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Board of Directors Meeting
Thursday, February 17, 2022
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:

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Dial-in: (669) 900-9128
Webinar ID: 820 8525 4745
Meeting Passcode: 205749

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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 12.16.21 Meeting Minutes
 - C.2 Approved Contracts for Energy Update
 - C.3 First Amendment to First Agreement with Evergreen Economics
 - C.4 Resolution No. 2022-03 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. McGlashan Award – Award Presentation (Discussion)

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7. Addition of Board Members to Committees (Discussion/Action)
8. Confirmation Agreement for Bundled Renewable Energy Between Redwood Coast Energy Authority and Marin Clean Energy to Purchase Portfolio Content Category One Energy (Discussion/Action)
9. Debt Management Policy and Master Bond Indenture (Discussion/Action)
10. Customer Programs Update (Discussion)
11. Board Matters & Staff Matters (Discussion)
12. Adjourn

The Board of Directors may discuss and/or take action on any or all of the items listed on the agenda irrespective of how the items are described.

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.

MCE BOARD MEETING MINUTES
Thursday, December 16, 2021
7:00 P.M.

This 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
Edi Birsan, City of Concord
Tom Butt, City of Richmond, Board Chair
Barbara Coler, Town of Fairfax
Cindy Darling, City of Walnut Creek
Gina Dawson, City of Lafayette
David Fong, Town of Danville
Ford Greene, Town of San Anselmo
Maika Llorens Gulati, City of San Rafael
Kevin Haroff, City of Larkspur
Janelle Kellman, City of Sausalito
C. William Kircher, Town of Ross
Teresa Onoda, Town of Moraga
Aaron Meadows, City of Oakley
Katy Miessner, City of Vallejo
Leila Mongan, Town of Corte Madera
Devin Murphy, City of Pinole
Scott Perkins, City of San Ramon
Gabriel Quinto, City of El Cerrito
Matt Rinn, City of Pleasant Hill
Christina Strawbridge, City of Benicia
Scott Tonnesen, Alternate, City of Fairfield
Holli Thier, Town of Tiburon
John Vasquez, County of Solano
Sally Wilkinson, City of Belvedere and City of Mill Valley
Brianne Zorn, City of Martinez

Absent: John Gioia, Contra Costa County
Patricia Ponce, City of San Pablo
Katie Rice, County of Marin
Shanelle Scales-Preston, City of Pittsburg
Brad Wagenknecht, County of Napa

**Staff
& Others:** Jesica Brooks, Assistant Board Clerk
Michael Callahan, Senior Policy Counsel

Stephanie Chen, Senior Policy Counsel
Darlene Jackson, Board Clerk
Vicken Kasarjian, Chief Operating Officer
Justin Kudo, Senior Strategic Analysis and Rates Manager
Ami Kundaria, Administrative Services Assistant
Catalina Murphy, Legal Counsel II
Zae Perrin, Manager of Customer Operations
Evelyn Reyes, Administrative Services Assistant II
Garth Salisbury, Director of Finance and Treasurer
Lindsay Saxby, Director of Power Resources
Shalini Swaroop, General Counsel & Director of Policy
Dawn Weisz, Chief Executive Officer

1. Roll Call

Chair Butt called the regular meeting to order at 7:00 p.m. with quorum established by roll call.

2. Board Announcements (Discussion)

There were no announcements.

3. Public Open Time (Discussion)

Chair Butt opened the public comment period and there were comments made by member of the public Howdy Goudey.

4. Report from Chief Executive Officer (Discussion)

CEO Dawn Weisz, reported the following:

- Welcomed Scott Tonnesen, Alternate representing the City of Fairfield.
- MCE's 2021 Impact Report highlights:
 - We delivered more than 90% carbon-free energy to over 1 million people and businesses this year
 - We gave out over \$4 million dollars in energy efficiency rebates, and launched a FlexMarket program that is now being replicated across the state
 - We installed over 1,000 EV charging ports in our communities
 - We achieved an "A" credit rating due to strong financial management
- On the equity front
 - MCE Cares Credit Program has helped 30,000 customers to date. We were successful in making sure our customers could take full advantage of the Arrearage Management Program which has already helped customers eliminate more than \$1 million dollars in energy debt.
 - We distributed free energy-saving kits to almost 800 families, free smart thermostats to over 200 families, and helped over 100 families get weatherization upgrades. Almost every day of the

- week, we have crews in the field conducting audits and retrofits, to help our customers save energy.
 - We dedicated \$3 million to workforce development activities, connecting folks with green jobs.
 - We launched a new solar discount rate that gives income-qualified folks 100% renewable energy with a 20% bill discount.
 - We added “community benefits” as a new part of our power supply bids, raising the bar for suppliers to support equity and bolster our communities.
- To put all the work in perspective, since 2010, we have committed over \$2 billion to get new California renewable energy projects built, creating hundreds of good-paying jobs, and meeting the state’s SB 100 carbon-reduction target 13 years early.
- In preparation for next year, our policy team has been coordinating with our new federal lobbyist to identify federal and state funding opportunities that are a good fit for MCE’s goals and program priorities. We are especially interested in opportunities to bring renewable energy, efficiency, and storage to underserved communities, and to help emerging technologies that could provide RA/reliability resources. These opportunities will be a big focus of our work in 2022.
- As a reminder, MCE will have an administrative shut down between December 26 - 31 and we will not be holding our regular Executive or Technical Committee meetings the first week of January. However, there will be a virtual Special Executive Committee meeting on Friday, January 21 at 12:00 P.M. noon and we look forward to seeing some of you there.
- Due to recent fluctuations in COVID cases and CDC guidance, we have pushed our “in-person” office reopening from January 4th to January 18th, and will be reassessing any new guidance from the CDC in early January to determine if additional delays are warranted.

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 by and Between Marin Clean Energy and Strategic Energy Innovations
- C.4 Sixth Agreement with The Energy Alliance Association (TEAA)
- C.5 First Amendment to First Agreement with Thorn Run Partners

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

Action: It was M/S/C (Perkins/Birsan) to **approve Consent Calendar items C.1 – C.5**. Motion carried by unanimous roll call vote. (Absent: Directors Gioia, Rice, Wagenknecht, Scales-Preston, and Ponce).

6. Presentation of the Climate Action Leadership Award (Discussion)

Stephanie Chen, Senior Policy Counsel, introduced this item and addressed questions from Board members.

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

Action: No action required.

7. Assembly Bill No. 361: New Teleconferencing Legislation Resolution No. 2021-11 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); and Resolution No. 2021-12 Delegating Authority to Technical Committee to Adopt Findings Pursuant to Government Code Section 54953(e) (Discussion/Action)

Catalina Murphy, Legal Counsel II, introduced this item and addressed questions from Board members.

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

Action: It was M/S/C (Thier/Quinto) to:

1. Adopt proposed Resolution No. 2021-11 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); and
2. Adopt proposed Resolution No. 2021-12 Delegating Authority to Technical Committee to Adopt Findings Pursuant to Government Code Section 54953(e).

Motion carried by unanimous roll call vote. (Absent: Directors Gioia, Rice, Wagenknecht, Scales-Preston, and Ponce).

8. MCE Rate Adjustments (Discussion/Action)

Garth Salisbury, Director of Finance and Treasurer, Justin Kudo, Senior Strategic Analysis and Rates Manager, and Zae Perrin, Manager of Customer Operations introduced this item and addressed questions from Board members.

Chair Butt opened the public comment period and there were comments from member of the public Howdy Goudey.

Action: It was M/S/C (Coler/Athas) to:

1. Direct staff to increase system average rates on January 1, 2022 by \$0.003/kWh.
2. Direct staff to implement additional increases to system average rates of up to \$0.017/kWh while achieving a minimum 2% discount relative to PG&E rates, following the implementation of PG&E's 2022 Energy Resource Recovery Account and/or associated changes to the PCIA.

Motion carried by roll call vote. (Yea: 24, Nay: 1; Absent: Directors Gioia, Rice, Wagenknecht, Scales-Preston, and Ponce).

9. MCE Bonding (Discussion)

Director Haroff, introduced this item and addressed questions from Board members.

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

Action: No action required.

10. Report on Successful Completion of Renewable Energy Prepayment Transaction (Discussion)

Garth Salisbury, Director of Finance and Treasurer, Lindsay Saxby, Director of Power Resources, and Michael Callahan, Senior Policy Counsel, introduced this item and addressed questions from Board members.

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

Action: No action required.

11. Board Matters & Staff Matters (Discussion)

There were none.

12. Adjournment

Chair Butt adjourned the meeting at 9:07 p.m. to the next scheduled Board Meeting on January 20, 2022.

Tom Butt, Chair

Attest:

Dawn Weisz, Secretary



February 17, 2022

TO: MCE Board of Directors

FROM: Bill Pascoe, Senior Power Procurement Manager

RE: Approved Contracts for Energy Update (Agenda Item #05 C.2)

Dear Board Members:

SUMMARY: This report summarizes contracts for energy procurement entered into by the Chief Executive Officer and if applicable, the Chair of the Technical Committee since the last regular Board meeting in December. This summary is provided to your Board for information purposes only, and no action is needed.

Review of Procurement Authorities

In March 2018, your Board adopted Resolution 2018-03 which included the following provisions:

The CEO and Technical Committee Chair, jointly, are hereby authorized, after consultation with the appropriate Committee of the Board of Directors, to approve and execute contracts for Energy Procurement for terms of less than or equal to five years. The CEO shall timely report to the Board of Directors all such executed contracts.

The CEO is authorized to approve and execute contracts for Energy Procurement for terms of less than or equal to 12 months, which the CEO shall timely report to the Board of Directors.

The Chief Executive Officer is required to report all such contracts and agreements to the MCE Board of Directors on a regular basis.

<i>Item Number</i>	<i>Month of Execution</i>	<i>Purpose</i>	<i>Average Annual Contract Amount</i>	<i>Contract Term</i>
1	November, 2021	Sale of Renewable Energy	\$586,100	1-5 Years
2	November, 2021	Sale of Renewable Energy	\$359,583	1-5 Years
3	December, 2021	Sale of Resource Adequacy	\$30,000	Under 1 Year
4	December, 2021	Purchase of Resource Adequacy	\$25,000	Under 1 Year
5	December, 2021	Purchase of Resource Adequacy	\$21,000	Under 1 Year
6	December, 2021	Purchase of Resource Adequacy	\$156,800	Under 1 Year
7	December, 2021	Sale of Resource Adequacy	\$254,800	Under 1 Year
8	December, 2021	Purchase of System Energy (Hedge)	\$5,468,970	1-5 Years
9	December, 2021	Purchase of System Energy (Hedge)	\$20,672,427	1-5 Years
10	December, 2021	Purchase of System Energy (Hedge)	\$1,953,366	1-5 Years
11	December, 2021	Purchase of System Energy (Hedge)	\$6,331,302	Under 1 Year
12	December, 2021	Purchase of Carbon Free Energy	\$0	1-5 Years
13	December, 2021	Purchase of Carbon Free Energy	\$1,575,000	1-5 Years
14	December, 2021	Purchase of Additional Storage Capacity	\$512,229	Over 5 Years
15	January, 2022	Sale of Resource Adequacy	\$60,000	Under 1 Year
16	January, 2022	Sale of Resource Adequacy	\$73,710	Under 1 Year
17	January, 2022	Sale of Resource Adequacy	\$56,150	Under 1 Year
18	January, 2022	Sale of Resource Adequacy	\$46,371	Under 1 Year
19	January, 2022	Sale of Resource Adequacy	\$8,424	Under 1 Year
20	January, 2022	Sale of Resource Adequacy	\$5,967	Under 1 Year
21	January, 2022	Sale of Resource Adequacy	\$4,914	Under 1 Year
22	January, 2022	Sale of Resource Adequacy	\$189,516	Under 1 Year
23	January, 2022	Sale of Resource Adequacy	\$19,125	Under 1 Year
24	January, 2022	Sale of Import Allocation Rights	\$9,000	Under 1 Year

Contract Approval Process: Energy procurement is governed by MCE's Energy Risk Management Policy as well as Board Resolutions 2018-03, 2018-04, and 2018-08. The Energy Risk Management Policy (Policy) has been developed to help ensure that MCE achieves its mission and adheres to its procurement policies established by the MCE Board of Directors (Board), power supply and related contract commitments, good utility practice, and all applicable laws and regulations. The Board Resolutions direct the CEO to sign energy contracts up to and including 12 months in length.

The evaluation of every new energy contract is based upon how to best fill MCE's open position. Factors such as volume, notional value, type of product, price, term, collateral threshold and posting, and payment are all considered before execution of the agreement.

After evaluation and prior to finalizing any energy contract for execution, an approval matrix is implemented whereby the draft contract is routed to key support staff and consultants for review, input, and approval. Typically, contracts are routed for commercial, technical, legal and financial approval, and are then typically routed through the Chief Operating Officer for approval prior to execution. The table below is an example of MCE staff and consultants who may be assigned to review and consider approval prior to the execution of a new energy contract or agreement.

<i>Review Owner</i>	<i>Review Category</i>
Lindsay Saxby (MCE Director of Power Resources)	Procurement / Commercial
John Dalessi/Brian Goldstein (Pacific Energy Advisors)	Technical Review
Steve Hall (Hall Energy Law)	Legal
Garth Salisbury (MCE Director of Finance)	Credit/Financial
Vicken Kasarjian (MCE, Chief Operating Officer)	Executive

Fiscal Impacts: Expenses and revenue associated with these Contracts and Agreements that are expected to occur during FY 2021/22 are within the FY 2021/22 Operating Fund Budget. Expenses and revenue associated with future years will be incorporated into budget planning as appropriate.

Recommendation: Information only. No action required.



February 17, 2022

TO: MCE Board of Directors

FROM: Grace Peralta, Customer Programs Manager

RE: First Amendment to the First Agreement with Evergreen Economics (Agenda Item #5 C.3)

ATTACHMENTS: A. Draft First Amendment to the First Agreement with Evergreen Economics
B. First Agreement with Evergreen Economics

Dear MCE Board of Directors:

SUMMARY:

The proposed First Amendment to the First Agreement with Evergreen Economics is a contract for Evaluation, Measurement, and Verification (EM&V) services, primarily focused on evaluating MCE's Low-Income Families and Tenants (LIFT) Pilot Program. The proposed First Amendment to the First Agreement would commence upon contract execution through July 31, 2024.

Evergreen Economics Program Services To-Date

Evergreen Economics is an economic consulting and research firm with offices in Portland, Oregon; Berkeley, California; and Madison, Wisconsin. MCE selected Evergreen Economics after a Request for Qualifications (RFQ) process that evaluated industry experience, value, and alignment with MCE and program goals. MCE began working with Evergreen in November 2021 through February 2022 to design the new Evaluation, Measurement and Verification (EM&V) Plan for the latest LIFT program extension. Via this Amendment, Evergreen would conduct the evaluation and execute a series of research activities to test whether the LIFT pilot program achieves its objectives.

LIFT Program Background

In 2017, the California Public Utilities Commission (CPUC) granted MCE \$3.5 million to conduct the Low-Income Families and Tenants (LIFT) pilot program to provide additional incentives beyond what was available through the Multifamily Energy Savings (MFES)

program. MCE developed the LIFT pilot program to better serve income-qualified multifamily properties and tenants. The pilot provides comprehensive services and additional incentives to owners and tenants of low-income properties and supports fuel switching from gas to electric heat pumps for cleaner and safer energy use. The CPUC originally approved the LIFT pilot for two years, followed by a series of extensions and an additional \$3.25 million granted to keep the LIFT program running as a pilot through the end of 2023.

The duration of the proposed First Amendment to the First Agreement would commence upon contract execution through July 31, 2024. The maximum cost to MCE would not exceed **\$151,689**.

Fiscal Impacts: Expenditures related to the proposed First Amendment to the First Agreement with Evergreen Economics would be funded from Energy Savings Assistance (ESA) program funds allocated by the CPUC.

Recommendation: Approve the proposed First Amendment to the First Agreement with Evergreen Economics.

FIRST AMENDMENT TO FIRST AGREEMENT BY AND BETWEEN MARIN CLEAN ENERGY AND Evergreen Economics, Inc.

This FIRST AMENDMENT is made and entered into on _____, by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and Evergreen Economics, Inc. (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and Contractor entered into an agreement on December 2, 2021, to provide services to develop an evaluation, measurement and verification plan for MCE's Low-Income Families and Tenants ("LIFT") Program ("Agreement"); and

WHEREAS, Section 3 and Exhibit B to the Agreement provided for Contractor to be compensated in an amount not to exceed \$18,050 for the evaluation, measurement and verification plan services described within the scope therein; and

WHEREAS, the parties desire to amend the Agreement to increase the contract amount by \$133,639 for total consideration not to exceed \$151,689; and

WHEREAS, Section 4 of the Agreement stated the Agreement shall terminate on February 28, 2022; and

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

WHEREAS, Exhibit A to the Agreement specified the tasks Contractor will complete for the evaluation, measurement and verification plan services as described in the scope therein; and

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

NOW, THEREFORE, the parties agree to modify Section 3, Section 4, and Exhibits A and B as set forth below.

AGREEMENT

1. Section 3 is hereby amended to read as follows:

MAXIMUM COST TO MCE:

In no event will the cost to MCE for the Services to be provided herein exceed the maximum sum of **\$151,689**.

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

TERM OF AGREEMENT:

This Agreement shall commence on **November 19, 2021** (Effective Date"), and shall terminate on **July 31, 2024**, unless earlier terminated pursuant the terms and conditions set forth in Section 12.

3. The following Phase 2 services is hereby added at the end of Phase 1 in Exhibit A:

Phase 2: Conduct Evaluation

1. **Literature Review** - Contractor will conduct a literature review of best practices for low-income multifamily programs.

This review is intended to gather existing research, incorporating any new sources available with information on program strategies, drivers, barriers, and metrics to track impacts. This will provide early insights into the industry. This review will ensure that the program plan, as well as Contractor's analysis and primary data collection (e.g., surveys, interviews) include the full array of reasons that customers may or may not be interested in adopting storage.

This review will cover the following topics, as well as any others identified during the project initiation meeting:

- Metrics for the cost savings of avoided gas infrastructure, Combustion Appliance Safety testing, and GHG emissions;
- Identify other metrics worth tracking (see Attachment A of the MCE Low Income Families and Tenants (LIFT) Request For Qualifications (RFQ) for the current list of metrics);
- Tracking source British Thermal Unit (BTU) savings;
- Fuel substitution and fuel switching; and
- Best practices for scaling a program like LIFT and/or incorporating the LIFT program strategies (or similar strategies) into an ongoing program.

2. **Logic Model** - Contractor will facilitate a workshop with key MCE program staff leading them through the program logic mapping, building off a base model created by Contractor from program documentation. The workshop will include a discussion of specific regulatory, legal, or organizational requirements that dictate the desired outcomes of the program and will identify how program staff expect certain activities to lead to the identified outcomes. More importantly, in this exercise the Contractor will develop an understand of the informal and likely undocumented activities which may have significant impacts to project success.
3. **Program Tracking and Data Review** – Contractor will gather the information required for reporting under MCE's existing energy efficiency programs for participant level data, building level data, and measure level data. Evaluation of the LIFT pilot program will include collection of the following additional data. The Contractor will submit a data request memo to MCE outlining the specific fields Contractor will require for the evaluation.
 - Participant Level Data:
 - i. Income-Qualification
 - ii. Tenure in Home
 - iii. Prior Program Participation
 - iv. Primary Language
 - v. Referrals to Other Programs (e.g., California Alternate Rates for Energy (CARE))
 - Building Level Data
 - i. Record of Health and Safety Issues and Resolutions
 - ii. Referrals to MCE's Multifamily Energy Savings (MFES) Program
 - iii. Collecting Evaluation, Measuring and Verification (EM&V) Program Tracking Data

Program tracking data will be used to investigate the procurement and installation costs of heat pumps in addition to possible cost savings due to avoided gas infrastructure and appliance safety testing. In addition to asking participants about other program participation as part of the property owner/manager interviews (see Task 4), Contractor will review customer data to identify any other programs they have participated in since their participation in the pilot. These data will also help to measure the number of units receiving upgrades from both programs and assess the percentage of total eligible units that have participated in the pilot.

Contractor will also review program marketing material to better understand how the LIFT and MFES programs are delivered together and how property owners and managers are able to inform themselves about the program.

To understand if the program is working with priority communities, the evaluation will include an analysis of Census Public Use Microdata (PUMS) to compare a population estimate of eligible households to then compare to program participation. While this cannot be compared to other programs, it will identify if participation is proportionally representative within the identified priority communities.

The metrics produced in this task will include:

- Percentage of eligible household that participate in the LIFT program;
- Dual participation in LIFT and MCE Multifamily Energy Savings programs;

- Qualification as an (Environmental and Social Justice) ESJ Community;
- Quantification of measures installed including heat pumps; and
- Composition of units by the Affordability Ratio (AR20) of the community they are in.

4. **Analysis of Billing Data** - Contractor The billing analysis will look at program energy savings and associated bill impacts, the use and impacts of default and alternative rates (including MCE's Light, MCE's Deep Green, and PG&E's all-electric rates), and the persistence of savings at sites with electrification measures. MCE will collect information about any other programs that are being leveraged as part of this effort. Contractor will also use the billing data to assess rates of tenant turnover from Phase 1. This task will cover the entire duration of the LIFT program.

To understand the impacts of the program on energy use, Contractor will leverage a pre-post treatment billing analysis. This analysis will compare energy use at each individual participant site to energy levels after the program measures have been installed. The modeling will control for other factors which impact energy consumption at the site level including demographic and geographic variable.

The basic pre-post analysis approach is outlined below:

- Collect program tracking data for all program participants, as discussed above (Task 1). The tracking data should include program measures installed and on what date. These data may also include some customer or building characteristics, as well as customer tariff and rate schedule.
- Obtain billing data for all participating customers from MCE.
- Obtain billing data files for all common areas associated with each building in the analysis.
- Convert the billing records for each meter reading interval to average energy consumption-
per-day for each premise.
- Identify the pre- and post-periods for each premise in the analysis. The pre- and post-period is preferably 12 months before and 12 months after installation.
- Define terms that Contractor can use to control for variability over time, i.e., factors that also impact energy usage. This will likely include weather and demographics, participation in other programs, climate zone, and tenant turn over.
- Calculate premise level savings, building level savings, and total program savings

Bill impacts will then be calculated to estimate the financial impact of participating in a program from the tenant and building owners perspectives. The bill impacts are an extension of the billing analysis. The bill impacts take calculated energy use reduction with current tariff and rate schedules to estimate the bill reductions or increases attributed to the program. Similarly, Contractor can apply incremental impact multipliers of avoided Greenhouse Gases (GHG), Nitrogen Oxides (NOx), and Sulfur Oxides (SOx) emissions per kWh and then to estimate the emissions impacts associated with energy savings.

The metrics produced in this task include:

- Program savings estimates
- Bill impacts from the program, especially highlighting the benefits of heat pumps in both common and individual units.
- Quantification of GHG, NOx, and SOx emissions associated with the energy savings estimates

5. **Tenant Surveys**— A core strategy of the program is to interface with property owners and managers instead of tenants. Therefore, the tenant surveys provide a rare opportunity to hear directly from tenants whose landlords or property owners participated in the program. The survey will explore the tenant's experience with the program and measures, the demographic and socio-economic characteristics of the household, perceived benefits and costs of participation, and how the tenant uses energy in the home. The surveys will gather information related to the participation processes, barriers to participation, the effect of alternative eligibility criteria, and the use of trusted messengers. This information will be analyzed to determine the effect of the LIFT pilot strategies on

reducing the barriers to participation from the tenant's perspective. Contractor plans to include questions about income eligibility and any changes in income over time; however, Contractor will also need to balance the desire to learn about these topics with a need to limit probing on sensitive topics.

Contractor will utilize program tracking data to develop stratification for the tenant interviews to make sure unique customer segments are represented. Contractor will leverage a quantitative clustering approach to understand where the sample is naturally stratified and propose targets for approval by the study team.

Based on our current understanding of the participant unites, Contractor plans to stratify the sample by participation year and household language (primary and secondary). Contractor's budget assumes that Contractor will target 280 respondents, with around 140 from Phase 1 of the LIFT pilot (~21% of those treated in the past three years) and 140 from Phase 2 (19% of forecasted treated units). Contractor has had mail survey response rates of around 30 percent in similar low-income households using direct mail recruitment with small cash pre-incentives followed by a completion incentive. If Contractor is unable to obtain direct mailing addresses for the participating units, Contractor intends to rely on MCE's other implementer agents or the property managers to distribute the surveys. In this scenario, Contractor would omit the pre-incentive and instead offer a larger completion incentive. Shifting away from direct mail would likely reduce response rates and require that Contractor attempts to recruit all participant units instead of a stratified random sample.

Program logic and metrics to be addressed by the tenant survey are:

- Measure impact of Marketing, Education and Outreach (ME&O) specifically
- Impact of educational efforts to inform tenants on how to use their heat pumps
- Impact of program design and program management changes (e.g., new income verification process) on tenant satisfaction

Contractor will work closely with MCE and MCE designated implementer program staff, currently the Association for Energy Affordability (AEA), to determine the best method to distribute the survey (e.g., providing survey recruitment materials to property owners or AEA staff for distribution versus gathering contact information for direct outreach). The Contractor team will provide MCE staff with a memo outlining the sample design including stratification, recruitment plan, and a draft of the tenant survey.

6. **Property Owner/Manager Interviews** - Property owner/management recruitment is a core strategy of this pilot, reducing the burden on tenants and removing key barriers to participation. Contractor will interview property owners/managers to understand the success and barriers of this recruitment approach. MCE's third-party evaluator will ask property owners/managers about participation process, the benefits of layering multiple programs, stability of tenant income eligibility, issues of tenant turnover, interactions with program staff and trade allies (MCE, AEA, and contractors), as well as general satisfaction with the program. Contractor will complete 12-24 property manager/owner interviews, with at least 6 respondents from the first phase of the pilot. Contractor will work with MCE to develop a contact list of property owners and develop a plan for outreach.

Program logic and metrics to be addressed are:

- General satisfaction and ease of participation
- Impacts of program design and program management changes (e.g., new income verification process) on property owner satisfaction

7. **Contractor In-Depth Interviews** – Contractor will conduct interviews with program contractors (since the start of the LIFT pilot) to help understand how the program is promoting electrification more broadly within the workforce. Contractor will discuss any trainings that occurred and the contractor experience with MCE program engagement. A key outcome of these interviews will be identifying barriers to education. Contractor will aim to complete ten interviews, with at least three contractors from each phase of the Pilot to gauge changes in the program electrification training over time. Contractor will request a list of contacts from MCE along with some indicators of which contractors were involved in Workforce Engagement (WFE) training.

8. Key Personnel

Personnel	Role
Tami Rasmussen	Project Director
Sarah Monohon	Project Manager and Primary Point-of-Contact for MCE
Martha Wudka	Advisor
Contractor Analyst	Assistance with Literature Review

*Additional staff are available as needed, including experts in sample design and heat pump monitoring.

9. Schedule**Phase 2 Schedule**

Task	Deliverable	Due Date
2022 Interim Progress Report (Tasks 1 and 3)	Data Request	Feb 2022
	Draft Memo	Apr 2022
	Final Memo	Apr 2022
2. Logic Model Workshop and Memo	Workshop	May 2022
	Draft Memo	Jun 2022
	Final Memo	Jul 2022
5. Tenant Survey	Draft Sample Design, Survey Instrument, and Recruitment Plan	Aug 2022
	Final Instrument	Aug 2022
6. Owner Manager Interviews	Draft Guide	Oct 2022
	Final Guide	Oct 2022
7. Contractor Interviews	Draft Guide	Oct 2022
	Final Guide	Oct 2022
2023 Interim Progress Report (Tasks 2-7)	Data Request	Jan 2023
	Interim Report Draft	Apr 2023
	Interim Report Final	Apr 2023
Full Evaluation Report (Tasks 1-7)	Data Request	Jan 2024
	Final Report Draft	May 2024
	Final Report Final	May 2024

4. The following Phase 2 budget table is hereby added after the Phase 1 budget table in Exhibit B:

Phase 2 Budget by Task and Staff

Proposal Budget											
		Billing Rate >>	Vice President	Prin. Consultant	Sr. Consultant	Consultant	Sr. Analyst	Analyst	Admin/Editor	Associate	
			\$ 225	\$ 200	\$ 190	\$ 180	\$ 170	\$ 160	\$ 110	\$ 125	
Tasks:											
2	Logic Model		-	20	6	-	-	20	-	-	46 \$ 8,340
3	Program tracking and data review		2	3	15	-	60	-	-	-	80 \$ 14,100
4	Energy and bill impact analysis		3	15	30	40	80	-	-	-	168 \$ 30,175
5	Tenant surveys		4	6	30	20	12	24	80	4	180 \$ 26,580
6	Property owner/manager interviews		3	-	26	-	37	-	-	2	68 \$ 12,155
7	Contractor in-depth interviews		-	-	12	-	-	16	-	2	30 \$ 5,090
8	Reporting and project management		8	36	56	6	22	6	14	-	148 \$ 26,960
Total Hours			20	80	175	66	211	66	94	8	720
Total Labor Costs			\$ 4,500	\$ 16,000	\$ 33,250	\$ 11,880	\$ 35,870	\$ 10,560	\$ 10,340	\$ 1,000	\$ 123,400
Direct Costs											
Mail survey in large envelope, with \$2 pre-incentive and stamped return envelope (n=1,430)											\$ 5,849
\$15 respondent post-incentives (n=280)											\$ 4,390
Total Direct Costs											\$ 10,239
Total Costs											\$ 133,639

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

In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of \$151,689 for the term of the Agreement.

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

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
FIRST AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND EVERGREEN ECONOMICS, INC.**

THIS FIRST AGREEMENT ("Agreement") is made and entered into on 12/2/2021 by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and EVERGREEN ECONOMICS, INC., an Oregon S-corporation with principal address at: 1500 SW 1st Avenue, Suite 1000, Portland, Oregon 97201 (hereinafter referred to as "Contractor") (each, a "Party," and, together, the "Parties").

RECITALS:

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

WHEREAS, Contractor desires to provide the Services to MCE;

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

1. SCOPE OF SERVICES:

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

2. FEES AND PAYMENT SCHEDULE; INVOICING:

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

3. MAXIMUM COST TO MCE:

In no event will the cost to MCE for the Services to be provided herein exceed the maximum sum of **\$18,050**.

4. TERM OF AGREEMENT:

This Agreement shall commence on **November 19, 2021** ("Effective Date") and shall terminate on **February 28, 2022**, unless earlier terminated pursuant to the terms and conditions set forth in Section 12.

5. REPRESENTATIONS; WARRANTIES; COVENANTS:

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

being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

- 5.2. COMPLIANCE WITH APPLICABLE LAW.** At all times during the Term and the performance of the Services, Contractor shall comply with all applicable federal, state and local laws, regulations, ordinances and resolutions ("Applicable Law").
- 5.3. LICENSING.** At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all required permits, licenses, certificates and registrations required for the operation of its business and the performance of the Services. Contractor shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.
- 5.4. NONDISCRIMINATORY EMPLOYMENT.** Contractor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, gender identity, age or condition of disability. Contractor understands and agrees that Contractor is bound by and shall comply with the nondiscrimination mandates of all federal, state, and local statutes, regulations, and ordinances.
- 5.5. ASSIGNMENT OF PERSONNEL.** The Contractor shall not substitute any personnel for those specifically named in its proposal, if applicable, unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

6. INSURANCE:

At all times during the Term and the performance of the Services, Contractor shall maintain the insurance coverages set forth below. All such insurance coverage shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, directors, officers, and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of Services. Certificate(s) of insurance must be current as of the Effective Date, and shall remain in full force and effect through the Term. If scheduled to lapse prior to termination date, certificate(s) of insurance must be automatically updated before final payment may be made to Contractor. Each certificate of insurance shall provide for thirty (30) days' advance written notice to MCE of any cancellation or reduction in coverage. Insurance coverages shall be payable on a per occurrence basis only.

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

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

- 6.1. GENERAL LIABILITY.** The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than **one million dollars (\$1,000,000) with a two million dollars (\$2,000,000)** aggregate limit. "Marin Clean Energy" shall be named as an additional insured on the commercial general liability policy and the certificate of insurance shall include an additional endorsement page (see sample form: ISO - CG 20 10 11 85).
- 6.2. INTENTIONALLY OMITTED**
- 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.** Contractor shall maintain professional liability insurance with a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that Contractor has segregated amounts in a special insurance reserve fund, or that Contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon. Coverages required by this subsection may be provided on a claims-made basis with a "Retroactive Date" prior to the Effective Date. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond termination of this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Effective Date, Contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after termination of this Agreement.

7. RESERVED

8. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior, written approval of MCE, except for any subcontract work expressly identified herein in Exhibit A. If Contractor hires a subcontractor under this Agreement (a "Subcontractor"), Subcontractor shall be bound by all applicable terms and conditions of this Agreement, and Contractor shall ensure the following:

- 8.1.** Subcontractor shall comply with the following terms of this Agreement: Sections 9, 10, Exhibit A.
- 8.2.** Subcontractor shall provide, maintain and be bound by the representations, warranties and covenants of Contractor contained in Section 5 hereof (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' compliance with the terms and conditions of this Agreement made applicable above and to collect and maintain all documentation and current evidence of such compliance. Upon request by MCE, Contractor shall promptly forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the Parties shall create any legal or contractual relationship between MCE and any Subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor's obligation to pay its Subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any monies to any Subcontractor.

9. RETENTION OF RECORDS AND AUDIT PROVISION:

Contractor shall keep and maintain on a current basis full and complete records and documentation pertaining to this Agreement and the Services, whether stored electronically or otherwise, including, but not limited to, valuation records, accounting records, documents supporting all invoices, employees' time sheets, receipts and expenses, and all customer documentation and correspondence (the "Records"). MCE shall have the right, during regular business hours, to review and audit all Records during the Term and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written request from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

10. DATA, CONFIDENTIALITY AND INTELLECTUAL PROPERTY:

10.1. OWNERSHIP AND USE RIGHTS.

- a) **MCE Data.** Unless otherwise expressly agreed to in writing by the Parties, MCE shall retain all of its rights, title and interest in MCE's Data. "MCE Data" shall mean all data or information provided by or on behalf of MCE, including but not limited to, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to Contractor as MCE may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Contractor. MCE Data shall also include all data and materials provided by or made available to Contractor by MCE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors.
- b) **Intellectual Property.** Unless otherwise expressly agreed to in writing by the Parties, any and all materials, information, or other intellectual property created, prepared, accumulated or developed by Contractor or any Contractor Party under this Agreement ("Intellectual Property"), including finished and unfinished inventions, processes, templates, documents, drawings, computer programs, designs, calculations, valuations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be owned by MCE on behalf and for the benefit of MCE's respective customers. MCE shall have the exclusive right to use Intellectual Property in its sole discretion and without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide Intellectual Property to MCE or to any party MCE may designate upon written request. Contractor may keep one file reference copy of Intellectual Property prepared for MCE solely for legal purposes and if otherwise agreed to in writing by MCE. In addition, Contractor may keep one copy of Intellectual Property if otherwise agreed to in writing by MCE.
- c) **Intellectual Property shall be owned by MCE upon its creation.** Contractor agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Intellectual Property.
- d) **Contractor's Pre-Existing Materials.** If, and to the extent Contractor retains any preexisting ownership rights ("Contractor's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, Contractor hereby grants MCE on behalf of its customers and the CPUC for governmental and regulatory purposes an irrevocable, assignable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of Contractor or any Contractor Party for the sole purpose of using such Intellectual Property for the conduct of MCE's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Intellectual Property must be expressly disclosed to MCE prior to performing any Services under this Agreement. Any such Pre-Existing Material that is modified by work under this Agreement is owned by MCE.

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

11. FORCE MAJEURE:

A Party shall be excused for failure to perform its obligations under this Agreement if such obligations are prevented by an event of Force Majeure (as defined below), but only for so long as and to the extent that the Party claiming Force Majeure ("Claiming Party") is actually so prevented from performing and provided that (a) the Claiming Party gives written notice and full particulars of such Force Majeure to the other Party (the "Affected Party") promptly after the occurrence of the event relied on, (b) such notice includes an estimate of the expected duration and probable impact on the performance of the Claiming Party's obligations under this Agreement, (c) the

Claiming Party furnishes timely regular reports regarding the status of the Force Majeure, including updates with respect to the data included in Section 10 above during the continuation of the delay in the Claiming Party's performance, (d) the suspension of such obligations sought by Claiming Party is of no greater scope and of no longer duration than is required by the Force Majeure, (e) no obligation or liability of either Party which became due or arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the Force Majeure; (f) the Claiming Party shall exercise commercially reasonable efforts to mitigate or limit the interference, impairment and losses to the Affected Party; (g) when the Claiming Party is able to resume performance of the affected obligations under this Agreement, the Claiming Party shall give the Affected Party written notice to that effect and promptly shall resume performance under this Agreement. "Force Majeure" shall mean acts of God such as floods, earthquakes, fires, orders or decrees by a governmental authority, civil or military disturbances, wars, riots, terrorism or threats of terrorism, utility power shutoffs, strikes, labor disputes, pandemic, or other forces over which the responsible Party has no control and which are not caused by an act or omission of such Party.

12. TERMINATION:

- 12.1.** If the Contractor fails to provide in any manner the Services required under this Agreement, otherwise fails to comply with the terms of this Agreement, violates any Applicable Law, makes an assignment of any general arrangement for the benefit of creditors, files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it, otherwise becomes bankrupt or insolvent (however evidenced), or becomes unable to pay its debts as they fall due, then MCE may terminate this Agreement by giving five (5) business days' written notice to Contractor.
- 12.2.** Either Party hereto may terminate this Agreement for any reason by giving thirty (30) calendar days' written notice to the other Party. Notice of termination shall be by written notice to the other Party and be sent by registered mail or by email to the email address listed in Section 19.
- 12.3.** In the event of termination not the fault of the Contractor, the Contractor shall be paid for Services performed up to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s). Notwithstanding anything contained in this Section 12, in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Agreement. Contractor shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12, Contractor shall have delivered to MCE any and all Intellectual Property (as defined in Section 10.1(b)) prepared for MCE before the effective date of such termination.
- 12.4.** MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.
- 12.5.** Without limiting the foregoing, if either Party's activities hereunder become subject to law or regulation of any kind, which renders the activity illegal, unenforceable, or which imposes additional costs on such Party for which the parties cannot mutually agree upon an acceptable price modification, then such Party shall at such time have the right to terminate this Agreement upon written notice to the other Party with respect to the illegal, unenforceable, or uneconomic provisions only, and the remaining provisions will remain in full force and effect.
- 12.6.** Upon termination of this Agreement for any reason, Contractor shall and shall cause each Contractor Party to bring the Services to an orderly conclusion as directed by MCE and shall return all MCE Data (as defined in Section 10.1(a) above) and Intellectual Property to MCE.
- 12.7.** Notwithstanding the foregoing, this Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall

have the right to change, modify or terminate this Agreement in any manner to be consistent with such order or directive.

12.8. Notwithstanding any provision herein to the contrary, Sections 2, 3, 8.4, 9, 10, 12, 15, 16, 17, 18, 19, 20, 21, 22, 24 and Exhibit B of this Agreement shall survive the termination or expiration of this Agreement.

13. ASSIGNMENT:

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

14. AMENDMENT; NO WAIVER:

This Agreement may be amended or modified only by written agreement of the Parties. Failure of either Party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

15. DISPUTES:

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

16. JURISDICTION AND VENUE:

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

17. INDEMNIFICATION:

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

18. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.). Pursuant to MCE's Joint Powers Agreement, MCE is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations, and liabilities accruing and arising out of this Agreement. No Contractor Party shall have rights and nor shall any Contractor Party make any claims, take any actions, or assert any remedies against any of MCE's constituent members in connection with this Agreement.

19. INVOICES; NOTICES:

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

Email Address: invoices@mcecleanenergy.org

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

Contract Manager: Troy Nordquist

MCE Address: 1125 Tamalpais Avenue
San Rafael, CA 94901

Email Address: contracts@mcecleanenergy.org

Telephone No.: (925) 378-6767

Notices shall be given to Contractor at the following address:

Contractor: Stephen Grover, PhD





Address: 1500 Southwest 1st Avenue, Suite 1000
Portland, Oregon 97201

Email Address: grover@evergreenecon.com

Telephone No.: (503) 894-8676

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		

21. SEVERABILITY:

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

22. INDEPENDENT CONTRACTOR:

Contractor is an independent contractor to MCE hereunder. Nothing in this Agreement shall establish any relationship of partnership, joint venture, employment or franchise between MCE and any Contractor Party. Neither MCE nor any

Contractor Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided for herein.

23. TIME:

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

24. THIRD PARTY BENEFICIARIES:

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

25. FURTHER ACTIONS:

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

26. PREPARATION OF AGREEMENT:

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

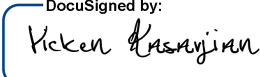
27. COUNTERPARTS:

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

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

APPROVED BY

Marin Clean Energy:

By: 
ACC4B8FA2E834F3...

Name: Vicken Kasarjian

Title: COO

Date: 12/2/2021

CONTRACTOR:

By: 
6C5595C5BA20448...

Name: Steve Grover

Title: President

Date: 12/2/2021

EXHIBIT A SCOPE OF SERVICES

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

The entire Project will include two phases. The following scope is for work in Phase 1 of the two phases of the Project. Contracting for Phase 2 is subject to MCE Board approval.

Phase 1: Evaluation, Measurement and Verification ("EM&V") Plan

1. **Project Initiation Meeting** - Contractor's key personnel will meet with MCE CP staff to discuss the following:

- Research objectives and priorities;
- Advice letter filing requirements;
- Recommended questions or sources for the literature review;
- Available data and request process; and
- Outline Contractor's proposed EM&V plan.

Following the kick-off meeting, Contractor will distribute the slide deck and a memo with notes from the meeting.

2. **EM&V Plan Development** - Contractor will draft an EM&V plan, integrating key decisions made and feedback received at the project initiation meeting. The EM&V plan will include:

- Updated research goals and methodologies;
- Detailed analysis tasks and methods;
- A detailed schedule for research activities and deliverables.

EM&V Plan finalization will occur in Phase 2 if Phase 2 is approved by MCE Board.

3. **Ad Hoc Advice Letter Support** - Contractor will provide ad hoc support for MCE's advice letter filing, which will include conducting a review of the LIFT program metrics table and current measure offerings at MCE's request.

4. **Literature Review** - Contractor will conduct a literature review of best practices for low-income multifamily programs.

This review is intended to gather existing research, incorporating any new sources available with information on program strategies, drivers, barriers, and metrics to track impacts. This will provide early insights into the industry

This review will ensure that the EM&V Plan, as well as Contractor's analysis and primary data collection (e.g., surveys, interviews) include the full array of reasons that customers may or may not be interested in adopting electrification.

This review will cover the following topics, as well as any others identified during the project initiation meeting:

- Metrics for the cost savings of avoided gas infrastructure, Combustion Appliance Safety testing, and GHG emissions;
- Identify other metrics worth tracking (see Appendix A of the MCE LIFT RFQ, included below, for the current list of metrics);
- Tracking source British Thermal Unit (BTU) savings;
- Fuel substitution and fuel switching; and
- Best practices for scaling a program like LIFT and/or incorporating the LIFT program strategies (or similar strategies) into an ongoing program.

Key Personnel

Personnel	Role
Tami Rasmussen	Project Director
Sarah Monohon	Project Manager and Primary Point-of-Contact for MCE
Martha Wudka	Advisor
Jesse Emge and Evergreen Analyst	Literature Review

*Additional staff are available as needed, including experts in sample design and heat pump monitoring.

The list of key personnel above is subject to change. Should a staff member need to be replaced, Contractor 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.

Phase 1 Schedule

Task	Deliverable	Due Date
1. Project initiation	Advice letter planning meeting	Nov 21, 2021*
	Formal initiation meeting (if needed)	Dec 8, 2021
	Slides & meeting notes memo	Dec 9, 2021
2. EM&V plan development	Draft for advice letter	Nov 25, 2021
	Final for advice letter	Dec 2, 2021
	Full draft plan for MCE	Dec 16, 2021
	Final plan for MCE	Jan 5, 2022
3. Ad hoc advice letter support	N/a	Nov-Dec, 2021
4. Literature review	N/a, within Phase 1 Task 3	Nov, 2021-Jan, 2022

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:

Phase 1: Budget								Total Hours	Total Cost
			T. Rasmussen	S. Monohon	M. Wudka	J. Emge			
			Vice President	Senior Consultant	Senior Consultant	Principal Consultant	Analyst	Editor	
	Billing Rate >>		\$ 220	\$ 190	\$ 190	\$ 200	\$ 160	\$ 110	
Tasks:									
1	Project initiation meeting		1	3	1				5 \$ 980
2	EM&V plan development		3	10	5			2	20 \$ 3,730
3	Ad hoc advice letter support		3	6	6	3			18 \$ 3,540
4	Literature review		4	8	4	26	9		51 \$ 9,800
Total Hours			11	27	16	29	9	2	94
Total Labor Costs			\$ 2,420	\$ 5,130	\$ 3,040	\$ 5,800	\$ 1,440	\$ 220	
Total Costs									\$ 18,050

Contractor will bill on a time and materials basis, according to the hourly rates provided in the below hourly rate table below. The hourly rates shall remain in effect for the entire term of the Agreement.

Hourly Rates by Title

Title	Staff	Rate
Vice President	Tami Rasmussen, Ted Helvoigt	\$225
Principal Consultant	Ingo Bensch, Kevin Price, Jesse Emge	\$200
Senior Consultant	Martha Wudka, Sarah Monohon	\$190
Consultant		\$180
Sr. Analyst		\$170
Analyst		\$160
Administrative Support		\$110

Contractor will bill monthly by providing an itemized invoice to MCE Customer Programs staff for all Services rendered the month prior. Payment of itemized invoice is subject to MCE Customer Programs staff's written approval. In no event shall the total cost to MCE for the services provided herein exceed the **maximum sum of \$18,050** for the term of the Agreement.



February 17, 2022

TO: MCE Board of Directors

FROM: Catalina Murphy, Legal Counsel

RE: Resolution No. 2022-03 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.4)

ATTACHMENT: Proposed Resolution No. 2022-03 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)

MCE Board of Directors:

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 January 21, 2022, the MCE Executive Committee, by Resolution 2022-01, 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. This finding should be reconsidered every 30 days, pursuant to AB 361.

To continue holding teleconference meetings for the next 30 days, the MCE Board of Directors must make the following findings by majority vote:

1. The Board of Directors has reconsidered the circumstances of the state of emergency, as designated by the Governor.

¹ Gov. Code, §§ 54950 et seq.

2. The Board of Directors 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. 2022-03 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 required AB 361 findings for continuing remote teleconference meetings.

Fiscal Impacts: None.

Recommendation:

Adopt proposed Resolution No. 2022-03 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. 2022-03

A RESOLUTION OF THE BOARD OF DIRECTORS 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 (Government Code Section 6500 et seq.); 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 Fairfield, 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 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 set forth in Government Code section 54953(e), finding 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, by majority vote, 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, by majority vote, pursuant to option 2, 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 Executive Committee previously adopted Resolution No. 2022-01 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 desires to continue to hold the MCE Board of Directors, MCE Executive Committee, and MCE Technical Committee public meetings by teleconference consistent with Government Code section 54953(e).

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 MCE Board of Directors hereby finds and declares the following, as required by Government Code section 54953(e)(3):
 1. The Governor of California proclaimed a state of emergency on March 4, 2020, pursuant to Government Code section 8625, which remains in effect.
 2. State or local officials have imposed or recommended measures to promote social distancing.
 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.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 17th day of February 2022, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin				
Contra Costa County				
County of Napa				
County of Solano				
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				

City of Concord				
Town of Corte Madera				
Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Fairfield				
City of Lafayette				
City of Larkspur				
City of Martinez				
City of Mill Valley				
Town of Moraga				
City of Napa				
City of Novato				
City of Oakley				
City of Pinole				
City of Pittsburg				
City of Pleasant Hill				
City of San Ramon				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Vallejo				
City of Walnut Creek				
Town of Yountville				

CHAIR, MCE

Attest:

SECRETARY, MCE



February 17, 2022

TO: MCE Board of Directors

FROM: Sebastian Conn, Community Development Manager, Public Affairs

RE: Presentation of the 2021 Charles F. McGlashan Advocacy Award
(Agenda Item #06)

ATTACHMENTS: No Attachments

Dear Board 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.

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)

On December 3, 2021, the MCE Executive Committee unanimously approved a motion to present the 2021 award to Sustainable Contra Costa.

2021 Award Winner:

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.

Fiscal Impacts:

None

Recommendation:

Honor Sustainable Contra Costa as the recipient the 2021 Charles F. McGlashan Advocacy Award, as approved by the MCE Executive Committee on December 3, 2021.



MCE Board Offices and Committees

Board Offices:

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

Executive Committee

1. Kevin Haroff, *Chair*
2. Denise Athas
3. Edi Birsan
4. Tom Butt
5. Barbara Coler
6. Cindy Darling
7. Ford Greene
8. Devin Murphy
9. Gabriel Quinto
10. Shanelle Scales-Preston
11. Brad Wagenknecht
12. Sally Wilkinson

Ad Hoc Committee for CEO Compensation Structures – 2022

1. Barbara Coler
2. Cindy Darling
3. Gabe Quinto
4. Shanelle Scales-Preston
5. Brad Wagenknecht
6. Sally Wilkinson

Ad Hoc Contracts Committee – 2021

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

Ad Hoc Bonding Committee – 2021

1. Edi Birsan
2. Ford Greene
3. Kevin Haroff
4. Scott Perkins
5. Holli Thier
6. Sally Wilkinson

Technical Committee

1. Ford Greene, *Chair*
2. Gina Dawson
3. John Gioia
4. Kevin Haroff
5. Katy Miessner
6. Devin Murphy
7. Teresa Onoda
8. Scott Perkins
9. Katie Rice

Ad Hoc Audit Committee – 2021

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

Ad Hoc Rate Setting Committee – 2021

1. Dave Fong
2. Kevin Haroff
3. Katy Miessner
4. Devin Murphy
5. Scott Perkins
6. Holli Thier
7. Shanelle Scales-Preston
8. Gabe Quinto



MCE Technical Committee Overview and Scope

Current Membership: 9

Current Members:

- Ford Greene, Town of San Anselmo (Chair)
- Gina Dawson, City of Lafayette
- John Gioia, County of Contra Costa
- Kevin Haroff, City of Larkspur
- Katy Miessner, City of Vallejo
- Devin Murphy, City of Pinole
- Teresa Onoda, Town of Moraga
- Scott Perkins, City of San Ramon
- Katie Rice, County of Marin

Membership Process: MCE strives to assemble a Technical Committee comprised of at least one county representative and one city/town representative from each county in the MCE service area. Available seats on the Technical Committee are therefore first offered to any interested and applicable Board member whose county is not yet represented by one county and one city member. Interested members can be added at a meeting of the Board when "New Committee Members" is on the Agenda.

Current meeting date: First Thursday of each month at 8:30 am

Scope

The scope of the MCE Technical Committee is to explore, discuss and provide direction or approval on issues related to electricity supply, distributed generation, greenhouse gas emissions, energy efficiency, procurement risk management and other topics of a technical nature.

Frequent topics include electricity generation technology and procurement, greenhouse gas accounting and reporting, energy efficiency programs and technology, energy storage technology, net energy metering tariff, local solar rebates, electric vehicle programs and technology, Feed-in Tariff activity and other local development, Light Green, Deep Green and Local Sol power content planning, long term integrated resource planning, regulatory compliance, MCE's Energy Risk Management Policy (ERMP), procurement risk oversight, and other activity related to the energy sector. The MCE Technical Committee reviews and discusses new technologies and potential application by MCE.

Authority of Technical Committee

- Approval of and changes to MCE's Net Energy Metering Tariff
- Approval of and changes to MCE's Feed in Tariff
- Approval of annual GHG emissions level and related reporting
- Approval of MCE procurement pursuant to Resolution 2018-03 or its successor
- Approval of MCE procurement-related certifications and reporting, including the Power Content Label
- Approval of contracts with vendors for technical programs or services, energy efficiency program or services and procurement functions or services Approval of power purchase agreements
- Approval of adjustments to power supply product offerings
- Approval of the Integrated Resource Plan
- Receipt of reports from the Risk Oversight Committee (ROC) on at least a quarterly basis regarding the ROC's meetings, deliberations, and any other areas of concern
- Initiation of and oversight of a review of the implementation of the ERMP as necessary
- Approval of substantive changes to MCE's Energy Risk Management Policy (ERMP), including periodic review of the ERPM and periodic review of ERPM implementation



MCE Executive Committee Overview and Scope

Current Membership: 12

Current Members:

- Kevin Haroff, City of Larkspur (Chair)
- Denise Athas, City of Novato
- Edi Birsan, City of Concord
- Tom Butt, City of Richmond
- Barbara Coler, Town of Fairfax
- Cindy Darling, City of Walnut Creek
- Ford Greene, Town of San Anselmo
- Devin Murphy, City of Pinole
- Gabriel Quinto, City of El Cerrito
- Shanelle Scales-Preston, City of Pittsburg
- Brad Wagenknecht, County of Napa
- Sally Wilkinson, City of Belvedere

Membership Process: MCE strives to assemble an Executive Committee comprised of at least one county representative and one city/town representative from each county in the MCE service area. Available seats on the Executive Committee are therefore first offered to any interested and applicable Board member whose county is not yet represented by one county and one city member. Interested members can be added at a meeting of the Board when "New Committee Members" is on the Agenda.

Current meeting date: First Fridays of each month at 12:15pm

Scope

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

Authority of Executive Committee

Executive Committee is authorized to make decisions regarding:

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



- Ad hoc committees
- Honorary awards

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

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



February 17, 2022

TO: MCE Board of Directors

FROM: Lindsay Saxby, Director of Power Resources

RE: Confirmation Agreement for Bundled Renewable Energy
Between Redwood Coast Energy Authority and Marin Clean
Energy to Purchase Portfolio Content Category One Energy
(Agenda Item #08)

ATTACHMENT: Confirmation Bundled Renewable Energy Portfolio Content
Category One ("PCC1")

Dear Board Members:

Attached for the Board of Directors consideration and approval is a five-year confirmation agreement with Redwood Coast Energy Authority (RCEA) for Product Content Category One (PCC1) renewable energy. The energy purchased under this contract will help MCE meet its mid-term renewable energy goals. The varying lengths of MCE's contracts, such as a 5-year transaction, provides MCE with price certainty, helping to minimize MCE's exposure to short-term price increases as well as possible future downturns in prices.

SUMMARY:

As a California load-serving entity and Community Choice Aggregation program, MCE engages in monthly and annual energy procurement in order to meet Board adopted targets for renewable and carbon free energy on a yearly basis. MCE's renewable target in 2022 through 2024 is 60%, which then increase by 5% each year starting in 2025 through 2029, when an 85% renewable portfolio is reached.

Under the transaction with RCEA, MCE would make a partial pre-payment for PCC1 renewable energy in exchange for a discount to the total cost of energy. A prepayment of \$4 million would be due to RCEA within 10 business days after the Effective Date of the agreement. Starting January 1, 2023, RCEA would deliver a set quantity of

Megawatt hours (MWh) of PCC1 renewable energy each year until December 31, 2027. During the delivery term, MCE would pay RCEA a monthly discounted rate for the delivered energy. Energy deliveries may come from three different resources including, the Snow Mountain hydroelectric project, Sandrini Solar, and Humboldt Sawmill Company facilities. MCE would be entitled to the bundled renewable energy and Renewable Energy Credits associated with the energy deliveries. RCEA has the right to repay the prepayment plus an administrative fee by December 31, 2022 and not deliver energy to MCE if RCEA gives notice to MCE by July 1, 2022. If the right is exercised, the transaction would be terminated.

Fiscal Impact:

Cost in Fiscal Year (FY) 2021/22 associated with the Confirmation for Bundled Renewable Energy would be \$4 million. The cost of the Confirmation starting in FY 2022/23 and through FY 2027/28 would be \$2.67 million. The total savings realized by using this partial prepayment structure is expected to be \$2 million.

Recommendation:

Approve the Confirmation Agreement for Bundled Renewable Energy Between Redwood Coast Energy Authority and Marin Clean Energy to Purchase Portfolio Content Category One Energy.

**CONFIRMATION
BUNDLED RENEWABLE ENERGY
PORTFOLIO CONTENT CATEGORY ONE (“PCC1”)**

This confirmation (“Confirmation”) confirms the transaction between Redwood Coast Energy Authority, a California joint powers authority (“Seller”) and Marin Clean Energy, a California joint powers authority (“Buyer”), and each individually a “Party” and together the “Parties”, by which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product (the “Transaction”). This Transaction is governed by the WSPP Agreement dated August 12, 2021 (the “WSPP Agreement”). The WSPP Agreement, including WSPP Service Schedule R, this Confirmation, and any applicable appendices, exhibits or amendments hereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Terms capitalized but not defined herein shall have the meaning as set forth in the WSPP Agreement, WSPP Service Schedule R or the CAISO Tariff. This Confirmation becomes effective on the date fully executed by both Parties (the “Effective Date”).

The Parties agree as follows:

Seller:	Redwood Coast Energy Authority	Buyer:	Marin Clean Energy
Product:	<p>“<u>Product</u>” means Delivered Energy generated by the Generating Facility bundled with the associated Renewable Energy Credits, which satisfies the CPUC’s criteria for Portfolio Content Category 1. “<u>Portfolio Content Category 1</u>” or “<u>PCC1</u>” means Energy, along with the associated RECs, generated by an Eligible Renewable Energy Resource without substituting energy from another generating source (as defined by the CPUC in D.11-12-052), delivered on an hourly basis to the Delivery Point during the Delivery Term. To the extent not inconsistent with the foregoing, the Product is a Firm Bundled REC as such is described under Section R-2.3.2 of WSPP Service Schedule R.</p>		
Contract Price:	<p>“<u>Contract Price</u>” shall be equal to the sum of the Energy Price and the REC Price, less the CAISO Credit.</p> <p>“<u>REC Price</u>” means \$ [REDACTED] /MWh.</p>		
Contract Quantity (MWh):	<p>The quantity of Delivered Energy to be generated and delivered during each calendar year of the Delivery Term as set forth below is an “<u>Annual Quantity</u>”, and the sum of the Annual Quantities is the “<u>Contract Quantity</u>”.</p> <p>2023 – [REDACTED] MWh</p> <p>2024 – [REDACTED] MWh</p> <p>2025 – [REDACTED] MWh</p> <p>2026 – [REDACTED] MWh</p> <p>2027 – [REDACTED] MWh</p>		
Delivery Term:	<p>Start Date: January 1, 2023</p> <p>End Date: December 31, 2027</p>		
Delivery Point:	CAISO		

<p>Generating Facilities:</p>	<p>The Product shall be produced by one or more of the renewable energy generating facilities listed in Exhibit A, each of which is, or shall be: (i) certified as an ERR for the California RPS and registered with WREGIS, and (ii) from which Seller is entitled, pursuant to its agreements, to the output of the Energy and associated RECs, and such output is used to source the Product delivered hereunder during the Delivery Term (each, a “<u>Generating Facility</u>” and collectively, the “<u>Generating Facilities</u>”). In addition, each Generating Facility has:</p> <ul style="list-style-type: none"> (i) a first point of interconnection with a California balancing authority; (ii) its first point of interconnection with distribution facilities used to serve end users within a California balancing authority area; (iii) its generation is scheduled into a California balancing authority without substituting electricity from any other source, provided that, if another source provides real-time ancillary services required to maintain an hourly or sub-hourly import schedule into the California balancing authority, then only the fraction of the schedule actually generated by the Generating Facility from which the electricity is procured may count toward this Product; or (iv) its generation is scheduled into a California balancing authority pursuant to a dynamic transfer agreement between the balancing authority where the Generating Facility is located and the California balancing authority into which the generation is scheduled. <p>Seller shall deliver Product solely from the Cove Hydroelectric Project and Sandrini Sol 1 Generating Facilities, except that if the combined generating output of the Cove Hydroelectric Project and Sandrini Sol 1 Generating Facilities in any calendar year is not enough, or not reasonably likely to be enough, to satisfy the Annual Quantity for such calendar year, Seller may, upon prior written notice to Buyer, supply the remainder of the Annual Quantity from the Humboldt Redwood Generating Facility.</p> <p>Subject to prior written approval of Buyer, Seller may add additional replacement Generating Facilities to Exhibit A.</p>
<p>Scheduling:</p>	<p>Seller or Seller’s designee shall schedule and deliver the Energy portion of the Product, on behalf of Buyer, to the Delivery Point in accordance with the requirements and the prevailing protocols of the WECC and CAISO Tariff, as applicable.</p>
<p>Eligibility:</p>	<p>Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used</p>

	commercially reasonable efforts to comply with such change in law. [STC 6, Non-Modifiable. (Source: D.07-11-025, Attachment A.) D.08-04-009] The aggregate “commercially reasonable efforts” expenditures for Eligibility, Transfer of RECS, and Change of Law Provisions (Section R-5.2.2(b)) are limited to the Capped Amount.
Transfer of RECs:	<p><u>Transfer of Renewable Energy Credits.</u> Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1, Non-modifiable. D.11-01-025]</p> <p><u>Tracking of RECs in WREGIS.</u> Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under this contract. [STC REC-2, Non-modifiable. D.11-01-025]</p> <p>The Transfer of RECs shall be made in accordance with the rules and regulations of WREGIS. Buyer and Seller agree that the obligation to deliver RECs hereunder shall be evidenced by the delivery of WREGIS Certificates in WREGIS. Seller shall transfer WREGIS Certificates from its WREGIS account to Buyer’s WREGIS account once available, on a monthly basis, and no later than April 15 following the end of each Reporting Year.</p> <p>Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month as evidenced by the Generating Facility’s metered data. Seller shall ensure that no WREGIS Certificates are transferred to Buyer’s WREGIS Account unless they are the result of Delivered Energy.</p>
Payment:	<p><u>Contract Price.</u> Contract Price shall be calculated as follows: $\text{Contract Price} = (\text{Energy Price} + \text{REC Price}) - \text{CAISO Credit}$ Where: “<u>CAISO Credit</u>” means the Energy Price paid by the CAISO for the energy associated with the Product. “<u>Energy Price</u>” means the applicable Day-Ahead Market, Fifteen Minute Market, or Real-Time Market LMP clearing at the Delivery Point, as published by the CAISO, per MWh of energy delivered. “<u>REC Price</u>” is equal to the applicable amount set forth on page 1 of this Confirmation.</p> <p><u>Payment:</u> Buyer shall pay the applicable Contract Price multiplied by the quantity of RECs associated with the Delivered Energy that have been</p>

	<p>transferred to Buyer as WREGIS Certificates through WREGIS. Seller shall be entitled to retain all revenues associated with delivery of the Product to the CAISO at the Delivery Point in full satisfaction of Buyer's payment obligation for the Energy component of the Product. The Parties acknowledge that the actual CAISO revenues received by Seller may be greater than or less than the Energy Price but agree that the CAISO Credit shall fully offset the Energy Price component of the Contract Price, and that no amount associated with the Energy Price shall be payable by Buyer hereunder.</p> <p><u>Monthly Invoice Timeline.</u> The Parties hereby agree that all invoices under this Confirmation shall be due and payable within thirty (30) days of Buyer's receipt of Seller's invoice, provided that if such day is not a Business Day, then on the next Business Day.</p> <p><u>Invoice Requirements.</u> Each invoice shall provide Buyer (a) records of metered data, including metering and CAISO transaction data sufficient to document and verify the amount of Delivered Energy by the Generating Facility for each Settlement Period during the applicable month, including the amount of Delivered Energy as set forth in the first CAISO settlement statement for the applicable month that includes meter data from the CAISO-approved meter; (b) the applicable Contract Price; (c) a statement of the quantity of WREGIS Certificates transferred during the prior month, and (d) any additional information reasonably requested by Buyer. Seller shall provide Buyer reasonable access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount included by Seller on an invoice. Each invoice shall be in an electronic format reasonably specified by Seller (e.g., PDF, .xlsx).</p>
Prepayment:	<p>In consideration for this Transaction, Buyer agrees to pay Seller the following amount: [REDACTED] (the "<u>Prepayment</u>"). The Prepayment shall be paid by Buyer to Seller within ten (10) Business Days after the Effective Date.</p>
Early Termination of the Transaction:	<p>Seller shall have the right to terminate this Transaction in its entirety if (a) Seller delivers written notice of its intention to terminate this Transaction to Buyer no later than [REDACTED], and (b) Buyer receives the Early Termination Payment (as defined below) from Seller no later than [REDACTED].</p> <div style="background-color: black; height: 150px; width: 100%;"></div>

	<p>[REDACTED]</p> <p>No Seller termination shall be effective unless Buyer receives timely written notice and timely payment of the Early Termination Payment as set forth above. Following such termination, neither Party will have any further liability to the other under this Agreement, except for payment of any obligations arising under this Agreement prior to such termination.</p> <p>The “Early Termination Payment” shall be equal to [REDACTED] provided, however, that if termination occurs after Seller has begun delivering Product, the amount of the Early Termination Payment shall be prorated, with such amount to be determined by Buyer in its reasonable discretion, taking into account the quantity of Product that has been delivered to Buyer prior to the effective date of such termination and any other amounts owed by Seller to Buyer under this Transaction.</p>
Environmental Attributes:	<p><u>All Attributes.</u> The Product consists of Firm Bundled RECs sourced from the Generating Facilities. The Parties agree that the Product will be sourced only from the Generating Facilities specifically identified in the Confirmation with no substitutions, unless otherwise approved by Buyer.</p>
Applicable Program:	<p>State of California Renewable Portfolio Standard Program (hereinafter referred to as “<u>California RPS</u>”, “<u>Renewables Portfolio Standards</u>” or “<u>RPS Program</u>”), as codified at California Public Utilities Code Section 399.11, <i>et seq.</i>, and requiring that a specified percentage of a retail seller’s retail sales should be supplied with electricity generated by eligible ERRs.</p>
Tracking System:	<p>RECs associated with the Product shall be tracked using WREGIS.</p>
Representations and Warranties:	<p><u>Seller Representations.</u> Seller represents, warrants and covenants to Buyer that:</p> <ul style="list-style-type: none"> (i) Seller has the right to sell the Product from the Generating Facility; (ii) Seller has not sold the Product or any REC or other attributes of the Product to be transferred to Buyer to any other person or entity; (iii) Energy and RECs to be purchased and sold pursuant to this Confirmation are not committed to another party; (iv) The Product is free and clear of all liens or other encumbrances; and (v) Seller will cooperate and work with Buyer, the CEC, and/or the CPUC to provide all reasonable documentation required by the CPUC or CEC to support the Product’s classification as a Portfolio Content Category 1 Product as set forth in California Public Utilities Code Section 399.16(b)(1). <p>Seller further represents and warrants to Buyer that if the Product sold by Seller is a resale of part or all of a contract between Seller and one or more third parties, Seller represents, warrants and covenants that the resale</p>

	<p>complies with the following conditions in (i) through (iv) below as of the Effective Date and throughout the generation period:</p> <ul style="list-style-type: none"> (i) The original upstream third-party contract(s) meets the criteria of California Public Utilities Code Section 399.16(b)(1); (ii) This Confirmation transfers only electricity and RECs that have not yet been generated prior to the Effective Date; (iii) The electricity transferred by this Confirmation is transferred to Buyer in real time; and (iv) If the Project has an agreement to dynamically transfer electricity to a California balancing authority, the transactions implemented under this Confirmation are not contrary to any condition imposed by a balancing authority participating in the dynamic transfer arrangement.
Change in Law Provisions:	<p>This Confirmation is executed for the express purposes of complying with the California RPS and Section 399.16(b)(1) of the California Public Utilities Code. The Parties acknowledge that the CEC and/or CPUC may be modifying mandatory contract language, altering the procurement and product qualification rules, and updating the relevant RPS Eligibility Guidebook in a manner consistent with that legislation. If there is a change in law that makes implementation of this Transaction impossible or impracticable, or otherwise revokes or eliminates the California RPS or language required to conform to the California RPS, the Parties hereto agree to negotiate in good faith to amend this Confirmation to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement.</p>
Audit/Review:	<p>Buyer reserves the right to review during normal business hours and at its own expense, for up to two (2) years following delivery of the Product under this Confirmation, and with reasonable advance notice to Seller, the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Confirmation. In addition, during the Delivery Term and for a period of three (3) years after the Delivery Term, upon Buyer's reasonable request, Seller shall provide (i) meter data from the Generating Facility related to the Product and (ii) any other records reasonably required to demonstrate that the Product has been conveyed and delivered in accordance with the terms and conditions of this Confirmation, including scheduling or delivery information necessary to meet the requirements of the California RPS Program. Buyer shall be solely responsible for all costs it incurs to undertake any such audit or review and shall reimburse Seller reasonable costs, including administrative costs, incurred by Seller to cooperate with the requests of Buyer.</p>
Creditworthiness and Collateral:	<p>Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, Buyer shall not be required to post collateral or other security for this Transaction. For the avoidance of doubt, the Prepayment does not constitute collateral or other security for this Transaction. Seller is not required to post collateral or other security for this Transaction as</p>

	of the Effective Date, but shall be subject to Section 27 of the WSPP Agreement.
Notices:	All notices provided in connection with this Confirmation shall be addressed to the Party in accordance with Exhibit B or in such manner and at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.
Confidentiality:	The Parties acknowledge and agree that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).
Applicable Law/Governing Law:	This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17, (Source: D.07-11-025, Attachment A.) D.08-04-009]
No Recourse to Members:	The Parties are each organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and are each a public entity separate from their constituent members. Each Party will solely be responsible for all of such Party's debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the other Party's constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other Party or the other Party's constituent members, in connection with this Confirmation.
Counterparts:	This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation as a PDF attachment to an email shall be the same as delivery of a manually executed signature page.
Entire Agreement; No Oral Agreements Or Modifications:	This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.
Amendments To WSPP Agreement:	For this Transaction, the WSPP Agreement shall be amended as follows: (a) Section 9.4 is deleted in its entirety and replaced with the following:

	<p>“In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in writing within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.”</p> <p>(b) Section 22.1 is modified by inserting the following new text at the end thereof:</p> <p>“(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;</p> <p>(g) a default, event of default or other similar condition or event in respect of Seller under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than [REDACTED], which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable;</p> <p>(h) a default by Seller in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of [REDACTED];</p> <p>(i) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or</p> <p>(j) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”</p> <p>(c) Section 22.2(b) is amended by inserting “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.</p>
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	<p>(d) Section 22.3(c) is amended by deleting the third sentence thereof and replacing it with the following:</p> <p>“If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”</p> <p>(e) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”</p> <p>(f) In Section 22.3(f), delete the entire provision and replace it with the following:</p> <p>“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that the Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”</p> <p>(g) Section 28.1 is applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.</p> <p>(h) Section 30.1 is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.</p> <p>(i) Subsections 34.1 and 34.2 are deleted and replaced with the following:</p> <p>“34.1 INFORMAL DISPUTE RESOLUTION IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”</p>
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	<p>“34.2 EXCLUSIVE JURISDICTION</p> <p>EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”</p> <p>(j) The phrase “arbitration or” is deleted from the first line of Section 34.4.</p> <p>(k) The following shall be inserted as a new Section 34.5:</p> <p>“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”</p> <p>(l) Section 37 is amended by inserting the following in the beginning of the section: “On the date of entering into this Confirmation,”.</p> <p>(m) Section 41 “Witness” shall become Section 42 and the following “Standard of Review” Section shall be substituted in its place:</p>
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	<p>“The Parties agree as follows:</p> <p>From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:</p> <p>(i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956)(the “Mobile-Sierra” doctrine) and clarified in Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm’n, 558 U.S. 165 (2010).</p> <p>(ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”</p>
<p>Definitions/ Interpretations:</p>	<p>For purposes of the Confirmation, the following definitions and rules of interpretations shall apply:</p> <p>“<u>Annual Quantity</u>” has the meaning set forth on page 1 of this Confirmation.</p> <p>“<u>Buyer</u>” as used herein shall have the same meaning as “Purchaser” under the WSPP Agreement.</p> <p>“<u>CAISO</u>” means the California Independent System Operator Corporation or any successor entity performing similar functions.</p> <p>“<u>CAISO Tariff</u>” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.</p> <p>“<u>CEC</u>” means the California Energy Commission or any successor entity performing similar functions.</p> <p>“<u>Change in Law</u>” has the meaning set forth under the WSPP Agreement.</p> <p>“<u>Contract Price</u>” has the meaning set forth on page 1 of this Confirmation.</p> <p>“<u>Contract Quantity</u>” has the meaning set forth on page 1 of this Confirmation.</p>

	<p>“<u>CPUC</u>” means the California Public Utilities Commission or any successor entity performing similar functions.</p> <p>“<u>Day-Ahead Market</u>” has the meaning set forth in the CAISO Tariff.</p> <p>“<u>Delivered Energy</u>” means, in any Settlement Period, the Energy generated by the Generating Facility and delivered to the Delivery Point as measured in MWh at a CAISO-approved meter, net of all electrical losses and station use.</p> <p>“<u>Delivery Point</u>” has the meaning set forth on page 1 of this Confirmation.</p> <p>“<u>Delivery Term</u>” shall be the period set forth on page 1 of this Confirmation, during which the Delivered Energy was generated; provided that, for the sole purpose of matching delivery of RECs with Delivered Energy, such period will extend through the date that all RECs associated with such Delivered Energy have been delivered from Seller to Buyer in accordance with this Confirmation.</p> <p>“<u>Energy</u>” means electrical energy, measured in MWh.</p> <p>“<u>Fifteen Minute Market</u>” has the meaning set forth in the CAISO Tariff.</p> <p>“<u>Locational Marginal Price</u>” or “<u>LMP</u>” has the meaning set forth in the CAISO Tariff.</p> <p>“<u>Project</u>” as used herein has the same meaning as “Generating Facility.”</p> <p>“<u>Real-Time Market</u>” has the meaning set forth in the CAISO Tariff.</p> <p>“<u>Renewable Energy Credit</u>” or “<u>REC</u>” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by applicable law.</p> <p>“<u>Reporting Year</u>” means the period beginning January 1 and continuing until December 31 of the subject year (e.g., Reporting Year 2023 means January 1, 2023 through December 31, 2023).</p> <p>“<u>Settlement Period</u>” has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.</p> <p>“<u>WECC</u>” means the Western Electricity Coordinating Council or its successor organizations.</p> <p>“<u>WREGIS</u>” mean the Western Renewable Energy Generation Information System, or any successor renewable energy tracking program.</p> <p>“<u>WREGIS Certificate</u>” means a “Certificate” as defined by WREGIS in the WREGIS Operating Rules and designated by law as eligible for complying with the California RPS Program and for evidencing the RECs associated with the Product.</p> <p>“<u>WREGIS Operating Rules</u>” means the operating rules and requirement adopted by WREGIS, as amended from time to time.</p>
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This Confirmation is subject to the Exhibits identified below and attached hereto:
Exhibit A – Generating Facilities Exhibit B – Notices

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have signed this Confirmation effective as of the Effective Date.

**REDWOOD COAST ENERGY
AUTHORITY, a California joint powers
authority**

**MARIN CLEAN ENERGY, a California joint
powers authority**

Sign: _____
Print: _____
Title: _____
Date: _____

Sign: _____
Print: _____
Title: _____
Date: _____

**MARIN CLEAN ENERGY, a California joint
powers authority**

Sign: _____
Print: _____
Title: _____
Date: _____

EXHIBIT A
GENERATING FACILITIES

Facility Name	Resource ID	WREGIS ID	CEC Certification No.
Snow Mountain Hydro (Cove Hydroelectric Project)	COVERD_2_QFUNTS	W674	60178A
Sandrini Sol 1	1397 (queue position)	TBD	TBD
Humboldt Sawmill Company (Humboldt Redwood)	PACLUM_6_UNIT	W645 W790 W791	60083A

EXHIBIT B

NOTICES

SELLER	BUYER
All Notices: Redwood Coast Energy Authority 633 3rd St Eureka, CA 95501 Attn: Richard Engel Phone: 707-382-6440 Email: rengel@redwoodenergy.org	All Notices: Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Contract Administration Phone: (415) 464-6010 Email: Procurement@mcecleanenergy.org
Invoices: Attn: Accounts Payable Phone: 707-269-1700, ext. 316 Email: ap@redwoodenergy.org	Invoices: Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mcecleanenergy.org
Scheduling: Attn: The Energy Authority Day Ahead Desk Phone: 425-460-1118 Real Time Desk Phone: 425-460-1126 Email: Group-Corp-TradingCaiso@teainc.org	Scheduling: Attn: ZGlobal Phone: (916) 458-4080 Email: dascheduler@zglobal.biz
Confirmations: Attn: Richard Engel Phone: 707-382-6440 Email: rengel@redwoodenergy.org	Confirmations: Attn: Director of Power Resources Phone: (415) 464-6685 Email: Procurement@mcecleanenergy.org
Wire Transfer: Bank: Umpqua Bank ABA: [REDACTED] ACCT: [REDACTED] Beneficiary: Redwood Coast Energy Authority	Wire Transfer: Bank: River City Bank ABA: [REDACTED] ACCT: [REDACTED] ACCT NAME: MCE
Credit and Collections: Attn: Lori Biondini, Director of Business Planning and Finance Phone: 707-269-1700, ext. 316 Email: lbiondini@redwoodenergy.org	Credit and Collections: Attn: Director of Finance Phone: (415) 464-6684 Email: finance@mcecleanenergy.org
Defaults: Attn: Lori Biondini, Director of Business Planning and Finance Phone: 707-269-1700, ext. 316 Email: lbiondini@redwoodenergy.org With additional Notices of an Event of Default to: RCEA General Counsel Nancy Diamond, Law Offices of Nancy Diamond 822 G Street, Suite 3 Arcata, CA 95521 Phone: (707) 826-8540 Facsimile: (707) 826-8541 Email: ndiamond@ndiamondlaw.com	Defaults: Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@hallenergylaw.com



February 17, 2022

TO: MCE Board of Directors

FROM: Garth Salisbury, Director of Finance & Treasurer

RE: Debt Management Policy and Master Bond Indenture (Agenda Item #09)

ATTACHMENTS: A. Policy 017 - Debt Management Policy
B. Form of Master Bond Indenture
C. Bond Issuance Timeline

Dear Board Members:

Summary: Over the last 18 months, MCE has taken a number of important steps to be prepared to issue tax-exempt or taxable bonds¹ to possibly finance an ownership interest in a generating or storage asset or another asset that would help to control costs when the opportunity presents itself. This included securing a financial advisor ("FA"), Montague DeRose and Associates; and a bond counsel, K&L Gates LLC. The Board also established Ad Hoc Committees on Bonding in 2020 and 2021 that met five times over that period. During these meetings, staff, our FA, and bond counsel met with the Ad Hoc Committees to discuss and develop a Debt Management Policy ("Debt Policy") and a Master Bond Indenture (the "Bond Indenture"). The Ad Hoc Committees have completed their review and recommend the MCE Board adopt the Debt Policy and Bond Indenture.

Rationale for Adopting the Debt Policy and Bond Documents: MCE has taken many steps over the few years to strengthen our financial position including (1) meeting our Reserve Policy and Liquidity goals and subsequently increasing them; (2) establishing and funding an Operating Fund Reserve; (3) securing strong investment grade credit ratings; and (4) structuring and executing a tax-exempt prepayment transaction. MCE is maturing as a leading provider of renewable and GHG free energy, and must have access to all of the available tools to reach its ambitious goals of providing 85% renewable energy by 2029 and 95% GHG free energy by 2023.²

¹ Bonds are debt securities that are issued and sold to investors to generate capital for the acquisition of assets.

² MCE 2022 Operational Integrated Resources Plan (Nov. 2022). At p. 2. Available at https://www.mcecleanenergy.org/wp-content/uploads/2021/11/MCE-Operational-Integrated-Resource-Plan_2022.pdf.pdf.

MCE's ability to issue tax-exempt debt to finance an ownership interest in a generating or storage facility is a distinct advantage over investor-owned utilities and direct access providers. There are no specific asset purchases currently under consideration by staff. The documents before the Board, if adopted, will enable MCE to issue bonds within a six-to-eight-week time frame. This will help MCE take advantage of ownership opportunities that arise in a timely manner. Please see attached a bond issuance timeline which indicates the steps taken to date and a representation of remaining steps and timeframe to actually issue bonds.

Debt Management Policy: California law, SB 1029 (2016), requires that any state and local government agency that intends to issue debt must formulate and adopt a Debt Policy. MCE is a local government agency and the Board of Directors is required to adopt a formal Debt Policy before any debt can be issued. The proposed MCE form of Debt Policy is attached to this Staff Report and articulates: (1) the situations and steps necessary for the issuance of debt; (2) the types of debt that may be issued; and (3) how the debt fits into MCE's integrated resource plan, capital improvement program, or strategic policy goals. The policy can evolve over time to adapt to changes in market practices and Federal and State regulations. All of the current necessary state law requirements are incorporated. The Debt Policy also includes sections to (1) facilitate decision making, (2) establish basic parameters and principles; and (3) other aspects to guide future Boards, staff, and consultants. All changes or updates to the MCE Debt Policy will require Board approval.

Master Bond Indenture: The Bond Indenture dictates the requirements and conditions precedent for MCE to issue bonds. This includes financial and other operational requirements that MCE must maintain to protect bondholders and to ensure that the bonds are repaid ("Bond Covenants"). The draft Bond Indenture is attached to this staff report. The Bond Indenture is a foundational document that will guide aspects of MCE's operations as long as any bonds are outstanding. Some important standard Bond Covenants include:

- a. *Pledge of Revenue:* Requires specification of the revenues, sources of revenue and priority of payments pledged to repay the bonds.
- b. *The Rate Covenant:* Requires that MCE rates produce "net revenues" (revenues – all operating expenses) sufficient to cover the Debt Service (principal and interest payments) and an additional margin to protect bondholders (Debt Service Coverage Ratio). The Rate Covenant requires MCE to increase rates if needed to produce the required net revenues.
- c. *Additional Bonds Test:* Establishes historical and projected debt service coverage levels that must (1) have been achieved historically; and (2) are projected to be achieved in the future before additional bonds can be issued.

Final Debt Policy Metrics and Bond Covenants Not Yet Established: As MCE is not currently considering the purchase of a specific generating or storage facility or any other beneficial asset, a number of the important covenants and financial metrics have not been finalized in the Debt Policy or Bond Indenture. Once MCE has identified a project, staff

and consultants will work with the bond underwriting community and rating agencies to establish covenants that balance strong credit metrics to minimize interest costs against the appropriate financial flexibility for MCE at that time. Consequently, staff is requesting the Board consider adopting the current Debt Policy and *form of* Bond Indenture at this time. Once the optimal bond covenants and financial metrics have been determined, staff will provide them to the Board for consideration and adoption. Staff will also present any decision to issue bonds for the acquisition of a generating or storage asset to the Board for consideration prior to issuing bonds.

Fiscal Impacts: There are no fiscal impacts to adopt the Debt Management Policy and form of Master Bond Indenture.

Recommendations: Adopt Policy 017 - Debt Management Policy and form of Master Bond Indenture.



Policy 017 - Debt Management Policy

1. Background

The formation of Marin Clean Energy (“MCE” or the “Agency”), formerly Marin Energy Authority, was made possible by the passage, in 2002, of California Assembly Bill 117, enabling communities to purchase power on behalf of their residents and businesses, and creating competition in power generation.

MCE was established under the Joint Exercise of Powers Act, Chapter 5 of Division 7 of Title 1 of the California Government Code, commencing with Section 6500 (the “Act”); and a Joint Powers Agreement (the “Agreement”), executed on December 19, 2008; which established MCE as a Joint Powers Authority (“JPA”) to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs. Accordingly, participants in the JPA elected to implement a Community Choice Aggregation Program known as Marin Clean Energy. MCE was established to provide electric power and related benefits within MCE’s service area, including developing a wide range of renewable energy sources and energy efficiency programs. MCE is responsible for the acquisition of electric power for its service area. Governed by an appointed Board of Directors, MCE has the rights and powers to set rates and charges for electricity and services it furnishes, incur indebtedness, and issue bonds or other obligations.

2. Purpose and Goals

The financial strength of MCE is one of the necessary pillars of the Agency if it is to deliver on its mission to address climate change by providing competitively priced renewable and GHG-free energy to its customers. MCE’s policies and procedures will be designed to strengthen its financial position to allow the Agency to achieve its environmental goals.

The MCE Board of Directors adopts budgets and establishes and adjusts rates, as appropriate, each fiscal year to provide sufficient revenues to pay all operating expenses and to make required payments and comply with commitments on all other debts or financial obligations of the Agency. MCE and the Board of Directors are committed to long-term financial planning, maintaining appropriate reserve levels, and employing prudent practices in governance, management, and budget administration. To meet its goals, MCE will utilize financial policies that foster financial stability, support fiscal discipline, and enable MCE to maintain strong investment-grade credit ratings.

The purpose of this Debt Management Policy (“Policy”) is to establish guidelines for the issuance and management of debt issued by MCE. This Policy confirms the commitment of the MCE Board, management, staff, advisors and other decision makers to adhere to sound financial management practices, including full and timely repayment of all borrowings, allowing continuing ready access to the capital markets to achieve the most effective cost of capital within prudent risk parameters. The goals and objectives of this Debt Management Policy are as follows:

- Maintain cost-effective access to capital markets
- Maintain a prudent level of financial risk
- Preserve future financial flexibility
- Finance capital projects, acquisitions, or improvements in a timely and cost-effective

manner

- Manage debt effectively within MCE Board objectives and parameters
- Maintain strong credit ratings and good investor relations
- Maintain compliance with all relevant laws, reporting, and disclosure requirements
- Foster integrity in the debt management process

Further, this Policy is intended to comply with the regulatory requirements of California Government Code Section 8855 and Senate Bill 1029 which, among many things, requires debt issuers to adopt a local debt policy governing the issuance of debt and to enhance the management of government financial resources.

3. Scope and Authority

This Policy shall govern the issuance and management of all bonds and other forms of indebtedness of MCE, together with any credit, liquidity, or other security instruments and agreements that may be executed in connection with the issuance of bonds and other forms of indebtedness (“bonds” or “debt”). It also considers certain financial targets which MCE and its Board may contemplate in the future in order to continue to implement its capital investment program and to support cost effective borrowing.

While this Policy specifically governs debt issued directly by MCE, MCE may consider joint arrangements with other municipal issuers or private parties to finance a project when it serves MCE’s policy objectives. MCE is authorized to join together with other municipal agencies to create a separate entity, such as a joint powers authority, to issue debt on behalf of MCE or the project participants. Typically, joint venture debt is repaid through revenues generated by the project, and MCE will be liable only for its share of debt service, as specified in a contract executed in connection with the joint venture debt. If the potential for a joint venture does exist, MCE will examine and negotiate the financial arrangements, obligations, liabilities, tax issues and other factors that may arise in the context of impacts on MCE and its direct debt obligations using this Policy and financial best practices as guidance. MCE will comply with state law limitations and in general, avoid joint procurement situations if MCE lends it credit or enhances the credit of another entity, unless doing so will result in other net tangible benefits to MCE. Further, as with all MCE debt, any joint venture debt would be subject to evaluation and authorization of the Board.

While adherence to this Policy is generally required, it is recognized that changes in the capital markets, MCE programs and other unforeseen circumstances may from time to time produce situations that are not covered by the Policy and will require modifications or exceptions to best achieve policy goals. In these cases, management flexibility is appropriate, provided specific authorization from the MCE Board is obtained.

This Policy shall be reviewed at least annually as described below and presented to the MCE Board for approval of any changes as appropriate. This Policy will remain in effect as amended or restated in the future by the Board.

Notwithstanding anything in this Policy to the contrary, the failure of MCE to comply with any provisions of this Policy shall not affect the authorization, validity or enforceability of any debt or other forms of indebtedness that are otherwise issued in accordance with law.

4. Use of Debt

To achieve its objectives, MCE may consider debt financing for the construction, acquisition, rehabilitation, replacement, or expansion of physical assets, including real and personal property, equipment, furnishings, and improvements. Debt may also be issued for other Board-approved needs or for the refunding of prior outstanding debt.

For example, MCE may consider the use of debt to finance ownership interest in generating or storage assets if it is determined to be a cost-effective alternative to a standard power purchase

agreement or if asset ownership may afford synergies between MCE's other objectives (e.g. resiliency, GHG free energy etc.) or additional measurable advantages in terms of operational efficiency.

MCE, under the direction of the Board, will retain full flexibility in determining the best funding approach on a case-by-case basis.

5. Types of Debt

Types of bond issuance, further described in the Appendix, include:

- **New Money:** Debt may be incurred to provide for capital financing for future capital expenditures or reimbursement of prior expenditures.
- **Refunding:** Refunding bonds may be issued to realize debt service savings, restructure outstanding debt, modify covenants, or for other debt management purposes. Absent significant non-economic factors, refunding transactions contemplated solely for debt service savings must produce a minimum aggregate net present value debt service savings of at least 3% of the par value of the refunded bonds, calculated using the refunding issue's true interest cost (TIC) as the discount rate. MCE will work with its Municipal Advisor (MA) to assess potential refunding opportunities.

Bonds may be issued as taxable or federally tax-exempt:

- **Tax-Exempt:** Interest received by bondholders of MCE's bonds issued on a federally tax-exempt basis is exempt from federal income tax, and so typically may be issued at lower interest rates, reducing MCE's cost of borrowing. Additional interest rate advantages may be available for bank qualified bonds (where MCE will issue less than \$10 million of tax-exempt bonds in a year). However, MCE is limited by federal tax law in the uses of tax-exempt bond proceeds and must comply with additional federal tax law requirements during the full term of any bond issue. Uses of proceeds typically require a governmental purpose and must be spent on capital improvements rather than operating expenses. Tax implications include having reasonable expectations for spending proceeds at the time of issuance, limiting private use of financed projects, and complying with arbitrage restrictions on the bond proceeds.
- **Taxable:** Taxable debt's interest is not exempt from federal income tax, and so is typically issued at higher interest rates than tax-exempt debt. However, the IRS restrictions described above do not apply, and so MCE may wish to use taxable debt in situations where the project or purpose of borrowing may not meet federal tax law requirements. MCE may also consider taxable tax credit or direct subsidy bonds, such as Clean Renewable Energy Bonds, Qualified Energy Conservation Bonds, etc., that offer lower costs of borrowing to MCE through the issuance of taxable debt that is supported by federal subsidy payments on the interest expense to MCE.

6. Method of Sale

MCE may choose to issue bonds using either a competitive or negotiated sale process. MCE may also sell bonds by means of a private placement or direct sale with a financial institution or other accredited investor when this method is expected to result in cost savings or provide other advantages compared to a traditional public offering. MCE staff will work with its Municipal Advisor to determine the most appropriate method of sale for each issuance. Please see the Appendix for a detailed description of the different methods of sale that MCE may consider.

7. Structure and Term

The repayment schedule of a bond issue can vary greatly from one sale to another. The same is true for other debt instruments. MCE will consider which structures meet MCE's strategic goals, are cost effective, minimize the new debt's impact on MCE's overall debt service schedule, future

debt capacity, and other factors when deciding how to structure new debt. In addition to debt amortization terms, structuring options may include the addition and procurement of credit enhancement, the establishment of reserves, the use of capitalized interest, and call or redemption options.

In structuring debt service, MCE shall consider (1) current and forecasted revenues and any anticipated changes to rates, charges and operating expenses, (2) future borrowing plans, (3) meeting the Credit Considerations described in Section 8, and (4) feedback from the Municipal Advisor and rating agencies on a structure's potential impacts to MCE's credit worthiness. Generally, but not a requirement under this Policy, MCE prefers level debt service over time. MCE, consistent with tax law, will not structure debt with a maturity date that materially exceeds the average useful life of the assets or improvements being financed.

8. Credit Considerations

When MCE issues debt, the Agency will have to execute certain bond documentation and agreements (herein generally referred to as 'indentures') that will bind MCE to specific terms or requirements. Generally speaking, MCE will agree to abide by certain covenants written in the indenture which describes in detail the obligations and responsibilities of MCE and the rights of the bondholders which are designed to protect bondholders by setting standards by which MCE agrees to comply. These types of covenants may require MCE to meet certain requirements or, conversely, may forbid MCE from undertaking certain activities that would jeopardize MCE's ability to repay its debt. An indenture defines MCE's contractual obligations and determines the parameters of MCE's permissible financial behavior.

The incorporation of effective bond covenants into MCE's future bond issues and respective documentation signal a commitment to abide by stated financial and operating parameters over the long-term and contribute towards MCE's ability to maintain strong financial health. Credit ratings are ultimately statements about the likelihood of full and timely debt repayment. Because bond covenants govern an issuer's ongoing financial behavior, the analysis of bond/indenture covenants and their impact on the risk profile of a bond is an integral part of the credit rating process.

Credit ratings are fundamentally forward-looking opinions on the relative default risk associated with a particular issuer and its debt obligations. Credit ratings have a significant impact on the interest rates for MCE debt, and therefore MCE will work to address the cost and benefits of obtaining and maintaining strong credit ratings. Depending on the lien structure of the debt, some, or all, of the following factors may be included in its bond documentation in order to obtain and maintain strong credit ratings that would broaden the appeal of and lower the cost of debt issued by MCE.

- **Debt Service Coverage Ratio:** The ability of an agency to pay debt service (i.e. principal and interest on debt obligations) when due is often measured by how much cash flow is available, after payment of operating expenses, to cover debt service payments (Debt Service Coverage Ratio). Debt Service Coverage Ratio is a common financial metric used in the utility industry and is used by the rating agencies and investors to determine the ability of a utility to fulfill its debt obligations and ensure that the utility generates sufficient revenues to make its debt secure. MCE's future indentures will likely require cash flow in excess of debt service, or a Debt Service Coverage Ratio greater than 1.0x. Many public agencies target a Debt Service Coverage Ratio in its financial and debt policies higher than the minimum required by its indenture to improve debt ratings and lower their costs of borrowing. Should MCE establish a minimum Debt Service Coverage Ratio in its future indentures, the Board may consider establishing a target ratio in this Policy that is higher than the legal minimum. Note, that a failure by MCE to meet a target ratio proposed in this Policy will not result in a default under the indenture so long as the minimum Debt Service Coverage Ratio is achieved.
- **Rate Covenant:** A rate covenant is a promise to set rates or fees at levels that are set to

recover sufficient revenues at a designated threshold level to cover operating expenses and debt service payments. This designated threshold level is the same as the Debt Service Coverage Ratio discussed previously. MCE may develop one or more rate covenants in order to measure and govern operating performance. As noted, future indentures may establish minimum levels of coverage and MCE's Board-adopted financial policies may establish internal goals that exceed these minimum coverage requirements.

- **Additional Bonds Test:** If MCE were to issue bonds or other debt obligations, the indentures governing those obligations may have covenants that stipulate whether MCE may sell additional bonds in the future that share that same pledged revenue stream as security. MCE may develop conditions or standards in its indentures that describe the parameters whereby MCE could issue additional bonds (referred to as an "additional bonds test"). This test is intended to ensure that future bond issuance does not reduce bondholder security by placing too high a burden on the revenue stream. The additional bonds test may require that MCE demonstrate that it has sufficient revenues to meet or exceed the designated Debt Service Coverage Ratio before additional bonds can be issued.
- **Reserves:** MCE may maintain reserves including those in compliance with GASB 62 such as the adopted Operating Reserve Fund to act as a rate stabilization fund that can help mitigate the impacts of revenue variability. Depending on whether or not MCE incorporates a rate stabilization fund reserve into its indentures, this reserve may be used to help meet Debt Service Coverage Ratio requirements during times of revenue shortfalls. This fund can be a valuable tool to manage and mitigate the risk related to any Debt Service Coverage Ratio requirements included in future indentures and to address revenue and rate volatility. There are other reserves that the Board may consider adopting in the future that, for example, may be utilized for paying debt service, for funding specific capital projects, or for emergency purposes etc.

Additional Ratio Targets: In the future the Board will continue to monitor this Policy and will establish enhancements to further strengthen the financial ratios and targets of MCE. For example, while not a ratio included in Indenture covenants, another ratio that can help measure MCE's financial health and position is the ratio of debt-funded capital to overall capital spending (i.e., debt to pay-go spending). Prudent use of debt financing rather than pay-go funding of capital projects can facilitate better allocation of resources over time and ensure payment equity across generations for the use of long-term assets.

Financing Team and Professional Services

MCE will assemble a financing team that will provide advice and support for the development and implementation of debt issuance as well as ongoing analysis and support. The financing team will include both MCE staff and outside professional consultants. When required by MCE's solicitation policy, MCE will use a competitive process through a Request for Proposal (RFP) in the retention of professional consultants. Otherwise, MCE will adhere to its best practices in contracting to procure such vendors. The professional consultants selected by MCE could be engaged to help develop a credit strategy, issue debt and/or assist MCE with its compliance with applicable federal and state statutes, and Internal Revenue Code at the time of issuance as well as on a continuing basis. Please see the Appendix for a detailed description of the outside professional consultants MCE may include on its financing team.

9. Debt Administration

The CEO or designee shall make recommendations on budget, stabilization transfers and rate adjustments. The Director of Finance shall be responsible for the administration and implementation of this Policy and will have day-to-day responsibility for structuring, implementing and managing MCE's debt program.

10. Internal Control Procedures

When issuing debt, in addition to complying with the terms of this Policy, MCE shall comply with any other applicable policies regarding initial bond disclosure, continuing disclosure, post-issuance compliance, and investment of bond proceeds. Please see the Appendix for a detailed description of MCE's internal control procedures.

11. Post-Issuance Administration

MCE will comply with requirements pertaining to initial bond disclosure, continuing disclosure, tax-exemption, post-issuance compliance, and investment of bond proceeds. This includes any continuing disclosure undertakings under Securities and Exchange Commission (SEC) Rule 15c2-12; tax covenants and related federal tax compliance requirements such as arbitrage restrictions and rebate requirements; and all California State reporting requirements. Please see the Appendix for a detailed description of MCE's Post-Issuance Compliance Policy and additional information on MCE's post-compliance procedures.

12. Training

The Director of Finance shall provide training the members of MCE staff involved in the tax compliance and the initial or continuing disclosure process in coordination with the CEO, and the Board of Directors regarding their respective responsibilities for disclosure and tax compliance.

The Director of Finance, or designee, shall arrange for periodic disclosure and tax training sessions conducted by MCE's disclosure counsel or other professionals (e.g., seminars) which shall include education regarding disclosure policies, MCE's disclosure obligations under applicable federal and state securities and tax laws, and the tax compliance and disclosure responsibilities of MCE.

13. Policy Review

In coordination with the CEO, the Director of Finance, or designee, will be responsible for regularly reviewing and updating this Policy, and shall present any recommended revisions to the Board for consideration and adoption.

APPENDIX

Permitted Types of Debt

MCE may legally issue both short-term and long-term debt, through either a direct loan or through the public market, using the debt instruments described below. MCE in consultation with its internal Counsel, Bond Counsel and Municipal Advisors, shall determine the most appropriate instrument for a proposed debt offering.

MCE may issue the following types of tax-exempt or taxable Debt:

- **Long-Term Debt:** Long-term debt generally includes debt issued to finance capital expenditures with the objective of structuring repayment within the expected life of the financed asset. Debt may be used as a tool for rate stabilization as repayment of the debt is spread over the useful life of the financed project. Long-term bonds may bear interest at fixed or variable rates or structured with level debt service payments or otherwise with term maturities. Long-term revenue bonds are a type of debt that may be entered into by MCE and which may be secured by a lien on the revenues of MCE. MCE may also enter into long-term loans with state or federal agencies. These loans typically have fixed interest rates. Government loan programs may offer favorable interest rates and terms, and should be considered as alternatives to market rate debt when available. The use of long-term debt will be evaluated with pay-as-you-go capital investment and would not be expected (absent extraordinary circumstances) to fund non-capital operational expenditures or operating deficits.
- **Short-Term Debt:** Short-term debt generally has a maturity of less than 7 years and may take several forms, including notes, commercial paper, direct bank loans and other short-term products with either fixed or variable rates. Short-term debt products are flexible cash management tools that are primarily used to meet interim funding (pending the issuance of long-term debt). When approving short-term debt products, the Board may limit MCE's percentage of short-term debt when compared to its long-term debt portfolio taking into account future market access, term-out provisions and retail rate stability.
- **Variable-Rate Debt:** In addition to interim financing, which includes commercial paper and similar short-term borrowing programs, it may be appropriate to issue long-term variable rate debt that bears an interest rate that is reset periodically at predetermined intervals, including entering into revolving credit facilities, to diversify the debt portfolio, to reduce interest costs, and to improve the match of variable rate assets (such as short-term investments and reserves) to liabilities. The amount of variable rate debt will generally not exceed a net 20% after consideration of investments and cash equivalents of the outstanding debt portfolio of MCE.
- **Refunding Debt:** Refunding bonds may be issued to refinance existing bonds to achieve debt service savings, restructure the type of debt outstanding, modify MCE's covenants to bondholders, restructure future debt service payments, take advantage of market opportunities, or to reduce exposure to certain counterparties. MCE will work with its Municipal Advisor (MA) to assess potential savings and determine whether refunding bond issuance is warranted. If refunding bonds are being contemplated solely for debt service savings, the refunding should generally result in a reduction in average annual debt service or provide an overall savings target (net of all costs) set by the Board at the time it approves the financing. This savings target may be adjusted depending on the remaining term of the debt or under circumstances where the number of refunding options is then limited by federal tax law.

MCE may consider the following types of fixed or variable rate debt:

- Revenue Bonds secured by general revenues or project revenues
- Commercial Paper or other Interim Funding Notes
- Capital Leases
- Certificates of Participation/Lease Revenue Bonds

- Installment Sale or Purchase Agreements Revenue Bonds
- Bond or Grant Anticipation Notes
- Tax and Revenue Anticipation Notes
- State and Federal Loans and Grants
- Direct Bank Loans or Lines of Credit

This list is not meant to be inclusive of all options that may be available to MCE as different circumstances may dictate. MCE may from time to time find that other types of debt would be beneficial to further its purposes and may approve such debt without an amendment to this Policy.

Method of Sale

MCE may choose to issue bonds using either a competitive or negotiated sale process. MCE may also sell bonds by means of a private placement or direct sale with a financial institution or other accredited investor when this method is demonstrated to result in cost savings or provide other advantages relative to a traditional public offering. MCE staff will work with its Municipal Advisor to determine the most appropriate method of sale for each issuance.

- **Competitive Sale:** MCE may elect to sell bonds in the public market on a competitive basis depending on market conditions, required size of issuance and relative complexity of structure. The Bonds are marketed to a wide audience of investment banking (underwriting) firms. The underwriter is selected based on its bid for the securities. MCE will award the sale of the competitively sold bonds on the basis of the lowest true interest cost basis. Pursuant to this policy, The Director of Finance, or designee, is authorized to sign the bid form on behalf of the MCE fixing the interest rates on bonds sold on a competitive basis.
- **Negotiated Sale:** MCE may elect to sell bonds in the public market on a negotiated basis depending on market conditions, required size of issuance and relative complexity of structure. MCE staff selects the underwriter, or team of underwriters, of its securities in advance of the bond sale on the basis of responses to a proposal review. With the assistance of the MA, MCE staff works with the underwriter to bring the issue to market and negotiates all rates and terms of the sale. In advance of the sale, MCE staff will determine compensation for and liability of each underwriter employed and the designation rules and priority of orders under which the sale itself will be conducted. Pursuant to this policy, the Director of Finance or designee will be authorized to sign the bond purchase agreement on behalf of MCE, fixing the interest rates on bonds sold on a negotiated basis.
- **Private placement:** MCE may elect to issue debt on a private placement basis. Such method shall be considered if it is demonstrated to result in cost savings or provide other advantages relative to other methods of debt issuance, or if it is determined that access to the public market is unavailable and/or timing considerations require that a financing be completed more quickly than required for a competitive or negotiated sale.

Financing Team and Professional Services

MCE will assemble a financing team that will provide advice and support for the best execution of each debt transaction. The financing team may consist of multiple parties with distinct responsibilities and is generally comprised of both MCE staff and outside professional consultants. These outside professional consultants may include:

- **Municipal Advisors:** MCE shall utilize the services of independent municipal advisors (MAs) in connection with debt-related issuances or projects. MCE's MA will not serve as an underwriter on negotiated bond sales of MCE.

- **Underwriters:** MCE will utilize an underwriter in the sale of bonds on a competitive or negotiated basis. An underwriter is a financial services firm that acquires (by purchase) bonds for resale in the public bond markets. For a negotiated sale, MCE will select an underwriter through a request for proposal process; basing the selection on value for MCE including capital structure, underwriting capabilities, demonstrated expertise and experience as well as proposed fees. MCE may also select an underwriting firm to act as placement agent in connection with a private placement of bonds. In a competitive sale, bonds are offered for sale at a designated date and time, and multiple underwriters may submit bids. The bonds are awarded to the underwriter (or group of underwriters) that submit the lowest bid.
- **Disclosure Counsel:** MCE will endeavor to provide complete and appropriate disclosure of financial and legal condition in the issuance of debt. MCE will also take steps and adopt policies in order to provide for compliance with continuing disclosure requirements. Disclosure counsel, which may be Bond Counsel, shall be responsible for assisting MCE in the preparation of the Preliminary and Final Official Statements and any other disclosure documents. MCE will select, through a request for proposal process, and retain qualified and experienced counsel in achieving this objective of appropriate disclosure.
- **Bond Counsel:** MCE will retain qualified and experienced legal counsel as representation of MCE to provide the customary opinions required for the issuance of bonds and other financial obligations. Bond counsel shall be responsible for developing the legal documents required for each transaction and draft and review documentation sufficient to provide approving legal opinions. Bond counsel will render customary approving legal and tax opinions for each transaction.
- **Trustee:** MCE may select through a request for proposal process the services of a financial institution, acting through its trust division, to act as trustee. The trustee may hold, invest and disburse financing proceeds as directed by MCE. The trustee will act as registrar as well as the paying agent for MCE debt. The Director of Finance or designee shall monitor the services rendered by the trustee.

Internal Control Procedures

All debt transactions must be approved by the Board of Directors. The proceeds of bond sales will be invested until used for the intended project(s) in order to maximize utilization of the public funds. The investments will be made consistent with the following guidelines: (1) compliance with federal tax arbitrage requirements, as applicable, (2) safety of principal, (3) liquidity, (4) diversity and (5) return on investment or yield, and may be held as cash. MCE's Investment Policy guidelines and bond indentures will govern objectives and criteria for investment of bond proceeds. The Director of Finance or Treasurer will oversee the investment of bond proceeds consistent with the foregoing guidelines.

Proceeds of debt will be held either by a third-party trustee or by MCE. The trustee will disburse bond proceeds to MCE upon submission of one or more written requisitions signed by an authorized MCE officer. If the funds are held directly by MCE, they must be held and accounted for in a separate fund or account, the expenditure of which will be documented by MCE and subject to established internal controls consistent with MCE's applicable policies and procedures. These procedures will include, in connection with each requisition or expenditure of proceeds held by MCE, a written record of the particular capital project or program or other expense to which the funds drawn were applied or allocated.

For bond proceeds that are meant to reimburse MCE for previous expenditures, MCE staff will provide documentation that conform to tax requirements and other applicable regulations. To support this certification, staff will analyze capital expenditures and establish that requirements are met before the bond issuance takes place and maintain a written record of such analysis and the amount reimbursed to each particular capital project or program or other expense to which such reimbursed proceeds are to be allocated.

For bond proceeds intended to provide funding for ongoing or upcoming capital expenditures, MCE staff will monitor the expenditure process. Staff will analyze the use of proceeds on an annual basis or more frequently, if deemed appropriate, until the proceeds are completely spent and will perform monitoring and record-keeping in accordance with MCE's accounting guidelines and other applicable regulatory requirements.

Refunding bond proceeds are generally held by a third-party trustee or fiscal agent to be applied in connection with written directions generally prepared by bond counsel. MCE will maintain records of the directions to the trustee, and will review of fund statements and other records received from, the trustee.

Post-Issuance Administration

MCE will comply with requirements pertaining to initial bond disclosure, continuing disclosure, tax-exemption, post-issuance compliance, and investment of bond proceeds. This includes any continuing disclosure undertakings under Securities and Exchange Commission (SEC) Rule 15c2-12; tax covenants and related federal tax compliance requirements such as arbitrage restrictions and rebate requirements; and all California State reporting requirements.

- **Post-Issuance Compliance Policy:** MCE will adopt a Post-Issuance Compliance Policy ("PICP") to provide for ongoing monitoring and reporting with respect to compliance with SEC requirements for publicly offered indebtedness and with tax regulations applicable to tax-exempt debt. The PICP will provide for the federal disclosure requirements, responsibility for reporting, training, and describe procedures for compliance with continuing disclosure agreements entered into for each such series of bonds from the date they are issued until the bonds are no longer outstanding. The PICP may be administratively adopted and amended without approval of the Board.
- **Financial Disclosure:** MCE will comply with applicable deliverable obligations and financial disclosure requirements, as specified in any and all bond and debt-related documents. Staff has developed and will maintain an updated schedule of the requirements in compliance with MCE's internal record-keeping processes. MCE will post required documents to the Municipal Securities Rulemaking Board (MSRB)'s Electronic Municipal Market Access (EMMA) website as required on a timely basis. MCE, at its discretion, may also post documents voluntarily to EMMA. MCE will provide financial disclosure to rating agencies, institutional and individual investors, other levels of government, and the general public to share clear, comprehensible, financial information using the appropriate channels/policies/procedures. The Director of Finance is responsible for monitoring the compliance by MCE of applicable disclosure requirements. MCE also may contract with an outside service provider to monitor disclosure postings.
- **Tax Compliance:** MCE will comply with applicable federal arbitrage and rebate regulations related to its bonds and other debt instruments. These responsibilities include monitoring the investment and expenditure of bond proceeds, maintaining a system of record-keeping and reporting and contracting for the services of outside arbitrage consultants as necessary. MCE will establish and implement post-issuance procedures to guide its compliance with these requirements. The Director of Finance is responsible for monitoring the compliance by MCE of applicable tax requirements for debt issued on a tax-exempt basis.
- **Record Keeping:** A copy of all debt-related records shall be retained at MCE's offices or otherwise electronically. At a minimum, these records shall include all official statements, bid documents, bond documents/transcripts, indentures, resolutions, trustee statements, leases, and title reports for each financing (to the extent available). The following documents shall be maintained for the term of each issue of bonds (including refunding bonds) plus at least three years:
 - A copy of the bond closing transcript(s) and other relevant documentation delivered to MCE at or in connection with closing of the issue of bonds;

- A copy of material documents relating to capital expenditures financed or refinanced by bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, draw requests for bond proceeds and evidence as to the amount and date for each draw down of bond proceeds, as well as documents relating to costs paid or reimbursed with bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with bond proceeds, including a final allocation of bond proceeds;
- A copy of all contracts and arrangements involving the use of bond-financed or refinanced assets; and
- A copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements, in connection with any investment agreements, and copies of all bidding documents, if any.

Draft dated 12/16/2021

MASTER
INDENTURE OF TRUST

between

MARIN CLEAN ENERGY

and

[_____], as Trustee

Dated as of _____ 1, 202__

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INDENTURE OF TRUST

THIS MASTER INDENTURE OF TRUST, made and dated as of ____ 1, 202 __, by and between MARIN CLEAN ENERGY (“MCE”), a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California (the “State”), Government Code Section 6500 et. seq. (the “Act”), organized and existing under the Constitution and laws of the State, and _____, a _____ and having its principal place of business in _____, as Trustee (the “Trustee”),

W I T N E S S E T H:

WHEREAS, MCE is a joint powers authority organized and existing pursuant to the Joint Exercise of Powers Act (constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500), as amended or supplemented from time to time) (the “Joint Powers Act”), as a “community choice aggregator” (“CCA”) as defined in Section 331.1 of the Public Utilities Code of the State of California, as amended (the “Public Utilities Code”), formed in order to address climate change by reducing energy related greenhouse gas emissions and securing energy supply and price stability, energy efficiencies and local economic benefits, to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar and wind energy production; and

WHEREAS, MCE was formed and its powers are enumerated in that certain Joint Powers Agreement (the “Agreement”), entered into as of December 19, 2008, as amended, pursuant to the provisions of the Act and enacted by the governmental entities named in the Agreement; and

WHEREAS, the Agreement authorizes MCE to: (a) make and enter into contracts; (b) incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Section 53850 et seq. and authority under the Act; and (c) issue revenue bonds and other forms of indebtedness; and

WHEREAS, pursuant to the Agreement, the debts, liabilities or obligations of MCE shall not be debts, liabilities or obligations of the individual parties to the Agreement unless the governing board of such a party agrees in writing to assume any of the debts, liabilities or obligations of MCE, and any party who has not agreed to assume a debt, liability or obligation of MCE shall not be responsible in any way for such debt, liability or obligation even if a majority of the parties to the Agreement agree to assume the debt, liability or obligation of MCE; and

[expand with WHEREAS’s for future authorizing resolutions and actions of the Board];
and

WHEREAS, to provide for the authentication and delivery of the bonds issued pursuant to this Master Indenture (the “General Revenue Parity Bonds”), to establish and declare the terms and conditions upon which the General Revenue Parity Bonds are to be issued and secured and to secure the payment of the principal thereof and interest thereon, MCE has authorized the execution and delivery of this Master Indenture, Series Indenture(s), and such loan agreements or other

documents as the Designated MCE Representative shall determine are necessary to effectuate the purposes of this Master Indenture; and

WHEREAS, the Trustee has agreed to accept the trusts herein created upon the terms herein set forth;

NOW, THEREFORE, THIS MASTER INDENTURE

WITNESSETH:

GRANTING CLAUSES

MCE, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the General Revenue Parity Bonds by the Owners thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, to secure the payment of the principal of and interest on the General Revenue Parity Bonds according to their tenor and effect and to secure the performance and observance by MCE of all the covenants expressed or implied herein and in the General Revenue Parity Bonds, does hereby grant, without recourse, a security interest in the Trust Estate to the Trustee and its successors in trust and assigns forever, for the securing of the performance of the obligations of MCE hereinafter set forth:

TO HAVE AND TO HOLD all and singular the Trust Estate, whether now owned or hereafter acquired, to the Trustee and its respective successors in trust and assigns forever:

I.

All Available General Revenues paid into the Bond Fund and all of MCE's rights, title and interest in and to among other things, the assignment of MCE's rights, title, and interest in and to the Available General Revenues paid into the Bond Fund, including, but without limiting the generality of the foregoing, the present and continuing right to make claim for, collect and receive any of the money, income, revenues, issues, profits and other amounts payable or receivable thereunder, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which MCE or any other person is or may become entitled to do hereunder, but reserving, however, to MCE, MCE's Reserved Rights;

II.

All funds and accounts established under this Master Indenture and the investments thereof, if any, and money, securities and obligations therein (subject to disbursements from any such fund or account upon the conditions set forth in this Master Indenture) excepting the Rebate Fund;

III.

All money and securities from time to time held by the Trustee under the terms of this Master Indenture (except for the Rebate Account) ;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all present and future Owners of the General Revenue Parity Bonds issued under and secured by this Master Indenture without privilege, priority or distinction as to the lien or otherwise of any of the General Revenue Parity Bonds over any of the other General Revenue Parity Bonds, except as expressly provided herein;

PROVIDED, HOWEVER, that if MCE, its successors or its assigns shall well and truly pay, or cause to be paid, the principal of, and interest on the General Revenue Parity Bonds, due or to become due thereon, at the times and in the manner mentioned in the General Revenue Parity Bonds and as provided in Article IX hereof according to the true intent and meaning thereof, and shall cause the payments to be made as required under Article IV hereof, or shall provide, as permitted hereby, for the payment thereof in accordance with Article IX hereof, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Master Indenture to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee sums of money due or to become due in accordance with the terms and provisions hereof, then upon such final payments or deposits as provided in Article IX hereof, this Master Indenture and the rights hereby granted shall cease, terminate and be void, and the Trustee shall thereupon cancel and discharge this Master Indenture and execute and deliver to MCE such instruments in writing as shall be requisite to evidence the discharge hereof.

THIS MASTER INDENTURE FURTHER WITNESSETH, that MCE does hereby covenant to and agree with the Trustee, for the benefit of the respective Owners from time to time of the General Revenue Parity Bonds, as follows:

ARTICLE I DEFINITIONS; CONTENT OF CERTIFICATES AND OPINIONS

SECTION 1.01 Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Master Indenture, each Series Indenture and of any indenture supplemental hereto and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined.

Accreted Value means (1) with respect to any Capital Appreciation Bonds, as of any date of calculation, the sum of the initial principal amount of such General Revenue Parity Bonds plus the interest accumulated, compounded and unpaid thereon as of the most recent compounding date, or (2) with respect to Original Issue Discount Bonds, as of the date of calculation, the amount representing the initial public offering price of such General Revenue Parity Bonds plus the amount of discounted principal which has accreted since the date of issue. In each case the Accreted Value shall be determined in accordance with the provisions of the Series Indenture authorizing the issuance of such General Revenue Parity Bonds.

Act means the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq., as amended from time to time.

Agreement means the Joint Powers Agreement, entered into as of December 19, 2008, as amended, pursuant to the provisions of the Act and enacted by the governmental entities named in the Agreement and forming MCE.

The **Amount Due** (for purposes of the Rate Covenant) in each fiscal year of MCE shall be equal to (a) Scheduled Debt Service, plus (b) any other amounts due to any Credit Facility Issuer or any Liquidity Facility Issuer, but excluding from the foregoing (i) payments made or to be made from refunding debt and capitalized debt service or other money irrevocably (by Board of Directors resolution) set aside for such payment and (ii) Debt Service Offsets identified by MCE in a certificate of the Designated MCE Representative.

Annual Debt Service means the total amount of Debt Service paid for any series of Outstanding General Revenue Parity Bonds in any fiscal year or Base Period.

Available General Revenues mean the Gross Revenue of MCE after providing for the payments set forth in the First paragraph of Section 3.02 of this Master Indenture, excluding any Released Revenues.

Available General Revenues as First Adjusted means Available General Revenues increased (without duplication) by Debt Service Offsets identified by MCE in a certificate of the Designated MCE Representative and subject to further adjustment to reflect the following:

(a) It is the intent of MCE that regularly scheduled net payments under derivative products (interest rate hedges) with respect to MCE revenue obligations (regardless of lien position) be reflected in the calculation of debt service obligations with respect to those revenue obligations and not as adjustments to Gross Revenue or Operating Expenses; and

(b) Gross Revenue and Operating Expenses may be adjusted, regardless of then applicable generally accepted accounting principles, for certain items (e.g., to omit) in order to more fairly reflect MCE's annual operating performance.

Balloon Maturity Bonds means any General Revenue Parity Bonds that are so designated in the Series Indenture pursuant to which such General Revenue Parity Bonds are issued. Commercial paper (obligations with a maturity of not more than 270 days from the date of issuance) shall be deemed to be Balloon Maturity Bonds.

Base Period means any consecutive 12-month period selected by the Designated MCE Representative out of the 30-month period next preceding the date of issuance of an additional series of General Revenue Parity Bonds.

Beneficial Owner or Owner means any person that has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any General Revenue Parity Bonds (including persons holding General Revenue Parity Bonds through nominees, depositories or other intermediary).

BMA Municipal Swap Index means the Bond Market Association Municipal Swap Index as of the most recent date for which such index was published or such other weekly, high-grade index comprised of seven-day, tax-exempt variable rate demand notes produced by Municipal Market Data, Inc., or its successor, or as otherwise designated by the Bond Market Association; *provided*, however, that, if such index is no longer produced by Municipal Market Data, Inc. or its successor, then BMA Municipal Swap Index shall mean such other reasonably comparable index selected by the Designated MCE Representative.

Board of Directors means the elected governing body of MCE, or any successor thereto as provided by law.

Bond Counsel means a firm of lawyers nationally recognized and accepted as bond counsel and so employed by MCE for any purpose under this Master Indenture applicable to the use of that term.

Bond Fund means the Bond Fund authorized to be created pursuant to Section 3.01 of this Master Indenture.

Business Day means any day other than a Saturday, a Sunday, a day on which banking institutions in the State, the State of New York or any state in which the Principal Office of the Trustee is located are closed, or a day on which the New York Stock Exchange is closed.

Capital Appreciation Bonds means General Revenue Parity Bonds all or a portion of the interest on which is compounded, accumulated and payable only upon redemption, conversion or on the maturity date of such General Revenue Parity Bonds. If so provided in the Series Indenture authorizing their issuance, General Revenue Parity Bonds may be deemed to be Capital Appreciation Bonds for only a portion of their term. On the date on which General Revenue Parity Bonds no longer are Capital Appreciation Bonds, they shall be deemed Outstanding in a principal amount equal to their Accreted Value.

Certificate Period means a period commencing with the year of issuance of the proposed series of General Revenue Parity Bonds and ending with the third complete fiscal year following the earlier of (i) the projected Date of Commercial Operation of the Facilities to be financed with the proceeds of the proposed General Revenue Parity Bonds; or (ii) the date on which no portion of the interest on the proposed series of General Revenue Parity Bonds will be paid from the proceeds of such General Revenue Parity Bonds (such date to be determined in accordance with MCE's proposed schedule of expenditures).

Code means the Internal Revenue Code of 1986, as it may be amended, if applicable. Any reference to a provision of the Code shall include the applicable regulations of the Department of the Treasury promulgated or proposed with respect to such provision.

Consultant means at any time an independent consultant recognized in energy or energy utility matters or an engineer or engineering firm or other expert appointed by MCE to perform the duties of the Consultant as required by this Master Indenture. For the purposes of delivering any certificate required by Section 2.03 hereof and making the calculation required by Section 2.03 hereof, the term Consultant shall also include any independent public accounting firm appointed

by MCE to make such calculation or to provide such certificate or the financial advisor appointed by MCE to make such calculation or to provide such certificate.

Costs of Construction means all costs paid or incurred by MCE in connection with the acquisition and construction of capital additions, improvements and betterments to and extensions of the Facilities, and the placing of the same in operation, including, but without limiting the generality of the foregoing, paying all or a portion of the interest on the series of General Revenue Parity Bonds or any portion thereof issued to finance the costs of such improvements during the period of construction of such improvements, and for a period of time thereafter; paying amounts required to meet any reserve requirement for the fund or account established or maintained for such series of General Revenue Parity Bonds from the proceeds thereof; paying or reimbursing MCE or any fund thereof or any other person for expenses incident and properly allocable to the acquisition and construction of said improvements and the placing of the same in operation; and all other items of expense incident and properly allocable to the acquisition and construction of said additions and improvements, the financing of the same and the placing of the same in operation.

A ***Credit Event*** occurs when (a) a Qualified Letter of Credit terminates, (b) the issuer of Qualified Insurance or a Qualified Letter of Credit shall become insolvent or no longer be in existence, or (c) a Qualified Letter of Credit or Qualified Insurance no longer meets the requirements established therefor in the definition thereof.

Credit Facility means a policy of municipal bond insurance, a letter of credit, surety bond, guarantee or other financial instrument or any combination of the foregoing, which obligates a third party to make payment or provide funds for the payment of financial obligations of MCE, including but not limited to payment of the scheduled principal of and interest on General Revenue Parity Bonds.

Credit Facility Issuer means the issuer of any Credit Facility.

Date of Commercial Operation means the date upon which any Facilities are first ready for normal continuous operation or, if portions of the Facilities are placed in normal continuous operation at different times, shall mean the midpoint of the dates of continuous operation of all portions of such Facilities, as estimated by MCE or, if used with reference to Facilities to be acquired, shall mean the date on which such acquisition is final.

Debt Service means, for any period of time and for the purpose of determining compliance with the conditions for issuance of General Revenue Parity Bonds set forth in Section 2.03 and for the purpose of calculating the General Revenue Reserve Requirement,

(a) with respect to any Outstanding Original Issue Discount Bonds or Capital Appreciation Bonds that are not designated as Balloon Maturity Bonds in the Series Indenture authorizing their issuance and that have not been associated with a Parity Derivative Product, the principal amount equal to the Accreted Value thereof maturing, converting or scheduled for redemption in such period, including the interest payable during such period;

(b) with respect to any Outstanding Fixed Rate Bonds that have not been associated with a Parity Derivative Product, an amount equal to (1) the principal amount of such

General Revenue Parity Bonds due or subject to mandatory redemption during such period and for which no sinking fund installments have been established, (2) the amount of any payments required to be made during such period into any sinking fund established for the payment of the principal of any such General Revenue Parity Bonds, plus (3) all interest payable during such period on any such General Revenue Parity Bonds Outstanding and, with respect to General Revenue Parity Bonds with mandatory sinking fund requirements, calculated on the assumption that mandatory sinking fund installments will be applied to the redemption or retirement of such General Revenue Parity Bonds on the date specified in the Series Indenture authorizing such General Revenue Parity Bonds;

(c) with respect to all other series of General Revenue Parity Bonds Outstanding, other than Fixed Rate Bonds, Original Issue Discount Bonds or Capital Appreciation Bonds, specifically including but not limited to Balloon Maturity Bonds and General Revenue Parity Bonds bearing variable rates of interest and that have not been associated with a Parity Derivative Product, an amount for any period equal to the amount which would be payable (1) as principal on such General Revenue Parity Bonds during such period (computed on the assumption that the amount of General Revenue Parity Bonds Outstanding as of the date of such computation would be amortized in accordance with the mandatory redemption provisions, if any, set forth in the Series Indenture authorizing the issuance of such General Revenue Parity Bonds, or if mandatory redemption provisions are not provided, during a period commencing on the date of computation and ending on the date 30 years after the date of issuance to provide for essentially level annual debt service during such period) plus (2)

(i) (A) the greater of (a) the average for SIFMA over the past 3 years times 150% or (B) 4 percent; or

(ii) if, designated in writing by the Board in the supplemental indenture authorizing such Bonds, a fixed rate of interest reasonably determined by MCE for obligations with similar duration, which interest rate has been certified by a Qualified Financial Advisor.

(d) With respect to General Revenue Parity Bonds that bear variable rates of interest and have been associated with a Parity Derivative Product with fixed MCE Parity Payments, an amount equal to:

(1) principal to be paid on such General Revenue Parity Bonds calculated as set forth in (c)(1) above, plus

(2) assumed interest equal to

(A) the fixed MCE Parity Payments to be paid to a Reciprocal Payor, minus

(B) the Reciprocal Parity Payment calculated by determining the average interest rate over the prior 12 months if the Parity Derivative Product was then in effect or that would have been paid during the prior 12 months based on the rate formula for the Reciprocal Parity Payment set forth in the Parity Derivative Product, plus

(C) (i) if the General Revenue Parity Bonds bear interest that is exempt from general federal income taxation interest on the associated General Revenue Parity Bonds calculated at the average BMA Municipal Swap Index during the previous 12 months, or (ii) if the General Revenue Parity Bonds bear interest that is subject to general federal income taxation, interest on the associated General Revenue Parity Bonds calculated at the average one-month SOFR during the 12-month period immediately preceding the date of calculation;

(e) With respect to General Revenue Parity Bonds that bear variable rates of interest and have been associated with a Parity Derivative Product with variable MCE Parity Payments, an amount equal to:

(1) principal to be paid on such General Revenue Parity Bonds calculated as set forth in (c)(1) above, plus

(2) assumed interest equal to

(A) the variable MCE Parity Payments calculated by determining the average interest rate over the prior 12 months if the Parity Derivative Product was then in effect or that would have been paid during the prior 12 months based on the rate formula for MCE Parity Payment set forth in the Parity Derivative Product, minus

(B) the Reciprocal Parity Payment calculated by determining the average interest rate over the prior 12 months if the Parity Derivative Product was then in effect or that would have been paid during the prior 12 months based on the rate formula for the Reciprocal Parity Payment set forth in the Parity Derivative Product, plus

(C) (i) if the General Revenue Parity Bonds bear interest that is exempt from general federal income taxation, interest on the associated General Revenue Parity Bonds calculated at the average Municipal Swap Index during the previous 12 months, or (ii) if the General Revenue Parity Bonds bear interest that is subject to general federal income taxation, interest on the associated General Revenue Parity Bonds calculated at the average one-month SOFR during the 12-month period immediately preceding the date of calculation; and

(f) With respect to any Fixed Rate Bonds that have been associated with a Parity Derivative Product, an amount equal to:

(1) the principal to be paid on such General Revenue Parity Bonds calculated as set forth in (b)(1) and (b)(2) above, plus

(2) assumed interest equal to:

(A) MCE Parity Payment, calculated by determining the average interest rate over the prior 12 months if the Parity Derivative Product was then in effect or that would have been paid during the prior 12 months based on the rate formula for MCE Parity Payment set forth in the Parity Derivative Product, minus

(B) the Reciprocal Parity Payment to be paid to MCE; provided that if the Reciprocal Parity Payment is based on a variable rate then the Reciprocal Parity Payment

shall be calculated by determining the average interest rate over the prior 12 months if the Parity Derivative Product was then in effect or that would have been paid during the prior 12 months based on the rate formula for the Reciprocal Parity Payment set forth in the Parity Derivative Product, plus

(C) the interest on the associated Fixed Rate Bonds calculated as set forth in (b)(3) above.

With respect to any General Revenue Parity Bonds payable in other than U.S. Dollars, Debt Service shall be calculated as provided in the Series Indenture authorizing the issuance of such General Revenue Parity Bonds. With respect to any series of General Revenue Parity Bonds that is associated with a Parity Derivative Product with a notional amount that is less than the then Outstanding principal amount of such series of General Revenue Parity Bonds, Debt Service shall be calculated separately for the portion of such General Revenue Parity Bonds associated with the Parity Derivative Product and, without duplication, the portion not so associated.

Debt Service also shall be net of any principal and/or interest (not including any amount deposited in any reserve account for payment of principal and/or interest) funded from proceeds of any General Revenue Parity Bonds or from earnings thereon. For the purpose of determining compliance with the conditions for issuance of General Revenue Parity Bonds set forth in Section 2.03 (and not for the purposes of calculating the General Revenue Reserve Requirement), Debt Service also shall be net of Debt Service Offsets, subject to the conditions set forth in Section 2.03.

Debt Service shall include reimbursement obligations (and interest accruing thereon) then owing to any Credit Facility Issuer or Liquidity Facility Issuer to the extent authorized herein or in another Series Indenture.

Designated MCE Representative means the Chief Executive Officer of MCE, or the Director of Finance of MCE (or the successor in function to such person(s)) or such other person as may be directed by resolution of the Board of Directors.

Excluded Principal means _____.

Facilities means (i) all facilities, works, properties, structures and contractual rights to distribution, metering and billing services, electric power, scheduling and coordination, transmission capacity, and fuel supply of MCE, for the generation, storage, transmission and distribution of electric power, (ii) all general plant facilities, works, properties and structures of MCE, and (iii) all other facilities, properties and structures of MCE, wherever located, reasonably required to carry out any lawful purpose of MCE. The term shall include all such contractual rights, facilities, works, properties and structures now owned or hereafter acquired by MCE. The term ***Facilities*** shall exclude Special Facilities

Fixed Rate Bonds means those General Revenue Parity Bonds other than Capital Appreciation Bonds, Original Issue Discount Bonds or Balloon Maturity Bonds issued under a Series Indenture in which the rate of interest on such General Revenue Parity Bonds is fixed and determinable through their final maturity or for a specified period of time. If so provided in the Series Indenture authorizing their issuance, General Revenue Parity Bonds may be deemed to be

Fixed Rate Bonds for only a portion of their term. Fixed Rate Bonds also shall include two or more series of General Revenue Parity Bonds simultaneously issued under a Series Indenture and which, collectively, bear interest at a fixed and determinable rate for a specified period of time.

Government Obligations means (i) direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America; and (ii) evidences of ownership of proportionate interest in direct obligations of, or obligations the timely payment of the principal of and the interest on which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian.

Gross Revenue means all income and revenue derived by MCE from any source whatsoever except:

- (a) the proceeds of any borrowing by MCE and the earnings thereon (other than earnings on proceeds deposited in reserve funds);
- (b) income and revenue that may not legally be pledged for revenue bond debt service;
- (c) federal grants or substitutes therefor allocated to capital projects;
- (d) payments made under Credit Facilities issued to pay or secure the payment of a particular series of obligations;
- (e) proceeds of insurance or condemnation proceeds other than business interruption insurance;
- (f) income and revenue of MCE separately pledged and used by it to pay and secure the payment of the principal of and interest on any issue or series of Special Revenue Bonds of MCE issued to acquire, construct, equip, install or improve part or all of the particular facilities from which such income and revenue are derived, *provided that* nothing in this subparagraph (f) shall permit the withdrawal from Gross Revenue of any income or revenue derived or to be derived by MCE from any income producing facility that shall have been contributing to Gross Revenue prior to the issuance of such Special Revenue Bonds;
- [(g) income deposited to the Operating Reserve (but Gross Revenue shall include income withdrawn from the Operating Reserve);] and
- (h) income from investments irrevocably pledged to the payment of bonds issued or to be refunded under any refunding bond plan of MCE.

Notwithstanding the foregoing, MCE may elect to pledge the foregoing exceptions from Gross Revenue and/or any other receipts at any time as additional security for any one or more series of obligations and thereby include such exception and/or receipts in Gross Revenue for such series of obligations; but if and only to the extent that such receipts may legally be used to pay debt service on such series of obligations.

Debt Service Offsets means receipts of MCE that are not included in Gross Revenue and that are legally available and/or pledged by MCE to pay debt service on General Revenue Parity Bonds, which may include but is not limited to the Operating Reserve; but excluding any receipts that have been designated as Debt Service Offsets.

General Revenue Parity Bonds means the bonds, notes or other evidences of indebtedness issued from time to time in series pursuant to and under authority of Section 2.01 hereof. The term ***General Revenue Parity Bonds*** may include reimbursement obligations of MCE to the issuer of a Credit Facility.

General Revenue Reserve Account means the account of that name established within the Bond Fund pursuant to Section 3.04 of this Master Indenture.

[General Revenue Reserve Requirement means a dollar amount equal to average Annual Debt Service on all Outstanding General Revenue Parity Bonds, determined and calculated as of the date of issuance of each Series of General Revenue Parity Bonds (and recalculated upon the issuance of a subsequent Series of General Revenue Parity Bonds and also, at MCE's option, upon the payment of principal of General Revenue Parity Bonds)./

Liquidity Facility means a line of credit, standby purchase agreement or other financial instrument or any combination of the foregoing, which obligates a third party to make payment or to provide funds for the payment of the purchase price of General Revenue Parity Bonds.

Liquidity Facility Issuer means the issuer of any Liquidity Facility.

Maximum Annual Debt Service means, with respect to any Outstanding series of General Revenue Parity Bonds, the highest remaining Annual Debt Service for such series of General Revenue Parity Bonds.

MCE means Marin Clean Energy, a public agency formed under the provisions of the Act; or the corporation, authority, board, body, Board of Directors, department or officer succeeding to the principal functions of MCE or to whom the powers vested in MCE shall be given by law.

MCE Parity Payment means any payment, other than a termination or other nonscheduled payment, required to be made by or on behalf of MCE under a Parity Derivative Product and which is determined according to a formula set forth in a Parity Derivative Product and calculated without regard to netting.

MCE Other Payment means any payment, other than a termination or other nonscheduled payment, required to be made by or on behalf of MCE under an Other Derivative Product and which is determined according to a formula set forth in such Other Derivative Product and calculated without regard to netting.

Net Payments means, for a period of time and with respect to a Parity Derivative Product, the difference between Reciprocal Parity Payments and MCE Parity Payments which may be reflected as a positive or negative number on the financial statements of MCE (i.e., the net amount to be received by or paid by MCE for a period of time as a result of netting Reciprocal Parity Payments and MCE Parity Payments).

Net Revenues means Gross Revenue less any part thereof that must be used to pay Operating Expenses.

Operating Expenses shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and shall mean the reasonable and necessary costs paid or incurred by MCE for maintaining and operating the Facilities, including costs of electric energy and power generated or purchased, costs of transmission, storage, and fuel supply, and including all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Facilities in good repair and working order, and including all administrative costs of MCE that are charged directly or apportioned to the maintenance and operation of the Facilities, such as salaries and wages of employees, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of MCE such as fees and expenses of an independent certified public accountant, and including MCE's share of the foregoing types of costs of any electric properties co-owned with others, excluding in all cases depreciation, replacement and obsolescence charges or reserves therefore and amortization of intangibles and extraordinary items computed in accordance with GAAP or other bookkeeping entries of a similar nature. Operating Expenses shall include all amounts required to be paid by MCE under take or pay contracts.

Operating Reserve means a reserve fund established by MCE to provide a reserve that can be utilized by MCE for allowed MCE purposes when Revenues are insufficient.

Original Issue Discount Bonds means General Revenue Parity Bonds which are sold at an initial public offering price of less than 95% of their face value and which are specifically designated as Original Issue Discount Bonds in the Series Indenture authorizing their issuance.

Other Derivative Product means a payment agreement entered into in connection with one or more series of General Revenue Parity Bonds between MCE and a counterparty permitted under State law, which is not a Parity Derivative Product.

Outstanding, when used as of a particular time with reference to General Revenue Parity Bonds, means all General Revenue Parity Bonds delivered under a Series Indenture except those identified as no longer "Outstanding" under the terms established in the respective Series Indenture.

Parity Derivative Product means a written contract or agreement between MCE and a Reciprocal Payor permitted under State law, obligating MCE to make Net Payments on a parity of lien with General Revenue Parity Bonds.

Paying Agent shall mean any person, firm, association, corporation or public body as designated and appointed from time to time by resolution of the Board of Directors or by a Series Indenture to act as paying agent for one or more series of General Revenue Parity Bonds.

Qualified Insurance means any non-cancelable municipal bond insurance policy or surety bond issued by any insurance company licensed to conduct an insurance business in any state of the United States (or by a service corporation acting on behalf of one or more such insurance companies) (i) which insurance company or companies, as of the time of issuance of such policy or surety bond, are rated in one of the two highest Rating Categories by one or more of the Rating

Agencies for unsecured debt or insurance underwriting or claims paying ability or (ii) if as a result of the issuance of its policies, the obligations insured thereby to be rated in one of the two highest Rating Categories by one or more of the Rating Agencies.

Qualified Letter of Credit means any irrevocable letter of credit issued by a financial institution, which institution maintains an office, agency or branch in the United States and as of the time of issuance of such letter of credit, is rated in one of the two highest long-term Rating Categories by one or more of the Rating Agencies.

Rate Covenant has the meaning given such term in Section 4.04 of this Master Indenture.

Rating Agency means any nationally recognized securities rating agency(ies) designated by the Designated MCE Representative.

Rating Category means the generic rating categories of a Rating Agency, without regard to any refinement or gradation of such rating category by a numerical modifier or otherwise.

Rebate Analyst means a firm of independent certified public accountants or a firm capable of performing rebate calculations selected by MCE to perform the rebate calculations as provided pursuant to Sections 3.06 and 3.07 hereof.

Rebate Fund means the fund by that name created and established in Section 3.01 of this Master Indenture.

Reciprocal Parity Payment means any payment, other than a termination or other nonscheduled payment, to be made to, or for the benefit of, MCE under a Parity Derivative Product by the Reciprocal Payor and which is determined according to a formula set forth in a Parity Derivative Product and calculated without regard to netting.

Reciprocal Other Payment means any payment, other than a termination or other nonscheduled payment, to be made to, or for the benefit of, MCE under an Other Derivative Product by MCE's counterparty and which is determined according to a formula set forth in such Other Derivative Product and calculated without regard to netting.

Reciprocal Payor means any counterparty to a Parity Derivative Product that is obligated to make one or more Reciprocal Parity Payments thereunder and that satisfies then existing State law requirements for such counterparties.

Registered Owner means the person named as the registered owner of an General Revenue Parity Bond in the bond register maintained by the Registrar for such General Revenue Parity Bonds.

Released Revenues shall mean income or revenue of MCE previously included in Available General Revenue in respect of which the following have been delivered by or to MCE:

(a) a certificate of the Designated MCE Representative identifying the income or revenue to be removed from the definition of Available General Revenue and certifying MCE is in compliance with all requirements of this Master Indenture;

(b) a certificate of an independent certified public accountant to the effect that Available General Revenues, excluding the income or revenues proposed to become Released Revenues, for each of the two audited fiscal years prior to the date of such certificate were equal to at least 150% of average Annual Debt Service on then Outstanding General Revenue Parity Bonds; and

(c) an opinion of Bond Counsel to the effect that the exclusion of such revenues from the definition of Available General Revenues and from the pledge, charge and lien of this Master Indenture will not in and of itself cause the interest on any Outstanding General Revenue Parity Bond issued as tax-exempt securities to be included in gross income for purposes of federal income tax.

Reserved Lien Revenue Bonds means those revenue bonds and other revenue obligations issued or incurred by MCE payable from Gross Revenue and having liens on Net Revenues subordinate to that of the General Revenue Parity Bonds and prior to the lien thereon of the Subordinate Lien Parity Bonds.

Reserved Rights means the rights retained by MCE and not assigned to the Trustee under this Master Indenture and shall include the rights of MCE under Sections 6.01, Article VII, 10.03 and 10.06 hereof.

Revenue Fund means the fund of that name created pursuant to Section 3.01 hereof.

Scheduled Debt Service means the amounts required in a fiscal year to be paid by MCE as scheduled debt service (principal and interest) on Outstanding General Revenue Parity Bonds, adjusted by Net Payments during such fiscal year. Scheduled Debt Service shall exclude Excluded Principal.

Series Indenture means an Indenture authorizing the issuance of a series of General Revenue Parity Bonds, as such Indenture may thereafter be amended or supplemented. Each Series Indenture shall be supplemental to this Master Indenture.

SOFR means the rate offered for U.S. dollar deposits on the Secured Overnight Financing Rate, or any comparable successor rate.

Special Facilities means particular facilities financed with the proceeds of Special Revenue Bonds.

Special Revenue Bonds means any issue or series of revenue bonds, revenue warrants or other revenue obligations of MCE issued to directly or indirectly acquire (by purchase, lease or otherwise), construct, equip, install or improve part or all of particular facilities and which are payable from and secured by the income and revenue from such facilities.

State means the State of California.

Supplemental Indenture means any indenture hereafter duly authorized and entered into between MCE and the Trustee, supplementing, modifying or amending this Master Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

Subordinate Lien Parity Bonds means any other revenue bonds or revenue obligations that may be issued in the future at the discretion of MCE payable from Gross Revenues available after the payment of the amounts described in paragraphs First through Third of Section 3.02 of this Master Indenture.

Tax Maximum means the maximum dollar amount permitted by the Internal Revenue Code of 1986, as amended, including applicable regulations thereunder, to be allocated to a bond reserve account from bond proceeds without requiring a balance to be invested at a restricted yield.

Treasurer means the Chief Financial Officer of MCE, or any other officer as may hereafter be designated pursuant to law to have the custody of MCE funds.

Trust Estate means the trust estate pledged by MCE and described in the Granting Clauses of this Master Indenture.

Trustee means _____, a _____ or its successor, as Trustee hereunder as provided in Section 6.06.

SECTION 1.02 Interpretation.

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa;

(d) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons;

(e) Whenever any consent or direction is required to be given by MCE, such consent or direction shall be deemed given when given by the Designated MCE Representative or his or her designee, respectively, and all references herein to the Designated MCE Representative shall be deemed to include references to his or her designee, as the case may be.

(f) All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Master Indenture; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Master Indenture as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II THE BONDS

SECTION 2.01 Authorization of Bonds. Subject to Section 2.02 of this Master Indenture, revenue bonds of MCE, unlimited in amount, to be known as the “Marin Clean Energy General Revenue Bonds,” are hereby authorized to be issued in series, and each such series may be issued from time to time pursuant to this Master Indenture in such amounts and upon such terms and conditions as the Board of Directors may from time to time deem to be necessary or advisable, for any purposes of MCE now or hereafter permitted by law.

The General Revenue Parity Bonds and the lien thereof created and established hereunder shall be obligations only of the Bond Fund [and the General Revenue Reserve Account therein] (herein created). The General Revenue Parity Bonds shall be payable solely from and secured solely by Available General Revenues available after providing for the payments specified in the First paragraph of Section 3.02 of this Master Indenture; provided, however, that any series of General Revenue Parity Bonds also may be payable from and secured by a Credit Facility pledged specifically to or provided for that series of General Revenue Parity Bonds.

This Master Indenture constitutes a continuing agreement with the Trustee for the benefit of the Owners from time to time of the General Revenue Parity Bonds to secure the full payment of the principal of and interest on all such General Revenue Parity Bonds subject to the covenants, provisions and conditions herein contained.

General Revenue Parity Bonds are special and limited obligations of MCE. The interest, principal, and redemption premium, if any, will not constitute an indebtedness or an obligation of MCE within the meaning of any Constitutional limitation or statutory provision and shall not give rise to a charge against the general credit. General Revenue Parity Bonds and the interest thereon are payable solely from and secured by the Available Revenues and other funds pledged therefor, and do not constitute a pledge of the faith and credit of MCE, the State, or any political subdivision thereof, but shall be payable solely as described in this Master Indenture and the respective Series Indenture.

The debts, liabilities or obligations of MCE shall not be debts, liabilities or obligations of the parties to the Agreement unless the governing board of a party to the Agreement agrees in writing to assume any of the debts, liabilities or obligations of MCE. A party to the Agreement who has not agreed to assume an MCE debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the parties to the Agreement agree to assume the debt, liability or obligation of MCE.

SECTION 2.02 Authorization of a Series of General Revenue Parity Bonds MCE may issue hereunder from time to time one or more series of General Revenue Parity Bonds by means of a Series Indenture for any purpose of MCE now or hereafter permitted by law, provided that MCE shall comply with the terms and conditions for the issuance of General Revenue Parity Bonds hereinafter set forth in this Section 2.02.

Each series of General Revenue Parity Bonds shall be authorized by a Series Indenture which shall, among other provisions, specify and provide for:

- (1) the authorized maximum principal amount, designation and series of such General Revenue Parity Bonds;
- (2) the general purpose or purposes for which such series of General Revenue Parity Bonds is being issued, and the deposit, disbursement and application of the proceeds of the sale of the General Revenue Parity Bonds of such series;
- (3) the maximum interest rate or rates on the General Revenue Parity Bonds of such series (which may be a rate of zero) or, if the interest rate or rates shall be variable, the method for determining such interest rates;
- (4) the circumstances, if any, under which the General Revenue Parity Bonds of such series will be deemed to be no longer Outstanding;
- (5) the currency or currencies in which the General Revenue Parity Bonds of such series are payable;
- (6) the denominations of, and the manner of dating, numbering, and, if necessary, authenticating, the General Revenue Parity Bonds of such series;
- (7) the Paying Agent or Paying Agents, if any, for the General Revenue Parity Bonds of such series and the duties and obligations thereof;
- (8) the place or places of payment of the principal, redemption price, if any, or purchase price, if any, of and interest on, the General Revenue Parity Bonds of such series;
- (9) the tender agent or tender agents, if any, for the General Revenue Parity Bonds of such series and the duties and obligations thereof;
- (10) the remarketing agent or remarketing agents, if any, for the General Revenue Parity Bonds of such series and the duties and obligations thereof;
- (11) the Registrar or Registrars, if any, for the General Revenue Parity Bonds of such series and the duties and obligations thereof;
- (12) the form or forms of the General Revenue Parity Bonds of such series and any coupons attached thereto, which may include but shall not be limited to, registered form, bearer form with or without coupons, and book-entry form, and the methods, if necessary, for the registration, transfer and exchange of the General Revenue Parity Bonds of such series;
- (13) the terms and conditions, if any, for the redemption of the General Revenue Parity Bonds of such series prior to maturity, including the redemption date or dates, the redemption price or prices and other applicable redemption terms; provided that the Series Indenture may authorize the Designated MCE Representative to fix the terms and conditions for the redemption of the General Revenue Parity Bonds of such series prior to maturity, including the redemption date or dates, the redemption price or prices and other applicable redemption terms under such terms and conditions approved by resolution of the Board of Directors;

(14) the terms and conditions, if any, for the purchase of the General Revenue Parity Bonds of such series upon any optional or mandatory tender for purchase prior to maturity, including the tender date or dates, the purchase date or dates, the purchase price or prices and other applicable terms; provided that the Series Indenture may authorize the Designated MCE Representative to fix the terms and conditions for the tender of the General Revenue Parity Bonds of such series prior to maturity, including the tender date or dates, the purchase date or dates, the purchase price or prices and other applicable terms under such terms and conditions approved by resolution of the Board of Directors;

(15) the manner of sale of the General Revenue Parity Bonds of such series, with or without a premium or a discount, including the sale of Original Issue Discount General Revenue Parity Bonds; provided that the Series Indenture may authorize the Designated MCE Representative to establish the issue price of the General Revenue Parity Bonds, including a premium or a discount, under such terms and conditions approved by resolution of the Board of Directors;

(16) if so determined by MCE, the authorization of and any terms and conditions with respect to credit or liquidity support for the General Revenue Parity Bonds of such series and the pledge or provision of moneys, assets or security other than Net Revenues to or for the payment of the General Revenue Parity Bonds of such series or any portion thereof;

(17) a special fund or account to provide for the payment of the General Revenue Parity Bonds of such series and, if so determined by MCE, any other special funds or accounts for the General Revenue Parity Bonds of such series and the application of moneys or security therein;

(18) the amount, if any, to be deposited or credited to the General Revenue Reserve Account; and

(19) any other provisions which MCE deems necessary or desirable in connection with the General Revenue Parity Bonds of such series.

SECTION 2.03 Conditions of Issuance of General Revenue Parity Bonds.

(a) *Future General Revenue Parity Bonds - General Provisions.* All General Revenue Parity Bonds authorized to be issued under Series Indentures, upon fulfillment of the conditions of this Master Indenture, shall be issued on a parity of lien with one another, having an equal lien and charge upon the Available General Revenues of MCE.

MCE hereby further covenants and agrees with the owners and holders of each of the General Revenue Parity Bonds for as long as any of the same remain Outstanding that it will not issue any General Revenue Parity Bonds that constitute a charge and lien upon the Available General Revenues equal to the lien thereon of Outstanding General Revenue Parity Bonds, unless at the time of the issuance of such General Revenue Parity Bonds MCE is not in default under this Master Indenture, and MCE meets the conditions set forth in subsection (c) below or meets either of the conditions described in (1) or (2) below.

(1) Certificate Required. There shall have be delivered prior to or on the date of the issuance of the General Revenue Parity Bonds, either

(A) a certificate prepared as provided below and executed by the Designated MCE Representative stating that Available General Revenues as First Adjusted during the Base Period were at least equal to [125] percent of Annual Debt Service in each year of the Certificate Period with respect to all General Revenue Parity Bonds then Outstanding and then proposed to be issued; or

(B) a Consultant's certificate, prepared as provided below, stating that projected Available General Revenues as First Adjusted will be at least equal to [125] percent of Annual Debt Service in each year of the Certificate Period.

If Debt Service Offsets are or have been used in order to comply with Section 2.03 (a)(1) or (2), then for the purposes of meeting the conditions of this Section 2.03, MCE shall, by a Supplemental Indenture (which may be a Series Indenture), identify and irrevocably pledge the receipts that constitute such Debt Service Offsets for a period not less than the duration of the Certificate Period.

The Designated MCE Representative's certificate, described in (A) above shall be based upon the financial statements of MCE for the Base Period, corroborated by the audited annual financial statements of MCE prepared by an independent certified public accounting firm for the Base Period.

In making the computations of projected Available General Revenues for the purpose of certifying compliance with the conditions specified in (B) above, the Consultant shall use as a basis the Available General Revenues for the Base Period corroborated by the audited financial statements of MCE audited by an independent certified public accounting firm for the Base Period. The Consultant shall make such adjustments to Available General Revenues (including those described in establishing Available General Revenues as First Adjusted) in order to compute projected Available General Revenues as he/she/it deems reasonable as set forth in writing to MCE.

Compliance with the coverage requirements of this Section 2.03 shall be demonstrated conclusively by a certificate delivered in accordance with this subsection (b).

(2) No Certificate Required. A certificate shall not be required as a condition to the issuance of General Revenue Parity Bonds:

(A) if the General Revenue Parity Bonds are being issued for refunding purposes upon compliance with the provisions of subsection (c) of this section; or

(B) if the General Revenue Parity Bonds are being issued to pay Costs of Construction of Facilities for which indebtedness has been issued previously and the principal amount of such indebtedness being issued for completion purposes does not exceed an amount equal to an aggregate of 15% of the principal amount of indebtedness theretofore issued for such Facilities and reasonably allocable to the Facilities to be completed as shown in a written certificate of the Designated MCE Representative, stating that the scope, nature and purpose of such Facilities

has not materially changed and that the net proceeds of such indebtedness being issued for completion purposes will be sufficient, together with other available funds of MCE, to complete such Facilities.

(c) *General Revenue Parity Bonds for Refunding Purposes.* MCE may issue General Revenue Parity Bonds for refunding purposes, as follows:

(1) General Revenue Parity Bonds may be issued at any time for the purpose of refunding (including by purchase) General Revenue Parity Bonds including amounts to pay principal thereof and redemption premium, if any, and interest thereon to the date of redemption (or purchase), any deposits to a reserve account or to purchase a Qualified Letter of Credit or Qualified Insurance, any termination amount with respect to an associated Parity Derivative Product or Other Derivative Product, and the expenses of issuing the General Revenue Parity Bonds and of effecting such refunding upon delivery of a certificate as provided in subsection (b)(2) above. Such refunding General Revenue Parity Bonds also may be issued without a certificate if:

(A) the latest maturity of the General Revenue Parity Bonds to be issued is not later than the latest maturity of the General Revenue Parity Bonds to be refunded (were such refunding not to occur), and the increase in Annual Debt Service as a result of such refunding in any year is less than the greater of (i) \$25,000 or (ii) 5% of such Annual Debt Service on the General Revenue Parity Bonds to be refunded; or

(B) the latest maturity of the General Revenue Parity Bonds to be issued is later than the latest maturity of the General Revenue Parity Bonds to be refunded (were such refunding not to occur), and the Maximum Annual Debt Service on all General Revenue Parity Bonds to be Outstanding after the issuance of the refunding General Revenue Parity Bonds shall not be greater than Maximum Annual Debt Service were such refunding not to occur.

(2) General Revenue Parity Bonds may be issued without the requirement of a certificate pursuant to this section for the purpose of refunding (including by purchase) any Special Revenue Bonds or General Revenue Parity Bonds at any time within one year prior to their maturity or mandatory redemption date if sufficient Available General Revenues or other moneys are not expected to be available for payment at maturity or mandatory redemption.

(d) *Liens Subordinate to General Revenue Parity Bonds.* Nothing herein contained shall prevent MCE from issuing revenue bonds or other obligations (including any Other Derivative Product) which are a charge upon the Available General Revenues junior or inferior to the payments required by this Master Indenture to be made out of such Available General Revenues to pay and secure the payment of any General Revenue Parity Bonds. Such junior or inferior obligations shall not be subject to acceleration. This prohibition against acceleration shall not be deemed to prohibit mandatory tender or other tender provisions with respect to variable rate obligations or to prohibit the payment of a termination amount with respect to an Other Derivative Product or a Parity Derivative Product.

(e) In connection with the issuance of additional General Revenue Parity Bonds, the Trustee shall be entitled to receive and rely upon information specified in this Section 2.03,

certifying that the conditions to the issuance of such additional General Revenue Parity Bonds under this Section 2.03 have been satisfied.

ARTICLE III
CREATION OF FUNDS AND ACCOUNTS; PAYMENT OF
PRINCIPAL OF AND INTEREST ON GENERAL REVENUE PARITY BONDS

SECTION 3.01 Creation of Funds and Accounts.

(a) The following funds and accounts are hereby established and directed to be maintained, or continued, by the Trustee:

- (i) Revenue Fund
- (ii) Bond Fund
- (iii) Debt Service Reserve Fund
- [(1) General Revenue Reserve Account]
- (iv) Rebate Fund

(b) MCE may determine from time to time by Series Indenture to create additional funds, accounts and subaccounts to be established and maintained by the Trustee.

SECTION 3.02 Revenue Fund; Priority of Use of Gross Revenue. A special fund of MCE designated as “Marin Clean Energy Revenue Fund” or such other name as specified by the Designated MCE Representative (the “Revenue Fund”) is hereby authorized to be created or continued in the office of the Treasurer of MCE. MCE’s Gross Revenue shall be deposited in the Revenue Fund as collected. The Revenue Fund shall be held separate and apart from all other funds and accounts of MCE, and the Gross Revenue deposited therein shall be used only for the following purposes and in the following order of priority:

First, to pay Operating Expenses not paid from other sources;

Second, to make payments necessary to be paid into any bond fund or debt service account created to pay the debt service on General Revenue Parity Bonds to pay the principal of and interest on General Revenue Parity Bonds and, without duplication, to make Net Payments due with respect to any Parity Derivative Product secured by a pledge of and lien on Available General Revenues on an equal and ratable basis with Outstanding General Revenue Parity Bonds;

Third, to make all payments required to be made into the General Revenue Reserve Account, if any;

Fourth, to make payments necessary to be paid into any bond fund or debt service account created to pay the debt service on Subordinate Lien Parity Bonds, including, but not limited to the Subordinate Lien Bond Fund to pay the principal of and interest on Subordinate Lien Parity Bonds;

Fifth, to make all payments required to be made into the reserve account(s) securing Subordinate Lien Parity Bonds; and

Sixth, to retire by redemption or purchase any outstanding revenue bonds or other revenue obligations of MCE as authorized in the various resolutions of the Board of Directors authorizing their issuance or to make necessary additions, betterments, improvements and repairs to or extension and replacements of the Facilities, or any other lawful MCE purposes.

Notwithstanding the foregoing, the obligations of MCE to make nonscheduled payments under a Parity Derivative Product (i.e., any termination payment or other fees) and/or make any payment pursuant to an Other Derivative Product may be payable from Gross Revenue available after Third above, as set forth in such Parity Derivative Product or Other Derivative Product.

SECTION 3.03 Bond Fund. A special fund of MCE designated the “Marin Clean Energy Parity Revenue Bond Fund” (the “Bond Fund”) is hereby authorized to be created in the office of the Treasurer of MCE for the purpose of paying and securing the payment of General Revenue Parity Bonds. The Bond Fund shall be held separate and apart from all other funds and accounts of MCE and shall be a trust fund for the owners of General Revenue Parity Bonds.

MCE hereby irrevocably obligates and binds itself for as long as any General Revenue Parity Bonds remain Outstanding to set aside and pay into the Bond Fund from Available General Revenues or money in the Revenue Fund, on or prior to the respective dates the same become due (and if such payment is made on the due date, such payment shall be made in immediately available funds):

(1) Such amounts as are required to pay the interest scheduled to become due on Outstanding General Revenue Parity Bonds; and

(2) Such amounts with respect to Outstanding General Revenue Parity Bonds as are required (A) to pay maturing principal, (B) to make any required sinking fund payments, and (C) to redeem Outstanding General Revenue Parity Bonds in accordance with any mandatory redemption provisions.

Said amounts so pledged to be paid into such special funds are hereby declared to be a prior lien and charge upon the Net Revenues superior to all other liens and charges of any kind or nature whatsoever except for liens and charges equal in rank that may be made thereon to pay Net Payments due pursuant to any Parity Derivative Product and to pay and secure the payment of the principal of, premium, if any, and interest on General Revenue Parity Bonds issued under authority of a Series Indenture in accordance with the provisions of Sections 2.03 of this Master Indenture.

The General Revenue Parity Bonds shall not in any manner or to any extent constitute general obligations of MCE or of the State of California, or of any political subdivision of the State of California, except as may be provided for under the Agreement.

SECTION 3.04 Debt Service Reserve Fund. A Debt Service Reserve Fund, if any shall be required, is hereby authorized to be created by the Treasurer of MCE. A General Revenue Reserve Account (the “General Revenue Reserve Account”) is hereby authorized to be created by the Treasurer of MCE within the Debt Service Reserve Fund for the further purpose of securing

the payment of the principal of, premium, if any, and interest on all Outstanding General Revenue Parity Bonds. MCE shall make deposits therein as provided in this section so that the balance therein shall be at least equal to the General Revenue Reserve Requirement.

The General Revenue Reserve Requirement may be funded at the date of issuance of General Revenue Parity Bonds or may be funded in equal monthly deposits over a period of time (not greater than three years) established in Series Indenture(s); provided, however, that the dollar amount required to be contributed, if any, as a result of the issuance of a Series of General Revenue Parity Bonds shall not be greater than the Tax Maximum. If the dollar amount required to be contributed at the time of issuance of a Series exceeds the Tax Maximum, then the amount required to be contributed shall be equal to the Tax Maximum; the General Revenue Reserve Requirement shall be adjusted accordingly and remain in effect until the earlier of (i) at MCE's option, a payment of principal of General Revenue Parity Bonds or (ii) the issuance of a subsequent Series of General Revenue Parity Bonds (when the General Revenue Reserve Requirement shall be recalculated).

The General Revenue Reserve Requirement shall be maintained by deposits of cash and/or qualified investments, a Qualified Letter of Credit or Qualified Insurance, or a combination of the foregoing. The Designated MCE Representative may decide to utilize Qualified Insurance or Qualified Letter(s) of Credit to satisfy all or a portion of the General Revenue Reserve Requirement. Upon such election, the Designated MCE Representative is hereby authorized to execute and deliver one or more agreements with issuers of Qualified Insurance or Qualified Letters of Credit to effect the delivery of the appropriate instrument. To the extent that MCE obtains a Qualified Letter of Credit or Qualified Insurance in substitution for cash or securities in the General Revenue Reserve Account, all or a portion of the money on hand in the General Revenue Reserve Account shall be transferred to the fund or account specified by the Designated MCE Representative. In computing the amount on hand in the General Revenue Reserve Account, Qualified Insurance and/or a Qualified Letter of Credit shall be valued at the lower of the face amount thereof and the amount available to be drawn thereunder, and all other obligations purchased as an investment of moneys therein shall be valued on a marked to market basis, at least once annually. As used herein, the term "cash" shall include U.S. currency, cash equivalents and evidences thereof, including demand deposits, certified or cashier's check; and the deposit to the General Revenue Reserve Account may be satisfied by the transfer of investments to such account. If a deficiency in the General Revenue Reserve Requirement shall exist as a result of the foregoing valuation, such deficiency shall be made up within a year thereof.

If the balance on hand in the General Revenue Reserve Account is sufficient to satisfy the General Revenue Reserve Requirement, amounts in excess of such General Revenue Reserve Requirement shall be applied as provided in the following sentences. Whenever there is a sufficient amount in the Bond Fund and the General Revenue Reserve Account to pay the principal of, premium, if any, and interest on all Outstanding General Revenue Parity Bonds, the money in the General Revenue Reserve Account may be used to pay such principal and interest. If the balance on deposit in the General Revenue Reserve Account is at least equal to the General Revenue Reserve Requirement, money in the General Revenue Reserve Account in excess of the General Revenue Reserve Requirement may be transferred to the fund or account specified in writing by the Designated MCE Representative.

If a deficiency in the Bond Fund shall occur, such deficiency shall be made up from the General Revenue Reserve Account by the withdrawal of cash therefrom for that purpose and by the sale or redemption of investments held in the General Revenue Reserve Account, in such amounts as will provide cash in the General Revenue Reserve Account sufficient to make up any such deficiency with respect to the General Revenue Parity Bonds, and if a deficiency still exists immediately prior to an interest payment date and after the transfer of cash from the General Revenue Reserve Account to the Bond Fund, MCE shall then draw from any Qualified Letter of Credit or Qualified Insurance then credited to the General Revenue Reserve Account for the General Revenue Parity Bonds in sufficient amount to make up the deficiency. Such draw shall be made at such times and under such conditions as the agreement for such Qualified Letter of Credit or such Qualified Insurance shall provide. Reimbursement may be made to the issuer of any Qualified Letter of Credit or Qualified Insurance in accordance with the reimbursement agreement related thereto, and after making necessary provision for the payments required to be made in the First paragraph of Section 3.02 of this Master Indenture. If MCE shall have failed to make any payment required to be made under such reimbursement agreement for General Revenue Parity Bonds, the issuer shall be entitled to exercise all remedies available at law or under this Master Indenture; provided, however, that no acceleration of the General Revenue Parity Bonds shall be permitted, and no remedies that adversely affect Registered Owners of the General Revenue Parity Bonds shall be permitted. Any deficiency created in the General Revenue Reserve Account by reason of any such withdrawal shall be made up within one year from Qualified Insurance or a Qualified Letter of Credit or out of Available General Revenues (or out of any other moneys on hand legally available for such purpose), in 12 equal monthly installments, after first making necessary provision for all payments required to be made into the Bond Fund within such year.

To the extent that MCE has obtained Qualified Insurance or a Qualified Letter of Credit to satisfy its obligations under this Section 3.04, amounts then available to be drawn under such Qualified Insurance or a Qualified Letter of Credit shall be credited against the amounts required to be maintained in the General Revenue Reserve Account by this Section 3.04 to the extent that such payments and credits are insured by the issuer of such Qualified Insurance, or are to be made or guaranteed by a Qualified Letter of Credit. If a Credit Event occurs, the General Revenue Reserve Requirement shall be satisfied (A) within one year after the occurrence of such Credit Event with other Qualified Insurance or another Qualified Letter of Credit, or (B) within three years (in three equal annual installments) after the occurrence of such Credit Event, out of Available General Revenues (or out of other money on hand and legally available for such purpose) after first making necessary provisions for all payments required to be made into the Bond Fund.

SECTION 3.05 Derivative Products. MCE hereby reserves the right to enter into Parity Derivative Products and Other Derivative Products. MCE may amend this Master Indenture, within the limitations permitted in Article VIII, to accommodate new or modified definitions of Debt Service in connection with a Parity Derivative Product if the Parity Derivative Product includes MCE Parity Payments or Reciprocal Parity Payments not then contemplated or otherwise addressed by the definition of Debt Service. If MCE enters into a Parity Derivative Product with respect to previously Outstanding General Revenue Parity Bonds or General Revenue Parity Bonds to be issued subsequent to the effective date of the Parity Derivative Product, MCE shall not be required to satisfy the conditions set forth in Section 2.02 of this Master Indenture

with respect to the Parity Derivative Product. Each Parity Derivative Product shall set forth the manner in which MCE Parity Payments and Reciprocal Parity Payments are to be calculated and a schedule of payment dates. This Master Indenture may be amended in the future to reflect the lien position and priority of any payments made in connection with a Parity Derivative Product; provided, however, that termination amounts under Derivative Parity Products must be subordinate to the lien of General Revenue Parity Bonds.

SECTION 3.06 Arbitrage Rebate. MCE will perform or cause to be performed the rebate calculations and will direct the Trustee to pay to the United States of America the Rebatable Arbitrage, if any, in accordance with the provisions of the Federal Tax Certificate for each applicable series of General Revenue Parity Bonds. The Trustee shall not be responsible for performing rebate calculations and shall not be responsible for any loss or damage resulting from any action taken or omitted to be taken by MCE in performing such calculations or making any necessary payments.

SECTION 3.07 Rebate Fund. The Trustee shall establish a trust fund in the name of MCE to be designated the "Rebate Fund."

(a) *Creation of Rebate Fund*. The Rebate Fund shall be maintained for the purpose of holding funds required to satisfy arbitrage rebate requirements, as described in the Federal Tax Certificate for a series of General Revenue Parity Bonds. Notwithstanding any provision hereof to the contrary, funds deposited in the Rebate Fund shall be free and clear of any lien hereunder, but shall be held in trust for the purposes described in this Section 3.07. At the direction of the Designated MCE Representative, the Trustee shall apply funds on deposit in the Rebate Fund to make the payments of Rebatable Arbitrage required pursuant to Section 3.06 hereof.

(b) *Investment of Money in the Rebate Fund*. Money in the Rebate Fund shall be invested by the Trustee, upon written direction of the Designated MCE Representative that mature no later than a date that is earlier than the date any payment of Rebatable Arbitrage is due.

(c) *Remaining Balance*. Any funds remaining in the Rebate Fund after the Bonds are no longer Outstanding and after the right, title and interest of the Trustee in and to the Trust Estate and all covenants, agreements and other obligations of MCE under this Master Indenture shall have ceased, terminated and become void and shall have been satisfied and discharged in accordance with this Master Indenture, shall be paid to MCE.

(d) *Amendment*. The intent of this Section 3.07 is to require funding of the Rebate Fund so that money in that account will be available to pay Rebatable Arbitrage when it is required to be paid under Section 148 of the Code. Notwithstanding anything stated to the contrary in this Master Indenture, MCE shall not be required to perform arbitrage rebate calculations as provided in this Section 3.07 if MCE provides the Trustee with an Opinion of Bond Counsel to the effect that MCE has met one of the permitted exceptions from the payment of Rebatable Arbitrage; no Rebatable Arbitrage is due and owing and/or rebate computations are no longer required (which opinion may rely upon the mathematical computations of a Rebate Analyst).

SECTION 3.08 Custody of Bond Fund; Withdrawal of Money. The Bond Fund shall be in the custody of the Trustee and the Trustee shall withdraw from the Bond Fund funds

sufficient to pay the principal of and interest on the General Revenue Parity Bonds as the same shall become due and payable, and funds sufficient to pay any other amounts payable therefrom as the same shall become due and payable.

SECTION 3.09 Bonds Not Presented for Payment. In the event any General Revenue Parity Bonds shall not be presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption thereof or otherwise, if money sufficient to pay such General Revenue Parity Bonds is held by the Trustee in its capacity of paying agent for the benefit of the Owners thereof, the Trustee in its capacity of paying agent shall segregate and hold such money in trust, without investing such money and without liability for interest thereon, for the benefit of the Owners of such General Revenue Parity Bonds, who shall, except as provided in the following paragraph, thereafter be restricted exclusively to such fund or funds for the satisfaction of any claim of whatever nature on their part under this Master Indenture or relating to said General Revenue Parity Bonds.

Any money that the Trustee shall segregate and hold in trust for the payment of the principal of or interest on any General Revenue Parity Bond and remaining unclaimed for three years after such principal or interest shall have become due and payable shall be remitted by the Trustee in accordance with the State law, and thereafter Owners of General Revenue Parity Bonds shall be entitled to look only to such Owner's rights provided under State law, and all liability of the Trustee with respect to such money shall thereupon cease.

SECTION 3.10 Money Held in Trust. All money required to be deposited with or paid to the Trustee for deposit into the Bond Fund under any provisions hereof and all money withdrawn from the Bond Fund or any other Fund and Account held by the Trustee pursuant to this Master Indenture shall be held by the Trustee in trust. Such money shall, excepting the Rebate Fund, while so held, constitute part of the Trust Estate and be subject to the lien hereof.

SECTION 3.11 Payment to MCE. Any money remaining in the Trust Estate after the right, title and interest of the Trustee in and to the Trust Estate and all covenants, agreements and other obligations of MCE under this Master Indenture shall have ceased, terminated and become void and shall have been satisfied and discharged in accordance with Article IX hereof, shall be paid (a) to the Trustee, if any amounts are then owing to the Trustee, or (b) if no such amounts shall be so certified as due and payable, to MCE.

SECTION 3.12 Investment of Money. All money paid by or on behalf of MCE to the Trustee and held in the Bond Fund or any other fund or account held hereunder shall, absent an Event of Default hereunder, be invested by the Trustee at the written direction of the Designated MCE Representative, or upon oral direction promptly confirmed in writing as described in this sentence, which shall mature not later than the date when the amounts will foreseeably be needed for purposes set forth in this Master Indenture; provided, however, that the stated maturity of investments in the Debt Service Reserve Fund at any time may not exceed five years. The Trustee shall have no obligation to approve or disapprove of any such direction and shall suffer no liability whatsoever in following such direction. The Trustee shall have no responsibility for any losses on any such investments.

In the absence of direction, the Trustee shall be under no obligation to invest any money on hand in the funds or accounts established hereunder for the benefit of MCE. In the event that the Trustee shall not have received written instruction as to the investment of such funds, it shall not be obligated to seek or obtain the highest interest rate available nor shall it be responsible for liquidation of investments at a loss to meet requirements under this Master Indenture.

Investments acquired as an investment of money in any fund established under this Master Indenture and earnings thereon shall be credited to such fund unless otherwise directed herein. Investments in any and all funds and accounts may be commingled for purposes of making, holding, and disposing of investments, notwithstanding provisions herein for transfer to or holding in particular funds and accounts amounts received or held by the Trustee hereunder, provided that the Trustee shall at all times account for such investments strictly in accordance with the funds and accounts to which they are credited and otherwise as provided in this Master Indenture. The Trustee may act as principal or agent in the making or disposing of any investment. The Trustee or any of its Affiliates may sell or present for redemption any investments so purchased whenever it shall be necessary to provide money to meet any required payment, transfer, withdrawal or disbursement from the fund to which such investments is credited.

ARTICLE IV COVENANTS

SECTION 4.01 Not General Obligations. Each and every covenant herein made, including all covenants made in the various sections of this Article V, is predicated upon the condition that the General Revenue Parity Bonds shall not be general obligations of MCE nor constitute a debt or pledge of the faith and credit of MCE, the State, or any political subdivision thereof, but shall be payable solely from the Revenues and the other money pledged therefor under this Master Indenture.

MCE shall promptly cause to be paid, solely from the sources stated herein, the principal of, and interest on every General Revenue Parity Bond issued under this Master Indenture at the place, on the dates and in the manner provided herein and in the General Revenue Parity Bonds according to the true intent and meaning thereof.

SECTION 4.02 Performance of Covenants of MCE; Representations. MCE shall faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Master Indenture, in any and every General Revenue Parity Bond executed, authenticated and delivered hereunder, and in all proceedings pertaining thereto. MCE represents that it is duly authorized under the Constitution and laws of the State to issue the General Revenue Parity Bonds authorized hereby, to enter into this Master Indenture, and to pledge and assign the Trust Estate to the Trustee, and that the General Revenue Parity Bonds in the hands of the Owners thereof are and will be valid and binding obligations of MCE.

SECTION 4.03 Maintenance of Existence; Compliance With Laws. MCE shall at all times maintain its existence and shall comply with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body known to it to be applicable to this Master Indenture.

SECTION 4.04 Specific Covenants. MCE hereby makes the following covenants and agreements with the owners and holders of each of the General Revenue Parity Bonds for as long as any of the same remain Outstanding.

(a) *Rate Covenant.*

(1) To the fullest extent permitted by law, MCE will establish, fix and prescribe, prior to the commencement of each Fiscal Year, rates, fees and charges in the operation of all of its businesses, as long as any General Revenue Parity Bonds are Outstanding, so as to yield Available General Revenues at least sufficient, after making reasonable allowances for contingencies and error in the estimates to pay the following amounts:

(i) The interest on and principal of the General Revenue Parity Bonds as they become due and payable;

(ii) All other payments required for compliance with the terms of the this Master Indenture and any Series Indentures providing for the issuance of General Revenue Parity Bonds; and

(iii) All other payments to meet any other obligations of this Master Indenture and any Series Indentures which are charges, liens, or encumbrances upon, or payable from, the Available General Revenues.

(2) In addition to the requirements in subsection (1), to the fullest extent permitted by law, MCE shall establish, fix and prescribe, prior to the commencement of each Fiscal Year, rates, fees and charges in connection with the operation of all of its businesses, which are reasonably expected to be at least sufficient to yield during such Fiscal Year Available General Revenues equal to 1.25 times Annual Debt Service payable in such Fiscal Year.

(3) MCE may make adjustments from time to time in such rates, fees and charges and may make such classification thereof as it deems necessary, but shall not reduce such rates, fees, and charges below those then in effect unless the Available General Revenues resulting after such reduced rates are put into effect will at all times be sufficient to meet the requirements of the rate covenants set forth above.

(4) So long as MCE has complied with its obligations set forth in clause (1) and clause (2) above, the failure to yield the amount of Available General Revenues as set forth in clause (1) above, or the failure of Available General Revenues to equal [1.25] times Annual Debt Service as set forth in clause (1) above at the end of a Fiscal Year, shall not constitute a default or an Event of Default so long as MCE has complied with clause (1) and clause (2) above at the commencement of the succeeding Fiscal Year.

(b) *Payment of General Revenue Parity Bonds.* MCE will duly and punctually pay or cause to be paid out of the Bond Fund the principal of and interest on the General Revenue Parity Bonds at the times and places as provided in each Series Indenture and in said General Revenue Parity Bonds provided and will at all times faithfully perform and observe any and all covenants, undertakings and provisions contained in this Master Indenture, the Series Indenture, as applicable, and in the General Revenue Parity Bonds.

(c) *Maintenance and Operations.* MCE will at all times keep and maintain all of the Facilities in good repair, working order and condition, and will at all times operate the same and the business or businesses in connection therewith in an efficient manner and at a reasonable cost.

(d) *Sale of Certain Facilities.* In the event any Facility or part thereof which contributes in some measure to the Gross Revenue is sold by MCE or is condemned pursuant to the power of eminent domain, MCE will apply the net proceeds of such sale or condemnation to capital expenditures upon or for Facilities which will contribute in some measure to the Gross Revenue or to the retirement of Bonds then Outstanding. MCE may dispose of any portion of the Facilities that have become unserviceable, inadequate, obsolete, or unfit to be used, or no longer necessary for use in the operation of the Facilities.

(e) *Insurance of Facilities.* MCE will keep or arrange to keep all Facilities insured, if such insurance is obtainable at reasonable rates and upon reasonable conditions, against such risks, in such amounts, and with such deductibles as the Board of Directors or the Designated MCE Representative shall deem necessary.

(f) *Insurance Against MCE Liability.* MCE will at all times keep or arrange to keep in full force and effect policies of public liability and property damage insurance which will protect MCE against anyone claiming damages of any kind or nature, if such insurance is obtainable at reasonable rates and upon reasonable conditions, in such amounts and with such deductibles as the Board of Directors or the Designated MCE Representative shall deem necessary.

(g) *Maintenance of Books and Records.* MCE will keep and maintain proper books of account and accurate records of all of its revenue, including tax receipts, received from any source whatsoever, and of all costs of administration and maintenance and operation of all of its business that are in accordance with generally accepted accounting principles as in effect from time to time. (h) *Disposal of Income Properties.* In the event of voluntary or involuntary sale, lease, or other conveyance, transfer or disposal of all or substantially all of its Facilities, MCE shall require that contemporaneously with such disposition, there shall be paid into a special fund a sum which shall be sufficient to defease all General Revenue Parity Bonds then Outstanding; provided, however, that such defeasance will not be required so long as MCE maintains primary responsibility for the management and operation of the affected Facilities and provided further that all Available General Revenue from such Facilities continues to be pledged to all General Revenue Parity Bonds then Outstanding.

(i) *No Free Service.* MCE will not furnish or supply or permit the furnishing or supplying of electric energy or any other commodity, service or facility furnished by or in connection with the operation of the Facilities free of charge to any person, firm or corporation, public or private, and MCE will promptly enforce the payment of any and all accounts owing to MCE and delinquent; provided, however, that to the extent permitted by law, MCE may loan money and may provide commodities, services or facilities free of charge or at a reduced charge in connection with a plan of conservation of electric energy or senior citizen or indigent ratepayer discounts adopted by the Board of Directors.

SECTION 4.05 Further Instruments. MCE shall, upon the reasonable request of the Trustee, from time to time execute and deliver such further instruments as may be reasonable and

as may be required to carry out the purposes of this Master Indenture; provided, however, that no such instruments shall pledge the credit or taxing power, if any, of MCE.

SECTION 4.06 Arbitrage Covenant. MCE covenants for the benefit of the Owners from time to time of the General Revenue Parity Bonds issued on a federally tax-exempt basis that it will not knowingly act so as to cause the proceeds of tax-exempt General Revenue Parity Bonds, any money derived, directly or indirectly, from the use or investment thereof and any other money on deposit in any fund or account maintained in respect of such bonds (whether such money were derived from the proceeds of the sale of the bonds or from other sources) to be used in a manner that would cause such bonds to be treated as “arbitrage bonds” within the meaning of Section 148 of the Code.

ARTICLE V EVENTS OF DEFAULT AND REMEDIES OF OWNERS

SECTION 5.01 Events of Default. MCE hereby finds and determines that the failure or refusal of MCE or any of its officers to perform the covenants and obligations of this Master Indenture will endanger the operation of the Facilities and the application of Gross Revenue and such other money, funds and securities to the purposes herein set forth. Any one or more of the following shall constitute a default under this Master Indenture:

(a) MCE shall fail to make a payment of the principal of any General Revenue Parity Bonds when the same shall become due and payable whether by maturity or scheduled redemption prior to maturity; provided, that a failure to make a payment of the principal of a Series shall not constitute a payment default under any other Series not otherwise in default;

(b) MCE shall fail to make a payment of any installment of interest on any General Revenue Parity Bonds when the same shall become due and payable; provided, that a failure to make payment of interest on a Series shall not constitute a payment default under any other Series not otherwise in default; or

(c) MCE shall default in the observance or performance of any other covenants, conditions, or agreements on the part of MCE contained in this Master Indenture, after receiving written notice of such default from Trustee or a majority of Bondowners and such default shall have continued for a period of 90 days.

In determining whether a payment default has occurred or whether a payment on the General Revenue Parity Bonds has been made under this Master Indenture no effect shall be given to payments made under a Credit Facility that is a policy of municipal bond insurance or surety bond. Upon the occurrence and continuation of a default, a Credit Facility Issuer of a Credit Facility that is not a line of credit shall be entitled to waive any default or to exercise, on behalf of the owners of General Revenue Parity Bonds insured by such Credit Facility Issuer, any of the remedies provided under this section and, for as long as such Credit Facility Issuer is not in default of its obligations under the Credit Facility, such Credit Facility Issuer shall be the only party entitled to waive any default or exercise the remedies provided under this section. There may not be any acceleration of the General Revenue Parity Bonds, and a default under one Series of General

Revenue Parity Bonds shall not constitute a default under another Series of General Revenue Parity Bonds not then in default.

SECTION 5.02 Remedies on Default. Upon the occurrence of a default and so long as such default shall not have been remedied and subject to the foregoing paragraph, the owners of a majority in principal amount of the Outstanding General Revenue Parity Bonds of the series then in default by an instrument or concurrent instruments in writing signed and acknowledged by such Bondowners or by their attorneys-in-fact duly authorized and delivered to such Bondowners' Trustee, notification thereof being given to MC may exercise any remedy hereunder. The Trustee may upon the happening of a default and during the continuation thereof, take such steps and institute such suits, actions or other proceedings in its own name, or as trustee, all as it may deem appropriate for the protection and enforcement of the rights of Bondowners to collect any amounts due and owing MCE, or to obtain other appropriate relief, and may enforce the specific performance of any covenant, agreement or condition contained in this Master Indenture.

Any action, suit or other proceedings instituted by the Trustee hereunder shall be brought in its name as trustee for the Bondowners represented by the Trustee and all such rights of action upon or under any of the General Revenue Parity Bonds may be brought by the Trustee or the provisions of this Master Indenture may be enforced by the Trustee without the possession of any of said General Revenue Parity Bonds, and without the production of the same at any trial or proceedings relating thereto except where otherwise required by law, and the respective owners of said General Revenue Parity Bonds by purchase of such General Revenue Parity Bonds shall be conclusively deemed irrevocably to appoint the Trustee the true and lawful trustee to the respective owners of said General Revenue Parity Bonds, with authority to institute any such action, suit or proceeding; to receive as trustee and deposit in trust any sums that become distributable on account of said General Revenue Parity Bonds; to execute any paper or documents for the receipt of such moneys, and to do all acts with respect thereto that the Bondowner himself might have done in person. Nothing herein contained shall be deemed to authorize or empower the Trustee to consent to accept or adopt, on behalf of any owner of said General Revenue Parity Bonds, any plan of reorganization or adjustment affecting the said General Revenue Parity Bonds or any right of any owner thereof, or to authorize or empower the Trustee to vote the claims of the owners thereof in any receivership, insolvency, liquidation, bankruptcy, reorganization or other proceeding to which MCE shall be a party.

Subject to the rights of a Credit Facility Issuer set forth in this section, no owner of any one or more of the General Revenue Parity Bonds shall have any right to institute any action, suit or proceedings at law or in equity for the enforcement of the same, unless default shall have happened and be continuing, and unless the Trustee has not been appointed as herein provided, but any remedy herein authorized to be exercised by the Trustee may be exercised individually by any Bondowner, in his own name and on his own behalf or for the benefit of all Bondowners, in the event no Bondowners' Trustee has been appointed, or with the consent of the Bondowners' Trustee if such Bondowners' Trustee has been appointed; provided however, that nothing in this Master Indenture or in the General Revenue Parity Bonds shall affect or impair the obligation of MCE which is absolute and unconditional, to pay from Available General Revenues the principal of and interest on said General Revenue Parity Bonds to the respective owners thereof at the respective due dates therein specified, or affect or impair the right of action, which is absolute and unconditional, of such owners to enforce such payments.

SECTION 5.03 Trustee to Represent Owners. The Trustee is hereby irrevocably appointed (and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) as trustee and true and lawful attorney-in-fact of the Owners of the Bonds for the purpose of exercising and prosecuting on their behalf such rights and remedies as may be available to such Owners under the provisions of the Bonds, this Master Indenture, and applicable provisions of any law. Upon the occurrence and continuance of an Event of Default or other occasion giving rise to a right in the Trustee to represent the Bond Owners, the Trustee shall, upon the written request of the Owners of not less than 25% in aggregate principal amount of Bonds then Outstanding (*provided, however*, that if instructions are received from two or more groups of Owners representing not less than 25% in aggregate principal amount of Bonds then Outstanding, the Trustee shall follow the directions of the group of Owners representing the greatest amount of aggregate principal amount of Bonds then Outstanding), and upon being indemnified against anticipated expenses and liabilities to its satisfaction therefor (which indemnity is a condition precedent to its duties hereunder), shall, proceed to protect or enforce its rights or the rights of the Owners by such appropriate action, suit, mandamus or other proceedings as it shall deem most effectual to protect and enforce any such right, at law or in equity, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable right or remedy vested in the Trustee or in such Owners under this Master Indenture, or any law; and upon instituting such proceeding, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver of the Revenues and other assets pledged under this Master Indenture, pending such proceedings. All rights of action under this Master Indenture or the Bonds or otherwise may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in any proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in the name of the Trustee for the benefit and protection of all the Owners of such Bonds, subject to the provisions of this Master Indenture.

SECTION 5.04 Owner's Direction of Proceedings. Anything in this Master Indenture to the contrary notwithstanding, the holders of at least a majority of the principal amount of the Bonds then Outstanding shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the Trustee, to direct the method of conducting all remedial proceedings taken by the Trustee hereunder, upon indemnification satisfactory to the Trustee, provided that such direction shall not be otherwise than in accordance with law and the provisions of this Master Indenture. The Trustee shall not be responsible for the propriety of or liable for the consequences of following such a direction given by holders of at least a majority of the principal amount of the Bonds then Outstanding.

SECTION 5.05 Limitation on Bond Owners' Right to Sue. No Owner of any Bond shall have the right to institute any suit, action or proceeding at law or in equity for the protection or enforcement of any right or remedy under this Master Indenture, or any other applicable law with respect to such Bond until and/or unless (1) such Owner shall have given to the Trustee written notice of the occurrence of an Event of Default; (2) the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding shall have made written request to the Trustee to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name; (3) such Owners shall have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in complying with such request; (4) the Trustee

shall have refused or omitted to comply with such request for a period of 60 days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee; and (5) during such 60-day period no direction inconsistent with such written request has been delivered to the Trustee by the Owners of a greater majority in principal amount of Bonds then Outstanding.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Bonds of any remedy hereunder or under law; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Master Indenture or the rights of any other Owners of Bonds, or to enforce any right under this Master Indenture, or other applicable law with respect to the Bonds, except in the manner herein provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner herein provided and for the benefit and protection of all Owners of the Outstanding Bonds, subject to the provisions of this Master Indenture.

SECTION 5.06 Termination of Proceedings. In case any proceedings taken by the Trustee or any one or more Owners on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Owners, then in every such case MCE, the Trustee and the Owners, subject to any determination in such proceedings, shall be restored to their former positions and rights hereunder, severally and respectively, and all rights, remedies, powers and duties of MCE, the Trustee and the Owners shall continue as though no such proceedings had been taken.

SECTION 5.07 Remedies Not Exclusive. The remedies herein conferred upon or reserved to the owners of the General Revenue Parity Bonds and to a Bondowners' Trustee are not intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. The privileges herein granted shall be exercised from time to time and continued so long as and as often as the occasion therefor may arise and no waiver of any default hereunder, whether by a Bondowners' Trustee or by the owners of General Revenue Parity Bonds, shall extend to or shall affect any subsequent default or shall impair any rights or remedies consequent thereon.

SECTION 5.08 No Waiver of Default. No delay or omission of the Bondowners or of a Bondowners' Trustee to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein.

Upon any such waiver, such default shall cease to exist, and any default arising therefrom shall be deemed to have been cured, for every purpose of this Master Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

ARTICLE VI THE TRUSTEE

SECTION 6.01 Certain Duties and Responsibilities.

(a) Except during the continuance of an Event of Default:

(i) The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Master Indenture, and no implied covenants or obligations shall be read into this Master Indenture against the Trustee; and

(ii) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Master Indenture; but in the case of any such certificates or opinions which are required by any provision hereof, the Trustee shall be under a duty to examine the same to determine whether or not they conform on their face to the requirements of this Master Indenture.

(b) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights, powers, duties and obligations vested in it by this Master Indenture, and use the same degree of care and skill in their exercise, as a prudent corporate indenture trustee would exercise or use under the circumstances.

(c) No provision of this Master Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct or breach of trust, except that:

(i) this subsection (c) shall not be construed to limit the effect of subsection (a) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith and without negligence by the chairman or vice chairman of the Trustee's board of directors, the chairman or vice chairman of the executive committee of the Trustee's board of directors, the president, any vice president, any assistant vice president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the cashier, any assistant cashier, any trust officer or assistant trust officer, the controller and any assistant controller or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers or, with respect to a particular matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith and without negligence in accordance with the direction of the Owners of the Outstanding Bonds as provided herein relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Master Indenture; and

(iv) no provision of this Master Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties

hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The Trustee may, nevertheless, begin suit, or appear in and defend suit, or do anything else in its judgment properly to be done by it as the Trustee, without prior assurance of indemnity, and in such case shall be entitled to reimbursement by MCE for all reasonable disbursements, including its own fees, and for all liability and damages suffered by the Trustee in connection therewith except for the Trustee's negligence, bad faith, willful misconduct or breach of trust.

(v) no permissive power, right or remedy conferred upon the Trustee under this Master Indenture, any agreement assigned to the Trustee or any related document shall be construed to impose a duty to exercise such power, right or remedy.

(d) Whether or not therein expressly so provided, every provision of this Master Indenture, any agreement assigned to the Trustee or any related document relating to the conduct, powers or duties of, or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

(e) Any term of this Master Indenture, any agreement assigned to the Trustee or any related document to the contrary notwithstanding, and notwithstanding an agreement of indemnity, the Trustee shall not be obligated to perform or discharge any obligation of MCE as a result of the assignment of any agreement to the Trustee. The assignment of any agreement to the Trustee shall not constitute an assumption on the part of the Trustee of any obligation or liability thereunder.

(f) The Trustee shall not be responsible for the validity, perfection, continuation, or value of any lien or any collateral securing the Bonds.

(g) It shall not be the duty of the Trustee, except as expressly provided herein, to see that any duties or obligations imposed herein upon MCE or other persons are performed, and the Trustee shall not be liable or responsible for the failure of MCE or other such persons to perform any act required of them. The Trustee shall not be liable for any failure or delay in taking any action required to be taken at the direction of MCE resulting from a failure or delay on the part of MCE in providing such direction.

(h) The Trustee shall not be responsible or liable for the environmental condition or any contamination of the Facilities or any property which secures MCE's obligation or for any diminution in value of any such property as a result of any contamination of the property by any hazardous substance, hazardous material, pollutant or contaminant. The Trustee shall be under no obligation to effect or maintain insurance or to renew any policies of insurance or to inquire as to the sufficiency of any policies of insurance carried by MCE, or to report, or make or file claims or proof of loss for, any loss or damage insured against or that may occur, or to keep itself informed or advised as to the payment of any taxes or assessments, or to require any such payment to be made.

(i) The Trustee shall not be responsible for the recording, re-recording, filing or refilling this Master Indenture, the Mortgage, or any assignments thereof or have any duty to monitor, inspect or oversee the construction, completion or development of the Facilities.

(j) The Trustee, in its capacity as the mortgagee under the Mortgage, shall not be obligated to acquire possession of or take any action with respect to the Facilities, if as a result of such action, the Trustee would be considered to hold title to, to be a “mortgagee in possession of,” or to be an “owner” or “operator” of the Facilities within the meaning of the Comprehensive Environmental Responsibility Cleanup and Liability Act of 1980, (42 U.S.C. § 9601 et seq.), any analogous state or local laws, any amendments thereto, or the regulations promulgated pursuant to said laws, as amended from time to time, unless the Trustee has previously determined, based upon a report prepared by an “Environmental Professional” as defined at 40 C.F.R. 312.10(b), that (i) there are no “Recognized Environmental Conditions” as defined by ASTM E1527-13; and (2) the Facilities is in compliance with applicable environmental laws. Notwithstanding the foregoing, if at any time, Trustee determines to take any action to protect its security interest in the Facilities, prior to doing so, the Trustee may require that a satisfactory indemnity bond or Premises Pollution Liability Insurance be furnished to it for the payment or reimbursement of all expenses to which it may be put and to protect it against all liability resulting from any claims, judgments, damages, losses, fees, penalties or expenses which may result from such action.

(k) Simultaneously with the execution and delivery of this Master Indenture, the Trustee shall enter, and is hereby authorized to enter, into the other financing documents to which it is a party on behalf of itself and all Owners and all future Owners.

(l) Notwithstanding anything to the contrary herein, the Trustee shall not be obligated to provide any consents, directions, determinations, acceptances, rejections or other similar actions unless it shall have first been so directed by Owners of 25.0% in aggregate principal amount of the Bonds then Outstanding, and the Trustee shall have no liability for taking any such actions in accordance with such directions and shall not be liable for any failure or delay in taking such actions resulting from any failure or delay by such Owners in providing such directions. In the event of any conflict of instructions delivered to the Trustee by the Holders as described in this clause (l), the direction given to the Trustee by Owners of the greater percentage in aggregate principal amount of the Outstanding Bonds shall control. For the avoidance of doubt, this paragraph (l) is intended solely for the benefit of the Trustee and is not intended to and does not confer any rights, benefits or claims on or to any other party, or (ii) shall not limit the right and authority of the Trustee to take actions as may be requested by (A) the Issuer in accordance with the terms of this Master Indenture or (B) following an Event of Default, any Owners providing instructions in accordance with Article VI hereunder.

(m) For the purposes of this Master Indenture, the Trustee shall not be deemed to have knowledge of, or have any duty to ascertain or inquire into, the existence, the content, or the terms and conditions of any other agreement, instrument or document, in each case, to which the Trustee is not a party or beneficiary, whether or not such agreement, instrument or document, as the case may be, is referenced in this Master Indenture.

(n) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(o) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services.

(p) The delivery of reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of the foregoing will not constitute constructive notice of any information contained therein or determinable from information contained therein.

(q) The Trustee may become the registered Owner of any General Revenue Parity Bond with the same rights it would have if it were not the Trustee, and to the extent permitted by law may act as depository for and permit any of its officers or directors to act as member of, or in any other capacity with respect to, any committee formed to protect the right of the registered Owners of General Revenue Parity Bonds.

SECTION 6.02 Certain Rights of Trustee. Except as otherwise provided in Section 6.01:

The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.

(a) Any request or direction of MCE mentioned herein shall be sufficiently evidenced by a certificate of the Designated MCE Representative and any action of the governing board of MCE may be sufficiently evidenced by a copy of a resolution certified by the Secretary of MCE to have been duly adopted by MCE and to be in full force and effect on the date of such certification and delivered to the Trustee.

(b) Whenever in the administration of this Master Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a certificate of an Issuer Representative.

(c) The Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(d) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Master Indenture at the request or direction of any of the Bondowners pursuant to this Master Indenture, unless such Bondowners shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction. In any case where more than one Owner is providing indemnity, such indemnity shall be several and not joint, and as to each Owner, such indemnity obligation shall not exceed its proportional interest in the Outstanding Bonds.

(e) The Trustee shall not be bound to make any investigation into the facts or matters stated in any requisition, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

(f) The Trustee may engage agents and attorneys to assist it in executing any of the trusts or powers hereunder or performing any duties hereunder, and the Trustee shall not be liable for the acts of any such agent or attorney selected with due care.

SECTION 6.03 Employment of Experts. The Trustee is hereby authorized to employ as its agents such attorneys at law, certified public accountants and recognized authorities in their fields (who are not employees of the Trustee), as it reasonably may deem necessary to assist it to carry out any of its obligations hereunder, and shall be reimbursed by MCE for all reasonable expenses and charges in so doing.

SECTION 6.04 Enforcement of Performance by Others. Except as otherwise specifically provided herein, it shall not be the duty of the Trustee to see that any duties and obligations herein imposed upon MCE are performed.

SECTION 6.05 Right to Deal in Bonds and Take Other Actions. The Trustee may in good faith buy, sell or hold and deal in any Bonds with like effect as if it were not such Trustee and may commence or join in any action which an Owner is entitled to take with like effect as if the Trustee were not the Trustee. It is understood and agreed that the Trustee engages in a general banking business and no provision hereof is to be construed to limit or restrict the right of the Trustee to engage in such business with MCE. So engaging in such business shall not, in and of itself, and so long as the Trustee duly performs all of its duties as required hereby, constitute a breach of trust on the part of the Trustee, but neither shall engaging in such business abrogate, alter or diminish any duty or obligation of the Trustee as trustee hereunder.

SECTION 6.06 Removal and Resignation of the Trustee. The Trustee may resign at any time. The Trustee may be removed at any time, for any breach of the Trust set forth herein. The Trustee may also be removed at any time either by one or more instruments in writing signed by the Owners of not less than a majority in principal amount of Bonds then Outstanding, or, if no Event of Default or Default has occurred and is continuing and if no direction to the contrary is received from the Owners of a majority in principal amount of Bonds Outstanding, by an instrument in writing signed by MCE. Written notice of the Trustee's resignation or removal shall be given by the Trustee to MCE, and such resignation or removal shall take effect only upon the appointment and qualification of a successor Trustee. In the event a successor Trustee has not been appointed and qualified within 60 days of the date notice of resignation or removal is given, the Trustee, MCE may apply to any court of competent jurisdiction for the appointment of a successor Trustee to act until such time as a successor is appointed as provided in this Section.

In the event of the resignation or removal of the Trustee or in the event the Trustee is dissolved or otherwise becomes incapable to act as the Trustee, MCE shall be entitled to appoint a successor Trustee by an instrument in writing signed by MCE, so long as no Event of Default or Default has occurred and is continuing. If the Owners of a majority of the principal amount of

Bonds then Outstanding object to the successor Trustee so appointed by MCE and if such Owners designate another Person qualified to act as the Trustee, MCE shall then appoint as the Trustee the Person so designated by the Owners.

Unless otherwise ordered by a court or regulatory body having competent jurisdiction, or unless required by law, any successor Trustee shall be a trust company or bank having the powers of a trust company as to trusts, qualified to fulfill the obligations of the Trustee under this Master Indenture and having an officially reported combined capital, surplus, undivided profits and reserves aggregating at least \$75,000,000, if there is such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

Every successor Trustee howsoever appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to MCE, an instrument in writing, accepting such appointment hereunder, and thereupon such successor Trustee, without further action, shall become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor, and such predecessor shall execute and deliver an instrument transferring to such successor Trustee all the rights, power and trusts of such predecessor, subject to the terms and conditions herein set forth, including, without limitation, the right of the predecessor Trustee to be paid and reimbursed in full for its reasonable charges and expenses (including reasonable costs and fees of its counsel). The predecessor Trustee shall execute any and all documents necessary or appropriate to convey all interest it may have to the successor Trustee. The predecessor Trustee shall promptly deliver all records relating to the trust or copies thereof and communicate all material information it may have obtained concerning the trust to the successor Trustee.

Each successor Trustee, not later than ten days after its assumption of the duties hereunder, shall mail a notice of such assumption to each Owner of a Bond.

Notwithstanding any other provisions of this Master Indenture to the contrary, no removal, resignation or termination of the Trustee shall take effect until a successor shall be appointed.

SECTION 6.07 Continuation Statements; Proof of Claim. Within the period beginning six months prior to and ending 90 days prior to the expiration of five years after the initial UCC-1 filing for the security interest granted under this Master Indenture, and within six months prior to but in no event less than ninety days prior to the expiration of each five-year period thereafter until this Master Indenture is discharged, the Trustee will cause to be filed with the California Secretary of State continuation statements if necessary to continue the perfection (to the extent that such perfection can be accomplished under applicable law by filing) of the security interest granted under this Master Indenture. The Trustee shall not be responsible for the initial filing of any UCC statements. To the extent the Trustee is required to file any instrument, the Trustee shall be entitled to retain counsel and shall be entitled to reimbursement of Trustee Fees and Expenses pursuant to Sections 6.03 and 6.08 hereof. Trustee shall provide to the Owners of the Bonds copies of all such filings and any other documents received from MCE.

The Trustee shall have the right and power to take actions in the name and place of MCE or Owners to make proof of claim in any proceeding, bankruptcy, reorganization or otherwise where proof of claim may be required. Any amount recovered as a result of any such claim, after payment of all fees (including reasonable attorneys' fees), costs, expenses and advances incurred

by the Trustee or its agents in pursuing such claim, shall be for the equal benefit of all of the Owners.

SECTION 6.08 Trustee Fees and Expenses. The Trustee shall be entitled to be paid from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust); to reimbursement upon request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Master Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and its agents), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith or willful misconduct or breach of trust; and the Trustee, and its directors, officers, employees and agents, shall be entitled to be indemnified by MCE for, from and against any loss, liability or expense arising out of or in connection with the acceptance or administration of this trust or its duties hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers, trusts, obligations or duties hereunder; provided, however, that MCE shall not be liable for any such amounts so payable except to the extent the same can be paid or recovered from funds paid or payable to the Trustee. The Trustee's rights to compensation, reimbursement and indemnity for services provided and events occurring while serving as Trustee hereunder shall survive and continue notwithstanding the subsequent resignation or removal of the Trustee or discharge of the Indenture.

Any provision hereof to the contrary notwithstanding, if MCE fails to make any payment properly due the Trustee for its reasonable fees, costs, expenses and fees of attorneys, certified public accountants, recognized authorities in their field and agents (not employees of the Trustee) incurred in performance of its duties, the Trustee may reimburse itself from any money on hand in any fund or account created pursuant hereto, and shall enjoy a first priority lien for such costs, expenses, and fees.

SECTION 6.09 Destruction of Bonds. Upon payment of or surrender to the Trustee for cancellation of any Bond, the Trustee shall destroy such Bond.

SECTION 6.10 Recitals and Representations. The recitals, statements and representations contained herein, or in any Bond (excluding the Trustee's authentication on the Bonds or any recitals or representations concerning the Trustee or its rights, powers, duties, obligations or trusts) shall not be taken or construed as made by the Trustee, and the Trustee neither assumes nor shall be under any responsibility for the correctness of the same.

The Trustee makes no representation as to, and is not responsible for, the validity or sufficiency hereof, of the Bonds, or the validity or sufficiency of insurance to be provided or, except as herein required, the filing or recording or registering of any document. The Trustee shall be deemed not to have made representations as to the security afforded hereby or hereunder or as to the validity or sufficiency of such document. The Trustee shall not be concerned with or accountable to anyone for the use or application of any money which shall be released or withdrawn in accordance with the provisions hereof. The Trustee shall have no duty of inquiry with respect to any Default or Events of Default described herein without actual knowledge of or

receipt by the Trustee of written notice of a Default or an Event of Default from MCE or any Owner.

SECTION 6.11 Merger or Consolidation. Any company or national banking association into which the Trustee may be merged or converted or with which it may be consolidated or resulting from any merger, conversion or consolidation to which it shall be a party or to which it may sell or transfer all or substantially all of its corporate trust business, provided such entity shall be authorized by law to perform all duties imposed on it by this Master Indenture, and shall be eligible to be a successor Trustee under the provisions of this Master Indenture, shall be the successor to the Trustee without the execution or filing of any paper or the performance of any further act.

ARTICLE VII MODIFICATION OF THIS MASTER INDENTURE

SECTION 7.01 Limitations. Neither this Master Indenture shall be modified or amended in any respect subsequent to the initial issuance of the Bonds, except as provided in and in accordance with and subject to the provisions of this Article VII. The Trustee shall not be obligated to enter into or consent to any Supplemental Indenture which affects the duties, liabilities and immunities of the Trustee hereunder or the rights of the Trustee under Article VII hereof. A Series Indenture shall not be considered a Supplemental Indenture, unless it is otherwise identified as such therein.

SECTION 7.02 Supplemental Indentures without Consent of Owners. MCE may, and, subject to the provisions of Sections 7.01 and 7.05, the Trustee shall, from time to time and at any time (without the consent of or, except as provided below, notice to the Owners) enter into Supplemental Indentures as follows:

- (a) to cure any defect in form, omission, inconsistency or ambiguity in this Master Indenture;
- (b) to grant to or confer or impose upon the Trustee for the benefit of the Owners any additional rights, remedies, powers, authority, security, liabilities or duties which may lawfully be granted, conferred or imposed and which are not contrary to or inconsistent with this Master Indenture as theretofore in effect;
- (c) to add to the covenants and agreement of, and limitations and restrictions upon, MCE in this Master Indenture other covenants, agreements, limitations and restrictions to be observed by MCE which are not contrary to or inconsistent with this Master Indenture as theretofore in effect;
- (d) to confirm, as further assurance, any pledge under this Master Indenture, and the subjection to any claim, lien or pledge created or to be created by this Master Indenture, of the Revenues or of any other money, securities or funds;
- (e) to change the addresses specified in Section 10.06 hereof;

(f) to modify, alter, amend or supplement this Master Indenture in such manner as shall preserve the tax-exempt status of the Bonds or tax-exempt General Revenue Parity Bonds;

(g) to modify, alter, amend or supplement this Master Indenture in any other respect that is not materially adverse to the Owners (and the Trustee may rely conclusively upon an Opinion of Bond Counsel to such effect) and that does not involve a change described in the provisions of Section 7.03(a) hereof; and

(h) to authorize the issuance of Additional Bonds pursuant to Section 2.03 hereof.

Before MCE and the Trustee shall enter into any Supplemental Indenture pursuant to this Section 7.02, there shall have been delivered to the Trustee an Opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Master Indenture and the Act, complies with their respective terms, will, upon the execution and delivery thereof, be valid and binding upon MCE in accordance with its terms and will not adversely affect the exclusion of interest on the Bonds or tax-exempt Additional Bonds, if any, from gross income for federal income tax purposes. A copy of any proposed amendment to this Master Indenture shall be delivered to each Bond Owner at least 30 days before it becomes effective.

SECTION 7.03 Supplemental Indentures with Consent of Owners.

(a) Except for any Supplemental Indenture entered into pursuant to Section 7.02 hereof, subject to the terms and provisions contained in this Section 7.03, the Owners of a majority of the principal amount of any Outstanding General Revenue Bonds shall have the right from time to time to consent to and approve the execution and delivery by MCE and the Trustee of any Supplemental Indenture deemed necessary or desirable by MCE for the purposes of modifying, altering, amending, supplementing or rescinding, in any particular, any of the terms or provisions contained in this Master Indenture.

(b) If at any time MCE shall request the Trustee to enter into any Supplemental Indenture for any of the purposes of this Section 7.03, the Trustee shall cause notice of the proposed Supplemental Indenture to be given to all Owners. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that a copy thereof is on file at the office of the Trustee for inspection by all Owners.

(c) Within two months after the date of the giving of such notice, MCE and the Trustee may enter into such Supplemental Indenture in substantially the form described in such notice, but only if there shall have first been delivered to the Trustee (i) the required consents, in writing, of the Owners and (ii) an Opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Master Indenture and the Act, complies with their respective terms, and, upon the execution and delivery thereof, will be valid and binding upon MCE in accordance with its terms and will not adversely affect the exclusion of interest on the Bonds or tax-exempt Additional Bonds, if any, from gross income for federal income tax purposes.

(d) If Owners shall have consented to and approved the execution and delivery thereof as herein provided, no Owner shall have any right to object to the execution and delivery of such Supplemental Indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution and delivery thereof,

or to enjoin or restrain MCE or the Trustee from executing and delivering the same or from taking any action pursuant to the provisions thereof.

(e) Subject to the terms and provisions contained in Section 7.01 hereof and in this Section 7.03(e), the Owners of all the Bonds at any time Outstanding shall have the right, and MCE and the Trustee by their execution and delivery of this Master Indenture hereby expressly confer upon such Owners the right, to modify, alter, amend or supplement this Master Indenture in any respect, including without limitation in respect of the matters described in the proviso contained in subsection (a) of this Section 7.03, by delivering to MCE and the Trustee a written instrument or instruments, executed by or on behalf of such Owners, containing a form of Supplemental Indenture which sets forth such modifications, alterations, amendments and supplements, and, upon the expiration of a 60-day period commencing on the date of such delivery during which no notice of objection shall have been delivered by MCE or the Trustee to such Owners at an address specified in such written instrument, such Supplemental Indenture shall be deemed to have been approved and confirmed by MCE and the Trustee, to the same extent as if actually executed and delivered by MCE and the Trustee, and to have been approved by MCE, and such Supplemental Indenture shall thereupon become and be for all purposes in full force and effect without further action by MCE or the Trustee. The foregoing provisions are, however, subject to the following conditions:

(i) no such Supplemental Indenture shall in any way affect the limited nature of the obligations or responsibilities of MCE or the Trustee under this Master Indenture or shall adversely affect any of their respective rights hereunder without their consent; and

(ii) there shall have been delivered to the Trustee an Opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Master Indenture and the Act, complies with their respective terms, will, upon the expiration of the aforesaid 60-day period, be valid and binding upon MCE in accordance with its terms, and will not adversely affect the exclusion of interest on the Bonds or tax-exempt Additional Bonds, if any, from gross income for federal income tax purposes.

SECTION 7.04 Effect of Supplemental Indenture. Upon the execution and delivery of any Supplemental Indenture pursuant to the provisions of this Article VII, this Master Indenture shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Master Indenture of MCE, the Trustee and all Owners shall thereafter be determined, exercised and enforced under this Master Indenture subject in all respects to such modifications and amendments.

SECTION 7.05 Consent of MCE. Except as provided in Section 7.03(e) hereof, no Supplemental Indenture shall become effective unless and until MCE shall have consented thereto in writing.

ARTICLE VIII DEFEASANCE

SECTION 8.01 Discharge of Indenture. The Bonds may be paid by MCE in any of the following ways, provided that MCE also pays or causes to be paid any other sums payable hereunder:

- (a) by paying or causing to be paid the principal of, and interest on the Bonds, as and when the same become due and payable;
- (b) by defeasance (as provided in Section 8.02); or
- (c) by delivering to the Trustee, for cancellation by it, the Bonds then Outstanding pursuant to the terms of this Master Indenture.

If MCE shall also pay or cause to be paid all other sums payable hereunder, then and in that case, at the election of MCE (evidenced by a certificate of MCE, filed with the Trustee, signifying the intention of MCE to discharge all such indebtedness and this Master Indenture and upon the delivery of an Opinion of Counsel to the Trustee that all conditions precedent to the discharge of the lien of this Master Indenture have been complied with), and notwithstanding that any Bonds shall not have been surrendered for payment, this Master Indenture and the pledge of the Trust Estate, Revenues and other assets made under this Master Indenture and all covenants, agreements and other obligations of MCE under this Master Indenture shall terminate, become void and be completely discharged and satisfied. In such event, upon the request of MCE, the Trustee shall cause an accounting for such period or periods as may be requested by MCE to be prepared and filed with MCE and shall execute and deliver to MCE all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over, transfer, assign or deliver all money or securities or other property held by it pursuant to this Master Indenture which are not required for the payment or redemption of Bonds not theretofore surrendered for such payment or redemption or fees and expenses of the Trustee to MCE.

SECTION 8.02 Defeasance. In the event MCE shall have set aside irrevocably in a special fund for and pledged to pay the principal of, premium, if any, and interest on the Bonds included in a plan of refunding or defeasance, money and/or Government Obligations described in clause (i) of the definition thereof in Section 1.01 that are not subject to redemption or prepayment prior to maturity sufficient in amount, together with known as opposed to estimated earned income from the investments thereof, to make such payments and to accomplish the refunding or defeasance as scheduled (hereinafter called the “trust account”); and/or shall make irrevocable provisions for redemption of such Bonds, then in that case all right and interest of the Owners of the Bonds to be so retired, refunded or defeased (hereinafter collectively called the “defeased Bonds”) in the covenants of this Master Indenture, in the Revenues, and in the funds and accounts obligated to the payment of such defeased Bonds, other than the right to receive the funds so set aside and pledged, thereupon shall cease and become void, except that such Owners shall have the right to receive payment of the principal of, premium, if any, and interest on the defeased Bonds from the trust account and, in the event the funds in the trust account are not available for such payment, shall have the residual right to receive payment of the principal of, premium, if any, and interest on the defeased Bonds from the Revenues without any priority of

lien or charge against those Revenues or covenants with respect thereto except to be paid therefrom (except such rights as exist with respect to payment, exchange and transfer of such Bonds under the pertinent provisions of this Master Indenture). After the establishing and full funding of such trust account and the delivery of an Opinion of Counsel to the Trustee that all conditions precedent to the defeasance of the lean of this Master Indenture have been complied with, the defeased Bonds shall be deemed to be discharged, the Trustee shall cancel the defeased Bonds as paid, and MCE then may apply any money in any other fund or account established for the payment or redemption of the defeased Bonds to any lawful purposes as it shall determine, subject only to the rights of the Owners of any other Bonds then Outstanding and MCE. Money held in any defeasance trust account shall be held solely for the benefit of the Owners of said Bonds. No defeasance shall be effective unless and until all fees and expenses of MCE and the Trustee have been fully paid and satisfied.

ARTICLE IX FORM OF BONDS

SECTION 9.01 Form of Bonds. Each series of General Revenue Parity Bonds shall be in substantially the form specified in the Series Indenture for a such series.

ARTICLE X MISCELLANEOUS

SECTION 10.01 Successor Is Deemed Included in All References to Predecessor. Whenever in this Master Indenture either MCE or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Master Indenture contained by or on behalf of MCE and the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 10.02 Limitation of Rights to Parties and Bond Owners. Nothing in this Master Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any Person other than MCE, the Trustee, and the Owners of the Bonds, any legal or equitable right, remedy or claim under or in respect of this Master Indenture or any covenant, condition or provision therein or herein contained, and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of MCE, the Trustee, and the Owners of the Bonds.

SECTION 10.03 Waiver of Notice. Except as otherwise provided herein, whenever in this Master Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 10.04 Destruction of Bonds. Whenever in this Master Indenture provision is made for the cancellation by the Trustee and the delivery to MCE of any Bonds, the Trustee

may, in lieu of such cancellation and delivery, destroy such Bonds (in the presence of an officer of MCE, if MCE shall so require) and deliver a certificate of such destruction to MCE.

SECTION 10.05 Patriot Act. The parties hereto acknowledge that in accordance with Section 326 of the Patriot Act, Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each Person or legal entity that establishes a relationship or opens an account with Trustee. Each of the parties hereto agrees that it will provide Trustee with such information as Trustee may request in order for it to satisfy the requirements of the Patriot Act.

SECTION 10.06 Severability of Invalid Provisions. If any one or more of the provisions contained in this Master Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Master Indenture, and such invalidity, illegality or unenforceability shall not affect any other provision of this Master Indenture, and this Master Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. MCE hereby declares that it would have entered into this Master Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Master Indenture may be held illegal, invalid or unenforceable.

SECTION 10.07 Notices. Any notice to or demand upon the following parties shall be given by first class mail, return receipt requested, as set forth below, or to such other addresses as may from time to time be furnished, effective upon the receipt of notice thereof given as provided for in this Section 10.07.

If to MCE: Marin Clean Energy

If to the Trustee: _____

Notwithstanding any provision to the contrary in this Master Indenture, any information or documents required to be provided by the Trustee to Owners may be provided by providing notice of and access to the Trustee's website or other electronic platform containing such information or document. It is acknowledged that distribution of material through any such electronic platform is not necessarily secure and that there are confidentiality and other risks associated with such distribution. In consideration for the convenience and other benefits afforded by such distribution and for the other consideration provided hereunder, the receipt and sufficiency of which is hereby acknowledged, the Issuer and the Owners hereby approve distribution of electronic communications through such electronic platform and understand and assume the risks of such distribution.

SECTION 10.08 Evidence of Rights of Bond Owners. Any request, consent or other instrument required or permitted by this Master Indenture to be signed and executed by Owners may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Owners in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or of the holding by any Person of Bonds transferable by delivery, shall be sufficient for any purpose of this Master Indenture and shall be conclusive in favor of the Trustee and MCE if made in the manner provided in this Section.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

The ownership of General Revenue Parity Bonds shall be proved by the Bond Register maintained by the Trustee.

Any request, consent, or other instrument or writing of the Owner of any General Revenue Parity Bond shall bind every future Owner of the same General Revenue Parity Bond and the Owner of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or MCE in accordance therewith or reliance thereon.

SECTION 10.09 Applicable Provisions of Law. This Master Indenture shall be governed by and construed in accordance with the laws of the State.

SECTION 10.10 Execution in Several Counterparts. This Master Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts, or as many of them as MCE and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

SECTION 10.11 Non-Business Day If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Master Indenture, is on a Saturday, Sunday or any other day that is not a Business Day, such payment (or performance) with no interest accruing for the period after such nominal date, may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided therefor in this Master Indenture.

IN WITNESS WHEREOF, the Marin Clean Energy has caused this Master Indenture to be signed in its name by its Chair, and Trustee, in acceptance of the trusts created hereunder, has caused this Master Indenture to be signed in its corporate name by its agent thereunder duly authorized all as of the day and year first above written.

MARIN CLEAN ENERGY

By _____
Chair

_____, as Trustee

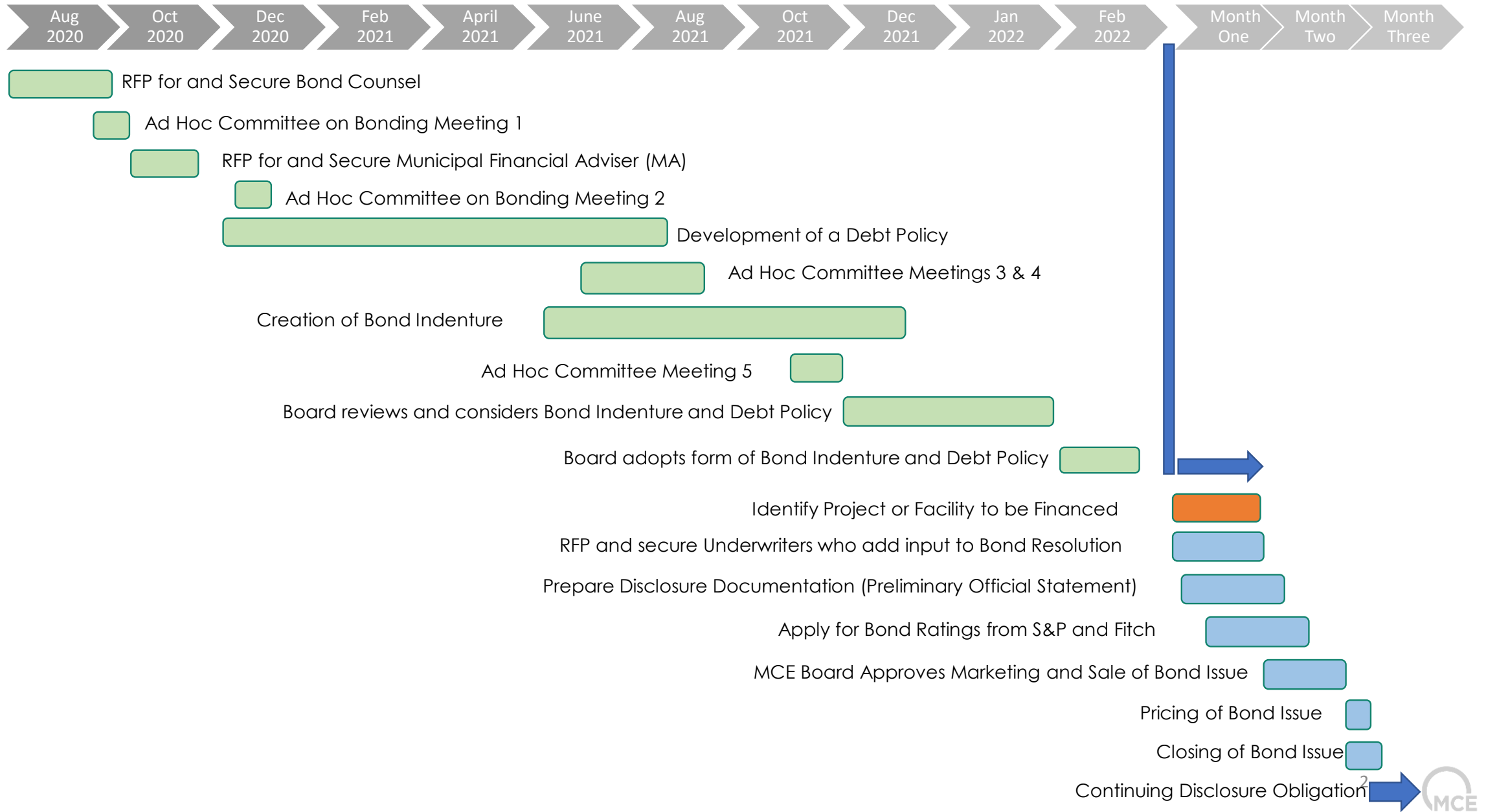
By _____
Title _____



Timeline for Issuing Tax-exempt Bonds

Board of Directors Meeting, February 17, 2022

Little Bear, Fresno. Courtesy of First Solar.





February 17, 2022

TO: MCE Board of Directors

FROM: Shalini Swaroop, General Counsel & Director of Policy

RE: Policy Update of Regulatory and Legislative Items

Dear Board Members:

Below is a summary of the key activities at the state and federal legislatures and the California Public Utilities Commission (CPUC) impacting Community Choice Aggregation (CCA) and MCE.

I. **Legislative Advocacy**

The California Legislature has now entered its 2021-2022 session. On January 3, 2022, Asm. Lorena Gonlazez-Fletcher resigned from her position, in which she also served as the Chair of the Appropriations Committee. Because of her resignation, Asm. Holden has become the Chair of the Appropriations Committee, leaving a vacancy in the Chair of the Assembly Utilities and Energy Committee. This vacancy has been filled by Asm. Eduardo Garcia. Asm. Garcia's likely priority is a large geothermal procurement mandate to be built at the Salton Sea, which is in his district. In addition, in 2019, Asm. Garcia previously sponsored AB 56, which would have undermined CCA local governance. MCE staff will continue to monitor all energy-related bills and provide regular updates to the Board.

II. **California Public Utilities Commission**

a. **PG&E's 2022 Energy Resource Recovery Account Application**

On November 24, 2021, the CPUC issued an Administrative Law Judge (ALJ) Ruling in Pacific Gas and Electric Company's (PG&E) 2022 Energy Resource Recovery Account (ERRA) Forecast Proceeding. The Ruling required two supplemental updates from PG&E to revise its 2022 ERRA

forecast and amended the procedural schedule by pushing out the timeline for a Decision in the proceeding.

This proceeding will set PG&E bundled generation rates and the Power Charge Indifference Adjustment (PCIA) rate for 2022. In effect, a delay in a Final Decision in this proceeding leads to a delay in the implementation of updated PG&E bundled generation rates (expected to increase) and the implementation of an updated PCIA rate (expected to decrease).

On December 20, 2021, the CPUC issued an ALJ Ruling requiring PG&E to file additional information related to the amortization of PG&E's ERRA balance. The Ruling ordered PG&E to model the effects of extending the amortization period of 2022 revenue requirements from the traditional 12-months to 18- or 24-months.

On December 22, 2021, the CPUC issued an additional ALJ Ruling amending the procedural schedule once more, pushing the expected date for a Proposed Decision to January 14, 2022, and changing the date of the expected Commission vote on the Proposed Decision to January 27, 2022.

On January 6, a group of Joint CCAs participating in the proceeding filed a joint statement with the California Community Choice Association, the Direct Access Customer Coalition, PG&E, and the Public Advocates Office. The filing noted the Joint CCAs' preference for (1) a 12-month amortization period and (2) for the Commission to emphasize the timely implementation of updated rates to prevent increased rate volatility for both bundled and unbundled customers.

On January 24, 2022, the CPUC issued a Proposed Decision (PD) in the proceeding. The Proposed Decision would adopt the 12-month amortization period requested by the Joint CCAs, and lead to reduced PCIA rates for MCE customers (exact rates to be determined in a subsequent PG&E filing). The Joint CCAs filed Opening and Reply Comments on the PD on January 31, 2022, and February 4, 2022, respectively.

If approved, the PD would require PG&E to file updates to its tariffs no later than 15 days after the Final Decision. The Commission is scheduled to vote on the PD on February 10, 2022.

b. Net Energy Metering

On December 13, 2021, the CPUC issued a Proposed Decision (PD) in the Net Energy Metering (NEM) Successor Tariff Proceeding. This

proceeding is intended to determine the structure of a NEM 2.0 successor tariff for Pacific Gas and Electric (PG&E) solar customers.

As outlined in the PD, the Commission proposes to replace the current NEM framework with a new Net Billing Tariff. The PD includes numerous revisions to the PG&E's NEM programs including:

- (1) Revisions to reduce the compensation customers receive for energy sent to the grid;
- (2) The creation of a fixed monthly charge for residential solar customers on the Net Billing Tariff;
- (3) The creation of a temporary incentive, in the form of a monthly bill credit, for prospective residential solar customers;
- (4) Revisions to existing NEM customers' tariffs.

Most notably for MCE customers is the proposed Grid Participation Charge (GPC), which would be applicable to MCE residential customers who take service on MCE's NEM tariff after the sunset date for the current NEM 2.0 tariff. The GPC would be a fixed monthly charge, set at \$8/kW, based on the number of kilowatts of installed solar in a residential customer's system. Residential customers defined as low-income would be exempt from the GPC.

As proposed in the PD, the sunset date for NEM 2.0 would be no later than 120 days after the adoption of the final decision, after which time no additional customers will be permitted to take service under PG&E's NEM 2.0 tariff. Additionally, the proposed decision would reduce the current eligibility period for existing customers to maintain their residential NEM 1.0 and NEM 2.0 rates from 20-years to 15-years.

On January 11, 2022, the Commission reassigned the proceeding to CPUC President Alice Reynolds. On February 3, 2022, the Administrative Law Judge (ALJ) for the proceeding issued a procedural update to all parties. Effectively, the update indicated that the proceeding is on hold. President Reynolds has requested additional time to analyze the record and consider revisions to the PD based on party comments. The ALJ noted that a subsequent procedural update will be provided to parties once additional analysis is conducted. MCE will continue to monitor the status of the NEM proceeding and provide regular updates to the board.