Recovery Project". The Marin project is one of five preliminarily selected pilots that would help build sustainable biomass projects.

Since biomass has the potential to contribute to air quality impacts, advocating for its adoption can be challenging. The Marin Biomass Collective demonstrates a commitment to fostering inclusion of diverse opinions in the exploration of biomass development in Marin County.

Dr. Itoco Garcia, Superintendent of Sausalito Marin City School District, with Leslie Alden, Marin community advocate

Dr. Garcia and Leslie Alden have been instrumental partners in developing a proposed solar plus battery storage project, through MCE's Energy Storage Program, at Marin City's Bayside MLK Academy to serve as a community gathering space for vulnerable community members during an outage or natural disaster.

During the 2019 PSPS events, parts of Marin City lost power for up to 5 days, which made community resilience a top priority for community leaders. As superintendent of the Sausalito Marin City School District, Dr. Garcia attended a series of community workshops co-hosted by MCE and the Climate Center, and organized by Leslie Alden, to explore potential locations for a solar plus storage project in Marin City.

Leslie helped identify critical needs, shared values, and community priorities by forming a Stakeholder Advisory Committee and organizing several virtual community meetings with technical partners, funding partners, and the School District Board and staff. Dr. Garcia helped shepherd the project forward through a series of public School Board bodies for review, including the school district's Facilities Subcommittee and full Board of Directors.

Dr. Garcia and Leslie Alden share a commitment to improving energy outcomes for a historically underserved population in Marin County. The contract for the proposed

40kW solar plus 125kW storage project at Bayside MLK is expected to be considered by the Sausalito Marin City School Board in December 2021.

Fiscal Impacts:

None

Recommendation:

Select the 2021 recipients of the Charles F. McGlashan Advocacy Award to be presented at the next meeting of the MCE Board of Directors.



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, December 16, 2021
7:00 P.M.**

This Meeting will be conducted via teleconference pursuant to the requirements of [Assembly Bill No. 361](#). By using teleconference for this meeting, MCE continues to promote social distancing measures recommended by local officials.

Members of the public who wish to observe the Meeting and/or offer public comment 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-in:(669)900-9128
Webinar ID: 847 8159 1169
Passcode: 376527

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1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
 - C.1 Approval of 11.18.21 Meeting Minutes
 - C.2 Approved Contracts for Energy Update
 - C.3 Fourth Agreement with Strategic Energy Innovations
 - C.4 Sixth Agreement with The Energy Alliance Association (TEAA)

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6. MCE Rate Adjustment (Discussion/Action)
7. MCE Bonding (Discussion)
8. Board Matters & Staff Matters (Discussion)
9. Adjourn

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