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PINOLE | PITTSBURG | PLEASANT HILL | RICHMOND | SAN PABLO | SAN RAMON | VALLEJO | WALNUT CREEK

Board of Directors Meeting Thursday, March 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: 1-669-900-9128
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 2.17.22 Meeting Minutes
 - C.2 Approved Contracts For Energy Update
 - C.3 Resolution No. 2022-04 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)
 - C.4 Second Amended and Restated Demand FLEXmarket Agreement with Recurve Analytics, Inc.

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- C.5 First Amended and Restated Schedule A.2 and Second Amended and Restated Schedule A.3 to the Master Services Agreement with Association for Energy Affordability
- 6. Fiscal Year 2022/23 Proposed Budget (Discussion/Action)
- 7. Resolution 2022-05 Appointing Director of Finance as Treasurer (Discussion/Action)
- 8. Policy Update of Regulatory and Legislative Items (Discussion)
- 9. Board Matters & Staff Matters (Discussion)
- 10. Adjourn

The Board 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, February 17, 2022

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
 John Gioia, Contra Costa County
 Ford Greene, Town of San Anselmo
 Maika Llorens Gulati, City of San Rafael
 Kevin Haroff, City of Larkspur
 Teresa Onoda, Town of Moraga
 Doriss Panduro, City of Fairfield
 Aaron Meadows, City of Oakley
 Katy Miessner, City of Vallejo
 Leila Mongan, Town of Corte Madera
 Devin Murphy, City of Pinole
 Patricia Ponce, City of San Pablo
 Gabriel Quinto, City of El Cerrito
 Katie Rice, County of Marin
 Matt Rinn, City of Pleasant Hill
 Shanelle Scales-Preston, City of Pittsburg
 Christina Strawbridge, City of Benicia
 Holli Thier, Town of Tiburon
 John Vasquez, County of Solano
 Brad Wagenknecht, County of Napa
 Sally Wilkinson, City of Belvedere and City of Mill Valley
 Brianne Zorn, City of Martinez

Absent: Janelle Kellman, City of Sausalito
 C. William Kircher, Town of Ross
 Scott Perkins, City of San Ramon

**Staff
& Others:** Sebastian Conn, Community Development Manager
 Darlene Jackson, Board Clerk
 Alice Havenar-Daughton, Director of Customer Programs

Vicken Kasarjian, Chief Operating Officer
Evelyn Reyes, Administrative Services Assistant II
Garth Salisbury, Director of Finance and Treasurer
Daniel Settlemyer, Internal Operations Coordinator
Lindsay Saxby, Director of Power Resources
Dawn Weisz, Chief Executive Officer

1. Roll Call

Chair Butt called the regular meeting to order at 7:01 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 no comments.

4. Report from Chief Executive Officer (Discussion)

CEO Dawn Weisz, reported the following:

- The Pittsburg Unified School District has approved the installation of more than 3 MWh of batteries using MCE's Energy Storage program and gap funds. The batteries will be installed in 10 different sites, and will be tied to solar power to provide great reliability during emergency outages, and help support a healthy grid in the evening on a regular basis.
- The Technical Committee met in the first week of February to approve MCE's largest battery-storage project so far, located in Kern County, which will provide enough power for an estimated 52,000 homes each year. The Golden Fields Solar project came out of MCE's Open Season in 2021 and will generate 100 MW of solar energy with 75 MW lithium-ion battery. Feel free to share the press release with your constituents and other stakeholders as you see fit.
- On February 11 a notice was sent to your board letting you know that the CPUC approved PG&E's requested rate increase along with a reduction in the PCIA. As your board directed, MCE will implement a 1.7 cent/kWh rate increase to cover increased power supply costs on March 1st. This will be entirely offset by a PCIA reduction of about 2.5 cent/kWh. When taken with PG&E's large (3.5 cent/(kWh) increase to its generation rates, MCE service should be \$13/mo less for the typical household, providing a total bill discount of 7% compared to PG&E.
- It is time again to submit your Form 700s. If you have questions, please feel free to reach out to us.

- On the CCA front: The City Council of Atascadero voted unanimously in favor of joining the **Central Coast Community Energy Program (3CE)**. This makes Atascadero the last city in San Luis Obispo County to join 3CE.

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 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)

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

Action: It was M/S/C (Greene/Gioia) to **approve Consent Calendar items C.1 – C.4**. Motion carried by unanimous roll call vote. (Absent: Directors Kellman, Kircher, and Perkins).

6. McGlashan Award – Award Presentation (Discussion)

Director John Gioia presented the McGlashan Award to Contra Costa County Sustainable Contra Costa. The Award was accepted by Sharon Harichandran.

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

Action: No action required.

7. Addition of Board Members to Committees (Discussion/Action).

CEO Dawn Weisz, presented the item and addressed questions from Board members.

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

Action1: It was M/S/C (Coler/Wagenknecht) to **establish a 2022 Ad Hoc Audit Committee and a 2022 Ad Hoc Contracts Committee**. The following Directors volunteered for the Ad Hoc Audit Committee: Cindy Darling, Kevin Haroff and Katie Rice. The following Directors volunteered for the 2022 Ad Hoc Contracts Committee: Barbara Coler, Ford Greene, Kevin Haroff, Doriss Panduro and Holli Thier.
Motion carried by unanimous roll call vote. (Absent: Directors Kellman, Kircher, and Perkins).
Action 2: It was M/S/C (Llorens-Gulati/Quinto) to **approve the addition of Director Holli Thier to the Executive Committee**.

Motion carried by unanimous roll call vote. (Absent: Directors Kellman, Kircher, and Perkins).

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)

COO Vicken Kasarjian, presented the 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 (Greene/Quinto) to approve the Confirmation Agreement for Bundled Renewable Energy Between Redwood Coast Energy Authority and Marin Clean Energy to Purchase Portfolio Content Category One Energy.

Motion carried by roll call vote. (Abstain: Kellman; Absent: Directors Kircher and Perkins).

9. Debt Management Policy and Master Bond Indenture (Discussion/Action)

Garth Salisbury, Director of Finance and Treasurer, presented 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 (Darling/Wagenknecht) to adopt Policy 017 - Debt Management Policy and form of Master Bond Indenture.

Motion carried by unanimous roll call vote. (Absent: Directors Kircher and Perkins).

10. Customer Programs Update (Discussion)

Director of Customer Programs, Alice Havenar-Daughton presented the 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 8:36 p.m. to the next scheduled Board Meeting on March 17, 2022.

Tom Butt, Chair

Attest:

Dawn Weisz, Secretary



March 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 February. 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	January, 2022	Sale of Resource Adequacy	\$10,000	Under 1 Year
2	January, 2022	Sale of Resource Adequacy	\$75,000	Under 1 Year
3	January, 2022	Sale of Resource Adequacy	\$15,000	Under 1 Year
4	January, 2022	Purchase of Carbon Free Energy	\$525,000	Under 1 Year
5	February, 2022	Sale of Resource Adequacy	\$148,600	Under 1 Year
6	February, 2022	Purchase of Renewable Energy & Storage Capacity	\$20,247,034	Over 5 Years
7	February, 2022	Sale of Resource Adequacy	\$198,000	Under 1 Year
8	February, 2022	Purchase of Renewable Energy & Storage Capacity	\$446,266	Over 5 Years
9	February, 2022	Purchase of Carbon Free Energy	\$980,000	Under 1 Year
10	February, 2022	Prepay Renewable Energy Purchase Option	\$1,333,332	1-5 Years
11	March, 2022	Purchase of Renewable Energy	\$1,764,000	Under 1 Year
12	March, 2022	Sale of Resource Adequacy	\$154,750	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.



March 17, 2022

TO: MCE Board of Directors

FROM: Catalina Murphy, Legal Counsel

RE: Resolution No. 2022-04 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.3)

ATTACHMENT: Proposed Resolution No. 2022-04 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. The last time MCE reconsidered this finding was by the MCE Board of Directors on February 17, 2022, by approving Resolution 2022-03 to continue remote teleconference meetings for the next 30 days.

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

¹ Gov. Code, §§ 54950 et seq.

1. The Board of Directors has reconsidered the circumstances of the state of emergency, as designated by the Governor.
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. 2022-04 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. 2022-04 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. 2022-04

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 Board of Directors previously adopted Resolution No. 2022-03 finding that the requisite conditions continue to 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 March 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



March 17, 2022

TO: MCE Board of Directors

FROM: Joey Lande, Manager of Customer Programs

RE: Proposed Second Amended and Restated Demand FLEXmarket Agreement with Recurve Analytics, Inc. (Item #5 C.4)

ATTACHMENTS: A. Proposed Second Amended and Restated Demand FLEXmarket Agreement with Recurve Analytics, Inc.
B. First Amended and Restated Demand FLEXmarket Agreement with Recurve Analytics, Inc.
C. First Amendment to First Amended and Restated Demand FLEXmarket Agreement with Recurve Analytics, Inc.
D. Second Amendment to First Amended and Restated Demand FLEXmarket Agreement with Recurve Analytics, Inc.

Dear MCE Board Members:

SUMMARY:

The proposed Second Amended and Restated Demand FLEXmarket Agreement ("Agreement") with Recurve Analytics, Inc. ("Recurve") is a contract for services in support of MCE's FLEXmarket programs, which currently include the Commercial Efficiency Market Program and the Peak FLEXmarket Program; if approved, this Agreement would also include the Residential Efficiency Market Program. All three programs would be supported by a broad network of aggregators, who are paid for delivering value to MCE in the form of cost-effective energy efficiency savings, or reducing demand during peak evening hours.

These programs would utilize Recurve's Demand FLEXmarket platform – a web-based tool which serves as the interface for participating aggregators, and can screen for customer eligibility, identify customers with the greatest potential for savings or demand reduction, and then analyze project portfolios based on meter data-based

measurement.

The Demand FLEXmarket platform first launched in support of the Commercial Efficiency Market in December 2020. Program funding awarded by the California Public Utilities Commission (“CPUC”) quickly scaled from roughly \$1,000,000 to \$5,000,000 based on strong market interest and completed projects. Just one year later, the Commercial Efficiency Market has become a core component of MCE’s energy efficiency portfolio. If approved, the Residential Efficiency Market will adopt a nearly identical program model, but instead will serve residential customers.

The Peak FLEXmarket Program is similar to the Commercial and Residential Efficiency Markets, but aims to incentivize load shifting and demand reduction during the summer evening peak hours rather than long-term energy efficiency. The Peak FLEXmarket program pays for both daily load-shifting, and day-ahead signaled demand response.

MCE’s FLEXmarket programs would leverage several innovative features. **First**, they would allow MCE to rapidly scale behind-the-meter impacts. Instead of developing individual contracts with a limited network of program partners, MCE could instead offer a technology-agnostic payment for energy efficiency or for reduced demand during peak hours, to nearly any provider who could deliver value. These service providers could come from diverse business areas, including demand response, storage, energy efficiency and refrigeration controls. Engaging a broad range of technology solutions and energy services would be a significant asset to MCE and MCE’s customers. **Second**, the platform would leverage cutting edge measurement and verification, utilizing open-source methods approved by the CPUC for meter-based measurement. **Third**, the Demand FLEXmarket pays vendors based on the value of the energy reductions they provide, at a time-dependent rate. This would bring an important new capability to MCE—to provide a variable price signal for behind-the-meter impacts which would open a market and engage providers.

All three programs are designed to rapidly scale, while also aligning program expenditures with verifiable impacts and grid benefits. The core program design principles of MCE’s FLEXmarket programs were recently adopted by the CPUC in the recent Grid Reliability Decision, which authorized a new statewide program – the \$150M Market Access Program – as well as funding for MCE’s Peak FLEXmarket program.

Project enrollment and tracking is already underway for energy efficiency projects through the Commercial Efficiency Market, and, if this Agreement is approved, it will be possible to launch the Residential Efficiency Market and the Peak FLEXmarket program in advance of the summer season.

The proposed Agreement would increase the current not-to-exceed contract value from \$1,600,000 to \$12,750,000. The increase in contract value is due to the recent authorization of ratepayer funding for the Peak FLEXmarket and the Residential Efficiency Market, as well as the proposed increased duration of the Agreement, which would now extend through October 31, 2027. Current approved funding from the CPUC for all three programs is \$27,175,039. MCE has applied for additional funding of \$59,356,180 for the years 2024-2027. Recurve’s compensation would be grounded in

performance-based principles, and the cost of service under this Agreement scales with successful delivery and expansion of the FLEXmarket programs – there are no fixed costs or time and materials charges associated with this proposed Agreement. Recurve would be compensated at 15% of a project's value. The 15% performance rate would pay for all services provided under this proposed Agreement – including Measurement & Verification, customer eligibility screening, aggregator outreach, regulatory support, etc. The determination of value is based on calculation of Total System Benefits (TSB). These calculations are informed by the hourly value of avoided electricity consumption, and are established by the CPUC. MCE's cost of administering these FLEXmarket programs would be applied in a similar way, set at 10% within the Commercial and Residential Efficiency Market programs and 5% in Peak FLEXmarket. The remainder of a project's value – 75-80% - is paid directly to participating aggregators. To put this in context, MCE plans to administer the Residential Efficiency Market and the Commercial Efficiency Market in 2022 and 2023, at a combined 2-year total of roughly \$16M. If successful, roughly \$12M would flow directly to aggregators for the value of their projects, with an estimated \$2.4M in payment to Recurve.

There is one exception to this compensation structure, which applies to measured demand reduction within the Peak FLEXmarket. For services provided on demand response events, Recurve would be compensated based on measured demand reduction, per the following:

1. Under 1 Peak MW - \$2,500 per event
2. 1-5 Peak MW - \$5,000 per event
3. Above 5 Peak MW - \$10,000 per event

The reasoning behind a separate payment structure for demand response events is that TSB value is not captured by emergency grid reliability needs, although much of the work - in analyzing meter data and assessing demand reduction – is similar.

Fiscal Impacts: Expenditures related to the proposed Agreement would be funded either from MCE's energy efficiency programs budget or MCE's Market Access Program budget, both of which are allocated by the CPUC, at a not-to-exceed value of \$12,750,000.

Recommendation: Approve the proposed Second Amended and Restated Demand FLEXmarket Agreement with Recurve.

**SECOND AMENDED AND RESTATED DEMAND
FLEXMARKET AGREEMENT**
BY AND BETWEEN
MARIN CLEAN ENERGY AND RECURVE ANALYTICS, INC.

THIS SECOND AMENDED AND RESTATED DEMAND FLEXMARKET AGREEMENT ("Agreement"), originally executed October 30, 2020, and amended July 12, 2021 and September 15, 2021, between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and RECURVE ANALYTICS, INC., a Delaware corporation with its principal place of business located at 364 Ridgewood Avenue, Mill Valley, California, 94941, hereinafter referred to as "Recurve" (each a "Party" and together the "Parties") is hereby amended and restated as of this 17th day of March, 2022. For the avoidance of doubt, this Agreement is separate from, and not related to, that series of Standard Short Form Contracts between MCE and Recurve pertaining to the Recurve Meter Platform and the RecurveOS Operations.

RECITALS:

WHEREAS, MCE desires to retain Recurve to continue to administer the Flex Market Program ("FLEXmarket Program", "FLEXmarket", or "Program") which is a marketplace with third-party project implementers (each, an "Aggregator" and collectively the "Aggregators") that allows Aggregators to receive incentive payments for grid value created by developing portfolios of Demand Flexibility Projects (each, a "Project" or "DFP" and collectively the "DFPs") which are projects that lead to predictable long-term or dispatchable event-driven load shaping and reduction; and

WHEREAS, Recurve will administer a Residential Energy Efficiency Program ("REEP"), Commercial Energy Efficiency Program ("CEEP"), and a Peak Program ("PP"), collectively referred to as the FLEXmarket Program, and specifically to provide the services for the FLEXmarket Program as described in **Exhibit A**; and

WHEREAS, Recurve seeks to provide, and warrants that it is qualified and competent to render, the services described in **Exhibit A**.

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

1. SCOPE OF SERVICES:

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

2. MCE OBLIGATIONS:

During the term of this Agreement, and in addition to MCE's other obligations under this Agreement, MCE agrees to:

2.1 Promptly upon request from Recurve, provide Recurve all pertinent data and records necessary for Recurve's delivery of the Services.

2.2 Regularly and on a timely basis, provide Recurve with data for Recurve's use in calculating MCE's payments to Aggregators under Flexibility Purchase Agreements ("FPA") (in the form attached hereto as **Exhibit A-1**) when MCE is the Program Administrator (as defined in FPA).

2.3 Pay undisputed and verified invoiced amounts to Aggregators within 30 days of receiving invoices and supporting documentation from Recurve.

3. FEES AND PAYMENT SCHEDULE; INVOICING:

MCE shall compensate Recurve for the Services in accordance with the Fee Schedule attached hereto as **Exhibit B** and by this reference incorporated herein. Recurve shall provide MCE with its Federal Tax I.D. number prior to submitting the first invoice. Recurve is responsible for billing MCE in a timely and accurate manner. Recurve shall email all invoices to MCE on a monthly basis as specified in **Exhibit B** for any Services rendered or expenses incurred hereunder. Fees and expenses related to the EE Program invoiced beyond 240 days will not be reimbursable; fees and invoices related to the PF Program invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 90 days of completion of the Services or termination of this Agreement. MCE will process payment for undisputed invoiced amounts within 90 days of receipt of such invoice.

4. MAXIMUM COST TO MCE:

In no event will the total cost to MCE for the Services exceed **Twelve Million Seven-Hundred Fifty Thousand Dollars (\$12,750,000.00)**.

5. TERM OF AGREEMENT:

This Agreement shall commence on **March 17, 2022**. Recurve may enroll new DFPs under the Program until **October 31, 2027**. This Agreement shall terminate when Recurve has completed the Services on the last DFP enrolled (the "Term"). Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Recurve.

6. INSURANCE AND SAFETY:

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its

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

Nothing herein shall be construed as a limitation on Recurve's indemnification and defense obligations under Section 16.5 of this Agreement. MCE agrees to timely notify Recurve of any negligence claim.

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

6.1 GENERAL LIABILITY

Recurve shall maintain a commercial general liability insurance policy in an amount of no less than two million dollars (\$2,000,000) with a four million dollar (\$4,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

6.2 RESERVED

6.3 WORKERS' COMPENSATION

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

6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED X)

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, Recurve must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Recurve shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that Recurve has segregated amounts in a special insurance reserve fund or Recurve's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon. In lieu of Professional Liability Insurance, Recurve shall maintain Errors and Omissions Insurance coverage per the same terms and in an amount no less than stated in this Section 6.4 for Professional Liability Insurance.

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

Recurve shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE. For the avoidance of doubt, Aggregators will not be considered subcontractors for purposes of this Agreement. If Recurve hires a subcontractor under this Agreement, Recurve shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Recurve under this Agreement and shall require subcontractor to name Recurve as additional insured under this Agreement. It shall be Recurve's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same. Notwithstanding the foregoing, 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 Recurve of any of its duties or obligations under this Agreement. Recurve shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. Recurve's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Recurve. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

9. ASSIGNMENT:

The rights, responsibilities and duties under this Agreement are personal to Recurve and may not be transferred or assigned

without the express prior written consent of MCE; provided, however, that upon thirty (30) days prior, written notice to MCE, this Agreement may be assigned without MCE's consent to Recurve's successor in interest in (a) the sale of substantially all of Recurve's assets or (b) a merger wherein Recurve is not the surviving entity.

10. RETENTION OF RECORDS AND AUDIT PROVISION:

Recurve and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records pertaining to this Agreement. Such records shall include, but not be limited to, FPAs, correspondence with Aggregators and records supplied to Recurve by Aggregators, documentation of Program Value (as defined in **Exhibit B**), calculations for each DFP, and documentation of the basis for payments to Aggregators. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement 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 Recurve's premises or, at MCE's option, Recurve shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Recurve 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; and MCE shall reimburse Recurve for any deficit in amounts paid to Recurve based on such undisputed audit findings. MCE shall also have the right to review, upon oral or written request to Recurve, any agreement, commitment or subcontract entered into by Recurve pursuant to this Agreement, including, but not limited to, the form of FPA, and any subsequent revisions thereto, and Recurve shall not unreasonably delay in delivering such agreement, commitment or subcontract to MCE.

11. TERMINATION:

- A. If either Party (the "Defaulting Party") fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, and does not cure such failure or violation within ten (10) business days after receiving written notice thereof from the other Party, the other Party may terminate this Agreement by giving five (5) business days' written notice to the Defaulting Party. For the avoidance of doubt, this paragraph A shall apply to any failure by MCE to pay an Aggregator in accordance with this Agreement or the FPA.
- B. Either Party shall be excused for failure to perform its obligations herein if such obligations are prevented by acts of God, pandemics, epidemics, strikes, labor disputes or other forces ("Force Majeure") over which the Party claiming Force Majeure has no control and which is not caused by any act or omission of the Party claiming Force Majeure, but only for so long as the Party claiming Force Majeure is actually so prevented from performing, and only provided the Party claiming Force Majeure provides prompt written notice to the other Party.
- C. Either Party hereto may terminate this Agreement for any reason by giving sixty (60) calendar days' written notice to the other party. Notice of termination shall be by written notice to the other Party and shall be sent by email to the email address listed in Section 19 Invoices; Notices.
- D. In the event of termination not the fault of Recurve, Recurve shall be paid for all Services performed to the date of termination in accordance with the terms of this Agreement and so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s), as defined in Section 12 below. Notwithstanding anything contained in this Section 11 in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Services. Recurve 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 11. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 11, Recurve shall have delivered to MCE any and all reports, drawings, documents and deliverables prepared for MCE before the effective date of such cancellation or termination.
- E. This Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such CPUC order or directive. MCE may also terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.
- F. Upon MCE's termination of this Agreement for any reason, Recurve shall bring the Services to an orderly conclusion as directed by MCE.

12. AMENDMENT:

This Agreement may be amended or modified only by written agreement of both Parties (an "Amendment"). For the avoidance of doubt, when MCE is the Program Administrator (as defined in FPA), any modification to the form FPA attached here to as **Exhibit A-1** shall require advance written approval by both Parties.

13. ASSIGNMENT OF PERSONNEL:

Recurve shall not substitute any personnel assigned to perform the Services unless personnel with substantially equal or better qualifications and experience are provided, as is evidenced in writing.

14. GOVERNING LAW AND VENUE:

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

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 Recurve'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 Recurve 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 Recurve cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and Recurve shall have the right to pursue all rights and remedies that may be available at law or in equity. In particular, Recurve shall have the right to request arbitration or mediation to resolve the dispute and MCE shall be required to participate in arbitration or mediation in good faith. All negotiations and any mediation agreed to by the Parties are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.

16. REPRESENTATIONS; WARRANTIES; INDEMNIFICATION:

16.1 LICENSING. At all times during the Term of this Agreement, Recurve represents, warrants and covenants that it has obtained and shall maintain, at its sole cost and expense, all required licenses and registrations required for the operation of its business and the performance of its obligations under this Agreement. Recurve shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.

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

MCE represents and warrants that (a) it is duly organized, validly existing, (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 to engage in the business it presently conducts and contemplates conducting, (c) the execution, delivery and performance of this Agreement and all exhibits 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, (d) this Agreement and each exhibit constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, and (e) 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.

16.3 BACKGROUND CHECKS.

- (a) Recurve hereby represents, warrants and certifies that any personnel of Recurve having or requiring access to MCE's assets, premises, customer property ("Covered Personnel") shall have successfully passed background screening on each such individual, prior to receiving access, which screening may include, among other things to the extent applicable to the Services, a screening of the individual's educational background, employment history, valid driver's license, and court record for the seven (7) year period immediately preceding the individual's date of assignment to the project.
- (b) Notwithstanding the foregoing and to the extent permitted by applicable law, in no event shall Recurve permit any Covered Personnel to have one or more convictions during the seven (7) year period immediately preceding the individual's date of assignment to the project, or at any time after the individual's date of, assignment to the project, for any of the following ("Serious Offense"): (i) a "serious felony," similar to those defined in California Penal Code Sections 1192.7(c) and 1192.8(a), or a successor statute, or (ii) any crime involving fraud (such as, but not limited to, crimes covered by California Penal Code Sections 476, 530.5, 550, and 2945, California Corporations Code 25540), embezzlement (such as, but not limited to, crimes covered by California Penal Code Sections 484 and 503 et seq.), or racketeering (such as, but not limited to, crimes covered by California Penal Code Section 186 or the Racketeer Influenced and Corrupt Organizations("RICO") Statute (18 U.S.C. Sections 1961-1968)).
- (c) To the maximum extent permitted by applicable law, Recurve shall maintain documentation related to such background and drug screening for all Covered Personnel and make it available to MCE for audit if required pursuant to the audit provisions of this Agreement.
- (d) To the extent permitted by applicable law, Recurve shall notify MCE if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Recurve will also immediately prevent that employee, representative, or agent from performing any Services.

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

16.5 INDEMNIFICATION.

By Recurve: Recurve agrees to indemnify, defend, and hold MCE and its employees, officers, contractors, owners and agents, harmless from any and all losses, damages, costs, expenses and liabilities including, but not limited to, litigation and other dispute resolution costs, including reasonable attorney's fees, arising from or in connection with any and all claims and losses to anyone who may be injured or damaged by reason of Recurve's negligence, recklessness or any fraud, willful misconduct, violation of law, or breach of this Agreement in connection with this Agreement. For the avoidance of doubt, Recurve shall have no liability to MCE for any inaccuracy in data or forecasts provided by an Aggregator to Recurve provided that Recurve used commercially reasonable efforts to enforce Section 2.5 of the FPA.

By MCE: MCE agrees to indemnify, defend, and hold Recurve and its employees, officers, contractors, owners and agents, harmless from any and all losses, damages, costs, expenses and liabilities including, but not limited to, litigation and other dispute resolution costs, including reasonable attorney's fees, arising from or in connection with any failure by MCE to pay undisputed amounts of Incentive Payments (as defined below in the FPA) owed by MCE to any Aggregator.

Neither Recurve nor MCE shall be liable for any incidental, special, indirect, punitive or consequential damages relating to or arising from this Agreement.

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

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

18. COMPLIANCE WITH APPLICABLE LAWS:

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

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

Contract Manager:	Troy Nordquist
MCE Address:	1125 Tamalpais Avenue
	San Rafael, CA 94901
Email Address:	contracts@mcecleanenergy.org
Telephone No.:	(415) 464-6027

Notices shall be given to Recurve at the following address:

Recurve:	Matt Golden
Address:	364 Ridgewood Avenue
	Mill Valley, CA 94941
Email Address:	admin@recurve.com
Telephone No.:	(415) 841-3425

20. ACKNOWLEDGEMENT OF EXHIBITS:

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

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>	<u>MCE'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services		
<u>EXHIBIT A-1.</u>	<input checked="" type="checkbox"/>	Form Flexibility Purchase Agreement w/ Data Collection and Ownership Requirements (Exhibit 1), MCE specific Program Administrator Terms (Exhibit 2) and Form NDA (Exhibit 3)		
<u>EXHIBIT B</u>	<input checked="" type="checkbox"/>	Fees and Payment Schedule		

21. DATA COLLECTION AND OWNERSHIP REQUIREMENTS:

21.1. DEFINITION OF "MCE DATA". "MCE Data" shall mean all data or information provided by or on behalf of MCE, including but not limited to, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to Recurve 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 Recurve. MCE Data shall also include all data and materials provided by or made available to Recurve by MCE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors.

"Confidential Information" under this Agreement shall have the same meaning as defined in the Marin Clean Energy Non-Disclosure Agreement between the Parties dated **April 26, 2021**.

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

21.3. MCE DATA SECURITY MEASURES. Prior to Recurve receiving any MCE Data, Recurve shall comply, and at all times thereafter continue to comply, in compliance with MCE's Data security policies set forth in MCE Policy 009 and MCE's Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy ("Security Measures") and pursuant to MCE's Confidentiality provisions in Section 5 of the Marin Clean Energy Non-Disclosure Agreement between the Parties dated **April 26, 2021**. MCE's Security Measures and Confidentiality provisions require Recurve to adhere to reasonable administrative, technical, and physical safeguard protocols to protect MCE's Data from unauthorized handling, access, destruction, use, modification or disclosure.

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

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

21.6. OWNERSHIP AND USE RIGHTS.

- a) **MCE Data.** Unless otherwise expressly agreed to by the Parties, MCE shall retain all of its rights, title and interest in the MCE Data.
- b) **Program Intellectual Property owned by MCE.** Unless otherwise expressly agreed to by the Parties, any and all materials, information, or other work product created, prepared, accumulated or developed by Recurve under this

Agreement ("Program Intellectual Property"), including, but not limited to, any content for an Implementation Plan or otherwise required by the CPUC for purposes related to the Services contemplated, program value forecasts, dashboards, inventions, processes, templates, documents, drawings, computer programs, designs, calculations of savings impacts, demand flexibility, demand reduction, value, 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. MCE shall have the non-exclusive right to use such materials in its sole discretion without further compensation to Recurve or to any other party and hereby grants Recurve an irrevocable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use the Program Intellectual Property for internal development purposes only, such that Recurve may use its learnings from the Program Intellectual Property to enhance the Services and to inform its development of similar services to other Program Administrators (defined below in FPA). Notwithstanding the foregoing, to the extent any MCE Data is embedded in the Program Intellectual Property, MCE shall remain the exclusive owner of such Program Intellectual Property and Recurve shall have no right to its use absent advance written approval by MCE. Recurve shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Recurve may keep file reference copies of all documents prepared for MCE.

- c) **Program Intellectual Property will be owned by MCE upon its creation.** MCE agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Program Intellectual Property.
- d) **Recurve's Pre-Existing Materials.** If, and to the extent Recurve retains any preexisting ownership rights ("Recurve's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Program Intellectual Property, including but not limited to Recurve's cost-effectiveness tool ("CET"), Recurve hereby grants MCE 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 Recurve for the sole purpose of using such Program Intellectual Property for the conduct of MCE's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Recurve shall retain all of its rights, title and interest in Recurve's Pre-Existing Materials. Any and all claims to Recurve's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Program Intellectual Property must be expressly disclosed to MCE prior to performing any Services under this Agreement. Any such Pre-Existing Material that is modified by work under this Agreement is owned by MCE.

21.7 BILLING, ENERGY USE, AND PROGRAM TRACKING DATA.

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

22. FINANCIAL STATEMENTS:

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

23. QUALITY ASSURANCE PROCEDURES:

Recurve shall comply with the following Quality Assurance Procedures: (i) industry standard best practices; and (ii) procedures that ensure Program functionality, customer satisfaction, and that the minimum qualifications are satisfied.

24. COORDINATION WITH OTHER PROGRAM PARTICIPANTS:

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

25. 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.

26. COMPLETE AGREEMENT:

This Agreement, together with any attached Exhibits and the MCE Non-Disclosure Agreement, constitutes the entire Agreement

between the Parties. No modification or amendment shall be valid unless made in writing and signed by each Party. Failure of either Party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

27. DIVERSITY SURVEY:

Pursuant to Senate Bill 255 which amends Section 366.2 of the California Public Utilities Code, MCE is required to submit to the California Public Utilities Commission an annual report regarding its procurement from women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises ("WMDVLGBTBE"). Consistent with these requirements, Contractor agrees to provide information to MCE regarding Contractor's status as a WMDVLGBTBE and any engagement of WMDVLGBTBEs in its provision of Services under this Agreement. Concurrently with the execution of this Agreement, Contractor agrees to complete and deliver MCE's Supplier Diversity Survey, found at the following link: <https://forms.gle/DUBkcdFCskb7NNcA8> (the "Diversity Survey"). Because MCE is required to submit annual reports and/or because the Diversity Survey may be updated or revised during the term of this Agreement, Contractor agrees to complete and deliver the Diversity Survey, an updated or revised version of the Diversity Survey or a similar survey at the reasonable request of MCE and to otherwise reasonably cooperate with MCE to provide the information described above. Contractor shall provide all such information in the timeframe reasonably requested by MCE.

28. 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.

29. SURVIVAL:

The Parties' obligations under Sections 4, 10, 11, 14, 15, 16.5, 17, 18, 19, 20, 21 shall survive the Termination of this Agreement.

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

APPROVED BY

Marin Clean Energy:

CONTRACTOR:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

By: _____

Chairperson

Date: _____

MODIFICATIONS TO ENERGY EFFICIENCY STANDARD SHORT FORM



List sections affected: Sections 1, 2, 3, 4, 5, 6, 8, 9, 10; Standard Form Section 11: Work Product was omitted and shifted numbering for all following sections; **Section 11: Termination** (previously Section 12 changes throughout); **Section 12: Amendment** (previously 13 – changes throughout); **Section 13: Assignment of Personnel** (previously 14 – changes throughout); **Section 14: Governing Law** (previously 15 – no change); **Section 15: Disputes** (previously 16 – no change); **Section 16: Representations, Warranties, Indemnification** (previously 17 – changes throughout); **Section 17: No Recourse Against Constituent Members** (previously 18 – no change); **Section 18: Compliance with Laws** (previously 19 – no change); **Section 19: Invoices, Notices** (previously 20 – no change); **Section 20: Acknowledgement of Exhibits** (previously 21 – changes throughout); **Section 21: Data Collection and Ownership Rights** (previously 22 – changes throughout); Standard Form Section 23 Workforce Standards was omitted and further shifted number for all following sections; **Section 22: Financial Statements** (previously 24 – no change); **Section 23: Quality Assurance** (previously 25 – changes throughout); **Section 24: Coordination with Program Administrators** (previously 26 – change to coordination with Program Participants); Standard Form Sections 27 and 28 (Access to Customer Sites and Measurement Verification Requirements, respectively) were omitted and further shifted numbering for all following sections; **Section 25: Severability** (previously 29 – no change); **Section 26: Complete Agreement** (previously 30 – minor change to add NDA); **Section 28: Counterparts** (previously 31 – no change); **Section 29: Survival** was added.

Approved by MCE Counsel: _____

Date: _____

EXHIBIT A

SCOPE OF SERVICES

Recurve will provide the following Services as requested and directed by MCE Customer Programs staff, up to the maximum fee allowed under this Agreement.

Services related to the FLEXmarket Program:

- 1) Recurve shall manage the FLEXmarket Program which includes:
 - a) Residential Energy Efficiency Program ("REEP");
 - b) Commercial Energy Efficiency Program ("CEEP"); and
 - c) Peak Program ("PP").
- 2) Recurve shall provide third-party FLEXmarket Program management by:
 - a) Contracting with Aggregators who will develop Demand Flexibility Projects (each, a "Project" or "DFP" and collectively the "DFPs") or portfolios of DFPs pursuant to the terms of the Flexibility Purchase Agreement ("FPA") (attached hereto as Exhibit A-1), and, if MCE is the Program Administrator, pursuant to the Program Administrator Terms (attached hereto as Exhibit 2 to the FPA).
 - b) Being responsible for managing operational FLEXmarket Program functions, including but not limited to:
 - i) Recruiting and qualifying Aggregators, and, when MCE is the Program Administrator, ensuring the requirements set forth in Program Administrator Terms (attached hereto as Exhibit 2 to the FPA) to the FPA (attached hereto as Exhibit A-1) are met, which Aggregators (and any applicable subcontractors thereto) will deliver DFPs under the requirements of the FLEXmarket Program;
 - ii) Aligning Aggregators and their proposed DFPs to the FLEXmarket Program, including, but not limited to the rules, incentive structures, and funding, and any other applicable FLEXmarket Program information. The rules, incentive structures and funding for individual FLEXmarket Programs may evolve with regulatory changes and funding approvals, directed by MCE or the CPUC, which Recurve shall implement and communicate to Aggregators;
 - iii) Continuing to provide all necessary content to MCE to include in any applicable FLEXmarket Program Implementation Plans (referred to throughout as "PIP" or "PIPs" or "FLEXmarket Plan" or "FLEXmarket Plans");
 - iv) Collecting, storing, and, upon oral or written request by MCE, promptly sharing with MCE all DFP and programmatic data, including but not limited to DFP costs, Energy Savings forecasts ("Energy Savings" defined as the annual/first year reduction in kWh or therms over the baseline year, or in the case of events as described in the PP, day-ahead signaled demand reduction, credited to a specific intervention or set of interventions at a Customer's facility ["Customer" means the building owner or other end-user who purchases and receives natural gas and/or electricity]), measure lists, Customer project costs, Aggregator Incentive Payments and enrollment dates;
 - v) Developing and implementing the terms and conditions of FLEXmarket Program operation with MCE's written approval, including DFP and Customer eligibility rules, access to incentive budgets, Measurement & Verification ("M&V") plans, and Quality Assurance ("QA") requirements and processes;
 - vi) Completing and enrolling applicable DFPs in the FLEXmarket Programs, aggregating the portfolios of DFPs, calculating FLEXmarket Program energy savings for each DFP, and collecting all necessary data for FLEXmarket Program infrastructure;
 - vii) Defining and implementing a process for validating forecasts of first year Normalized Metered Energy Consumption ("NMEC") savings provided by Aggregators, which validation process and the requirements to implement it shall be described in the applicable section of MCE's PIPs;
 - viii) Establishing coordination protocols for Aggregators when multiple Aggregators are serving the same or similar Customer groups or are otherwise in competition, if necessary;
 - ix) Adhering to MCE branding and marketing requirements when requested by MCE, and consistently incorporating MCE feedback and guidance pertaining to customer relationship management.
 - c) Managing the allocation of incentive budgets among the Aggregators in accordance with the PIPs by ensuring that Customer impacts and delivered benefits are fully optimized within budget availability, and by ensuring that sufficient incentive funds are available for all DFPs enrolled through FPAs.
 - d) Preparing and verifying Aggregator invoices and providing such invoices to MCE on a timely basis and, if requested by MCE, providing MCE with supporting documentation verifying the invoice amount.
- 3) Recurve shall report NMEC savings to MCE by:
 - a) Adhering to timelines and rules for reporting and quantifying NMEC savings as required by MCE

- or the CPUC for individual FLEXmarket Programs, and as described in the PIPs which include, as applicable, M&V Plans and/or Program Manuals.
- b) Adhering to the “Rulebook for Programs and Projects Based on Normalized Metered Energy Consumption, Version 2.0, Release Date: January 7, 2020” (“Rulebook”),¹ or the most current Rulebook administered by the CPUC, in the management of MCE’s population-level NMEC Programs. Recurve shall be responsible for tracking the publication of any updates or new versions of the Rulebook and shall ensure utilize, and ensure that all Aggregators utilize, the updated or new versions once released.
 - i) As defined in the Rulebook, “Claimable Savings” (or “Claimed Savings”, or “Savings Claims”) means “the savings reported by Program Administrators to the Commission prior to formal evaluation, measurement, and verification (EM&V).”²
 - ii) “Payable savings” as defined in the Rulebook, are “the savings determined via the method and calculation software described in a program’s M&V Plan which constitute the basis of payments between the Program Administrator and Implementer(s). Payable savings determinations may differ from claimable savings in that payable savings may account differently for net-to-gross determinations, non-routine events and outliers, and/or other similar considerations.”³
 - c) Recurve shall provide verified data, completed NMEC savings assessments, and supporting materials, including auditable meter-level records of calculations, to MCE for the purposes of supporting MCE’s Savings Claims filings with the CPUC and any other governing authorities as may be required. Recurve shall complete savings assessments and claims data in a timely manner upon data receipt, and in accordance with the timelines established by the CPUC or MCE for individual FLEXmarket Programs. Savings Claims methodology will be specified in the PIPs filed by MCE with the CPUC prior to program launch or in other official documentation.
 - d) With respect to payable Energy Savings, Recurve shall:
 - i) Incorporate payable Energy Savings per the PIPs;
 - ii) Report verifiable payable Energy Savings to MCE for the purpose of invoicing and paying Aggregators;
 - iii) Create reproducible methodology for assigning payments to Aggregators where deviations from standard methodology may be allowed in a specific M&V plan attached to the FPA and produce such methodology to MCE.
- 4) For the FLEXmarket Programs, Recurve shall report NMEC savings to MCE in accordance with individual FLEXmarket Program M&V plans.
 - 5) Recurve shall provide FLEXmarket Program administrative support by:
 - a) Contributing, as requested by MCE, to the development and update of MCE’s: PIPs; Program M&V plans; and Annual Budget Advice Letter(s) (“ABAL”), each to be submitted to the CPUC;
 - b) Annually providing MCE with cost effectiveness forecasts and budget requests that rely on and incorporate the primary measure load shape from CPUC’s Database of Energy Efficiency Resources⁴ or approved work papers for the forecasted potential to support MCE’s ABAL;
 - c) Providing a monthly report of the FLEXmarket Programs’ impacts, as well as access to a FLEXmarket Program dashboard that tracks Aggregator enrollment, FLEXmarket Program DFP enrollment, flexibility impacts, and Incentive Payment amounts;
 - d) Support MCE’s communication of a day-ahead signaled prices for load shaping and reduction (“Demand Flexibility”) on event days (“event days” to be defined in Program Plan);
 - e) Providing MCE with M&V Report(s), generated at the close of each year, which will demonstrate verifiable consistency with each FLEXmarket Program’s M&V Plan;
 - f) Supporting MCE’s preparation of Savings Claims (monthly, quarterly and annually) through the development of blended load shapes post-intervention;
 - i) Specifically, by select measure load shapes that best reflect the actual savings load shape for a Project or portfolio of Projects;
 - g) Supporting MCE or CPUC-led EM&V studies or FLEXmarket Program evaluations by collecting and submitting Project, Customer, and FLEXmarket Program-level data;
 - i) Specifically, by providing good faith support and coordination with other potential FLEXmarket Program Administrators that offer or intend to offer population-level NMEC programs within MCE’s service area or adjacent service areas;
 - h) Providing MCE and/or the CPUC with access to auditable records for regulatory Savings Claims or evaluations;
 - i) Providing Quality Assurance by providing, at minimum, the following documents and information to MCE:

¹ Rulebook for Programs and Projects Based on Normalized Metered Energy Consumption Version 2.0 Release Date: 7 January, 2020 (hereafter, “Rulebook”). Available at: <https://www.cpuc.ca.gov/general.aspx?id=6442456320>.

² See Rulebook, page 21.

³ See Rulebook, page 23.

⁴ Available at: <http://www.deeresources.com>.

- i) Baseline annual consumption amounts for each DFP;
 - ii) Anticipated Energy Savings;
 - iii) Technology measures or other energy efficiency improvements identified for installation;
 - iv) Customer project costs and proposed Customer Incentives payment amounts.
- 6) FLEXmarket Program Scope Assumptions and Understandings:
 - a) MCE is not a party to the FPAs with Aggregators.
 - b) Recurve is authorized to modify the form FPA used with specific Aggregators except when MCE is the Program Administrator (as defined in FPA) and is materially impacted by such changes. The sections of the FPA that are considered of material impact include, but are not limited to: Aggregator Responsibilities; Recurve Responsibilities; Assignment; Termination; Indemnification; and Exhibit 1 Data Collection and Ownership requirements.
 - c) MCE is authorized to review each segment of the FLEXmarket Plan which, for the avoidance of doubt, includes, but is not limited to: PIP, M&V Plan, Quality Assurance Plan ("QA Plan") and Operation and Maintenance Plan ("O&M Plan"). Modification of any FLEXmarket Plan shall require MCE's prior written consent.
 - d) Unless otherwise agreed to in writing by both Parties, MCE shall be responsible for issuing payments to Aggregators for undisputed invoiced amounts.
 - e) All necessary DFP and Customer data to be collected shall be outlined in the PIPs.
 - f) Parties acknowledge that Recurve is not responsible for submitting MCE's PIPs to the California Energy Data and Reporting System.
 - g) Energy savings and population-level NMEC rules are defined by the Rulebook as well as the PIPs.
 - h) Updated or new versions of the Rulebook shall apply to this Agreement and be used by MCE and Recurve once released.

Exhibit A-1

Flexibility Purchase Agreement

THIS FLEXIBILITY PURCHASE AGREEMENT (the “Agreement”) is made by and between Recurve Analytics, Inc., (“Recurve”), a Delaware corporation having its principal place of business located at 364 Ridgewood Ave., Mill Valley, CA 94941, and _____ (“Aggregator”), a _____ having its principal place of business located at _____. This Agreement is effective on _____ (“Effective Date”). Recurve and Aggregator are each individually referred to herein as a “Party” and collectively as the “Parties.”

RECITALS:

WHEREAS, Aggregator is in the business of performing work that leads to predictable long-term or dispatchable event-driven demand flexibility (such as energy efficiency, demand response, and electrification) (“Demand Flexibility”) in existing buildings or facilities; and

WHEREAS, Recurve has entered into one or more Demand Flexibility Marketplace contracts, or similar agreements, with Program Administrators (as defined below in the Defined Terms Section) to establish a set of methods and protocols that allow for Aggregators to receive Incentive Payments (defined below) from the Program Administrators for increasing flexibility savings realized by Program Administrator (“Demand Flexibility”) across a portfolio of customers (may be referred to as either “Demand FLEXmarkets”, “Flexibility Markets”, or “FLEXmarkets”); and

WHEREAS, Recurve has agreed to administer the Demand FLEXmarkets that complies with all applicable regulations as set by Regulators (defined below) having jurisdiction over Program Administrators; and

WHEREAS, Aggregator and Recurve wish to enter into this Agreement so Aggregator can submit projects to the Demand FLEXmarkets; and

WHEREAS, Aggregator and Recurve wish to enter into this Agreement to memorialize the rights and responsibilities of Recurve, on its own behalf and on behalf of Program Administrator, and of Aggregator under each Demand FLEXmarket;

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 to the following:

1. Defined Terms

The following capitalized terms shall have the meanings specified in this Section I. Other terms are defined in the text of this Agreement, and, throughout this Agreement, those terms shall have the meanings respectively ascribed to them.

“*Customer*” means the building owner or other end-user who purchases and receives natural gas and/or electricity.

“*Demand Flexibility*” means any project that leads to predictable long-term or dispatchable event-driven load shaping and reduction as outlined in the FLEXmarket Plan.

“*FLEXmarket*” or “*Demand FLEXmarket*” or “*Flexibility Market*” means a marketplace created by a third party (in this example, Recurve is the third party that has created the marketplace) that allows Aggregators to get paid for the grid value created by implementing Demand Flexibility projects.

"FLEXmarket Plans" means, for each Project, the applicable contractual plans, which may include but are not limited to: Measurement & Verification Plan, Operations and Maintenance Plan, Insurance Requirement Plan, Quality Assurance Plan, Incentive Payments (defined below), Program Administrator Terms (defined below), and/or any other document as required for participation in the respective FLEXmarket.

"Energy Savings" means the annual reduction in kWh or therms relative to the baseline year, credited to a specific intervention or set of interventions at a customer/ratepayers facility.

"Fleet Manager Platform" means the software and analytics which track the performance of project portfolios.

"Incentive Payment" means the payments to be provided to Aggregator by Program Administrator for flexibility savings, as calculated and verified by Recurve, upon the flexibility savings being realized by Program Administrator pursuant to the applicable FLEXmarket Plan.

"Program Administrator" means an electricity, gas, water, or sewerage-providing entity (such as an investor-owned utility, community choice aggregator, municipal utilities, regional energy network, or similar) that wishes to participate in the FLEXmarket.

"Program Administrator Terms" means the additional terms and conditions established by the Program Administrator that is specific to its FLEXmarket being administered under this Agreement. These Program Administrator Terms are attached to this Agreement as Exhibit 2 and are incorporated by reference herein.

"Project" means a measure, project, or intervention intended to alter the energy consumption of a Customer site.

"Regulators" means the utility regulatory body that regulates a Program Administrator for the area in which any particular Demand FLEXmarket is located.

"Regulations" refers to the specific rules set in place by the Regulators.

"Term" has the meaning set forth in Section 4.

2. Aggregator Responsibilities.

- 2.1. Aggregator will use the Demand FLEXmarket website (demandflexmarket.com) to submit Projects for consideration by Recurve.
- 2.2. All data and estimations of Energy Savings provided by Aggregator to Recurve pursuant to this Agreement or as part of the FLEXmarket will be made in good faith, will be true and accurate, and subject to verification.
- 2.3. Aggregator shall comply with all applicable rules and standards as set forth in the FLEXmarket Plans.
- 2.4. Aggregator shall obtain, maintain, and obey any and all permits required by applicable law to install and maintain the Project.
- 2.5. Aggregator shall at all times:
 - (a) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes, and ordinances to safeguard persons and property from injury or damage;
 - (b) comply with all applicable Regulations;
 - (c) abide by all standard safety program contract requirements that Recurve provides on behalf of Program Administrator to Aggregator;
 - (d) provide all necessary training to its employees, contractors, subcontractors and agents;
 - (e) require subcontractors to provide training to their employees about the safety and health rules and standards required under this Agreement;
 - (f) have the technical expertise and capacity to provide the necessary services in connection with each FLEXmarket and Project.
- 2.6. At all times during the Term, Aggregator shall obtain and maintain, at its sole cost and expense, all required licenses and registrations required for the installation and operation of the Projects and the performance of its obligations under this Agreement. Aggregator shall promptly provide copies of such licenses, registrations and verifications to Recurve at the request of Recurve and/or Program Administrator.

- 2.7. Aggregator shall comply with the Data Collection and Ownership Requirements set forth in Exhibit 1.
- 2.8. Aggregator shall obtain any and all access rights from enrolled customer/ratepayer and other third parties to the extent necessary to implement the FLEXmarket and to allow for Program Administrator and Regulator employees, representatives, agents, designees and contractors to inspect the projects.
- 2.9. If Aggregator or any employee, officer, member, agent or subcontractor of Aggregator performs Demand Flexibility work on the property of a customer, Aggregator shall, prior to commencing such Demand Flexibility work, obtain and maintain, at its sole cost and expense and at all times during this Agreement, all bonding requirements of the California Contractors State License Board, as may be applicable. Each Aggregator that performs Demand Flexibility work on the property of a customer shall also maintain any payment and/or performance assurances as may be required by the FLEXmarket Plan.
- 2.10. Aggregator shall keep and maintain on a current basis full and complete documentation and accounting records pertaining to the Demand FLEXmarket and to each Customer for at least five (5) years from the date of expiration or termination of this Agreement; Recurve and/or Program Administrator reserve the right to audit the Demand FLEXmarket records.

3. Recurve Responsibilities.

- 3.1. Recurve shall use commercially reasonable efforts to confirm the FLEXmarket eligibility of each Project Aggregator submits to Recurve.
- 3.2. Recurve shall notify Aggregator of any missing information or issues identified by Recurve as soon as is practical and shall provide instructions to Aggregator regarding a solution for the missing information. However, this shall not relieve or excuse Aggregator from any of its obligations to provide required information.
- 3.3. Recurve shall calculate and verify Incentive Payment amounts in accordance with the M&V Plan in place at the time of Project completion.
- 3.4. Recurve will maintain a Fleet Manager Platform for each FLEXmarket summarizing and tracking project savings and portfolio savings for each Aggregator and will provide Aggregator and Program Administrator with access to the applicable information.

4. TERM OF AGREEMENT:

The term of this Agreement will commence on the Effective Date, and shall continue, unless terminated earlier in accordance with the terms of this Agreement, until the first anniversary of the Effective Date. This Agreement will then renew for successive one-year periods unless a Party notifies the other in writing of its intent not to renew this Agreement at least 30 days prior to the end of the then-current term (each such renewal term, together with the initial term, is referred to herein as the "Term").

5. INSURANCE:

Aggregator shall maintain the insurance policies set forth in the Program Administrator Terms. The General Liability and Business Auto Liability shall remain in force through the Term and shall be on a per occurrence basis only. The general liability policy must include Recurve and Program Administrator and their employees, officers and agents as additional insureds. Aggregator shall provide Recurve an insurance industry standard ACORD form certificate of insurance for all required insurance coverage for each Program Administrator within 15 days after the Effective Date. All insurance policies and the Certificate of Insurance shall indicate, that should the policy be canceled before the expiration date thereof, written notice of said cancellation will be delivered in accordance with the policy provisions, which shall not be less than thirty (30) days' notice of cancellation except for non-payment of premium which shall not be less than ten (10) days' notice of cancellation.

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

6. NONDISCRIMINATORY EMPLOYMENT:

Aggregator shall not unlawfully discriminate against any individual, including without limitation based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Aggregator and any subcontractor of Aggregator shall comply with the nondiscrimination mandates of all applicable federal, state and local statutes, regulations and ordinances.

7. SUBCONTRACTING:

If Aggregator hires a subcontractor in connection with this Agreement, a FLEXmarket and/or any Project, Aggregator shall ensure compliance by such subcontractor with all applicable terms and conditions of this Agreement and any applicable FLEXmarket Plans. Nothing contained in this Agreement shall create any legal or contractual relationship between Program Administrator or Recurve, on the one hand, and any subcontractor, contractor or agent of Aggregator on the other hand. Aggregator is solely responsible for paying its subcontractors, and neither Program Administrator nor Recurve shall have any obligation to pay or to enforce the payment to any subcontractor, contractor or agent of Aggregator.

8. ASSIGNMENT:

Aggregator may not transfer or assign its rights and obligations under this Agreement without: receiving Recurve's prior written consent; and providing advanced written notice to Program Administrator of transfer or assign. However, upon providing advanced written notice to Program Administrator, Aggregator may assign its rights to receive payment under this Agreement to a third party financial or insurance intermediary, at its sole and absolute discretion.

9. TERMINATION:

- 9.1. If Recurve believes that Aggregator has materially breached this Agreement, Recurve shall notify Aggregator in writing of the breach. Aggregator will then have 10 business days to cure such breach to Recurve's sole satisfaction. If Aggregator does not do so, then Recurve may terminate this Agreement by giving Aggregator 5 business days' written notice, in which case Aggregator will not be entitled to be paid the Incentive Payments for Projects approved prior to the date of termination. However, if Aggregator can demonstrate to Program Administrator's reasonable written satisfaction within three months of the date of termination that any particular Project was not adversely affected by Aggregator's breach, then Aggregator shall be entitled to be paid the Incentive Payments for Demand Flexibility achieved for one year from the Project approval date for that Project, pursuant to the appropriate M&V Plan.
- 9.2. Aggregator shall be excused for failure to perform its obligations under this Agreement (other than any obligation to pay money or to maintain insurance) if that failure is caused by events or conditions outside its control, such as labor disputes, supply chain issues, pandemics or epidemics, but only for so long as Aggregator is actually prevented from performing its obligations and notifies Recurve in writing of the issue within 5 days after the event or condition arises.
- 9.3. Either party may terminate this Agreement for any reason by giving sixty (60) calendar days' prior written notice to Aggregator sent by registered mail or by email to the email address listed in Section 14 Notices. If this Agreement is terminated for any reason other than a breach by Aggregator, Aggregator shall be paid the Incentive Payments achieved for up to one year past the Project approval date for any Projects approved in accordance with the terms of this Agreement and the respective FLEXmarket Plans, so long as proof of required insurance is provided for such one-year period. In the event of early termination, sections 2.8, 2.9, 3.3, 3.4, 11, 12, 13, 14, 15, 16, and 17 shall survive such termination.
- 9.4. This Agreement and any FLEXMarket Plan is subject to changes, modifications, or termination by order or directive of the Regulators. If a Regulator issues an order or directive relating to or affecting any aspect of this Agreement or any FLEXMarket Plan, Recurve shall have the right to modify or terminate this Agreement and any FLEXMarket Plan as needed to be consistent with such Regulations.
- 9.5. Recurve may terminate this Agreement without notice if funding for this Agreement is substantially reduced or eliminated by Program Administrator, by the third-party funding source, or by a Regulator, or if the FLEXmarket is terminated for any reason.

10. GOVERNING LAW AND VENUE:

This Agreement will be governed by the laws of the State of California. Any litigation to enforce or interpret any terms of this Agreement must be brought in a Superior Court of the State of California located in San Francisco County (or if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Northern District of California), and the Parties hereby submit to the exclusive jurisdiction of such courts.

11. DISPUTES:

- 11.1. 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 Aggregator's contract representative and Recurve's contract representative by good faith negotiation efforts shall be referred to the Chief Operating Officer of Recurve and an officer of the Aggregator for resolution. Within 20 calendar days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and

12. REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION:

At all times during the Term, Aggregator represents and warrants that (a) it is a _____ [corporation/limited liability company/partnership] duly organized, validly existing and in good standing under the laws of the State of _____, (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to engage in the business it presently conducts and contemplates conducting, and (c) it is and will be duly licensed or qualified to do business and in good standing under the laws of 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.

i. Aggregator agrees to indemnify, defend, and hold Recurve and Program Administrator, and their respective employees, officers, contractors, owners and agents (collectively, "Program Administrator Parties"), harmless from any and all losses, damages, costs, expenses and liabilities including, but not limited to, litigation and other dispute resolution costs, and attorney's fees ("Claims"), arising from or in connection with (a) any act or omission of Aggregator, or Aggregator's employees, officers, contractors, owners and agents (collectively, the "Aggregator Parties") in connection with this Agreement, or a Project or work performed under a FLEXmarket; (b) any products installed or services performed during the installation, operation or maintenance of any Project, or otherwise in connection with any Project; or (c) any and all fines, penalties, or similar imposed by any governmental authority in connection with any Project or this Agreement generally.

ii. Recurve agrees to indemnify, defend and hold the Aggregator Parties harmless from any and all Claims arising from or in connection with any act or omission of any employee, officer, member, agent or subcontractor of Recurve (a) in connection with this Agreement, any Project or work performed under a FLEXmarket, or (b) resulting in fines, penalties or similar imposed by any governmental authority in connection with any Project or this Agreement.

13.1. Neither Aggregator, Recurve, nor Program Administrator shall be liable for any incidental, special, indirect, punitive or consequential damages relating to or arising from this Agreement.

14. NOTICES:

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Contract Manager: Jeff Soplop, Chief Operating Officer

Address: 364 Ridgewood Ave. Mill Valley, CA 94941

Email Address: jeff@recurve.com

Telephone No.: (919) 389-1796

Notices shall be given to Aggregator at the following address:

Aggregator:

Address:

Email Address:

Telephone No.:

Notices shall be given to Program Administrator at the address listed in the Program Administrator Terms.

15. SEVERABILITY:

If a court determines that any provision of this Agreement is invalid or unenforceable, the remainder of the Agreement will continue in full force and effect.

16. COMPLETE AGREEMENT; NO WAIVER:

This Agreement, together with the FLEXmarket Plans, which, for the avoidance of doubt include Program Administrator Terms, including all exhibits and addenda hereto and thereto are incorporated herein and constitute the entire agreement between the Parties. No modification or amendment shall be valid unless made in writing and signed by each Party. This Agreement supersedes all prior or contemporaneous negotiations, representations, promises and agreements, whether written or oral, concerning the subject matter hereof. 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.

17. THIRD PARTY BENEFICIARY:

Except as set forth in the immediately following sentence, the Parties do not confer any rights or remedies upon any person other than the parties to this Agreement and their respective successors and permitted assigns. The Parties hereby designate Program Administrators an intended third-party beneficiary of this Agreement, having the right to enforce the provisions of this Agreement in law or equity directly against Aggregator or its subcontractors the same as if it were a party hereto.

18. 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.

Recurve Analytics, Inc.:

By: _____

Name: _____

Title: _____

Date: _____

Aggregator:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT 1 to the Flexibility Purchase Agreement**DATA COLLECTION AND OWNERSHIP REQUIREMENTS:**

DEFINITION OF "RECURVE DATA". "Recurve Data" means all data or information provided by or on behalf of Recurve, including but not limited to, energy usage data relating to, of, or concerning, provided by or on behalf of any enrolled customer/ratepayer, Program Administrator, or Regulators; 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 Recurve to Aggregator as Recurve 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 Aggregator.

DEFINITION OF "PROGRAM ADMINISTRATOR DATA". "Program Administrator Data" means all data or information provided by or on behalf of Program Administrator, including but not limited to, enrolled customer/ratepayer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any enrolled customer/ratepayer; dashboards; 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 Program Administrator to Aggregator as Program Administrator 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 Aggregator. Program Administrator Data shall also include all data and materials provided by or made available to Aggregator by Program Administrator'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 Program Administrator and their licensors.

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

PROGRAM ADMINISTRATOR DATA SECURITY MEASURES. Prior to Aggregator receiving any Program Administrator Data, Aggregator shall comply, and at all times thereafter continue to comply, with Program Administrator's applicable data security policies set forth in the Program Administrator Terms which are part of the FLEXmarket Plans. Aggregator must adhere to reasonable administrative, technical, and physical safeguard protocols to protect Program Administrator Data from unauthorized handling, access, destruction, use, modification or disclosure. In the case of a data breach, Aggregator must inform Recurve within 24 hours.

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

RETURN OF DATA. Within sixty days (60) after this Agreement terminates or expires, and upon Recurve's request, (i) Aggregator will securely destroy all Recurve Data and Program Administrator Data in its possession and certify the secure destruction in writing to Recurve, and (ii) each Party will return (or if requested by the disclosing Party, destroy) all other property of the other and of Program Administrator(if any), provided that each Party's attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

OWNERSHIP AND USE RIGHTS.

- a) **Ownership of Data.** Unless otherwise expressly agreed to by the Parties, Recurve shall retain all of its rights, title and interest in Recurve Data and Program Administrator shall retain all of its rights, title and interest in the Program Administrator Data. However, Recurve shall grant Aggregator an irrevocable, assignable, non-exclusive, fully paid up, worldwide, royalty-free, unrestricted license to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of Recurve Data derivatives for the sole purpose of using such Recurve Data derivatives for the conduct of Aggregator's business and for disclosure to Regulators for governmental and regulatory purposes related thereto.

b) Definitions:

1. **Program Intellectual Property.** "Program Intellectual Property" means and includes any and all materials, information, analysis or other work product jointly created, prepared, accumulated or developed by Recurve and Aggregator in connection with the FLEXmarket, including inventions, processes, templates, documents, drawings, computer applications, designs, calculations, maps, plans, work plans, texts, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual material, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith. Recurve shall retain all right, title and interest, including all related intellectual property rights, in the Program Intellectual Property, and Aggregator shall execute any such documents or take such actions as Recurve may reasonably request to perfect such ownership in the Program Intellectual Property.
2. **Recurve Intellectual Property.** "Recurve Intellectual Property" means and include any and all materials,

information, analysis or other work product created, prepared, accumulated or developed solely by Recurve in connection with the FLEXmarket, including inventions, processes, templates, documents, drawings, computer applications, designs, calculations, maps, plans, work plans, texts, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual material, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith. As between the Parties, Recurve owns and shall retain all right, title and interest, including all related intellectual property rights, in the Recurve Intellectual Property. Aggregator agrees to execute any such other documents or take other actions as Recurve may reasonably request to perfect Recurve's ownership in the Recurve Intellectual Property.

3. **Aggregator Intellectual Property.** "Aggregator Intellectual Property" means and includes any and all materials, information, analysis or other work product created, prepared, accumulated or developed solely by Aggregator in connection with the FLEXmarket, including inventions, processes, templates, documents, drawings, computer applications, designs, calculations, maps, plans, work plans, texts, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual material, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith. As between the Parties, Aggregator owns and shall retain all right, title and interest, including all related intellectual property rights, in the Aggregator Intellectual Property. Recurve agrees to execute any such other documents or take other actions as Aggregator may reasonably request to perfect Aggregator's ownership in the Aggregator Intellectual Property.
- c) **Aggregator's Pre-Existing Materials.** If, and to the extent Aggregator retains any preexisting ownership rights ("Aggregator's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Program Intellectual Property, Aggregator hereby grants Recurve and Program Administrator, including on behalf of the Regulator for governmental and regulatory purposes, an irrevocable, assignable, non-exclusive, 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 Aggregator for the sole purpose of using such Program Intellectual Property for the conduct of Recurve's and Program Administrator's business and for disclosure to Regulators for governmental and regulatory purposes related thereto. The term of such license shall expire upon the expiration or termination of this Agreement. Unless otherwise expressly agreed to by the Parties, Aggregator shall retain all of its rights, title and interest in Aggregator's Pre-Existing Materials. Any and all claims to Aggregator's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Program Intellectual Property must be expressly disclosed to Recurve on or before the Effective Date.

EXHIBIT 2 to the Flexibility Purchase Agreement PROGRAM ADMINISTRATOR TERMS

Where Marin Clean Energy ("MCE") is the applicable Program Administrator, the following additional terms and conditions shall apply to the Agreement:

1. Insurance Requirements For Aggregator

1.1. GENERAL LIABILITY

Aggregator shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) per occurrence and with a two million dollar (\$2,000,000) aggregate limit. Recurve and Program Administrator each shall be named as an additional insured on the commercial general liability policy, and the Certificate of Insurance shall include an additional endorsement page.

1.2. AUTO LIABILITY

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

1.3. WORKERS' COMPENSATION

Aggregator acknowledges Regulations require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the applicable Labor Code. If Aggregator has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to Recurve within 15 days after the Effective Date.

1.4. PRIVACY AND CYBERSECURITY LIABILITY

Aggregator shall maintain privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs) coverage of at least \$ one million dollars (\$1,000,000) US per occurrence.

2. FLEXmarket Program Standards and Regulations

2.1. Workforce Standards

2.1.1. Aggregator shall comply with the workforce qualifications, certifications, standards and requirements set forth below or established by any applicable law or regulation. Prior to commencement of any Services, once per calendar year, and at any other time as may be requested by MCE or Recurve, Aggregator shall provide, and shall require every Subcontractor to provide all documentation necessary to demonstrate to MCE's or Recurve's reasonable satisfaction that Aggregator Parties have complied with the Workforce Standards.

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

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

This standard shall not apply where the incentive is paid to any manufacturer, distributor, or retailer of HVAC equipment, unless the manufacturer, distributor, or retailer installs or contracts for the installation of the equipment. For the avoidance of doubt, Aggregator is deemed to be equivalent to manufacturer, distributor or retailer; therefore, the standard shall not apply unless Aggregator installs or contracts for the installation of the equipment.

2.1.3. Advanced Lighting Controls Standards. For any non-residential project pursuant to this Agreement involving installation, modification, or maintenance of lighting controls with incentives valued at \$2,000 or more, Aggregator shall ensure that all workers or technicians involved in the project, including those of its Aggregator Parties are certified by the California Advanced Lighting Controls Training Program ("CALTP"). This requirement shall not apply where the incentive is paid to a manufacturer, distributor, or retailer of lighting controls unless the manufacturer, distributor, or retailer installs or contracts for installation of the equipment. For the avoidance of doubt, Aggregator is deemed to be equivalent to manufacturer, distributor or retailer; therefore, the standard shall not apply unless Aggregator installs or contracts for the installation of the equipment.

2.2. Licensing and/or Certifications. Each Aggregator represents and warrants that, at all times it is performing the Services, it is properly licensed and/or certified, as required by law, to perform the Work at all times during the term of this Agreement. For avoidance of doubt, any Aggregator Party that is performing work at the property of a Customer shall have and maintain licensure by the California Contractors State License Board ("CSLB"), at all times during the Term of this Agreement. CSLB License numbers must be made available by Aggregator upon request by Recurve or MCE for verification.

2.3. Quality Assurance. Aggregator shall comply with Quality Assurance procedures, as they are defined in the FLEXmarket Plan, including but not limited to: (i) industry standard best practices; and (ii) procedures that ensure FLEXmarket functionality, Customer satisfaction, and that Workforce Standards are satisfied. This section is not applicable to Demand Flexibility Projects ("DFP") solely in the Peak Program ("PP").

2.4. Data Security Measures. Prior to receiving any MCE Data, and at all times continuing thereafter, Aggregator shall comply with MCE's Data security policies set forth in MCE Policy 009 and MCE's Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy ("Security Measures"). "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 Customer; 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 Recurve 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 Recurve. MCE Data shall also include all data and materials provided by or made available to Recurve 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. MCE's Security Measures and Confidentiality provisions require Aggregator to adhere to reasonable administrative, technical, and physical safeguard protocols to protect MCE's Data from unauthorized handling, access, destruction, use, modification or disclosure.

Additionally, Aggregator shall execute the non-disclosure agreement ("NDA") attached hereto as Exhibit 3. Subcontractors are not required to execute a NDA but Aggregator shall ensure that any Subcontractor, at its own expense, adopt and continuously implement, maintain and enforce reasonable technical and organizational measures, consistent with the sensitivity of Personal Information and Confidential Information including, but not limited to, measures designed to (1) prevent unauthorized access to, and otherwise physically and electronically protect, the Personal Information and Confidential Information, and (2) protect MCE content and data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

Promptly after the FPA terminates or expires (i) Aggregator will securely destroy all MCE Data in its possession and certify the secure destruction in writing to MCE, and (ii) Aggregator will return (or if requested Recurve or MCE, destroy) all other Confidential Information and property of the other (if any), provided that Recurve's attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

2.5. Performance Assurance. Regardless of the specific work provided, Aggregator shall maintain any payment and/or performance assurances as may be requested by Recurve or MCE during the performance of the work.

2.6. Fitness for Duty. Aggregator shall ensure that all Covered Personnel report to work fit for their job. Covered Personnel may not consume alcohol while on duty and/or be under the influence of

drugs or controlled substances that impair their ability to perform their work properly and safely. Aggregator shall have, and shall ensure that any Subcontractor shall have, policies in place that require its employees report to work in a condition that allows them to perform the work safely. For example, employees should not be operating equipment under medication that creates drowsiness.

- 2.7. Background Checks.** Aggregator shall conduct appropriate background checks as required by rules and standards as set forth in the FLEXmarket plans, to the extent legally permissible, on all personnel.
- 2.8. Standards of Performance.** Aggregator shall deliver the Work under the DFP in a timely, professional, good and workmanlike and ethical manner as specified in the CPIP.
- 2.9. Attendance at Meetings.** Aggregator's representatives will attend all meetings required by Recurve while the Work, or any part of it, is in progress, or as reasonably requested by Recurve, and will be prepared and authorized to address all matters related to the Work.
- 2.10. No Discrimination; Equal Opportunity Employer.** Aggregator shall be an Equal Employment Opportunity employer committed to the principles of equal employment opportunity. Aggregator shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741-5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Additionally, these regulations require that covered contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability.
- 2.11. Warranties to Participants.** Aggregator shall provide a standard, best practice installation warranty for the workmanship on each FLEXmarket Program. Aggregator shall provide proof to Recurve that the Aggregator has submitted all warranty registrations for the DFP equipment. Aggregator shall prosecute manufacturer warranty claims on behalf of the Participant.
- 2.12. Post-Installation Maintenance and Operation.** Aggregator shall ensure each DFP remains installed, reasonably maintained, and operational, including any and all timely repairs and replacements, for the entire Term. This section is not applicable to DFPs solely in the PP.
- 2.13. Site Access.** Aggregator shall be responsible for obtaining any and all access rights from Participants and other third parties to the extent necessary to perform the Work. Aggregator shall also procure any and all access rights from Participants and other third parties in order for MCE and Recurve employees, representatives, designees, and contractors to access the DFP site and inspect the Work prior to, during, and after installation for the full Term.
- 2.14. Compliance with Laws.** Aggregator shall comply at all times during the Term with any and all federal, state and local laws, regulations, orders, ordinances, permitting requirements and resolutions, including without limitation, the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data.
- 2.15. MCE Customer Engagement Protocol.** Aggregators shall comply at all times during the Term with any MCE-provided MCE co-branding and/or customer engagement protocol that provides MCE's expectations for customer interactions by Aggregator. Failure of Aggregator to comply at all times with this section will constitute a material breach pursuant to FPA section 9.1, and may result in the discontinuation of work with MCE at MCE's request.
- 3. Subcontractors.** Aggregator shall be solely responsible for ensuring that each Subcontractor complies with the terms and conditions of this Exhibit 2.
- 4. California Civil Code § 1542 Waiver.** Aggregator is on notice of, and hereby specifically and expressly waives, the provisions of California Civil Code § 1542, which provides that a "general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."
- 5. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:** MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government

Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. Aggregator shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

EXHIBIT 3 to the Flexibility Purchase Agreement

FORM NON-DISCLOSURE AGREEMENT

**Fully Executed Non-Disclosure Agreement Must Be Sent to
compliance@mceCleanEnergy.org**

This Non-Disclosure Agreement ("Agreement") is entered into by and between Marin Clean Energy ("MCE") and ____ ("Contractor") as of ____, 202__ ("Effective Date"). As used herein MCE and Contractor may each be referred to individually as a "Party" and collectively as "Parties." The provisions of this Agreement and MCE Policy 001 (Customer Confidentiality) govern the disclosure of MCE's confidential customer information to Contractor ("Disclosure Provisions"). The Parties hereby mutually agree that:

1. Subject to the terms and conditions of this Agreement, current proprietary and confidential information of MCE regarding customers of MCE ("MCE Customers") may be disclosed to Contractor from time to time in connection herewith as provided by the Disclosure Provisions and solely for the purposes set forth on Schedule A. Such disclosure is subject to the following legal continuing representations and warranties by Contractor:
 - (a) Contractor represents and warrants that it has all necessary authority to enter into this Agreement, and that it is a binding enforceable Agreement according to its terms;
 - (b) Contractor represents and warrants that the authorized representative(s) executing this Agreement is authorized to execute this Agreement on behalf of the Contractor; and
 - (c) Contractor confirms its understanding that the information of MCE Customers is of a highly sensitive confidential and proprietary nature, and that such information will be used as contemplated under the Disclosure Provisions solely for the purposes set forth on Schedule A and that any other use of the information is prohibited.
 - (d) Contractor represents and warrants that it will implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for purposes not set forth on Schedule A.
2. The confidential and proprietary information disclosed to Contractor in connection herewith may include, without limitation, the following information about MCE Customers: (a) names; (b) addresses; (c) telephone numbers; (d) service agreement numbers; (e) meter and other identification numbers; (f) MCE-designated account numbers; (g) meter numbers; (h) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption as defined in Public Utilities Code Section 8380, HP load, and other data detailing electricity or gas needs and patterns of usage); (i) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (j) payment / deposit status; (k) number of units; and (l) other similar information specific to MCE Customers individually or in the aggregate (collectively, "Confidential Information"). Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Contractor or its representatives that are derived from or based on Confidential Information disclosed by MCE, regardless of the form of media in which it is prepared, recorded or retained.
3. Except for electric and gas usage information provided to Contractor pursuant to this Agreement, Confidential Information does not include information that Contractor proves
 - (a) was properly in the possession of Contractor at the time of disclosure; (b) is or becomes publicly known through no fault of Contractor, its employees or representatives; or (c) was independently developed by Contractor, its employees or representatives without access to any Confidential Information.
4. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Contractor, or used for any purpose other than the purposes set forth on Schedule A.

5. Contractor shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Contractor shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth on Schedule A. Specifically, Contractor shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees or representatives of Contractor who have a "need to know" such Confidential Information in the course of their duties with respect to the Contractor program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, Contractor shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree to be bound by the terms of this Agreement.
6. Contractor shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by MCE directly against such employees or representatives for improper disclosure and/or use. In no event shall Contractor or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Contractor shall immediately notify MCE in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Contractor or any of its employees or representatives. However, nothing in this Agreement shall obligate the MCE to monitor or enforce the Contractor's compliance with the terms of this Agreement.
7. Contractor shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to CPUC Decision No. 12-08-045.
8. Contractor acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to MCE and/or MCE Customers, the amount of which may be difficult to assess. Accordingly, Contractor hereby confirms that the MCE shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Contractor or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the MCE, in law or equity.
9. In addition to all other remedies, Contractor shall indemnify and hold harmless MCE, its officers, employees, or agents from and against all claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) attributable to actions or non-actions of Contractor and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.
10. When Contractor fully performs the purposes set forth on Schedule A, or if at any time Contractor ceases performance or MCE requires Contractor cease performance of the purposes set forth on Schedule A, Contractor shall promptly return or destroy (with written notice to MCE itemizing the materials destroyed) all Confidential Information then in its possession at the request of MCE. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.
11. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties hereto. This Agreement shall not be assigned, however, without the prior written consent of the non-assigning Party, which consent may be withheld due to the confidential nature of the information, data and materials covered.
12. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, understandings, communications, correspondence and representations, whether oral or written. This Agreement shall not be amended, modified or waived except by an instrument in writing, signed by both Parties, and, specifically, shall not be modified or waived by course of performance, course of dealing or usage of trade. Any waiver of a right under this Agreement shall be in writing, but no such writing shall be deemed a subsequent waiver of that right, or any other right or remedy.
13. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without reference to its principles on conflicts of laws.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement

AI#05_C.4_Att. A Proposed Second Amended & Restated Demand FLEXmarket Agmt w/Recurve Analytics, Inc.
as of the Effective Date.

MARIN CLEAN ENERGY

BY: _____
(Signature)

(Name, Title)

(Address)

CONTRACTOR

BY: _____
(Signature)

(Name, Title)

(Address)

Fully Executed Non-Disclosure Agreement Must Be Sent to
compliance@mceCleanEnergy.org

All Contractors Must Complete the Attached Schedule A

**SCHEDULE A to NON DISCLOSURE AGREEMENT
CONTRACTOR PURPOSES**

To be completed by each Aggregator at execution of this form NDA.

EXHIBIT B
FEES AND PAYMENT SCHEDULE

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

1. Monthly Invoices. Recurve shall bill MCE monthly by written invoice ("Invoice") for 15% of the Total Program Value (defined below) of the projects completed (each a "DFP Completion") in the previous month, as defined and further detailed below. DFP Completion shall be defined in the PIPs and evidenced by receipt of the final invoice, as provided by the Aggregator to the Customer.

"Total Program Value" for energy efficiency projects with an Effective Useful Life ("EUL") of greater than 1 year shall be calculated using the forecasted energy savings estimates provided by the Aggregator, the lead measure that will be used to forecast the marginal hourly savings load shape of the project for each hour of the year ("Anchor Measure"), and the associated measure EUL. Recurve shall calculate the program value of each installed Project ("Program Value"), creating an "enrollment summary" that will be delivered to MCE on a monthly basis. Program value mirrors the calculation of "net benefits" as defined by the CPUC.

"Total Program Value" for load shifting projects or portfolios – which do not have an "Anchor Measure" or EUL of a year or less– and are funded under the Peak Program, or PP, shall be determined by forecasts submitted by aggregators, and in accordance with forecasting methods and procedures outlined in the FLEXmarket Plan. Forecasts from Aggregators may be set monthly, or across the summer (June-September) season. Recurve may submit invoices amounting to 15% of forecasted load shifting value once 15% of the forecasted load shifting value has been achieved by the Customer.

MCE shall pay undisputed Invoice amounts equaling 15% of the Total Program Value for all DFPs completed in the previous month.

PP EVENTS

In addition to the payments outlined above, Recurve will invoice MCE to perform M&V services for PP demand response events. Recurve will invoice MCE to perform M&V services for each event (as defined in the M&V plan) called (as directed by MCE) per the following:

1. Under 1 Peak MW - \$2,500 per event
2. 1-5 Peak MW - \$5,000 per event
3. Above 5 Peak MW - \$10,000 per event

Peak MW is the peak demand reduction delivered during an event, as defined in the PP's M&V Plan which is part of the FLEXmarket Plan.

2. Notwithstanding cases in which MCE or an MCE-designated third party that provides data to Recurve causes the delay of complete data needed to perform the calculations, the Parties understand and agree that Recurve's failure to provide MCE with Recurve's timely verified documentation of the monetary value of the electric and gas net benefits of a DFP for any reason, including but not limited to termination of the Agreement whereby Recurve is a Defaulting Party, will damage MCE, including by causing reputational harm to MCE, in an amount that is difficult or incapable of precise estimation. The Parties agree that a liquidated damage amount of twenty percent (20%) of the Total Program Value for each such DFP, represents a fair, reasonable and appropriate estimate of the damages thereof and that such sum bears a reasonable relationship to those anticipated damages.
3. For Projects with an EUL equal to or greater than 1 year, timely verified documentation of a DFP is one year plus 60 days after Project completion. For load-shifting and PP events, timely verified documentation is informed by CPUC reporting requirements and/or MCE, documented within the FLEXmarket Plan.

The Parties agree that a liquidated damage amount of twenty percent (20%) of the Total Program Value for each such DFP, represents a fair, reasonable and appropriate estimate of the damages thereof and that such sum bears a reasonable relationship to those anticipated damages.

4. DFP Documentation shall include the following:
 - a. List of energy efficiency measures installed, or demand flexibility strategy;
 - b. Total Customer cost of installing or implementing the Energy Efficiency measures
 - c. Customer rebate or cost share, if any
 - d. Anticipated Energy Savings for the DFP (as they are defined and calculated in the Rulebook);
 - e. The Anchor Measure;
 - f. An EUL of the energy efficiency measures installed.

Additional details on required DFP documentation may be included in the PIPs as confirmed in writing by Recurve and MCE.

5. Fee Assumptions and Understandings:
 - a. The Anticipated Energy Savings for the DFP and the Anchor Measure load shape and EUL are the "Key Inputs" required to calculate the monetary benefits of an energy efficiency project using the CPUC's Avoided Cost Calculator.
 - b. These key inputs determine the monetary value of the energy efficiency project, which when divided by the Total Resource Costs, as defined by the CPUC, are the main determinants of program Cost Effectiveness, as defined by the CPUC.
 - c. The values of the Avoided Cost Calculator are in the public domain and have been incorporated into a pricing tool developed by Recurve that will be used to determine the value of the project and thus determine the payment due to Recurve.
 - d. Recurve will share the code behind Recurve's version of the Cost-Effectiveness Tool within two (2) weeks of the effective date of this Agreement.

In no event shall the total cost to MCE for all services, provided herein exceed the maximum sum of \$12,750,000.

FIRST AMENDED AND RESTATED DEMAND
FLEXMARKET AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND RECURVE ANALYTICS, INC.

THIS FIRST AMENDED AND RESTATED DEMAND FLEXMARKET AGREEMENT ("Agreement"), originally executed October 30, 2020 between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and RECURVE ANALYTICS, INC., a Delaware corporation with its principal place of business located at 364 Ridgewood Avenue, Mill Valley, California, 94941, hereinafter referred to as "Recurve" (each a "Party" and together the "Parties") is hereby amended and restated as of this 7th of May, 2021. For the avoidance of doubt, this Agreement is separate from, and not related to, that series of Standard Short Form Contracts between MCE and Recurve pertaining to the Recurve Meter Platform and the RecurveOS Operations.

RECITALS:

WHEREAS, MCE desires to retain Recurve to administer the Flex Market Program ("FLEXmarket Program", "FLEXmarket", or "Program") with third party project implementers (each, an "Aggregator" and collectively the "Aggregators") who have developed portfolios of Demand Flexibility Projects (each, a "DFP" and collectively the "DFPs"); and

WHEREAS, Recurve will administer an Energy Efficiency Program ("EE") and a Peak FLEXmarket Program ("PF") within the FLEXmarket Program, and specifically to provide the services for the EE Program and the PF Program as described in **Exhibit A**; and

WHEREAS, Recurve seeks to provide, and warrants that it is qualified and competent to render, the services described in **Exhibit A**.

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

1. SCOPE OF SERVICES:

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

2. MCE OBLIGATIONS:

During the term of this Agreement, and in addition to MCE's other obligations under this Agreement, MCE agrees to:

2.1 Promptly upon request from Recurve, provide Recurve all pertinent data and records necessary for Recurve's delivery of the Services.

2.2 Regularly and on a timely basis, provide Recurve with data for Recurve's use in calculating MCE's payments to Aggregators under applicable Flexibility Purchase Agreements ("FPA") in the form attached hereto as **Exhibit A-1**.

2.3 Pay undisputed and verified invoiced amounts to Aggregators within 30 days of receiving invoices and supporting documentation from Recurve.

3. FEES AND PAYMENT SCHEDULE; INVOICING:

MCE shall compensate Recurve for the Services in accordance with the Fee Schedule attached hereto as **Exhibit B** and by this reference incorporated herein. Recurve shall provide MCE with its Federal Tax I.D. number prior to submitting the first invoice. Recurve is responsible for billing MCE in a timely and accurate manner. Recurve shall email all invoices to MCE on a monthly basis as specified in **Exhibit B** for any Services rendered or expenses incurred hereunder. Fees and expenses related to the EE Program invoiced beyond 240 days will not be reimbursable; fees and invoices related to the PF Program invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 90 days of completion of the Services or termination of this Agreement. MCE will process payment for undisputed invoiced amounts within 90 days of receipt of such invoice.

4. MAXIMUM COST TO MCE:

In no event will the total cost to MCE for the Services exceed **One Million Six Hundred Thousand Dollars (\$1,600,000.00)**.

5. TERM OF AGREEMENT:

This Agreement shall commence on **May 7, 2021**. Recurve may enroll new DFPs under the Program until **October 31, 2022**. This Agreement shall terminate when Recurve has completed the Services on the last DFP enrolled (the "Term"). Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Recurve.

6. INSURANCE AND SAFETY:

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

Nothing herein shall be construed as a limitation on Recurve's indemnification and defense obligations under Section 16.5 of this Agreement. MCE agrees to timely notify Recurve of any negligence claim.

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

6.1 GENERAL LIABILITY

Recurve shall maintain a commercial general liability insurance policy in an amount of no less than two million dollars (\$2,000,000) with a four million dollar (\$4,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

6.2 RESERVED

6.3 WORKERS' COMPENSATION

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

6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED X)

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, Recurve must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Recurve shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that Recurve has segregated amounts in a special insurance reserve fund or Recurve's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon. In lieu of Professional Liability Insurance, Recurve shall maintain Errors and Omissions Insurance coverage per the same terms and in an amount no less than stated in this Section 6.4 for Professional Liability Insurance.

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

Recurve shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE. For the avoidance of doubt, Aggregators will not be considered subcontractors for purposes of this Agreement. If Recurve hires a subcontractor under this Agreement, Recurve shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Recurve under this Agreement and shall require subcontractor to name Recurve as additional insured under this Agreement. It shall be Recurve's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same. Notwithstanding the foregoing, 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 Recurve of any of its duties or obligations under this Agreement. Recurve shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. Recurve's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Recurve. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

9. ASSIGNMENT:

The rights, responsibilities and duties under this Agreement are personal to Recurve and may not be transferred or assigned without the express prior written consent of MCE; provided, however, that upon thirty (30) days prior, written notice to MCE, this Agreement may be assigned without MCE's consent to Recurve's successor in interest in (a) the sale of substantially all of Recurve's assets or (b) a merger wherein Recurve is not the surviving entity.

10. RETENTION OF RECORDS AND AUDIT PROVISION:

Recurve and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records pertaining to this Agreement. Such records shall include, but not be limited to,

FPA's, correspondence with Aggregators and records supplied to Recurve by Aggregators, documentation of Program Value (as defined in **Exhibit B**) calculations for each DFP, and documentation of the basis for payments to Aggregators. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement 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 Recurve's premises or, at MCE's option, Recurve shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Recurve 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; and MCE shall reimburse Recurve for any deficit in amounts paid to Recurve based on such undisputed audit findings. MCE shall also have the right to review, upon oral or written request to Recurve, any agreement, commitment or subcontract entered into by Recurve pursuant to this Agreement, including, but not limited to, the form of FPA, and any subsequent revisions thereto, and Recurve shall not unreasonably delay in delivering such agreement, commitment or subcontract to MCE.

11. TERMINATION:

- A. If either Party (the "Defaulting Party") fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, and does not cure such failure or violation within ten (10) business days after receiving written notice thereof from the other Party, the other Party may terminate this Agreement by giving five (5) business days' written notice to the Defaulting Party. For the avoidance of doubt, this paragraph A shall apply to any failure by MCE to pay an Aggregator in accordance with this Agreement or the FPA.
- B. Either Party shall be excused for failure to perform its obligations herein if such obligations are prevented by acts of God, pandemics, epidemics, strikes, labor disputes or other forces ("Force Majeure") over which the Party claiming Force Majeure has no control and which is not caused by any act or omission of the Party claiming Force Majeure, but only for so long as the Party claiming Force Majeure is actually so prevented from performing, and only provided the Party claiming Force Majeure provides prompt written notice to the other Party.
- C. Either Party hereto may terminate this Agreement for any reason by giving sixty (60) calendar days' written notice to the other party. Notice of termination shall be by written notice to the other Party and shall be sent by email to the email address listed in Section 19 Invoices; Notices.
- D. In the event of termination not the fault of Recurve, Recurve shall be paid for all Services performed to the date of termination in accordance with the terms of this Agreement and so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s), as defined in Section 12 below. Notwithstanding anything contained in this Section 11 in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Services. Recurve 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 11. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 11, Recurve shall have delivered to MCE any and all reports, drawings, documents and deliverables prepared for MCE before the effective date of such cancellation or termination.
- E. This Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such CPUC order or directive. MCE may also terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.
- F. Upon MCE's termination of this Agreement for any reason, Recurve shall bring the Services to an orderly conclusion as directed by MCE.

12. AMENDMENT:

This Agreement may be amended or modified only by written agreement of both Parties (an "Amendment"). For the avoidance of doubt, any modification to the form FPA attached here to as **Exhibit A-1**, or the addendum to the form FPA attached hereto as **Exhibit A-2**, shall require advance written approval by both Parties.

13. ASSIGNMENT OF PERSONNEL:

Recurve shall not substitute any personnel assigned to perform the Services unless personnel with substantially equal or better qualifications and experience are provided, as is evidenced in writing.

14. GOVERNING LAW AND VENUE:

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

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 Recurve'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 Recurve 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 Recurve cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and Recurve shall have the right to pursue all rights and remedies that may be available at law or in equity. In particular, Recurve shall have the right to request arbitration

or mediation to resolve the dispute and MCE shall be required to participate in arbitration or mediation in good faith. All negotiations and any mediation agreed to by the Parties are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.

16. REPRESENTATIONS; WARRANTIES; INDEMNIFICATION:

16.1 LICENSING. At all times during the Term of this Agreement, Recurve represents, warrants and covenants that it has obtained and shall maintain, at its sole cost and expense, all required licenses and registrations required for the operation of its business and the performance of its obligations under this Agreement. Recurve shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.

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

MCE represents and warrants that (a) it is duly organized, validly existing, (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 to engage in the business it presently conducts and contemplates conducting, (c) the execution, delivery and performance of this Agreement and all exhibits 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, (d) this Agreement and each exhibit constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, and (e) 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.

16.3 BACKGROUND CHECKS.

- (a) Recurve hereby represents, warrants and certifies that any personnel of Recurve having or requiring access to MCE's assets, premises, customer property ("Covered Personnel") shall have successfully passed background screening on each such individual, prior to receiving access, which screening may include, among other things to the extent applicable to the Services, a screening of the individual's educational background, employment history, valid driver's license, and court record for the seven (7) year period immediately preceding the individual's date of assignment to the project.
- (b) Notwithstanding the foregoing and to the extent permitted by applicable law, in no event shall Recurve permit any Covered Personnel to have one or more convictions during the seven (7) year period immediately preceding the individual's date of assignment to the project, or at any time after the individual's date of, assignment to the project, for any of the following ("Serious Offense"): (i) a "serious felony," similar to those defined in California Penal Code Sections 1192.7(c) and 1192.8(a), or a successor statute, or (ii) any crime involving fraud (such as, but not limited to, crimes covered by California Penal Code Sections 476, 530.5, 550, and 2945, California Corporations Code 25540), embezzlement (such as, but not limited to, crimes covered by California Penal Code Sections 484 and 503 et seq.), or racketeering (such as, but not limited to, crimes covered by California Penal Code Section 186 or the Racketeer Influenced and Corrupt Organizations("RICO") Statute (18 U.S.C. Sections 1961-1968)).
- (c) To the maximum extent permitted by applicable law, Recurve shall maintain documentation related to such background and drug screening for all Covered Personnel and make it available to MCE for audit if required pursuant to the audit provisions of this Agreement.
- (d) To the extent permitted by applicable law, Recurve shall notify MCE if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Recurve will also immediately prevent that employee, representative, or agent from performing any Services.

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

16.5 INDEMNIFICATION.

By Recurve: Recurve agrees to indemnify, defend, and hold MCE and its employees, officers, contractors, owners and agents, harmless from any and all losses, damages, costs, expenses and liabilities including, but not limited to, litigation and other dispute resolution costs, including reasonable attorney's fees, arising from or in connection with any and all claims and losses to anyone who may be injured or damaged by reason of Recurve's negligence, recklessness or any fraud, willful misconduct, violation of law, or breach of this Agreement in connection with this Agreement. For the avoidance of doubt, Recurve shall have no liability to MCE for any inaccuracy in data or forecasts provided by an Aggregator to Recurve provided that Recurve used commercially reasonable efforts to enforce Section 2.5 of the Flexible Purchase Agreement.

By MCE: MCE agrees to indemnify, defend, and hold Recurve and its employees, officers, contractors, owners

and agents, harmless from any and all losses, damages, costs, expenses and liabilities including, but not limited to, litigation and other dispute resolution costs, including reasonable attorney's fees, arising from or in connection with any failure by MCE to pay undisputed amounts of Flexibility Payments (as defined in the FPA) owed by MCE to any Aggregator.

Neither Recurve nor MCE shall be liable for any incidental, special, indirect, punitive or consequential damages relating to or arising from this Agreement.

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

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

18. COMPLIANCE WITH APPLICABLE LAWS:

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

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

Contract Manager:	Troy Nordquist
MCE Address:	1125 Tamalpais Avenue
	San Rafael, CA 94901
Email Address:	contracts@mcecleanenergy.org
Telephone No.:	(415) 464-6027

Notices shall be given to Recurve at the following address:

Recurve:	Matt Golden
Address:	364 Ridgewood Avenue
	Mill Valley, CA 94941
Email Address:	admin@recurve.com
Telephone No.:	(415) 841-3425

20. ACKNOWLEDGEMENT OF EXHIBITS:

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



Check applicable Exhibits

CONTRACTOR'S INITIALS

MCE'S INITIALS

EXHIBIT A.



Scope of Services

DS
MG

DS
DW

<u>EXHIBIT A-1.</u>	<input checked="" type="checkbox"/>	Flexibility Purchase Agreement	^{DS} MG	^{DS} DW
<u>EXHIBIT A-2.</u>	<input checked="" type="checkbox"/>	Addendum to Flexibility Purchase Agreement	^{DS} MG	^{DS} DW
<u>EXHIBIT 1</u>	<input checked="" type="checkbox"/>	LSE Program Terms and Conditions	^{DS} MG	^{DS} DW
<u>EXHIBIT A-3.</u>	<input checked="" type="checkbox"/>	Non-Disclosure Agreement	^{DS} MG	^{DS} DW
<u>EXHIBIT B</u>	<input checked="" type="checkbox"/>	Fees and Payment Schedule	^{DS} MG	^{DS} DW

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

21.1. DEFINITION OF "MCE DATA". "MCE Data" shall mean all data or information provided by or on behalf of MCE, including but not limited to, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to Recurve 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 Recurve. MCE Data shall also include all data and materials provided by or made available to Recurve by MCE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors.

"Confidential Information" under this Agreement shall have the same meaning as defined in the Marin Clean Energy Non-Disclosure Agreement between the Parties dated **April 26, 2021**.

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

21.3. MCE DATA SECURITY MEASURES. Prior to Recurve receiving any MCE Data, Recurve shall comply, and at all times thereafter continue to comply, in compliance with MCE's Data security policies set forth in MCE Policy 009 and MCE's Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy ("Security Measures") and pursuant to MCE's Confidentiality provisions in Section 5 of the Marin Clean Energy Non-Disclosure Agreement between the Parties dated **April 26, 2021**. MCE's Security Measures and Confidentiality provisions require Recurve to adhere to reasonable administrative, technical, and physical safeguard protocols to protect MCE's Data from unauthorized handling, access, destruction, use, modification or disclosure.

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

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

21.6. OWNERSHIP AND USE RIGHTS.

- a) **MCE Data.** Unless otherwise expressly agreed to by the Parties, MCE shall retain all of its rights, title and interest in the MCE Data.
- b) **Program Intellectual Property owned by MCE.** Unless otherwise expressly agreed to by the Parties, any and all materials, information, or other work product created, prepared, accumulated or developed by Recurve under this Agreement ("Program Intellectual Property"), including, but not limited to, any content for an Implementation Plan or otherwise required by the CPUC for purposes related to the Services contemplated, program value forecasts, dashboards, inventions, processes, templates, documents, drawings, computer programs, designs, calculations of

savings impacts, demand flexibility, demand reduction, value, 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. MCE shall have the non-exclusive right to use such materials in its sole discretion without further compensation to Recurve or to any other party and hereby grants Recurve an irrevocable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use the Program Intellectual Property for internal development purposes only, such that Recurve may use its learnings from the Program Intellectual Property to enhance the Services and to inform its development of similar services to other Load Serving Entities ("LSE"). Notwithstanding the foregoing, to the extent any MCE Data is embedded in the Program Intellectual Property, MCE shall remain the exclusive owner of such Program Intellectual Property and Recurve shall have no right to its use absent advance written approval by MCE. Recurve shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Recurve may keep file reference copies of all documents prepared for MCE.

- c) **Program Intellectual Property will be owned by MCE upon its creation.** MCE agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Program Intellectual Property.
- d) **Recurve's Pre-Existing Materials.** If, and to the extent Recurve retains any preexisting ownership rights ("Recurve's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Program Intellectual Property, including but not limited to Recurve's cost-effectiveness tool ("CET"), Recurve hereby grants MCE 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 Recurve for the sole purpose of using such Program Intellectual Property for the conduct of MCE's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Recurve shall retain all of its rights, title and interest in Recurve's Pre-Existing Materials. Any and all claims to Recurve's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Program Intellectual Property must be expressly disclosed to MCE prior to performing any Services under this Agreement. Any such Pre-Existing Material that is modified by work under this Agreement is owned by MCE.

21.7 BILLING, ENERGY USE, AND PROGRAM TRACKING DATA.

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

22. FINANCIAL STATEMENTS:

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

23. QUALITY ASSURANCE PROCEDURES

Recurve shall comply with the following Quality Assurance Procedures: (i) industry standard best practices; and (ii) procedures that ensure Program functionality, customer satisfaction, and that the minimum qualifications are satisfied.

24. COORDINATION WITH OTHER PROGRAM PARTICIPANTS:

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

25. 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.

26. COMPLETE AGREEMENT:

This Agreement, together with any attached Exhibits and the MCE Non-Disclosure Agreement, constitutes the entire Agreement between the Parties. No modification or amendment shall be valid unless made in writing and signed by each Party. Failure of either Party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

27. COUNTERPARTS:

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

28. SURVIVAL:

The Parties' obligations under Sections 4, 10, 11, 14, 15, 16.5, 17, 18, 19, 20, 21 shall survive the Termination of this Agreement.

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

APPROVED BY**Marin Clean Energy:**

DocuSigned by:
By: Dawn Weisz
A59878416EBC4F8...
Name: Dawn Weisz

Title: CEO

Date: 5/7/2021

DocuSigned by:
By: Kevin Haroff
3C8DE88B7D6543E...
Chairperson

Date: 5/7/2021

CONTRACTOR:

DocuSigned by:
By: Matt Golden
59C19823502C447...
Name: Matt Golden

Title: CEO

Date: 5/17/2021

MODIFICATIONS TO ENERGY EFFICIENCY STANDARD SHORT FORM

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

List sections affected: Sections 1, 2, 3, 4, 5, 6, 8, 9, 10; Standard Form Section 11: Work Product was omitted and shifted numbering for all following sections; **Section 11: Termination** (previously Section 12 changes throughout); **Section 12: Amendment** (previously 13 – changes throughout); **Section 13: Assignment of Personnel** (previously 14 – changes throughout); **Section 14: Governing Law** (previously 15 – no change); **Section 15: Disputes** (previously 16 – no change); **Section 16: Representations, Warranties, Indemnification** (previously 17 – changes throughout); **Section 17: No Recourse Against Constituent Members** (previously 18 – no change); **Section 18: Compliance with Laws** (previously 19 – no change); **Section 19: Invoices, Notices** (previously 20 – no change); **Section 20: Acknowledgement of Exhibits** (previously 21 – changes throughout); **Section 21: Data Collection and Ownership Rights** (previously 22 – changes throughout); Standard Form Section 23 Workforce Standards was omitted and further shifted number for all following sections; **Section 22: Financial Statements** (previously 24 – no change); **Section 23: Quality Assurance** (previously 25 – changes throughout); **Section 24: Coordination with Program Administrators** (previously 26 – change to coordination with Program Participants); Standard Form Sections 27 and 28 (Access to Customer Sites and Measurement Verification Requirements, respectively) were omitted and further shifted numbering for all following sections; **Section 25: Severability** (previously 29 – no change); **Section 26: Complete Agreement** (previously 30 – minor change to add NDA); **Section 27: Counterparts** (previously 31 – no change); **Section 28: Survival** was added.

Approved by MCE Counsel:

DocuSigned by:
Catalina Murphy
0CC3ED724F79482...

Date: 5/14/2021

EXHIBIT A
SCOPE OF SERVICES

Recurve will provide the following Services as requested and directed by MCE Customer Programs staff, up to the maximum fee allowed under this Agreement.

Services related to the EE Program:

- 1) Recurve shall manage the EE Program;
- 2) Recurve shall provide third-party EE Program management by:
 - a) Contracting with Aggregators who will develop DFPs or portfolios of DFPs pursuant to the terms of the FPA (attached hereto as Exhibit A-1).
 - b) Being responsible for managing operational EE Program functions, including but not limited to:
 - i) Recruiting and qualifying Aggregators, including by ensuring the requirements set forth in Exhibit 1 (attached hereto as Exhibit 1) to the FPA (attached hereto as Exhibit A-1) are met, which Aggregators (and any applicable subcontractors thereto) will deliver DFPs under the requirements of the EE Program;
 - ii) Continuing to provide all necessary content to MCE to include in the Commercial Program Implementation Plan ("CPIP") as applicable;
 - iii) Collecting, storing, and, upon oral or written request by MCE, promptly sharing with MCE all DFP and programmatic data, including but not limited to DFP costs, Energy Savings forecasts ("Energy Savings" defined as the annual/first year reduction in kWh or therms over the baseline year, credited to a specific intervention or set of interventions at a DFM Participant's facility), measure lists, and enrollment dates;
 - iv) Developing and implementing the terms and conditions of EE Program operation, including DFP and end users of DFPs ("DFM Participant") eligibility rules, access to incentive budgets, Measurement & Verification ("M&V") plans, and Quality Assurance ("QA") requirements;
 - v) Completing and enrolling applicable DFPs in the EE Program, aggregating the portfolios of DFPs, calculating EE Program energy savings for each DFP, and collecting all necessary data for EE Program infrastructure;
 - vi) Defining and implementing a process for validating forecasts of first year NMEC savings provided by Aggregators, which validation process shall be described in the applicable section of MCE's CPIP;
 - vii) Establishing coordination protocols for Aggregators when multiple Aggregators are serving the same or similar DFM Participant groups or are otherwise in competition, if necessary;
 - viii) Adhering to MCE branding and marketing requirements when requested by MCE, and consistently incorporating MCE feedback and guidance pertaining to customer relationship management.
 - c) Managing the allocation of incentive budgets among the Aggregators in accordance with the CPIP by ensuring that DFM Participant impacts and delivered benefits are fully optimized within budget availability, and by ensuring that sufficient incentive funds are available for all DFPs enrolled through FPAs.
 - d) Preparing and verifying Aggregator invoices and providing such invoices to MCE on a timely basis and, if requested by MCE, providing MCE with supporting documentation verifying the invoice amount.
- 3) Recurve shall report NMEC savings to MCE by:
 - a) Adhering to the "Rulebook for Programs and DFPs Based on Normalized Metered Energy Consumption, Version 2.0, Release Date: January 7, 2020" ("Rulebook")¹ in the management of MCE's Commercial population-level NMEC Program. Recurve shall be responsible for tracking the publication of any updates or new versions of the Rulebook and shall ensure utilize, and ensure that all Aggregators utilize, the updated or new versions once released.
 - i) As defined in the Rulebook, "Claimable Savings" (or "Claimed Savings", or "Savings Claims") means "the savings reported by Program Administrators to the Commission prior to formal evaluation, measurement, and verification (EM&V)."²
 - ii) "Payable savings" as defined in the Rulebook, are "the savings determined via the method and calculation software described in a program's M&V Plan which constitute the basis of payments between the Program Administrator and Implementer(s). Payable savings determinations may differ from claimable savings in that payable savings may account differently for net-to-gross determinations, non-routine events and outliers, and/or other similar considerations."³
 - b) With respect to "Claimable Savings," within one year plus 60 days after completion of each DFP, Recurve shall provide verified data, completed NMEC savings assessments, and supporting

¹ Rulebook for Programs and DFPs Based on Normalized Metered Energy Consumption Version 2.0 Release Date: 7 January, 2020 (hereafter, "Rulebook"). Available at: <https://www.cpuc.ca.gov/general.aspx?id=6442456320>.

² See Rulebook, page 21.

³ See Rulebook, page 23.

materials, including auditable meter-level records of calculations, to MCE for the purposes of supporting MCE's Savings Claims filings with the CPUC and any other governing authorities as may be required. Savings Claim methodology will be specified in the CPIP filed by MCE with the CPUC prior to program launch or in other official documentation.

- c) With respect to payable energy savings Recurve shall:
 - i) Incorporate payable energy savings per the Implementation Plan;
 - ii) Report verifiable payable energy savings to MCE for the purpose of invoicing and paying Aggregators;
 - iii) Create reproducible methodology for assigning payments to Aggregators where deviations from standard methodology may be allowed in a specific M&V plan attached to the FPA and produce such methodology to MCE.
- 4) Recurve shall provide EE Program administrative support by:
 - a) Contributing, as requested by MCE, to the development and update of MCE's: CPIP; Program M&V plan; and Annual Budget Advice Letter ("ABAL"), each to be submitted to the CPUC;
 - b) Annually providing MCE with cost effectiveness forecasts and budget requests that rely on and incorporate the primary measure load shape from CPUC's Database of Energy Efficiency Resources or approved work papers for the forecasted potential to support MCE's ABAL;
 - c) Providing MCE with a M&V Report, generated at the close of each year, which will demonstrate verifiable consistency with the Program's M&V Plan;
 - d) Supporting MCE's preparation of Savings Claims (quarterly and annually) through the development of blended load shapes post-intervention;
 - i) Specifically, by select measure load shapes that best reflect the actual savings load shape for a project or portfolio of projects;
 - e) Supporting MCE or CPUC-led EM&V studies or program evaluations by collecting and submitting project, DFM Participant, and program-level data;
 - i) Specifically, by providing good faith support and coordination with other Program Administrators that offer or intend to offer population-level NMEC programs within MCE's service area or adjacent service areas;
 - f) Providing MCE and/or the CPUC with access to auditable records for regulatory Savings Claims or evaluations;
 - g) Providing Quality Assurance by providing, at minimum, the following documents and information to MCE:
 - i) Baseline annual consumption amounts for each DFP;
 - ii) Anticipated Energy Savings;
 - iii) Technology measures or other energy efficiency improvements identified for installation.
- 5) EE Program Scope Assumptions and Understandings:
 - a) MCE is not a party to the FPAs with Aggregators.
 - b) Recurve is authorized to modify the form of FPA used with specific Aggregators only upon MCE's prior written consent to any such modification, including modification to any FPA addendum or exhibit.
 - c) MCE is authorized to review each Measurement and Verification Plan (M&V Plan), Quality Assurance Plan (QA Plan) and Operation and Maintenance Plan (O&M Plan). Modification of any M&V Plan that includes payment terms shall require MCE's prior written consent.
 - d) Unless otherwise agreed to in writing by both Parties, MCE shall be responsible for issuing payments to Aggregators for undisputed invoiced amounts.
 - e) All necessary DFP and DFM Participant data to be collected shall be outlined in the CPIP.
 - f) Parties acknowledge that Recurve is not responsible for submitting MCE's CPIP to the California Energy Data and Reporting System.
 - g) Energy savings and population-level NMEC rules are defined by the Rulebook.
 - h) Updated or new versions of the Rulebook shall apply to this Agreement and be used by MCE and Recurve once released.

Services related to the PF Program:

- 1) Recurve shall manage the PF Program;
- 2) Recurve shall provide third-party PF Program management by:
 - a) Contracting with Aggregators who will develop DFPs or portfolios of DFPs pursuant to the terms of the PF FPA Addendum (attached hereto as Exhibit A-2).
 - b) Being responsible for managing operational PF Program functions, including but not limited to:
 - i) Recruiting and qualifying Aggregators, including by ensuring the requirements set forth in PF FPA Addendum (attached hereto as Exhibit A-2) are met, which Aggregators (and any applicable subcontractors thereto) will deliver DFPs under the requirements of the Program;
 - ii) Propose and provide all necessary content to MCE to include in the Demand FLEXmarket Program Plan ("Program Plan") within 30 days of execution of this Agreement;
 - iii) Collecting, storing, and, upon oral or written request by MCE, promptly sharing with MCE

- all DFP and programmatic data, including but not limited to DFP costs, Demand Flexibility forecasts ("Demand Flexibility" defined as the daily reductions in kWh during the Program's defined peak hours, or the day-ahead signaled demand reduction on event days; "event days" to be defined in the Program Plan) over the measured baseline, credited to a specific intervention or set of interventions at a DFM Participant's facility), intervention strategies, and enrollment dates;
- iv) Developing and implementing the terms and conditions of PF Program operations within the Program Plan, including DFP and end users of DFPs ("DFM Participant") eligibility rules, Program payments to aggregators as outlined in Exhibit B, access to PF Program Funding (as defined in Exhibit B), Measurement & Verification ("M&V") plans, and Quality Assurance ("QA") requirements as applicable;
 - v) Completing and enrolling DFPs in the PF Program, aggregating the portfolios of DFPs, calculating PF Program energy savings for each DFP, and collecting all necessary data for Program infrastructure;
 - vi) Establishing coordination protocols for Aggregators when multiple Aggregators are serving the same or similar DFM Participant groups or are otherwise in competition, if necessary;
 - vii) Define a process and protocol within the Program Plan to collect and account for dual participation, provided that data is available;
 - viii) Adhering to MCE branding and marketing requirements when requested by MCE, and consistently incorporating MCE feedback and guidance pertaining to customer relationship management.
- c) Managing the allocation of incentive budgets among the Aggregators in accordance with the Program Plan by ensuring that DFM Participant impacts and delivered benefits are fully optimized within budget availability, and by ensuring that sufficient incentive funds are available for all DFPs enrolled through FPAs, or that Aggregators are aware of limitations in PF Program Funding as defined in Exhibit B.
 - i) The total budget for PF Aggregators in the summer of 2021 is capped at \$2,000,000. Overall payments made to Aggregators by MCE will be managed by Recurve to ensure commitments do not exceed the total available budget for the PF Program.
 - d) Preparing and verifying Aggregator invoices and providing such invoices to MCE on a timely basis and, if requested by MCE, providing MCE with supporting documentation verifying the invoice amount.
- 3) Recurve shall report NMEC savings to MCE by:
- a) Following the CalTRACK 2.0 hourly methods for the computation of hourly baselines, counterfactuals, and savings;⁴
 - b) Utilizing the OpenEEmeter open source python codebase for the execution of CalTRACK methods;
 - c) Conducting comparison group sampling via the methods described in the DOE report "Comparison Groups for the COVID Era and Beyond";⁵
 - d) Utilizing GRIDmeter open source code for the execution of comparison group sampling methods
 - e) Conducting the savings adjustment calculations associated with the comparison group in accordance to the percent difference of differences approach detailed in chapter 4 of "Comparison Groups for the COVID Era and Beyond";⁶

For cases in which demand response savings need to be parsed from EE/load shifting savings due to the presence of a separate program demand response event, the following procedure will be followed:

For both treatment and comparison groups:

1. Develop standard CalTRACK Hourly baseline model;
2. Project this hourly baseline model forward after the program intervention as the "EE counterfactual";
3. In the reporting period (post program intervention), develop a second hourly model utilizing hourly data from the 45 days before and 15 days after the event.⁷ In this "DR Baseline" model, Recurve will blackout (i.e., not include) the hours of any DR events;
4. For non-event hours, load-shifting+efficiency savings are determined by differencing the observed meter readings from the EE counterfactual;
5. For event hours, load-shifting+efficiency savings are determined as the difference between the EE counterfactual and the DR Baseline model;
6. For event hours, demand response savings are determined as the difference between the observed meter readings and the DR Baseline model;
7. Total event period savings are determined as the sum of load-shifting+efficiency and demand response savings;
8. load-shifting+efficiency savings will be automatically assigned as 0 when the EE counterfactual is lower than the DR baseline.

- 4) Recurve shall provide PF Program administrative support by:

⁴ The CalTRACK methods are fully specified and publicly available at www.caltrack.org

⁵ Available at: https://grid.recurve.com/uploads/8/6/5/0/8650231/recurve_comparison_group_methods_final_report_2.pdf.

⁶ See fn 5.

⁷ If empirical testing shows that other baseline time periods are preferable then these measurement periods may be changed. Recurve will present any modifications to MCE for written approval in such cases.

- a) Contributing, as requested by MCE, to the development and update of MCE's Program Plan and Program M&V plan;
 - b) Providing a monthly report of Demand Flexibility impacts, as well as access to a PF Program dashboard that tracks Aggregator enrollment, PF Program DFP enrollment, flexibility impacts, and payments;
 - c) Support communication of a day-ahead signaled prices for Demand Flexibility on event days ("event days" to be defined in Program Plan);
 - d) Providing MCE with a Program Report, generated at the close of each summer (June – September), which will demonstrate verifiable consistency with the PF Program Plan and Program M&V Plan, and summarize performance results and recommendations for program improvement;
 - e) Supporting EM&V studies or program evaluations by collecting or facilitating the collection of project, DFM Participant, and Program-level data;
 - i) Specifically, by providing good faith support and coordination with other PF Program Administrators that offer or intend to offer Demand Flexibility or Demand Reduction programs within MCE's service area or adjacent service areas;
 - f) Providing MCE and/or the CPUC with access to auditable records for regulatory impact claims or evaluations;
 - g) Providing Quality Assurance by providing, at minimum, the following documents and information to MCE:
 - i) Baseline annual consumption amounts for each DFP;
 - ii) Anticipated Flexibility Impacts;
 - iii) To be defined in the Program Plan, technology measures or other flexibility strategies depending upon data availability from aggregator(s).
- 5) PF Program Scope Assumptions and Understandings:
- a) MCE is not a party to the FPAs with Aggregators.
 - b) Recurve is authorized to modify the form of PF FPA used with specific Aggregators only upon MCE's prior written consent to any such modification, including modification to any FPA exhibit or addendum.
 - c) MCE is authorized to review each Measurement and Verification Plan (M&V Plan), Quality Assurance Plan (QA Plan) and Operation and Maintenance Plan (O&M Plan). Modification of any M&V Plan that includes payment terms shall require MCE's prior written consent.
 - d) Unless otherwise agreed to in writing by both Parties, MCE shall be responsible for issuing payments to Aggregators for undisputed invoiced amounts.
 - e) All necessary DFP and DFM Participant data to be collected shall be outlined in the PF Program Plan. Updated or new versions of the Rulebook shall apply to this Agreement and be used by MCE and Recurve once released.

EXHIBIT A-1
Flexibility Purchase Agreement

THIS FLEXIBILITY PURCHASE AGREEMENT (the "Agreement") is made by and between _____ ("Aggregator"), a _____ with its principal place of business located at _____, and Recurve Analytics, Inc., ("Recurve"), a Delaware corporation with its principal place of business located at 364 Ridgewood Ave., Mill Valley, CA 94941. This Agreement is effective on _____ ("Effective Date"). Recurve and Aggregator are each individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS:

WHEREAS, Aggregator will develop one or more portfolios ("Portfolios") of demand flexibility projects that shape and reduce load (the "DFPs");

WHEREAS, Recurve has entered into one or more Demand Flexibility Marketplace Contracts, or similar agreements (each a "DFM Contract") with one or more utilities and/or load serving entities ("LSE"), pursuant to which Recurve has agreed to administer a Demand Flexibility Marketplace (each a "DFM") that complies with all applicable regulations ("Regulations") as set by entities having jurisdiction over LSE ("Regulators"), pursuant to which LSE will deliver gas and/or electricity to end users of the DFPs ("DFM Participant"), and Aggregator will receive payments from LSE (the "Flexibility Payments") for flexibility savings realized by LSE through the DFPs; and

WHEREAS, Aggregator and Recurve wish to enter into this Agreement to memorialize the rights and responsibilities of Recurve, on its own behalf and on behalf of LSE, and of Aggregator under each DFM.

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 to the following:

1. Demand Flexibility Marketplace Agreements. For each DFM in which Aggregator will participate hereunder, Recurve and Aggregator shall adhere to the DFM Standards and Regulations (the "Standards"), as provided in Exhibit 1, and shall develop the following plans, in addition to any other plan required by applicable Regulations, the terms and conditions of which shall comply with all applicable Regulations, and such plans will be specific to the applicable DFM and LSE (each, a "DFM Plan" and collectively, the "DFM Plans");

- 1.1. Measurement and Verification Plan** (the "M&V Plan");
- 1.2. Quality Assurance Plan** (the "QA Plan");
- 1.3. Operation and Maintenance Plan** (the "O&M Plan");
- 1.4. Implementation Plan**;

All DFM Plans shall be subject to LSE review and approval, including all amendments or revisions thereto. In the event of a conflict between the terms of this Agreement and the terms of any DFM Plan, the terms of this Agreement will govern. For each DFM, Recurve and Aggregator will enter into additional DFM Plans, beyond those listed above, if required by the applicable Regulations, by LSE, or by mutual consent of the Parties. One or more of the DFM Plans listed above may be omitted if permissible per the Regulations and with the written consent of both LSE and Recurve.

2. Aggregator Responsibilities.

- 2.1.** On a monthly basis, or more frequently as may reasonably be requested by Recurve, Aggregator shall provide to Recurve documentation as necessary for Recurve to validate Aggregator's forecasted future energy savings. Energy savings are defined as the annual (first year) reduction in kWh or therms over the baseline year, credited to a specific intervention or set of interventions at a DFM Participant's facility ("Energy Savings").
- 2.2.** Aggregator shall promptly provide to Recurve or LSE, or as directed by Recurve, any additional information, data, certifications or the like as may be required by LSE and any Regulators, the DFM, or the DFPs, as the case may be.
- 2.3.** Aggregator shall keep and maintain on a current basis full and complete documentation and accounting records pertaining to the DFM and to each DFP (collectively, the "Records") for at least five (5) years from the date of expiration or termination of this Agreement. During the Term of this Agreement (as defined in Section 4) and for the five (5) year period following the Term, Recurve and LSE shall have the right, during regular business hours, to review and audit all Records. Any review or audit may be conducted on Aggregator's premises or, at Recurve's option, Aggregator shall provide to Recurve all Records within fifteen (15) days after receipt of written notice from Recurve. Aggregator 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 LSE based on undisputed audit findings.
- 2.4.** Aggregator shall comply at all times during the Term of this Agreement with the DFM Plans, any and all federal, state and local laws, regulations, orders, ordinances, permitting requirements and resolutions, including without limitation, Regulations, all Regulator policies and guidance for energy efficiency programs applicable to the DFM and the DFPs, all applicable building codes and other requirements of local authorities having jurisdiction. Aggregator shall comply with and timely cooperate with all Regulator directives, activities, and requests regarding the DFM and DFP evaluation, measurement and verification ("EM&V"). For the avoidance of doubt, it is the responsibility of Aggregator to be aware of all Regulator requirements

applicable to the DFM Plans and to ensure Aggregator and Subcontractor compliance. Aggregator shall also comply with all applicable requirements of the applicable LSE, as described in this Agreement, the DFM Plans, or any other attachments.

- 2.5. Aggregator hereby represents and warrants that all data and estimations of forecasted future Energy Savings that are provided by Aggregator to Recurve pursuant to this Agreement or as part of the DFM shall be made in good faith, shall be true and accurate to the best knowledge of Aggregator, and shall be subject to verification at the request of Recurve and/or LSE. Aggregator agrees that Recurve may require any individual employed by or acting as agent or subcontractor to Aggregator who provides such data and estimations to certify in writing as to the accuracy thereof and to provide documentation supporting any such certification to Recurve and/or LSE.
- 2.6. Quality Assurance. Aggregator shall comply with quality assurance procedures including but not limited to: (i) industry standard best practices and (ii) procedures that ensure DFM functionality, DFM Participant satisfaction and that all workforce standards are satisfied.
- 2.7. If Aggregator or any employee, officer, member, agent or subcontractor of Aggregator (each, an "Aggregator Party," and, collectively, the "Aggregator Parties") performs work on the property of a DFM Participant under a DFP, the DFM or this Agreement, such Aggregator Party shall, prior to commencing such Work, obtain and maintain, at its or Aggregator's sole cost and expense and at all times during this Agreement, all bonding requirements of the California Contractors State License Board ("CSLB"), as may be applicable. Each Aggregator Party that performs Work on the property of a DFM Participant shall also maintain any payment and/or performance assurances as may be required by the DFM Plans.
- 2.8. Standard of Performance. Aggregator shall deliver the Work under the DFM in a timely, professional, good and workmanlike and ethical manner and in accordance with best energy industry practices. Aggregator shall follow Aggregator-provided performance specifications and installation requirements.
- 2.9. Permits. Aggregator shall obtain, maintain, and obey any and all permits required by applicable law to install and maintain the DFP. For the avoidance of doubt, the Parties expressly agree that Aggregator will obtain all required permits from the authority having jurisdiction for each DFP.

3. Recurve Responsibilities.

- 3.1. Recurve shall use commercially reasonable efforts to confirm the DFM eligibility of Aggregator and the DFPs and shall notify Aggregator of any missing information or issues identified by Recurve; provided, however, that the foregoing shall not relieve or excuse Aggregator of or from any of its obligations under this Agreement, including without limitation its obligations under Section 2 above.
- 3.2. Recurve shall calculate and verify payable Energy Savings in accordance with the M&V Plan and will quantify and verify Flexibility Payments. The calculation of the Flexibility Payment for any DFP will be based on the M&V Plan in place at the time of Project Completion, as defined in the Implementation Plan, for the applicable DFP. Recurve's calculations under this Section 3.2, subject to review and verification by LSE, shall be final and binding upon the Parties.
- 3.3. Recurve will maintain each DFM dashboard summarizing and tracking DFP savings and portfolio savings for each DFM ("Dashboard") and will promptly provide Aggregator and LSE with access to the applicable Dashboard.

4. TERM OF AGREEMENT:

This Agreement shall commence on the Effective Date, and shall continue, unless terminated earlier in accordance with the terms of this Agreement, until the first anniversary of the Effective Date (the "Initial Term"). Following the end of the Initial Term, this Agreement will renew for successive one-year periods unless a Party notifies the other in writing of its intent not to renew this Agreement at least 90 days prior to the end of the then-current term (each such renewal term, together with the Initial Term, is referred to herein as the "Term"). Certificate(s) of insurance must be current on the Effective Date and at all times during the Term of this Agreement, and if scheduled to lapse prior to the expiration date of this Agreement, must be automatically updated at least thirty (30) days prior to the expiration of each policy term, at all times as a condition precedent to the making of any Flexibility Payment to Aggregator.

5. INSURANCE AND SAFETY:

5.1 INSURANCE. For each DFM, all required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance. The general liability policy shall be endorsed naming each of Recurve and LSE and their employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to and verified by Recurve within 15 days after the Effective Date. Each certificate shall provide for thirty (30) days advance written notice to Recurve and LSE of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only.

Nothing herein shall be construed as a limitation on Aggregator's obligations under Section 13 of this Agreement to indemnify, defend and hold Recurve and LSE harmless as more particularly set forth therein.

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

Aggregator shall provide and maintain the insurance policies set forth in Exhibit 1 attached hereto.

5.2 SAFETY. Aggregator shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the implementation of the DFPs. Aggregator shall monitor the safety of the job site(s) for all projects included in the DFPs to comply with all applicable federal, state, and local laws, and to follow safe work practices.

5.2.1 BACKGROUND CHECKS. Aggregator shall ensure that any of its personnel having or requiring access to LSE's assets, data, premises or property ("Covered Personnel") shall have successfully passed background screening on such individual prior to receiving access, which screening may include, among other things to the extent applicable to the Work, a screening of the individual's educational background, employment history valid driver's license, and court record for the seven (7) year period immediately preceding the individual's date of assignment to the DFP.

To the extent required by applicable law, Aggregator shall maintain documentation related to such background and drug screening for all Covered Personnel and make it available to Recurve and/or LSE for audit if required pursuant to the audit provisions of this Agreement.

To the extent required by applicable law, Aggregator shall notify Recurve if any of its Covered Personnel is charged with or convicted of a Serious Offense during the Term of this Agreement. Aggregator will also immediately prevent that employee, representative, or agent from performing any Work.

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

6. NONDISCRIMINATORY EMPLOYMENT:

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

7. SUBCONTRACTING:

If Aggregator hires a subcontractor in connection with this Agreement, the DFM and/or any DFP ("Subcontractor"), Aggregator shall ensure compliance by Subcontractor with all applicable terms and conditions of this Agreement, including, but not limited to the following:

- 7.1. Subcontractor shall comply with and be bound by all Aggregator representations, covenants, warranties and obligations in Sections 1, 2, 5.2, 6, 7, 9.7, 10, 12, 13, 14, 15, 16, 17, 18, 19, and 20 and 23 hereof and Exhibit 1 attached hereto.
- 7.2. Subcontractor shall comply with the terms of Section 5.1 above, including, but not limited to providing and maintaining insurance coverage(s) identical to what is required of Aggregator under this Agreement, excluding privacy and cyber insurance shall name Aggregator, Recurve and LSE as additional insureds under such insurance policies. Aggregator shall collect, maintain, and promptly forward to LSE, 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 2.3.
- 7.3. Subcontractor shall provide the representations, warranties and covenants of Aggregator contained in Section 13 hereof as of the date of its entry into a subcontract with Aggregator under this Agreement and at all times during the term of such subcontract.
- 7.4. Subcontractor shall be contractually obligated to indemnify Recurve and LSE pursuant to the terms and conditions of Section 13 hereof.
- 7.5. Subcontractors shall not be permitted to further subcontract any obligations under this Agreement.

Nothing contained in this Agreement or otherwise stated between the Parties shall create any legal or contractual relationship between LSE or Recurve, on the one hand, and any Subcontractor, contractor or agent of Aggregator on the other hand. Aggregator's obligation to pay its Subcontractors is an independent obligation from LSE's obligation to make payments to Aggregator. As a result, neither LSE nor Recurve shall have any obligation to pay or to enforce the payment of any moneys to any Subcontractor, contractor or agent of Aggregator.

8. ASSIGNMENT:

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

9. TERMINATION:

- 9.1. Upon receipt of written notice from Recurve that Aggregator has materially breached any term of this Agreement or violated any ordinance, regulation or other law which applies to Aggregator's performance hereunder, Aggregator shall have ten (10) business days to cure such breach or violation to Recurve's sole satisfaction. If Aggregator fails to timely cure such breach, Recurve may terminate this Agreement by giving five (5) business days' written notice to Aggregator. If Recurve terminates this Agreement pursuant to this Section 9.1, Aggregator shall not be entitled to be paid the Flexibility Payments for Energy Savings for DFPs approved prior to the date of termination; provided, however, if the Aggregator can demonstrate to LSE's reasonable written satisfaction within three months of the date of Recurve's termination that any particular DFP was not adversely affected by Aggregator's breach or violation under this Section 9.1, then Aggregator shall be entitled to be paid the Flexibility Payments for Energy Savings achieved for one year past the project approval date for that DFP pursuant to Exhibit B.
- 9.2. Notwithstanding Section 9.1 above, Aggregator shall be excused for failure to perform its obligations hereunder (other than any obligation to pay money, or with respect to Aggregator's insurance requirements) if it is prevented from doing so by acts of God, strikes, labor disputes, pandemics or epidemics, or other forces over which Aggregator has no control, but only for so

long as Aggregator is actually so prevented from performing, and only provided Aggregator provides prompt written notice to Recurve of same.

- 9.3. Recurve may terminate this Agreement for any reason by giving sixty (60) calendar days' prior written notice to Aggregator. Notice of termination shall be by written notice to Aggregator and shall be sent by registered mail or by email to the email address listed in Section 15 Notices.
- 9.4. In the event of termination not the fault of Aggregator, Aggregator shall be paid the Flexibility Payments for Energy Savings achieved for one year past project approval date for any DFPs approved prior to the date of termination in accordance with the terms of this Agreement and the respective DFM Agreements so long as proof of required insurance is provided for the periods covered in the Agreement. Notwithstanding anything contained in this Section 9 or elsewhere in this Agreement to the contrary, in no event shall Recurve or LSE be liable for lost or anticipated profits or overhead, or for any incidental, special, indirect, punitive or consequential damages relating to or arising from this Agreement.
- 9.5. This Agreement shall be subject to changes, modifications, or termination by order or directive of the Regulators. Regulators may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case Recurve shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such Regulations.
- 9.6. Recurve may terminate this Agreement without notice if funding for this Agreement is reduced or eliminated by LSE, by the third-party funding source, or by a Regulator, or if DFM Contract is terminated for any reason.
- 9.7. Upon termination of this Agreement by either Party, Aggregator shall vacate the worksite and shall leave materials in a safe and orderly manner, but shall not remove any material, plant or equipment thereon without the written approval of Recurve or LSE.

10. GOVERNING LAW AND VENUE:

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

11. DISPUTES:

- 11.1. 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 Aggregator's contract representative and Recurve's contract representative by good faith negotiation efforts shall be referred to [] of Recurve and an officer of Aggregator 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 Recurve and Aggregator cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days from the date notice of the dispute was delivered), Recurve and Aggregator shall have the right to pursue all rights and remedies that may be available at law or in equity.
- 11.2. If either Party institutes any legal suit, action, or proceeding against the other Party to enforce this Agreement (or obtain any other remedy regarding any breach of this Agreement) the prevailing Party in the suit, action or proceeding is entitled to receive, and the non-prevailing Party shall pay, in addition to all other remedies to which the prevailing Party may be entitled, the costs and expenses incurred by the prevailing Party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses, court costs, administrative costs, disbursements, expert witness fees, investigative fees, and the costs of computerized legal research, even if not recoverable by law (including, without limitation, all fees, taxes, costs, and expenses incident to appellate, bankruptcy, and post-judgment proceedings).

12. AGGREGATOR REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION:

12.1 LICENSING. At all times during the Term of this Agreement, Aggregator represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all required licenses and registrations required for the installation and operation of the DFPs and the performance of its obligations under this Agreement. Aggregator shall promptly provide copies of such licenses, registrations and verifications to Recurve at the request of Recurve and/or LSE.

12.2 GOOD STANDING. At all times during the Term of this Agreement, Aggregator represents and warrants that (a) it is a [] **[corporation/limited liability company/partnership]** duly organized, validly existing and in good standing under the laws of the State of [], (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to engage in the business it presently conducts and contemplates conducting, and (c) it is and will be duly licensed or qualified to do business and in good standing under the laws of 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.

12.3 SAFETY. At all times during the Term of this Agreement, Aggregator continuously represents, warrants and covenants that it shall:

- (a) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;
- (b) comply with all applicable Regulations;
- (c) abide by LSE's standard safety program contract requirements as may be provided by Recurve on behalf of LSE to Aggregator from time to time;
- (d) provide all necessary training to its employees, contractors, Subcontractors and agents to ensure fitness for duty and require Subcontractors to provide training to their employees, about the safety and health rules and standards required under this Agreement; and

(e) have in place an effective Injury and illness prevention program that meets the requirements all applicable laws and regulations.

(f) comply with the workforce qualifications, certifications, standards and requirements set forth in this this Agreement or in any applicable state, federal or local law or regulation.

(g) complete an industry standard criminal history background check and all sound screening practices for all employees, contractors, Subcontractors or agents of Aggregator. Recurve shall have the right to review, at its discretion, the contents of such background check.

(h) have the technical expertise and capacity to provide the necessary services in connection with each DFM and DFP, including, as applicable according to each DFP:

- LSE bill analysis
- Site assessment
- Storage system sizing calculation and modeling to simulate performance
- Project management
- Project installation and commissioning
- Project operation
- Project verification by a program representative
- Financing assistance to refer potential DFM Participants to relevant and applicable financing opportunities

12.4 INDUSTRY EXPERIENCE. Aggregator must have been in business for at least two (2) years prior to the date of executing this Agreement, and shall make the following documents available to Recurve upon Recurve's request:

- Certificate of Incorporation.
- Resumes of Key Personnel.
- Three brief written case studies that demonstrate experience with performing the required Work.

12.5 FINANCIAL STABILITY. Aggregator represents that it is an established organization capable of long-term relationships. Aggregator shall be a stable, financially sound business or nonprofit organization. Aggregator shall make available its financial statements and other documentation for Recurve to evaluate Aggregator's creditworthiness/financial condition with respect to potential liabilities.

12.6 INDEMNIFICATION.

i. Aggregator agrees to indemnify, defend, and hold Recurve and LSE, and their respective employees, officers, contractors, owners and agents ("LSE Parties"), harmless from any and all losses, damages, costs, expenses and liabilities including, but not limited to, litigation and other dispute resolution costs, and attorney's fees ("Claims"), arising from or in connection with (a) any act or omission of an Aggregator Party in connection with this Agreement, the DFP or work performed under a DFM; (b) any and all Claims relating to any products installed or services performed during the installation, operation or maintenance of any DFP, or otherwise in connection with any DFP; or (c) any and all fines, penalties, or similar imposed by any governmental authority in connection with any DFP or this Agreement generally.

ii. Recurve agrees to indemnify, defend and hold Aggregator, and Aggregator's employees, officers, contractors, owners and agents ("Aggregator Parties"), harmless from any and all Claims arising from or in connection with any act or omission of any employee, officer, member, agent or subcontractor of Recurve, respectively (a) in connection with this Agreement, the DFP or work performed under a DFM, or (b) resulting in fines, penalties or similar imposed by any governmental authority in connection with any DFP or this Agreement.

12.7 WORKFORCE DIVERSITY. Aggregator shall meet or exceed the requirements of LSE's workforce diversity policies.

13. LIMITATIONS ON LIABILITY.

13.1. Neither Regulators, Aggregator, Recurve, nor any LSE shall be liable for any incidental, special, indirect, punitive or consequential damages relating to or arising from this Agreement except with respect to any Aggregator liabilities to LSE pursuant to Section 12.6.

13.2. Aggregator further agrees to release and hold Recurve harmless from any failure by any LSE to pay the Flexibility Payments. Aggregator acknowledges and agrees that Recurve is entering into this Agreement only on account of its administration of the DFMs on behalf of each respective LSE, and not as a party purchasing flexibility or obligated to make any Flexibility Payments to Aggregator, and that absent any fraud, gross negligence or willful misconduct of Recurve in connection with its performance hereunder, Recurve shall have no liability to Aggregator. For the avoidance of doubt, any and all Flexibility Payments earned by Aggregator shall be paid to Aggregator directly by the applicable LSE pursuant and subject to all applicable terms and conditions of the applicable DFM, and not by Recurve, and Recurve has and shall have no obligation whatsoever to make any Flexibility Payments to Aggregator. Aside from its obligation to pay Flexibility Payments, LSE Parties shall not be liable to Aggregator Parties for Claims arising out of an DFP or the DFM. Aggregator is on notice of, and hereby specifically and expressly waives, the provisions of California Civil Code § 1542, which provides that a "general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

14. NOTICES:

All written notices hereunder shall be given to Recurve at the following location:

Contract Manager:

Address:

Email Address:

Telephone No.:

Notices shall be given to Aggregator at the following address:

Aggregator:

Address:

Email Address:

Telephone No.:

15. DATA COLLECTION AND OWNERSHIP REQUIREMENTS:

15.1. DEFINITION OF "RECURVE DATA". "Recurve Data" shall mean all data or information provided by or on behalf of Recurve, including but not limited to, energy usage data relating to, of, or concerning, provided by or on behalf of any DFM Participants, LSE, or Regulators; 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 Recurve to Aggregator as Recurve 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 Aggregator.

"Confidential Information" under this Agreement shall have the same meaning as defined in the Non-Disclosure Agreement between the parties dated _____.

15.2. DEFINITION OF "LSE DATA". "LSE Data" shall mean all data or information provided by or on behalf of LSE, including but not limited to, DFM Participant Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any DFM Participant; dashboards; 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 LSE to Aggregator as LSE 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 Aggregator. LSE Data shall also include all data and materials provided by or made available to Aggregator by LSE'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 LSE and their licensors.

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

15.4. LSE DATA SECURITY MEASURES. Prior to Aggregator receiving any LSE Data, Aggregator shall comply, and at all times thereafter continue to comply, with LSE's applicable data security policies set forth in Exhibit 1. Aggregator must adhere to reasonable administrative, technical, and physical safeguard protocols to protect LSE Data from unauthorized handling, access, destruction, use, modification or disclosure.

15.5. AGGREGATOR DATA SECURITY MEASURES. Aggregator shall, at its own expense, adopt and continuously implement, maintain and enforce reasonable technical and organizational measures, consistent with the sensitivity of Personal Information and Confidential Information including, but not limited to, measures designed to (1) prevent

unauthorized access to, and otherwise physically and electronically protect, the Personal Information and Confidential Information, and (2) protect Recurve Data and LSE Data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

15.6. RETURN OF DATA. Within sixty days (60) after this Agreement terminates or expires, and upon Recurve's request, (i) Aggregator will securely destroy all Recurve Data and LSE Data in its possession and certify the secure destruction in writing to Recurve, and (ii) each Party will return (or if requested by the disclosing Party, destroy) all other Confidential Information and property of the other and of LSE (if any), provided that each Party's attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

15.7. OWNERSHIP AND USE RIGHTS.

a) **Ownership of Data.** Unless otherwise expressly agreed to by the Parties, Recurve shall retain all of its rights, title and interest in Recurve Data and LSE shall retain all of its rights, title and interest in the LSE Data.

b) **Definitions:**

1. **Program Intellectual Property.** "Program Intellectual Property" shall mean and include any and all materials, information, analysis or other work product jointly created, prepared, accumulated or developed by Recurve and Aggregator in connection with the DFM, including inventions, processes, templates, documents, drawings, computer applications, designs, calculations, maps, plans, work plans, texts, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual material, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith. Recurve shall retain all right, title and interest, including all related intellectual property rights, in the Program Intellectual Property, and Aggregator shall execute any such documents or take such actions as Recurve may reasonably request to perfect such ownership in the Program Intellectual Property; provided, however, that Recurve shall grant Aggregator an irrevocable, assignable, non-exclusive, 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 the Program Intellectual Property for the sole purpose of using such Program Intellectual Property for the conduct of Aggregator's business and for disclosure to Regulators for governmental and regulatory purposes related thereto.

2. **Recurve Intellectual Property.** "Recurve Intellectual Property" shall mean and include any and all materials, information, analysis or other work product created, prepared, accumulated or developed solely by Recurve in connection with the DFM, including inventions, processes, templates, documents, drawings, computer applications, designs, calculations, maps, plans, work plans, texts, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual material, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith. As between the Parties, Recurve owns and shall retain all right, title and interest, including all related intellectual property rights, in the Recurve Intellectual Property. Aggregator agrees to execute any such other documents or take other actions as Recurve may reasonably request to perfect Recurve's ownership in the Recurve Intellectual Property.

3. **Aggregator Intellectual Property.** "Aggregator Intellectual Property" shall mean and include any and all materials, information, analysis or other work product created, prepared, accumulated or developed solely by Aggregator in connection with the DFM, including inventions, processes, templates, documents, drawings, computer applications, designs, calculations, maps, plans, work plans, texts, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual material, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith. As between the Parties, Aggregator owns and shall retain all right, title and interest, including all related intellectual property rights, in the Aggregator Intellectual Property. Recurve agrees to execute any such other documents or take other actions as Aggregator may reasonably request to perfect Aggregator's ownership in the Aggregator Intellectual Property.

c) **Aggregator's Pre-Existing Materials.** If, and to the extent Aggregator retains any preexisting ownership rights ("Aggregator's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Program Intellectual Property, Aggregator hereby grants Recurve and LSE, including on behalf of the Regulator for governmental and regulatory purposes, an irrevocable, assignable, non-exclusive, 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 Aggregator for the sole purpose of using such Program Intellectual Property for the conduct of Recurve's and LSE's business and for disclosure to Regulators for governmental and regulatory purposes related thereto. The term of such license shall expire upon the expiration or termination of this Agreement. Unless otherwise expressly agreed to by the Parties, Aggregator shall retain all of its rights, title and interest in Aggregator's Pre-Existing Materials. Any and all claims to Aggregator's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Program Intellectual Property must be expressly disclosed to Recurve on or before the Effective Date.

15.8. BILLING, ENERGY USE, AND DFP TRACKING DATA.

a) Aggregator shall comply with and timely cooperate with all Regulations or Recurve directives, activities, and requests regarding the DFM evaluation, measurement, and verification ("EM&V"). For the avoidance of doubt, it is the responsibility of Aggregator to a) be aware of and comply with all Regulations and b) comply with other requirements applicable to DFM as described in this Agreement and all addenda, or as may be reasonably requested by Recurve.

b) Aggregator shall make available to Recurve upon demand, detailed descriptions of the DFM, data tracking systems, baseline conditions, and participant data, including financial assistance amounts.

- c) Aggregator shall make available to LSE any revisions to Aggregator's program theory and logic model ("PTLM") as applicable and results from its quality assurance procedures, and comply with all LSE EM&V requirements, including reporting of progress and evaluation metrics as required by the DFM Plans, or as reasonably requested by the LSE or Recurve.

16. FINANCIAL STATEMENTS:

Aggregator shall deliver financial statements on an annual basis or as may be reasonably requested by Recurve and/or LSE from time to time. Such financial statements or documents shall be for the most recently available audited or reviewed period and prepared in accordance with generally-accepted accounting principles. Recurve shall keep such information confidential if requested in writing by Aggregator, except as provided by law; additionally, Recurve may provide such information to LSE and to the Regulators under confidentiality procedures, where applicable.

17. ACCESS TO DFM Participant SITES:

Aggregator shall be responsible for obtaining any and all access rights from DFM Participants and other third parties to the extent necessary to implement the DFM and to allow for LSE and Regulator employees, representatives, agents, designees and contractors to inspect the DFPs.

18. PROJECT WARRANTIES:

Aggregator shall provide standard, best practice installation warranty for the workmanship on each DFP. Aggregator shall provide proof to Recurve that the Aggregator has submitted all warranty registrations for the DFP equipment. Notwithstanding the above, Aggregator shall prosecute manufacturer warranty claims on behalf of the Participant for a period of one year after Project Completion. Any additional warrantied provided by the manufacturer shall be extended to the Participant.

19. PROJECT COMPLETION:

Aggregator shall pass all inspections required by any authorities having jurisdiction over the DFP including obtaining all necessary permit, prior to approval by Recurve of Project Completion. Project Completion is defined in the M&V Plan and must be evidenced by receipt of the final invoice provided by the Aggregator to the DFM Participant.

20. 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.

21. COMPLETE AGREEMENT; NO WAIVER:

This Agreement, together with each DFM Agreement entered into between Recurve and Aggregator, and all exhibits and addenda thereto are incorporated herein and constitute the entire agreement between the Parties. No modification or amendment shall be valid unless made in writing and signed by each Party. This Agreement supersedes all prior or contemporaneous negotiations, representations, promises and agreements, whether written or oral, concerning the subject matter hereof. 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.

22. THIRD PARTY BENEFICIARY:

Except as set forth in the immediately following sentence, the Parties do not confer any rights or remedies upon any person other than the parties to this Agreement and their respective successors and permitted assigns. The Parties hereby designate LSE as an intended third-party beneficiary of this Agreement, having the right to enforce the provisions of this Agreement in law or equity directly against Aggregator or its Subcontractors the same as if it were a party hereto.

23. COUNTERPARTS:

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

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

Recurve Analytics, Inc.:

By: _____

Name: _____

Title: _____

Date: _____

AGGREGATOR:

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A-2
ADDENDUM TO FLEXIBILITY PURCHASE AGREEMENT

This **Addendum to Flexibility Purchase Agreement**, dated effective as of _____, 2021 (the "**Addendum**"), as applicable to the Peak FLEXmarket Program ("PF"), is made by and between _____ ("**Aggregator**"), a _____ with its principal place of business located at _____, and Recurve Analytics, Inc., ("**Recurve**"), a Delaware corporation with its principal place of business located at 364 Ridgewood Avenue, Mill Valley, CA 94941.

RECITALS:

WHEREAS, Aggregator and Recurve are parties to that certain Flexibility Purchase Agreement dated _____ (the "FPA"). Capitalized terms used herein that are not defined will have the meaning given to them in the FPA.

WHEREAS, Section 1 of the FPA provides that Recurve and Aggregator shall develop DFM Plans specified in Section 1 (the "Existing DFM Plans"), and Section 1 further provides that Recurve and Aggregator will enter into additional DFM Plans upon mutual consent.

WHEREAS, Aggregator and Recurve intend to participate in DFMs that are designed specifically for the Peak DFM, the nature of which requires the Parties to enter into DFM Plans that are different and separate from the DFM Plans currently in place under the FPA (the "DFM Plans").

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

1. **Peak DFM Plans**. Aggregator and Recurve shall enter into the Peak DFM Plans attached hereto as Exhibit A, in lieu of the Existing DFM Plans. The Peak DFM Plans will govern all DFMs in which Aggregator and Recurve participate as part of the Peak DFM.
2. **No Other Addendum or Amendment**. This Addendum, including the Peak DFM Plans attached hereto as Exhibit A, together with the FPA, sets forth the entire understanding and agreement of the Parties with respect to the subject matter hereof, and supersedes any and all prior negotiations and agreements between the parties, whether oral or written, with respect to such subject matter. All terms and conditions of the FPA shall remain in full force and effect.

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

Recurve Analytics, Inc.:

AGGREGATOR:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT 1
LSE PROGRAM TERMS AND CONDITIONS

Where Marin Clean Energy ("MCE") is the applicable LSE, the following additional terms and conditions shall apply to the Agreement:

1. Insurance Requirements For Aggregator

1.1. GENERAL LIABILITY

Aggregator shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) per occurrence and with a two million dollar (\$2,000,000) aggregate limit. Recurve and LSE each shall be named as an additional insured on the commercial general liability policy, and the Certificate of Insurance shall include an additional endorsement page.

1.2. AUTO LIABILITY

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

1.3. WORKERS' COMPENSATION

Aggregator acknowledges Regulations require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the applicable Labor Code. If Aggregator has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to Recurve within 15 days after the Effective Date.

1.4. PRIVACY AND CYBERSECURITY LIABILITY

Aggregator shall maintain privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs) coverage of at least \$ one million dollars (\$1,000,000) US per occurrence.

2. DFM Standards and Regulations

2.1. Workforce Standards

2.1.1. Aggregator shall comply with the workforce qualifications, certifications, standards and requirements set forth below or established by any applicable law or regulation. Prior to commencement of any Services, once per calendar year, and at any other time as may be requested by MCE or Recurve, Aggregator shall provide, and shall require every Subcontractor to provide all documentation necessary to demonstrate to MCE's or Recurve's reasonable satisfaction that Aggregator Parties have complied with the Workforce Standards.

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

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

This standard shall not apply where the incentive is paid to any manufacturer, distributor, or retailer of HVAC equipment, unless the manufacturer, distributor, or retailer installs or contracts for the installation of the equipment. For the avoidance of doubt, Aggregator is deemed to be equivalent to manufacturer, distributor or retailer; therefore, the standard shall not apply unless Aggregator installs or contracts for the installation of the equipment.

- 2.1.3. Advanced Lighting Controls Standards.** For any non-residential project pursuant to this Agreement involving installation, modification, or maintenance of lighting controls with incentives valued at \$2,000 or more, Aggregator shall ensure that all workers or technicians involved in the project, including those of its Aggregator Parties are certified by the California Advanced Lighting Controls Training Program ("CALTP"). This requirement shall not apply where the incentive is paid to a manufacturer, distributor, or retailer of lighting controls unless the manufacturer, distributor, or retailer installs or contracts for installation of the equipment. For the avoidance of doubt, Aggregator is deemed to be equivalent to manufacturer, distributor or retailer; therefore, the standard shall not apply unless Aggregator installs or contracts for the installation of the equipment.
- 2.2. Licensing and/or Certifications.** Each Aggregator represents and warrants that, at all times it is performing the Services, it is properly licensed and/or certified, as required by law, to perform the Work at all times during the term of this Agreement. For avoidance of doubt, any Aggregator Party that is performing work at the property of a DFM Participant shall have and maintain licensure by the California Contractors State License Board ("CSLB"), at all times during the Term of this Agreement. CSLB License numbers must be made available by Aggregator upon request by Recurve or MCE for verification.
- 2.3. Quality Assurance.** Aggregator shall comply with Quality Assurance procedures, as they are defined in the CPIP or MCE-Specific Program Plan, including but not limited to: (i) industry standard best practices; and (ii) procedures that ensure DFP functionality, DFM Participant satisfaction, and that Workforce Standards are satisfied. This section is not applicable to DFM's solely in the PEAK DFM (the PF Program).
- 2.4. Data Security Measures.** Prior to receiving any MCE Data, and at all times continuing thereafter, Aggregator shall comply with MCE's Data security policies set forth in MCE Policy 009 and MCE's Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy ("Security Measures"). "MCE Data" shall mean all data or information provided by or on behalf of MCE, including but not limited to, DFM Participant Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any DFM Participant; 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 Recurve 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 Recurve. MCE Data shall also include all data and materials provided by or made available to Recurve 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. MCE's Security Measures and Confidentiality provisions require Aggregator to adhere to reasonable administrative, technical, and physical safeguard protocols to protect MCE's Data from unauthorized handling, access, destruction, use, modification or disclosure.
- Additionally, Aggregator shall execute the non-disclosure agreement ("NDA") attached hereto as Exhibit A-3. Subcontractors are not required to execute a NDA but Aggregator shall ensure that any Subcontractor, at its own expense, adopt and continuously implement, maintain and enforce reasonable technical and organizational measures, consistent with the sensitivity of Personal Information and Confidential Information including, but not limited to, measures designed to (1) prevent unauthorized access to, and otherwise physically and electronically protect, the Personal Information and Confidential Information, and (2) protect MCE content and data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction.
- Promptly after the FPA terminates or expires (i) Aggregator will securely destroy all MCE Data in its possession and certify the secure destruction in writing to MCE, and (ii) Aggregator will return (or if requested Recurve or MCE, destroy) all other Confidential Information and property of the other (if any), provided that Recurve's attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.
- 2.5. Performance Assurance.** Regardless of the specific work provided, Aggregator shall maintain any payment and/or performance assurances as may be requested by Recurve or MCE during the performance of the work.
- 2.6. Fitness for Duty.** Aggregator shall ensure that all Covered Personnel report to work fit for their job. Covered Personnel may not consume alcohol while on duty and/or be under the influence of

drugs or controlled substances that impair their ability to perform their work properly and safely. Aggregator shall have, and shall ensure that any Subcontractor shall have, policies in place that require its employees report to work in a condition that allows them to perform the work safely. For example, employees should not be operating equipment under medication that creates drowsiness.

- 2.7. Standards of Performance.** Aggregator shall deliver the Work under the DFP in a timely, professional, good and workmanlike and ethical manner as specified in the CPIP.
- 2.8. Attendance at Meetings.** Aggregator's representatives will attend all meetings required by Recurve while the Work, or any part of it, is in progress, or as reasonably requested by Recurve, and will be prepared and authorized to address all matters related to the Work.
- 2.9. No Discrimination; Equal Opportunity Employer.** Aggregator shall be an Equal Employment Opportunity employer committed to the principles of equal employment opportunity. Aggregator shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741-5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Additionally, these regulations require that covered contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability.
- 2.10. Warranties to Participants.** Aggregator shall provide a standard, best practice installation warranty for the workmanship on each DFP. Aggregator shall provide proof to Recurve that the Aggregator has submitted all warranty registrations for the DFP equipment. Aggregator shall prosecute manufacturer warranty claims on behalf of the Participant.
- 2.11. Post-Installation Maintenance and Operation.** Aggregator shall ensure each DFP remains installed, reasonably maintained, and operational, including any and all timely repairs and replacements, for the entire Term. This section is not applicable to Aggregators when Aggregators intend to participate in DFMs that are designed specifically for the PEAK DFM.
- 2.12. Site Access.** Aggregator shall be responsible for obtaining any and all access rights from Participants and other third parties to the extent necessary to perform the Work. Aggregator shall also procure any and all access rights from Participants and other third parties in order for MCE and Recurve employees, representatives, designees, and contractors to access the DFP site and inspect the Work prior to, during, and after installation for the full Term.
- 2.13. Compliance with Laws.** Aggregator shall comply at all times during the Term with any and all federal, state and local laws, regulations, orders, ordinances, permitting requirements and resolutions, including without limitation, the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data.
- 2.14. MCE Customer Engagement Protocol.** Aggregators shall comply at all times during the Term with any MCE-provided MCE co-branding and/or customer engagement protocol that provides MCE's expectations for customer interactions by Aggregator. Failure of Aggregator to comply at all times with this section will constitute a material breach pursuant to FPA section 9.1, and may result in the discontinuation of work with MCE at MCE's request.
- 3. Subcontractors.** Aggregator shall be solely responsible for ensuring that each Subcontractor complies with the terms and conditions of this Exhibit 1.
- 4. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:** MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. Aggregator shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

EXHIBIT A-3**NON-DISCLOSURE AGREEMENT****Fully Executed Non-Disclosure Agreement Must Be Sent to
compliance@mceCleanEnergy.org**

This Non-Disclosure Agreement ("Agreement") is entered into by and between Marin Clean Energy ("MCE") and ____ ("Contractor") as of ____, 202_ ("Effective Date"). As used herein MCE and Contractor may each be referred to individually as a "Party" and collectively as "Parties." The provisions of this Agreement and MCE Policy 001 (Customer Confidentiality) govern the disclosure of MCE's confidential customer information to Contractor ("Disclosure Provisions"). The Parties hereby mutually agree that:

1. Subject to the terms and conditions of this Agreement, current proprietary and confidential information of MCE regarding customers of MCE ("MCE Customers") may be disclosed to Contractor from time to time in connection herewith as provided by the Disclosure Provisions and solely for the purposes set forth on Schedule A. Such disclosure is subject to the following legal continuing representations and warranties by Contractor:
 - (a) Contractor represents and warrants that it has all necessary authority to enter into this Agreement, and that it is a binding enforceable Agreement according to its terms;
 - (b) Contractor represents and warrants that the authorized representative(s) executing this Agreement is authorized to execute this Agreement on behalf of the Contractor; and
 - (c) Contractor confirms its understanding that the information of MCE Customers is of a highly sensitive confidential and proprietary nature, and that such information will be used as contemplated under the Disclosure Provisions solely for the purposes set forth on Schedule A and that any other use of the information is prohibited.
 - (d) Contractor represents and warrants that it will implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for purposes not set forth on Schedule A.
2. The confidential and proprietary information disclosed to Contractor in connection herewith may include, without limitation, the following information about MCE Customers: (a) names; (b) addresses; (c) telephone numbers; (d) service agreement numbers; (e) meter and other identification numbers; (f) MCE-designated account numbers; (g) meter numbers; (h) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption as defined in Public Utilities Code Section 8380, HP load, and other data detailing electricity or gas needs and patterns of usage); (i) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (j) payment / deposit status; (k) number of units; and (l) other similar information specific to MCE Customers individually or in the aggregate (collectively, "Confidential Information"). Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Contractor or its representatives that are derived from or based on Confidential Information disclosed by MCE, regardless of the form of media in which it is prepared, recorded or retained.
3. Except for electric and gas usage information provided to Contractor pursuant to this Agreement, Confidential Information does not include information that Contractor proves
 - (a) was properly in the possession of Contractor at the time of disclosure; (b) is or becomes publicly known through no fault of Contractor, its employees or representatives; or (c) was independently developed by Contractor, its employees or representatives without access to any Confidential Information.
4. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Contractor, or used for any purpose other than the purposes set forth on Schedule A.
5. Contractor shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Contractor shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth on Schedule A. Specifically, Contractor shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees

or representatives of Contractor who have a "need to know" such Confidential Information in the course of their duties with respect to the Contractor program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, Contractor shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree to be bound by the terms of this Agreement.

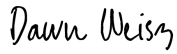
6. Contractor shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by MCE directly against such employees or representatives for improper disclosure and/or use. In no event shall Contractor or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Contractor shall immediately notify MCE in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Contractor or any of its employees or representatives. However, nothing in this Agreement shall obligate the MCE to monitor or enforce the Contractor's compliance with the terms of this Agreement.
7. Contractor shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to CPUC Decision No. 12-08-045.
8. Contractor acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to MCE and/or MCE Customers, the amount of which may be difficult to assess. Accordingly, Contractor hereby confirms that the MCE shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Contractor or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the MCE, in law or equity.
9. In addition to all other remedies, Contractor shall indemnify and hold harmless MCE, its officers, employees, or agents from and against all claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) attributable to actions or non-actions of Contractor and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.
10. When Contractor fully performs the purposes set forth on Schedule A, or if at any time Contractor ceases performance or MCE requires Contractor cease performance of the purposes set forth on Schedule A, Contractor shall promptly return or destroy (with written notice to MCE itemizing the materials destroyed) all Confidential Information then in its possession at the request of MCE. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.
11. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties hereto. This Agreement shall not be assigned, however, without the prior written consent of the non-assigning Party, which consent may be withheld due to the confidential nature of the information, data and materials covered.
12. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, understandings, communications, correspondence and representations, whether oral or written. This Agreement shall not be amended, modified or waived except by an instrument in writing, signed by both Parties, and, specifically, shall not be modified or waived by course of performance, course of dealing or usage of trade. Any waiver of a right under this Agreement shall be in writing, but no such writing shall be deemed a subsequent waiver of that right, or any other right or remedy.
13. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without reference to its principles on conflicts of laws.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement as of the Effective Date.

MARIN CLEAN ENERGY

DocuSigned by:

BY:



(Signature)

Dawn Weisz CEO

(Name, Title)

(Address)

CONTRACTOR

BY:

(Signature)

(Name, Title)

(Address)

Fully Executed Non-Disclosure Agreement Must Be Sent to
compliance@mceCleanEnergy.org

All Contractors Must Complete the Attached Schedule A

SCHEDULE A
CONTRACTOR PURPOSES

EXHIBIT B
FEES AND PAYMENT SCHEDULE

EE PROGRAM

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

1. Monthly Invoices. Recurve shall bill MCE monthly by written invoice ("Invoice") for 15% of the Total Program Value of the projects completed (each a "DFP Completion") in the previous month, as defined and further detailed below. DFP Completion shall be defined in the CPIP and evidenced by receipt of the final invoice, as provided by the Aggregator to the DFM Participant.

"Total Program Value" shall be calculated using the forecasted energy savings estimates provided by the Aggregator, the lead measure that will be used to forecast the marginal hourly savings load shape of the project for each hour of the year ("Anchor Measure"), and the associated measure expected useful life ("EUL"), Recurve shall calculate the program value of each installed project ("Program Value"), creating an "enrollment summary" that will be delivered to MCE on a monthly basis. Program value mirrors the calculation of "net benefits" as defined by the CPUC.

MCE shall pay undisputed Invoice amounts equaling 15% of the Total Program Value for all DFPs completed in the previous month.

2. The Parties understand and agree that Recurve's failure to provide MCE with Recurve's verified documentation of the monetary value of the electric and gas net benefits one year plus 60 days after completion of a DFP for any reason, including but not limited to termination of the Agreement whereby Recurve is a Defaulting Party, will damage MCE, including by causing reputational harm to MCE, in an amount that is difficult or incapable of precise estimation. The Parties agree that a liquidated damage amount of twenty percent (20%) of the Total Program Value for each such DFP, represents a fair, reasonable and appropriate estimate of the damages thereof and that such sum bears a reasonable relationship to those anticipated damages.
3. DFP Documentation shall include the following:
 - a. List of Energy Efficiency measures installed;
 - b. Total DFM Participant cost of installing or implementing the Energy Efficiency measures
 - c. Anticipated Energy Savings for the DFP (as they are defined and calculated in the Rulebook);
 - d. The Anchor Measure;
 - e. An EUL of the Energy Efficiency measures installed.

Additional details on required DFP documentation may be included in the CPIP as confirmed in writing by Recurve and MCE.

4. Fee Assumptions and Understandings:
 - a. The Anticipated Energy Savings for the DFP and the Anchor Measure load shape and EUL are the "Key Inputs" required to calculate the monetary benefits of a project using the CPUC's Avoided Cost Calculator.
 - b. These key inputs determine the monetary value of the project, which when divided by the Total Resource Costs, as defined by the CPUC, are the main determinants of program Cost Effectiveness, as defined by the CPUC.
 - c. The values of the Avoided Cost Calculator are in the public domain and have been incorporated into a pricing tool developed by Recurve that will be used to determine the value of the project and thus determine the payment due to Recurve.
 - d. Recurve will share the code behind Recurve's version of the Cost-Effectiveness Tool within two (2) weeks of the effective date of this Agreement.

Express Not to Exceed Amount. In no event shall the total cost to MCE for the EE Services provided herein exceed the maximum sum of **\$1,275,000** for the term of the Agreement, which sum is subject to grant and approval by the CPUC.

PF PROGRAM

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

Item	Notes	Price	Term	Total Price
Demand FLEXMarket Payment Schedule for 2021				
Platform Setup	Initial Market Development and Platform Setup	\$25,000	-	\$25,000
Peak FLEXmarket for Summer 2021	15% of Incentive Payments based on Total Budget of \$2,000,000		4 months	\$300,000 (NTE) ("PF Program Funding")
Total				\$325,000 (NTE)

Recurve Payment Schedule

For the Summer 2021 (June, July, August, September) pilot of PF Program:

- \$25,000 Platform Setup fees – invoiced upon execution of the Agreement.
- \$37,500 per month in June, July, August, and September 2021 for Program administration fixed costs. June's bill shall be invoiced once the PF Program receives its first enrollments of DFMs that are designed specifically for the Peak DFM Program.

Should PF Program performance result in incentive payments to Aggregator of more than \$250,000 in June, July, August, or September, Recurve will be paid 15% of the additional incentive payments – as determined by MCE Customer Programs staff and delivered by Aggregators - in a given month listed.

In no event shall the total cost to MCE for the PF Program provided herein exceed the **maximum sum of \$325,000** for the 4-month term of the PF Program.

In no event shall the total cost to MCE for all services, including EE and PF, provided herein exceed the maximum sum of \$1,600,000.

This FIRST AMENDMENT is made and entered into on July 12, 2021 by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and RECURVE ANALYTICS, INC. (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and Contractor entered into an agreement on October 30, 2020, as amended and restated on May 7, 2021, to provide Flex Market Program services ("Agreement"); and

WHEREAS, Exhibit A to the Agreement, as amended and restated, specified the tasks Contractor will complete for the Flex Market Program 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.

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

AGREEMENT

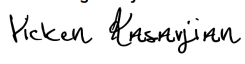
1. In the services related to the PF Program, the following item 2)e) is added immediately after 2)d):

e) Providing operational PF Program functions to any MCE-generated lead on a DFP (MCE-generated lead(s) to be managed by internal MCE staff).


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

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

MARIN CLEAN ENERGY:

DocuSigned by:

By: _____
ACC4B8FA2E834F3...
7/12/2021
Date: _____

CONTRACTOR:

DocuSigned by:

By: _____
3826C285BE144C7...
7/13/2021
Date: _____

SECOND AMENDMENT TO FIRST AMENDED AND RESTATED DEMAND FLEXMARKET AGREEMENT BY AND BETWEEN MARIN CLEAN ENERGY AND RECURVE ANALYTICS

This SECOND AMENDMENT is made and entered into on 9/15/2021, by and between MARIN CLEAN ENERGY, (hereinafter referred to as "MCE") and RECURVE ANALYTICS, (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and Contractor entered into an agreement on May 7, 2021, and amended on July 12, 2021 to provide Flex Market program services ("Agreement"); and

WHEREAS, Exhibit A to the Agreement, as amended, specified the tasks Contractor will complete for the provide Flex Market program services as described in the scope therein; and

WHEREAS the parties desire to further amend the Agreement to modify the scope of work of the Agreement to include the month of October in the Flex Market program; and

WHEREAS Exhibit B to the Agreement, as amended, specified the fee and payment schedule MCE would use to compensate Contractor for the provide Flex Market program services described within the scope therein; and

WHEREAS the parties desire to further amend the Agreement to modify the fee and payment schedule therein to capture services now being provided in the month of October.

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

AGREEMENT

1. Item 4(d) of the Services Related to the PF Program section of Exhibit A is hereby amended to read as follows:

d) Providing MCE with a Program Report, generated at the close of each summer (June – October), which will demonstrate verifiable consistency with the PF Program Plan and Program M&V Plan, and summarize performance results and recommendations for program improvement.

2. The Demand FLEXMarket Payment Schedule for 2021 related to the PF Program in Exhibit B is hereby amended to read as follows:

Item	Notes	Price	Term	Total Price
Demand FLEXMarket Payment Schedule for 2021				
Platform Setup	Initial Market Development and Platform Setup	\$25,000	-	\$25,000
Peak FLEXmarket for Summer 2021	15% of Incentive Payments based on Total Budget of \$2,000,000		5 months	\$300,000 (NTE) ("PF Program Funding")
Total				\$325,000 (NTE)

3. The Recurve Payment Schedule section of Exhibit B is hereby amended to read as follows:

Recurve Payment Schedule

For the Summer 2021 (June, July, August, September and October) pilot of PF Program:

- \$25,000 Platform Setup fees – invoiced upon execution of the Agreement.
- \$37,500 per month in June, July, August, and September 2021 for Program administration fixed costs. Administration of the PF Program shall continue in October without the \$37,500 monthly charge. June's bill shall be invoiced once the PF Program receives its first enrollments of DFMs that are designed specifically for the Peak DFM Program.

Should PF Program performance result in incentive payments to Aggregator of more than \$250,000 in June, July, August, September, or October Recurve will be paid 15% of the additional incentive payments – as determined by MCE Customer Programs staff and delivered by Aggregators - in a given month listed.

In no event shall the total cost to MCE for the PF Program provided herein exceed the maximum sum of \$325,000 for the 5 month term of the PF Program.

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

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

MARIN CLEAN ENERGY:

CONTRACTOR:

By: 
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Date: 9/15/2021

By: 
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Date: 9/15/2021



March 17, 2022

TO: MCE Board of Directors

FROM: Grace Peralta-Beasley, Senior Customer Programs Manager;
Lois Smith, Customer Programs Manager

RE: First Amended and Restated Schedule A.2 and Second
Amended and Restated Schedule A.3 to the Master Services
Agreement with the Association for Energy Affordability
(Agenda Item# 05 C.5)

ATTACHMENTS: A. First Amended and Restated Schedule A.2 to the Master
Services Agreement with the Association for Energy
Affordability
B. Second Amended and Restated Schedule A.3 to the
Master Services Agreement with the Association for Energy
Affordability
C. First Amendment to Schedule A.3 to the Master Services
Agreement with the Association for Energy Affordability
D. Master Services Agreement with the Association for
Energy Affordability
E. First Amendment to the Master Services Agreement with
the Association for Energy Affordability

Dear MCE Board Members:

SUMMARY:

MCE has an existing Master Services Agreement (MSA) with the Association for Energy Affordability (AEA) to perform program implementation services for several of MCE's residential energy efficiency (EE) programs, including MCE's multifamily energy efficiency offerings and MCE's Workforce, Education & Training (WE&T) Program. The proposed First Amended and Restated Schedule A.2 to the Master Services Agreement with AEA ("Schedule A.2") is a contract primarily focused on the implementation of the Multifamily Energy Savings ("MFES") program and the Low-Income Families and Tenants ("LIFT") Pilot program. The proposed Second Amended and Restated Schedule A.3 includes implementation of MCE's Workforce, Education & Training (WE&T) Program.

Schedule A.2:

On September 27, 2012, this Board approved the First Agreement with AEA to provide services to the multifamily sector. For the past ten years, AEA has supported MCE's energy efficiency goals by serving as technical consultants and program implementers to the MFES program and the LIFT program as well as supporting the co-leveraging with other internal and external multifamily program offerings. AEA's assistance has been instrumental in developing program guidelines, including audit procedures, report templates, quality assurance, and quality control policies. AEA has assisted MCE staff in adapting the program structure to meet the constant market changes and fluctuating CPUC requirements. AEA has proven itself as a proficient and professional program partner.

If Schedule A.2 is approved, AEA would be compensated for its work on the LIFT and MFES programs based on a combination of the following methods: 1) Time and Materials; and 2) Per milestone reached. These methods would be used to guide compensation throughout the two-year contract period. Schedule A.2 details the tasks and deliverables associated with this proposition. The full not-to-exceed value for LIFT and MFES is \$1,322,170 through March 31, 2024.

Schedule A.3

AEA's scope for this program includes workforce engagement, education, and electrification training support. The proposed Second Amended and Restated Schedule A.3 would allow AEA to continue WE&T program implementation for the upcoming fiscal year, and would further refine their work scope based on completed projects and current program needs. Staff recommends replacing the current Schedule A.3 with this Second Amended and Restated Schedule A.3 to the MSA with AEA for workforce, education and training services for FY 2022 – 2024 in the amount of \$404,380.

Fiscal Impacts:

Expenditures related to the proposed First Amended and Restated Schedule A.2 as well as the proposed Second Amended and Restated Schedule A.3 to the Master Services Agreement with the Association for Energy Affordability would be funded from energy efficiency program funds allocated to MCE by the CPUC.

Recommendation:

Staff recommends approval of the proposed First Amended and Restated Schedule A.2 to the Master Services Agreement with the Association for Energy Affordability as well as the proposed Second Amended and Restated Schedule A.3 to the Master Services Agreement with the Association for Energy Affordability.

FIRST AMENDED AND RESTATED SCHEDULE A.2 TO THE MASTER SERVICES AGREEMENT

BY AND BETWEEN MARIN CLEAN ENERGY AND ASSOCIATION FOR ENERGY AFFORDABILITY (AEA)

This FIRST AMENDED AND RESTATED SCHEDULE A.2 ("Agreement") is made and entered into on _____ (the "Execution Date") by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and ASSOCIATION FOR ENERGY AFFORDABILITY (AEA) (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and Contractor entered into a Master Services Agreement on March 18, 2021 to provide energy efficiency technical assistance services ("MSA"); and

WHEREAS, MCE and Contractor entered into a Statement of Work on March 18, 2021, to provide multifamily program services ("Schedule A.2"); and

WHEREAS the parties desire to amend and restate Schedule A.2 and replace it with this Agreement;

NOW, THEREFORE, the parties agree that Schedule A.2 is hereby amended and restated in its entirety to read as follows.

Schedule A.2 Statement of Work for Multifamily Programs

This FIRST AMENDED AND RESTATED Schedule A.2 is entered into on _____ pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and ASSOCIATION FOR ENERGY AFFORDABILITY, hereinafter referred to as "Contractor", dated March 18, 2021 ("MSA").

Contractor shall provide the following services under this Schedule A.2 as requested and directed by MCE Customer Programs staff, up to the maximum time/fees allowed under this Schedule A.2:

Contractor will be the overall program provider for MCE's multifamily programs, as requested and directed by MCE Customer Programs staff. Tasks and deliverables are described below:

1. Multifamily Energy Savings ("MFES") Program

Contractor will implement and provide technical consulting services for the MFES Program, including the following tasks:

A. Direct Implementation

Program Management

T&M-Based Activities

- Monthly Reporting to California Public Utilities Commission ("CPUC")
- Database management
- Program design
- Budgeting
- Cost effectiveness tool (CET)/ total resource cost (TRC) related activities

Technical Assistance and Program Coordination

Milestone-Based Activities

- Complete comprehensive assessments at qualifying multifamily properties within MCE's service area
- Build comprehensive reports with results of the assessments
- Provide technical assistance to property owners or managers ("Customers")
- Verify that installations meet minimum performance and programmatic specifications (which include industry standards and/or CPUC-approved work papers)

- Coordinate scope development with Bay Area Regional Energy Network (BayREN) program staff when co-leveraging with Bay Area Multifamily Building Enhancements Program (BAMBE)
 - Work with Customers to develop a scope of work that would best leverage MCE and BAMBE rebate opportunities
 - Coordinate with BAMBE Technical Assistance on site visit
 - Report BAMBE coordination progress back to MCE
- Coordinate scope development with MCE LIFT and other partnerships and programs as designated by MCE
- Identify high-quality direct install (DI) measures and specifications
- Work with subcontractors to provide DI to interested properties and coordinate DI activities, including maintenance staff training for DIs, with Customers and MCE staff, where applicable.
- Provide MCE with savings data for measures provided by MFES

T&M Based Activities

- Verify property eligibility (including income eligibility)
- Non-milestone-based project work (including combustion appliance safety ["CAS"] testing when required, project intake, co-leveraging referrals and other similar work directed by MCE)
- Regular check-ins with BAMBE team to ensure that MCE qualified properties are being properly assessed for MCE rebate opportunities
- Check-in calls and coordination meetings with MCE
- Staff Training and Tenant Education
- Benchmarking (including energy consumption data analysis before and after Program upgrades)
- Heat pump technical assistance

B. Marketing & Outreach

Contractor will provide marketing and outreach services to support the MFES program. The tasks below may be performed by the Contractor or a subcontractor to the Contractor.

- Development of marketing & outreach plan
- Update marketing and outreach plan as needed
- Development of MFES Program collateral
- Lead generation through targeted outreach to property owners, contractors and partner organizations
 - Report back to MCE on marketing and outreach results and progress

2. Low Income Families and Tenants ("LIFT") Pilot Program

Contractor will implement and provide technical consulting services for the LIFT Program, in conjunction with the MFES Program, including the following tasks:

A. Direct Implementation

Program Management

- Monthly Reporting to CPUC
- Database management
- Program design
- Budgeting
- CET/TRC related activities
- Communicate program updates with Customers

Technical Assistance and Program Coordination

Milestone Based Activities

- Complete comprehensive assessments at qualifying multifamily properties within MCE's service area
- Build comprehensive reports with results of the assessment
- Provide technical assistance to Customers
- Verify installations meet minimum performance and programmatic specifications.
- Coordinate scope development with MCE and other partnerships and programs as designated by MCE
- Identify high quality DI measures and specifications
- Work with subcontractors to provide DI to interested properties and coordinate DI activities, including maintenance staff training for DIs, with Customers and MCE staff, where applicable

- Provide MCE with savings data for LIFT measures

T&M Based Activities

- Verify property eligibility (including tenant income eligibility)
- Non-milestone-based project work (including CAS testing when required, project intake, co-leveraging referrals and other similar work directed by MCE)
- Check-in calls and coordination meetings with MCE
- Staff Training & Tenant Education
- Heat pump technical assistance
- Evaluation, Measurement, and Verification (EM&V) support
- LIFT heat pump technical assistance
- LIFT questionnaire development support
- Benchmarking (including energy consumption data analysis before and after Program upgrades)

B. Marketing & Outreach

Contractor will provide marketing and outreach services to support the LIFT program. The tasks below may be performed by the Contractor or a subcontractor to the Contractor.

- Development of marketing & outreach plan
- Development of program collateral
- Lead generation through targeted outreach (property owners, contractors & partner organizations).
- Report back to MCE on marketing and outreach results and progress.

Billing:

1. Multifamily Energy Savings (MFES) Program: \$402,170

A. Direct Implementation: Not to Exceed \$392,170

Program Management: Not to Exceed \$64,000

Contractor will bill on a time and materials (T&M) basis.

Technical Assistance and Program Coordination: Not to Exceed \$328,170

Contractor will bill on a milestone basis (Table 1).

Contractor will bill a separate rate for project only receiving direct install services (Table 1).

Contractor will bill on a T&M basis for all other activities (Table 2).

B. Marketing & Outreach: Not to Exceed \$10,000

Contractor will bill on a time and materials (T&M) basis.

2. Low Income Families and Tenants Pilot Program (LIFT): \$920,000

A. Direct Implementation: Not to Exceed \$800,000

Program Management: Not to Exceed \$80,000

Billed at a time and materials (T&M) rate.

Technical Assistance and Program Coordination: Not to Exceed \$720,000

Contractor will bill on a milestone basis (Table 1).

Contractor will bill a separate rate for project only receiving direct install services (Table 1).

Contractor will bill an additional fee for LIFT projects (Table 1).

Contractor will bill on a T&M basis for all other activities (Table 2).

LIFT technical assistance will be provided in conjunction with the BAMBE program and/or MCE's MFES Program.

- For MCE-only LIFT projects (no BAMBE), Contractor will be reimbursed for each of the LIFT adders identified per the milestones achieved in Table 1, in addition to the standard Contractor Compensation values.
- When LIFT is paired with BAMBE, Contractor will only be reimbursed by MCE for the per apartment unit LIFT adder per the milestones achieved in Table 1.

Table 1. Compensation for Milestone(s) achieved – MFES & LIFT Programs

Milestone	MFES	LIFT
Intake	Time and Materials Rate (See Table 2)	
Site Visit	\$35	\$40
Energy Audit Report	\$25	\$30
Rebate Reservation	\$0	\$0
Rebate Approved	\$55	
Direct Install Only	\$40	

Table 2. Rate Schedule

Position	Hourly Rate
Director, West Coast	\$ 175.00
Director, Programs	\$ 175.00
Director, Technical Services	\$ 175.00
Senior Program Manager	\$ 165.00
Program Manager II	\$ 160.00
Program Manager	\$ 150.00
Associate Program Manager	\$ 135.00
Senior Project Manager	\$ 165.00
Project Manager II	\$ 160.00
Project Manager	\$ 150.00
Associate Project Manager	\$ 135.00
Senior Energy Engineer	\$ 165.00
Energy Engineer II	\$ 160.00
Energy Engineer I	\$ 150.00
Senior Energy Analyst	\$ 165.00
Energy Analyst III	\$ 160.00
Energy Analyst II	\$ 150.00
Energy Analyst	\$ 140.00
Associate Energy Analyst	\$ 130.00
Office Manager	\$ 125.00

B. Marketing & Outreach: Not to Exceed \$120,000

Contractor will bill on a time and materials (T&M) basis.

Overall Budget

The following are the budget amounts for each of the tasks and subprograms described herein. Budget amounts listed include both 2022 and 2023 program years. In situations where a budget amount may be exceeded, funds may be moved between categories with written approval of the MCE Customer Programs Manager, prior to Contractor exceeding those budgets.

Program	Tasks	Per Task NTE	Category	Per Category	Total Budget
MFES Program	Program Management	\$64,000	Direct Implementation	\$392,170	\$402,170
	Technical Assistance and Program Coordination	\$328,170			
	Marketing & Outreach	\$10,000	Marketing & Outreach	\$10,000	
LIFT Program	Program Management	\$80,000	Direct Implementation	\$800,000	\$920,000
	Technical Assistance and Program Coordination	\$720,000			
	Marketing & Outreach	\$120,000	Marketing & Outreach	\$120,000	
TOTAL CONTRACT					\$1,322,170

Contractor shall bill monthly and all time and materials rates shall be according to the rate schedule listed in Exhibit B of the MSA dated **March 18, 2021**. In no event shall the total cost to MCE for the services provided under this Statement of Work exceed the maximum sum of **\$1,322,170** for the term of the Agreement.

Term of Statement of Work:

This Statement of Work shall commence on **March 18, 2021** and shall terminate on **March 31, 2024**.

This Agreement constitutes the entire agreement by the parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Execution Date.

MARIN CLEAN ENERGY:

CONTRACTOR:

By: _____

By: _____

Date: _____

Date: _____

MARIN CLEAN ENERGY:

By: _____

Date: _____

SECOND AMENDED AND RESTATED SCHEDULE A.3 TO MASTER SERVICES AGREEMENT BY AND BETWEEN MARIN CLEAN ENERGY AND ASSOCIATION FOR ENERGY AFFORDABILITY

This SECOND AMENDED AND RESTATED SCHEDULE A.3 ("Agreement") is made and entered into on _____ ("Execution Date") by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and ASSOCIATION FOR ENERGY AFFORDABILITY (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and Contractor entered into a Master Services Agreement on March 18, 2021 to provide energy efficiency technical assistance services ("MSA"); and

WHEREAS, MCE and Contractor entered into a Statement of Work on March 18, 2021, and amended on September 21, 2021, to provide technical assistance services as part of the Workforce Education and Training Program ("Schedule A.3"); and

WHEREAS, the parties desire to amend and restate Schedule A.3 and replace it with this Agreement;

NOW, THEREFORE, the parties agree that Schedule A.3 be amended and restated in its entirety to read as follows:

Schedule A.3 Statement of Work for Workforce Education and Training Program

This SECOND AMENDED AND RESTATED Schedule A.3 is entered into on _____ pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and ASSOCIATION FOR ENERGY AFFORDABILITY, hereinafter referred to as "Contractor", dated **March 18, 2021** ("MSA").

Contractor will provide the following technical assistance services as part of the Workforce Education and Training program ("Program") as requested and directed by MCE Customer Programs staff, up to the maximum time/fees allowed under this Schedule A.3:

The goal of the Program is to further develop the energy efficiency industry by:

- Providing trainings on electrification to: residential energy/home performance contractors ("Potential Employer"); residential energy/home performance job seekers ("Program Participant"); and other stakeholders; and
- Providing Program Participant a potential on-ramp to energy efficiency careers via workforce experiences or career coaching.

Task 1: Administration

Contractor will:

- Manage Program coordination meetings
 - Program coordination meetings may relate to more than one task listed below; topics covered in the Program coordination meetings could include budgets, reporting, invoicing, planning or other Program-wide issues
- Maintain *MCE WE&T Participating Contractors and Metrics* spreadsheet by updating the spreadsheet on a monthly basis
- Respond to general inquiries and California Public Utilities Commission-issued data requests regarding the Program
- Complete Program accounting and invoicing
- Contribute to Program strategies
- Develop Biannual Budget Advice Letter, as needed

- Collaborate on Program development
- Develop reports and documentation on overall Program achievements

Task 2: Workforce Engagement

Task 2.a. – Partner with Inclusive Economics: Contractor will work with Inclusive Economics (or another subcontractor as mutually agreed-to in writing by MCE and Contractor) as a subcontractor to ensure the training and workforce development activities undertaken will improve conditions for Program Participants.

Inclusive Economics conducts research on the employment, economic, and equity impacts of energy transitions and climate policies. Their role in regard to the Program is to ensure any training designed by Contractor will have a positive impact on work quality under the Program.

Task 2.a. 2022-2024 Deliverables: At the end of each year, Contractor will provide one (1) summary report to MCE on Inclusive Economics' (or another subcontractor as mutually agreed-to in writing by MCE and Contractor) recommendations on Program design to address workforce needs.

Task 2.b. – Industry/Stakeholder Roundtables: Contractor will leverage existing relationships with industry groups to increase industry/stakeholder participation in high-performance building training. These events will target participating industry/stakeholder groups in order to get their perspectives on high-performance buildings and the challenges they face as the industry continues to change.

To foster diversity, Contractor will ensure that a representative sample of participating stakeholder groups in MCE's service territory are invited to the event. Efforts will include outreach to participating industry/stakeholders from disadvantaged communities and minority-focused groups to ensure diversity, equity, and inclusion. These groups will be identified by leveraging: partnerships with community-based organizations, properties located in disadvantaged communities that have participated in MCE's multifamily programs, and existing trade relationships.

Task 2.b. 2022-2024 Deliverables: Conduct three (3) roundtables as needed during the 2022-2024 Program cycle. Provide a summary of roundtable discussions and the contact list of participants.

Task 2.c. – Contractor Engagement:

Contractor shall provide field mentorships to Potential Employers; mentorship will cover 1) how to deliver maximum value and performance within the residential energy efficiency/home performance sector; and 2) how Potential Employers' work could impact other building systems or trades that Potential Employers do not work on.

Contractor will provide Potential Employer with field mentorships through in-person or virtual field meetings. Each Potential Employer's field mentorship will consist of one session lasting one to four hours with a Contractor-provided trainer and the Potential Employer. Virtual field meetings will be performed when in-person field mentorships are not possible, such as during a pandemic. Contractor will track and report on the number of sessions and Potential Employers. Furthermore, after Contractor has completed field meetings and received paperwork from relevant Potential Employers, an introduction will be made to Strategic Energy Innovations (or another subcontractor as mutually agreed-to in writing by MCE and Contractor).

Topics covered in the field meeting will include:

- Service territory that the Potential Employer serves
- What Potential Employers are looking for in an employee
- Building science fundamentals:
 - Building Performance Institute (BPI) combustion safety & depressurization
 - Air sealing & insulation
 - Health & safety

- Heat transfer and thermodynamics
- Review of and explanation of minimum performance requirements
- Trade- or measure-specific best practices (as needed) for replacing gas appliances with heat pump technologies including
 - Ductless mini-split heat pumps
 - Heat pump water heaters (individual and/or central)
 - Electric induction cooking
- Trade or measure-specific best practices for installing measures to increase efficiency, including:
 - Air sealing and insulation
 - Hot water recirculation controls

Contractor will leverage existing and develop new relationships with Potential Employers to gain more insight into barriers to electrification and high-performance building work.

The information gathered will be used to: (a) inform future program design; and (b) help identify the practical barriers to heat pump adoption that the installation community faces.

Task 2.c. 2022-2024 Deliverables: Conduct six (6) field meetings per year. Submit field meeting summaries to MCE.

Task 3: Workforce Education

Develop and Deliver Workshops: Contractor will develop and deliver workshops on electrification by either using either existing materials or creating original materials. Contractor will share developed workshop materials with MCE. If virtual, Contractor will record the number of workshops given and participants in each workshop. Contractor will develop a tracking sheet that outlines each of the resources selected and/or developed.

Coordinate as appropriate with other similar programs delivering electrification classes.

2022-2024 Deliverables: Contractor will deliver four (4) electrification workshops that are either virtual or in-person per year and maintain records on the number and type of attendees.

Task 4: Funded Contractor/Trades Traineeship

Contractor will provide access to the online High Performance Building Module to Program Participants. There will also be opportunity for in person trainings depending on the needs of the Program.

Pursuant to MSA 10.6(d), Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Nothing herein shall affect or diminish the rights of Contractor with respect to its own Pre-Existing Materials, which, for the avoidance of doubt, include ownership of the High Performance Building Module.

Contractor will engage with Strategic Energy Innovations (or another subcontractor as mutually agreed-to in writing by MCE and Contractor) as well as any other partners on the Program traineeship. Topics of these meetings will include Program updates and reference to the WE&T Metrics tracker.

2022-2024 Deliverables: Contractor will maintain WE&T Metrics tracker by updating on a monthly basis. Contractor will register and engage with Program Participants on the High-Performance Building Module. Contractor will deliver in-person trainings for interested workforce partners as applicable.

Program Timeline

Q1 2022*	• Program cycle 2022 begins
Q2 2022*	• Host 1 industry roundtable
Q3 2022*	• Host 1 electrification workshop

Q4 2022*	• Host 1 electrification workshop
Q1 2023*	• Host 1 industry roundtable
Q2 2023*	• Host 1 electrification workshop
Q3 2023*	• Host 1 industry roundtable
Q4 2023*	• None
Q1 2024*	• Host 1 electrification workshop

* Program Timeline subject to change at the mutual written agreement of MCE and Contractor.

Billing:

For services provided under this Schedule A.3, Contractor shall bill monthly for all the hours rendered the month prior according to the tasks/subtasks in the fee schedule below and the rate schedule included in Exhibit B of the MSA.

		2022 Program Year Fee Schedule		2023 Program Year Fee Schedule	
Task	Subtask	Estimated Hours	Estimated Budget	Estimated Hours	Estimated Budget
Task 1: Administrative		90	\$15,300	90	\$15,300
Task 2: Workforce Engagement	Task 2.a. Partner with Inclusive Economics	25	\$9,750	25	\$9,750
	Task 2.b. Industry/Stakeholder Roundtables	30	\$5,100	30	\$5,100
	Task 2.c Contractor Engagement	255	\$43,350	249	\$42,330
	Task 2 Total	310	\$58,200	304	\$57,180
Task 3: Workforce Education		155	\$25,500	155	\$25,500
Task 4: Funded Contractor/Trades Traineeship		610	\$103,700	610	\$103,700
PROGRAM TOTAL		1165	\$202,700	1159	\$201,680
2022-2024 BUDGET TOTAL					
\$404,380					

*Fees billed shall include any necessary materials and mileage for onsite visits at the applicable standard reimbursement rate.

In no event shall the total cost to MCE for the services provided under this Statement of Work exceed the maximum sum of **\$404,380** for the term of the Agreement.

Special Terms:

Contractor agrees, and shall cause its subcontractors to agree, to not make any written or verbal statements about MCE that are disparaging, untrue, or inaccurate; doing so will allow MCE to terminate this Schedule A.3 pursuant to Section 12 of the Master Services Agreement.

Term of Statement of Work:

This Statement of Work shall commence on **April 1, 2022** and shall terminate on **March 31, 2024**.

This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Execution Date.

MARIN CLEAN ENERGY:

CONTRACTOR:

By: _____

By: _____

Date: _____

Date: _____

MARIN CLEAN ENERGY:

By: _____
Chairperson

Date: _____

**FIRST AMENDMENT TO SCHEDULE A.3 TO MASTER SERVICES
AGREEMENT
BY AND BETWEEN MARIN CLEAN ENERGY
AND ASSOCIATION FOR ENERGY AFFORDABILITY**

This FIRST AMENDMENT is made and entered into on September 21, 2021 by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and ASSOCIATION FOR ENERGY AFFORDABILITY (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and Contractor entered into a Master Services Agreement on March 18, 2021, to provide energy efficiency technical assistance services ("MSA"); and

WHEREAS, MCE and Contractor entered into a Statement of Work on March 18, 2021, to provide technical assistance services as part of the Workforce Education and Training Program ("Schedule A.3"); and

WHEREAS, Schedule A.3 specified the tasks Contractor will complete for the technical assistance services as part of the Workforce Education and Training Program as described in the scope therein; and

WHEREAS, the parties desire to amend Schedule A.3 to add to the scope of work of the Agreement;

NOW, THEREFORE, the parties agree to modify Schedule A.3 as set forth below.

AGREEMENT

1. The following language is hereby added before Task 1: Administration:

Background:

AEA began work on the Program in 2020. A Background and Narrative Summary of work performed in 2020 can be found in Attachment A.

2. The following is hereby added to Schedule A.3 as Attachment A:

**Schedule A.3 – Attachment A
Background and Narrative Summary of 2020 Completed Tasks**

Task 1: Administration

Contractor began the work of administration for the Program, including the following ongoing tasks:

- Managing team project coordination meetings to coordinate implementer work including: workforce engagement, contractor education, or developing the contractor market;
- Developing and maintaining the Program database;
- Responding to data requests regarding the Program;
- Program accounting and invoicing;
- Developing reports and documentation on overall Program achievements.

Task 2: Workforce Engagement

Task 2.a. – Partner with Inclusive Economics: Contractor brought Inclusive Economics on as a subcontractor to ensure the training and workforce development activities undertaken would improve conditions for workers. Contractor also developed a report on Inclusive Economics' identification of barriers that inhibit high performance building best practices in the installation community and recommendations on Program design to best address these issues.

Task 2.b. – Industry Roundtables: Contractor leveraged existing relationships with industry groups (MCE Community Power Coalition, Marin Builders Association, Rising Sun, Franklin Energy, trade unions, manufacturers) to co-sponsor roundtable events. These events targeted participating groups to get their perspectives on high-performance building and the challenges they face as the industry continues to change.

Contractor conducted outreach to participating groups; then planned and hosted four industry roundtables. This effort culminated in the work product of creating a contact list of participants and a summary of the roundtable discussions.

Task 2.c. – Direct Vendor Outreach: Contractor met with new contractors, contractors already enrolled in the Program ("participating contractors"), and other vendors to learn about barriers to electrification and high-performance building work, and gauge participating contractors' interest in being matched with a qualified job seeker.

The information gathered was used to: (a) inform future Program design; (b) identify the practical barriers to heat pump adoption that the installation community faces; (c) guide the development of training materials for participating contractors with little experience in electrification; and (d) recruit contractors into the field meeting sessions.

Following this research, Contractor developed a summary of participating contractors and other vendor narratives highlighting recurring challenges that have been a barrier to electrification and high-performance building.

Task 3: Participating Contractor Education

Task 3.a. – Participating Contractor Field Management: With an aim to provide participating contractors with the fundamental building performance knowledge they need to understand 1) how to deliver maximum value and performance within their trade and 2) how their work can impact other building systems or trades outside of their field, Contractor completed the following:

Task 3.a. 2020 Deliverables: Contractor conducted six field meetings with participating contractors. During the field meeting (which last between 1-4 hours), a Contractor trainer accompanied the participating contractor to a building site. The goal of field meetings was for Contractor to understand the scope of work performed by the participating contractor, their service territory, and what they are looking for in a trainee.

Contractor tracked and reported on the number of field meetings conducted and the participating contractors who attended.

Contractor performed at least six participating contractor field mentorship sessions.

Task 3.b. – Electrification Topic Workshops: Contractor's scope of work includes developing and delivering workshops covering a variety of electrification topics.

Task 3.b. and 3.c. Deliverables: Contractor drafted the Electrification Topic Guides for 2020 and 2021, and delivered two electrification workshops. They also maintained a resource tracking sheet, recorded the workshop, and tracked the number of participants in attendance.

Task 4: Develop New Workforce for Participating Contractors

Task 4.a – Funded Contractor/Trades Internship: Based on feedback from industry roundtables, participating contractor field mentorships, and direct vendor outreach, Contractor created a list of potential contractors to offer an on-the-job training opportunity for job seekers. Contractor was also responsible for preparing an outline of how the on-the-job training would operate.

The participating contractor/trade internship will provide job seekers with on-the-job training and education regarding high-performance building and the job seeker's specific trade. This includes a hybrid High Performance Building Module (HPBM).

Task 4.a. 2020 Deliverables: Contractor developed an operational outline for on-the-job trainings, as well as creating a list of potential on-the-job training partners.

Task 4.b. – New Workforce Development Training Coordination: In collaboration with MCE and workforce development providers, Contractor developed a training and job procurement plan.

Task 4.b. 2020 Deliverables: Contractor began outreach to participating contractors, and developed a list of potential partners and summary of desired qualifications from key hiring organizations.

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

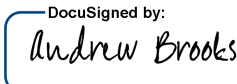
IN WITNESS WHEREOF, the parties hereto have executed this FIRST Amendment on the day first written above.

MARIN CLEAN ENERGY:

CONTRACTOR:

By:  ACC4B8FA2E834F3...

Date: 9/21/2021

By:  AFAD2489924E46B...

Date: 9/21/2021

**MASTER SERVICES AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND ASSOCIATION FOR ENERGY AFFORDABILITY (AEA)**

THIS MASTER SERVICES AGREEMENT ("Agreement") is made and entered into on **March 18, 2021** by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and ASSOCIATION FOR ENERGY AFFORDABILITY (AEA), a **California corporation** with principal address at: **5900 Hollis Street, Emeryville, CA 94608** (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 statements of work ("Statement of Work") to be agreed by the Parties, in form and substance as set forth on **Exhibit A** attached hereto and which shall be considered Schedules hereto;

Each Statement of Work executed by and between the Parties are 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 identified in each Statement of Work.

4. TERM OF AGREEMENT:

This Agreement shall commence on **March 18, 2021** ("Effective Date") and shall terminate on **March 31, 2023**, unless earlier terminated pursuant to the terms and conditions set forth in Section 12.

5. REPRESENTATIONS; WARRANTIES; COVENANTS:

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

- 5.2. COMPLIANCE WITH APPLICABLE LAW:** At all times during the Term and the performance of the Services, Contractor shall comply with all applicable federal, state and local laws, regulations, ordinances and resolutions ("Applicable Law")
- 5.3. LICENSING.** At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all required permits, licenses, certificates and registrations required for the operation of its business and the performance of the Services. Contractor shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.
- 5.4. NONDISCRIMINATORY EMPLOYMENT:** Contractor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, gender identity, age or condition of disability. Contractor understands and agrees that Contractor is bound by and shall comply with the nondiscrimination mandates of all federal, state, and local statutes, regulations, and ordinances.
- 5.5. PERFORMANCE ASSURANCE; BONDING (REQUIRED IF CHECKED ☐).** At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all bonding requirements of the California Contractors State License Board ("CSLB"), as may be applicable. Regardless of the specific Services provided, Contractor shall also maintain any payment and/or performance assurances as may be requested by MCE during the performance of the Services.
- 5.6. SAFETY (REQUIRED IF CHECKED ☒).** At all times during the performance of the Services, Contractor represents, warrants and covenants that it shall:
- (a) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;
 - (b) abide by all applicable MCE security procedures, rules and regulations and cooperate with MCE security personnel whenever on MCE's property;
 - (c) abide by MCE's standard safety program contract requirements as may be provided by MCE to Contractor from time to time;
 - (d) provide all necessary training to its employees, and require Subcontractors to provide training to their employees, about the safety and health rules and standards required under this Agreement;
 - (e) have in place an effective Injury and Illness Prevention Program that meets the requirements all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code. Additional safety requirements (including MCE's standard safety program contract requirements) are set forth elsewhere in the Agreement, as applicable, and in MCE's safety handbooks as may be provided by MCE to Contractor from time to time;
 - (f) be responsible for initiating, maintaining, monitoring and supervising all safety precautions and programs in connection with the performance of the Agreement; and
 - (g) monitor the safety of the job site(s), if applicable, during the performance of all Services to comply with all applicable federal, state, and local laws and to follow safe work practices.
- 5.7. BACKGROUND CHECKS (REQUIRED IF CHECKED ☒).**
- (a) Contractor hereby represents, warrants and covenants that any employees, members, officers, contractors, Subcontractors and agents of Contractor (each, a "Contractor Party," and, collectively, the "Contractor Parties") having or requiring access to MCE's assets, premises, customer property ("Covered Personnel") shall have successfully passed background screening on each such individual, prior to receiving access, which screening may include, among other things to the extent applicable to the Services, a screening of the individual's educational background, employment history, valid driver's license, and court record for the seven (7) year period immediately preceding the individual's date of assignment to perform the Services.
 - (b) Notwithstanding the foregoing and to the extent permitted by applicable law, in no event shall Contractor permit any Covered Personnel to have one or more convictions during the seven (7) year period immediately preceding the individual's date of assignment to perform the Services, or at any time after the individual's date of, assignment to perform the Services, for any of the following ("Serious Offense"): (i) a "serious felony," similar to those defined in California Penal Code Sections 1192.7(c) and 1192.8(a), or a successor statute, or (ii) any crime involving fraud (such as, but not limited to, crimes covered by California Penal Code Sections 476, 530.5, 550, and 2945, California Corporations Code 25540), embezzlement (such as, but not limited to, crimes covered by California Penal Code Sections 484 and 503 et seq.), or racketeering (such as, but not limited to, crimes covered by California Penal Code Section 186 or the Racketeer Influenced and Corrupt Organizations ("RICO") Statute (18 U.S.C. Sections 1961-1968)).

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

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

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

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

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

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

6. INSURANCE:

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

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

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

6.1. GENERAL LIABILITY. The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than **two million dollars (\$2,000,000) with a four million dollar (\$4,000,000)** aggregate limit. "Marin Clean Energy" shall be named as an additional insured on the commercial general liability policy and the certificate of insurance shall include an additional endorsement page (see sample form: ISO - CG 20 10 11 85).

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

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

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

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

7. FINANCIAL STATEMENTS:

Contractor shall deliver financial statements on an annual basis or as may be reasonably requested by MCE from time to time. Such financial statements or documents shall be for the most recently available audited or reviewed period and prepared in accordance with generally-accepted accounting principles.

8. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior, written approval of MCE, except for any subcontract work expressly identified herein in each Statement of Work and attachments thereto. 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, each Statement of Work and attachments thereto.
- 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. DEFINITION OF "MCE DATA". "MCE Data" shall mean all data or information provided by or on behalf of MCE, including but not limited to, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to Contractor as MCE may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Contractor. MCE Data shall also include all data and materials provided by or made available to Contractor by MCE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors.

"Confidential Information" under this Agreement shall have the same meaning as defined in the Marin Clean Energy Non-Disclosure Agreement between the Parties dated **January 1, 2017**.

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

10.3. MCE DATA SECURITY MEASURES. Prior to Contractor receiving any MCE Data, Contractor shall comply, and at all times thereafter continue to comply, in compliance with MCE's Data security policies set forth in MCE Policy 009 (available upon request) and MCE's Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy ("Security Measures") and pursuant to MCE's Confidentiality provisions in Section 5 of the Marin Clean Energy Non-Disclosure Agreement between the parties dated **January 1, 2017**, and as set forth in MCE Policy 001 - Confidentiality. MCE's Security Measures and Confidentiality provisions require Contractor to adhere to reasonable administrative, technical, and physical safeguard protocols to protect the MCE's Data from unauthorized handling, access, destruction, use, modification or disclosure.

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

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

10.6. OWNERSHIP AND USE RIGHTS.

- a) **MCE Data.** Unless otherwise expressly agreed to in writing by the Parties, MCE shall retain all of its rights, title and interest in MCE's Data.
- b) **Intellectual Property.** Unless otherwise expressly agreed to in writing by the Parties, any and all materials, information, or other intellectual property created, prepared, accumulated or developed by Contractor or any Contractor Party under this Agreement ("Intellectual Property"), including finished and unfinished inventions, processes, templates, documents, drawings, computer programs, designs, calculations, valuations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be owned by MCE on behalf and for the benefit of MCE's respective customers. MCE shall have the exclusive right to use Intellectual Property in its sole discretion and without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide Intellectual Property to MCE or to any party MCE may designate upon written request. Contractor may keep one file reference copy of Intellectual Property prepared for MCE solely for legal purposes and if otherwise agreed to in writing by MCE. In addition, Contractor may keep one copy of Intellectual Property if otherwise agreed to in writing by MCE.

- c) **Intellectual Property shall be owned by MCE upon its creation.** Contractor agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Intellectual Property.
- d) **Contractor's Pre-Existing Materials.** If, and to the extent Contractor retains any preexisting ownership rights ("Contractor's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, Contractor hereby grants MCE on behalf of its customers and the CPUC for governmental and regulatory purposes an irrevocable, assignable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of Contractor or any Contractor Party for the sole purpose of using such Intellectual Property for the conduct of MCE's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Intellectual Property must be expressly disclosed to MCE prior to performing any Services under this Agreement. Any such Pre-Existing Material that is modified by work under this Agreement is owned by MCE.

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

11. FORCE MAJEURE:

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

12. TERMINATION:

- 12.1.** If the Contractor fails to provide in any manner the Services required under this Agreement, otherwise fails to comply with the terms of this Agreement, violates any Applicable Law, makes an assignment of any general arrangement for the benefit of creditors, files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it, otherwise becomes bankrupt or insolvent (however evidenced), or becomes unable to pay its debts as they fall due, then MCE may terminate this Agreement by giving five (5) business days' written notice to Contractor.
- 12.2.** Either Party hereto may terminate this Agreement for any reason by giving thirty (30) calendar days' written notice to the other Party. Notice of termination shall be by written notice to the other Party and be sent by registered mail or by email to the email address listed in Section 19.
- 12.3.** In the event of termination not the fault of the Contractor, the Contractor shall be paid for Services performed up to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s). Notwithstanding anything contained in this Section 12, in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Agreement. Contractor shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12, Contractor shall have delivered to MCE any and all Intellectual Property (as defined in Section 10.6(b)) prepared for MCE before the effective date of such termination.
- 12.4.** MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

- 12.5. Without limiting the foregoing, if either Party's activities hereunder become subject to law or regulation of any kind, which renders the activity illegal, unenforceable, or which imposes additional costs on such Party for which the parties cannot mutually agree upon an acceptable price modification, then such Party shall at such time have the right to terminate this Agreement upon written notice to the other Party with respect to the illegal, unenforceable, or uneconomic provisions only, and the remaining provisions will remain in full force and effect.
- 12.6. Upon termination of this Agreement for any reason, Contractor shall and shall cause each Contractor Party to bring the Services to an orderly conclusion as directed by MCE and shall return all MCE Data (as defined in Section 10.1 above) and Intellectual Property to MCE.
- 12.7. Notwithstanding the foregoing, this Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such order or directive.
- 12.8. Notwithstanding any provision herein to the contrary, Sections 2, 3, 8.4, 9, 10, 12, 15, 16, 17, 18, 19, 20, 21, 22, 24, Exhibit B of this Agreement shall survive the termination or expiration of this Agreement.

13. ASSIGNMENT:

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

14. AMENDMENT; NO WAIVER:

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

15. DISPUTES:

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

16. JURISDICTION AND VENUE:

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

17. INDEMNIFICATION:

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

18. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

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

19. INVOICES; NOTICES:

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

Email Address: invoices@mcecleanenergy.org

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

Contract Manager: Troy Nordquist

MCE Address: 1125 Tamalpais Avenue

San Rafael, CA 94901

Email Address: contracts@mcecleanenergy.org

Telephone No.: (925) 378-6767

Notices shall be given to Contractor at the following address:

Contractor: Andrew Brooks

Address: 5900 Hollis St., Suite R2

Emeryville, CA 94608

Email Address: abrooks@aea.us.org

Telephone No.: (510) 431-1791

20. ENTIRE AGREEMENT; ACKNOWLEDGMENT OF EXHIBITS:

This Agreement along with the attached Exhibits marked below constitutes the entire Agreement between the Parties. In the event of a conflict between the terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement shall govern.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>	<u>MCE'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Form of Statement of Work	^{DS} LB	^{DS} DW ^{DS} T/OB
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment	^{DS} LB	^{DS} DW ^{DS} T/OB
<u>Schedule A.1</u>	<input checked="" type="checkbox"/>	Statement of Work for AERN Program	^{DS} LB	^{DS} DW ^{DS} T/OB
<u>Schedule A.2</u>	<input checked="" type="checkbox"/>	Statement of Work for Multifamily Programs	^{DS} LB	^{DS} DW ^{DS} T/OB
<u>Schedule A.3</u>	<input checked="" type="checkbox"/>	Statement of Work for Workforce Education and Training Program	^{DS} LB	^{DS} DW ^{DS} T/OB

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.

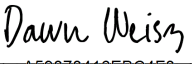
27. COUNTERPARTS:

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:

DocuSigned by:

 By: _____
 A59878416EBC4F8...
 Name: _____
 Title: CEO
 Date: 3/22/2021

DocuSigned by:

 By: _____
 5EFDDF8E1E86437...
 Chairperson
 Date: 3/20/2021

CONTRACTOR:

DocuSigned by:

 By: _____
 AFAD2489924E46B...
 Name: Andrew Brooks
 Title: Director, West Coast Operations
 Date: 3/31/2021

MODIFICATIONS TO STANDARD SHORT FORM MASTER SERVICES AGREEMENT

☐ Standard Short Form Master Services Agreement Content Has Been Modified

List sections affected: _____

Approved by MCE Counsel: _____

Date: _____

EXHIBIT A
FORM OF STATEMENT OF WORK

Statement of Work – Schedule A.[#]

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

[List scope of services]

Billing:
Contractor shall bill monthly and according to the rate schedule listed in Exhibit B of the Master Services Agreement dated **DATE**. In no event shall the total cost to MCE for the services provided under this Statement of Work exceed the maximum sum of **\$0,000** for the term of the Agreement.

Term of Statement of Work:
This Statement of Work shall commence on **DATE** and shall terminate on **DATE**.

IN WITNESS WHEREOF, the parties have executed this Statement of Work – Schedule A.1 on the date first above written.

APPROVED BY
Marin Clean Energy:

CONTRACTOR:

By: _____

By: _____

Name: _____

Name: _____

Date: _____

Date: _____

By: _____

Chairperson

Date: _____

EXHIBIT B
RATE SCHEDULE

For services provided under this Agreement, MCE shall pay Contractor in accordance with the rate schedule as specified below and in accordance with the payment structure listed in a Statement of Work:

Rate Schedule	
Position	Hourly Rate
Director, West Coast	\$ 175.00
Director, Programs	\$ 175.00
Director, Technical Services	\$ 175.00
Senior Program Manager	\$ 165.00
Program Manager II	\$ 160.00
Program Manager	\$ 150.00
Associate Program Manager	\$ 135.00
Senior Project Manager	\$ 165.00
Project Manager II	\$ 160.00
Project Manager	\$ 150.00
Associate Project Manager	\$ 135.00
Senior Energy Engineer	\$ 165.00
Energy Engineer II	\$ 160.00
Energy Engineer I	\$ 150.00
Senior Energy Analyst	\$ 165.00
Energy Analyst III	\$ 160.00
Energy Analyst II	\$ 150.00
Energy Analyst	\$ 140.00
Associate Energy Analyst	\$ 130.00
Office Manager	\$ 125.00

Contractor shall bill according to these rates and the payment structure listed in a Statement of Work. Contractor shall not exceed the maximum contract sum listed in any Statement of Work.

Schedule A.1
Statement of Work for AERN Program

This Schedule A.1 is entered into on **March 18, 2021** ("Agreement") pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and ASSOCIATION FOR ENERGY AFFORDABILITY, hereinafter referred to as "Contractor", dated **March 18, 2021** ("MSA").

Contractor shall provide the following technical assistance services as part of the Advanced Energy Rebuild Napa Program under the Agreement as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

Overview:

MCE is administering the Advanced Energy Rebuild Napa Program (AERN) and issuing rebates to participants in an incentive program for homeowners in Napa County affected by wildfires. The AERN Program is based on the California Advanced Homes Program. Furthermore, MCE has received a grant from the Bay Area Air Quality Management District (BAAQMD) to pay for electrification rebates only. These rebates are incentives for affected homeowners to rebuild energy-efficient, sustainable homes through the installation of electrification measures identified in Table 1. Contractor is the technical assistance provider to program participants and for the BAAQMD rebates, Contractor will be paid separately from the grant funds.

Task 1: Project administration

Contractor will be available for planning and progress check-in meetings or calls. Contractor is responsible, in coordination with MCE, for the development of any program documentation, forms or reporting templates. All program application materials must be provided to MCE for approval by BAAQMD.

Task 2: Provide information and technical support to residents and contractors about energy efficiency associated with the AERN Program, electrification measures associated with the BAAQMD grant, and eligibility for incentives.

Contractor will provide information and education to residents and contractors interested in incorporating energy efficiency measures into homes being rebuilt after the wildfires in Napa County, for both the AERN and NAAQMD programs. Contractor will provide programmatic and technical support to explain the steps necessary for the participant to receive funding for the AERN Program and rebates from MCE in relation to the BAAQMD grant. Contractor will explain technologies being incentivized by MCE and the resulting energy and greenhouse gas impacts, and will answer owner or contractor technical questions. Eligible electrification measures and the applicable rebate amounts are listed in the table below (Table 1).

Table 1

ELIGIBLE ELECTRIFICATION COMPONENT	STANDARD	REBATE AMOUNT	LOW-INCOME QUALIFIED REBATE AMOUNT
Photovoltaic (PV)	Solar Panel system designed to fully offset annual electric usage with battery storage sufficient to hold 30% of one summer day's production	\$3,000	\$3,600
Heat Pump HVAC	EER of 12.5+, HSPF of 9.5+	\$1,500	\$1,800
Heat Pump Water Heater	NEEA tier 3.0+	\$1,000	\$1,200
Heat Pump Clothes Dryer	Energy Star Most Efficient Certified, Electric	\$800	\$960
Induction cooktop with or without range	Must use induction technology per manufacturer literature. Portable plug-in single burner or double burner appliances are not eligible.	\$800	\$960
Electric Vehicle Charging Station	Level 2 Charger	\$500	\$600
Smart Thermostat	Energy Star Certified Smart Thermostat	\$40	\$48
Maximum rebate per dwelling unit		\$7,640	\$9,168

Estimated number of Leads: 60 homes

Time and Materials Budget for Tasks 1 and 2 Not to Exceed = \$18,068

Time shall be based on the rate schedule listed in Exhibit B of the Master Services Agreement

Task 3: Referral to PG&E

Contractor will coordinate appropriate referrals of eligible program participants. Contractor will work in collaboration with PG&E to transfer all information to PG&E's technical assistance provider (currently TRC) for participants interested in PG&E's California Advanced Homes Program.

Task 4: Ensure all incentive projects required documentation is collected, reviewed, and submitted to MCE

Contractor will work with PG&E and/or PG&E's technical assistance provider to collect the required documentation from each program participant as follows:

- Application Number, Applicant Name, Phone Number, Alternate Phone Number, Email Address, Project Type, Project Address, City, Zip Code, Mailing Address (if different), CARE enrollment status, Description of proposed work/component, Manufacturer, Model Number of Component, Building Permit Agency, Building Permit number, Project Status, Date of HERS Final Inspection, CF-2R/CF-3R form on file (Yes or No), Proof of Purchase on file if required (Yes or No), Installation photo on file if required (Yes or No), Rebate Amount, Check Number, Date Check Issued, Notes

Contractor will review all documents for completeness per the above specifications, will ensure that all projects are properly permitted and that Energy Code documentation is filed as needed, and will track and maintain all project and document measures and participant details as specified above. Project information will also be provided to Napa County, BayREN, and PG&E by MCE.

Task 5: Provide on-site technician assistance and/or site verification as needed for both BAAQMD funds and the AERN Program

Upon request from the participant and pending approval from MCE, Contractor will provide onsite technical assistance to homeowners as it relates to the funded measures listed in Table 1, including coordinating with approved manufacturer's representatives and ensuring that these energy efficiency measures are installed per code requirements and properly permitted. Contractor will also provide onsite technical assistance to homeowners as it relates to the AERN Program. Contractor shall comply with all applicable state and local orders regarding COVID-19 when providing onsite technical assistance.

Time and Materials Budget for Tasks 3-5 Not to Exceed = \$30,990

Time shall be based on the rate schedule listed in Exhibit B of the Master Services Agreement.

Billing:

Contractor shall bill monthly and according to the rate schedule listed in Exhibit B of the Master Services Agreement dated **March 18, 2021**. In no event shall the total cost to MCE for the services provided under this Statement of Work exceed the maximum sum of **\$49,058** for the term of the Agreement.

Term of Statement of Work:

This Statement of Work shall commence on **April 1, 2021** and shall terminate on **March 31, 2022**.

IN WITNESS WHEREOF, the parties have executed this Statement of Work – Schedule A.1 on **March 18, 2021**.

APPROVED BY**Marin Clean Energy:**

DocuSigned by:



By: _____

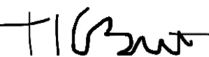
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Date: _____

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By: _____

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Chairperson

3/20/2021

Date: _____

CONTRACTOR:

DocuSigned by:



By: _____

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Name: _____

Andrew Brooks

Date: _____

3/31/2021

Schedule A.2

Statement of Work for Multifamily Programs

This Schedule A.2 is entered into on **March 18, 2021** ("Agreement") pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and ASSOCIATION FOR ENERGY AFFORDABILITY, hereinafter referred to as "Contractor", dated **March 18, 2021** ("MSA").

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

Contractor will serve as the overall program provider for MCE's multifamily programs, as requested and directed by MCE staff. Tasks and deliverables are described below:

1. Multifamily Energy Savings (MFES) Program

Contractor will implement and provide technical consulting services for the MFES Program, including single-measure rebate and direct install (DI) offerings. The tasks are:

Single Measure Rebates and Direct Install (DI)

- Complete comprehensive assessments at properties identifying targeted measures and high total resource cost (TRC) opportunities within MCE's service area.
- Build targeted and comprehensive reports with results of the assessment.
- Provide technical assistance to customers.
- Verify installations meet minimum performance and programmatic specifications.
- Coordinate scope development with Bay Area Regional Energy Network (BayREN) and other program staff when co-leveraging with Bay Area Multifamily Building Enhancements Program (BAMBE) or other MCE programs (LIFT, MCE Healthy Homes, or other partnerships and programs as designated by MCE).
- Identify cost-effective DI measures.
- Work with MCE and its program partners to develop a list of candidate buildings to participate in DI opportunities.
- Coordinate DI activities, including maintenance staff training for direct installs, with customers and MCE staff.
- Provide MCE with savings data from DI activities.
- Verify smart thermostat compatibility prior to DI, if offered through the program.

Coordination with BayREN's BAMBE Program

Contractor provides a technical assistance and implementation role for BayREN's BAMBE program. Based on a joint coordination effort between MCE and BayREN, some projects will be able to utilize rebates from both entities on the same project (although savings for individual measures may only be claimed by one entity). Contractor will perform the following tasks to ensure seamless coordination:

- Regular check ins with BAMBE team to ensure that MCE qualified properties are being assessed for MCE rebate opportunities.
- Work with property owners or managers (customers) to develop a scope of work that would best leverage MCE and BAMBE rebate opportunities.
- Coordinate with BAMBE Technical Assistance on site visit.
- Report BAMBE coordination progress back to MCE.

Marketing & Outreach

Contractor will provide marketing and outreach services to support the MFES and LIFT programs. The tasks indicated below will be billed at a time and materials (T&M) rate. The tasks below may be performed by Contractor or a subcontractor to the Contractor. Marketing & Outreach tasks include:

- Development of marketing & outreach plan.
- Update marketing and outreach plan as needed.
- Development of program collateral.
- Lead generation through targeted outreach (property owners, contractors & partner organizations).
- Report back on marketing and outreach results and progress.

Additional Tasks

Contractor will perform the specific tasks indicated below at a T&M rate. The below tasks may apply to specific customers and/or monthly activities required of the Contractor. The tasks under this rate are:

- Monthly Reporting to CPUC
- Database management
- Program design
- Non-milestone-based project work (including combustion appliance safety (CAS) testing when required, project intake, common & exterior LED lighting measure completion, etc.)
- Check-in calls with MCE

- Meetings
- Training
- Benchmarking
- Budgeting
- Cost effectiveness tool (CET)/TRC related activities

2. Low Income Families and Tenants Pilot Program (LIFT)

Contractor will implement and provide technical consulting services for the LIFT Program, which operates in conjunction with MFES and MCE Healthy Homes. The tasks include:

LIFT Measure Rebates

- Work with MCE and its program partners to develop a list of candidate buildings to participate in LIFT.
- Facilitate the implementation of the energy efficiency measures under LIFT.
- Perform post installation Quality Assurance (QA) and Verification inspections to ensure that the measures were installed in such a manner that they will achieve the projected energy savings.
- Work with MCE to identify which data points should be collected and tracked for each project and required for the Evaluation, Measurement, and Verification (EM&V) process.
- Assist with training of contractors, building operators, and tenants as needed and when requested by MCE.
- Communicate program updates with customers including LIFT extensions and/or LIFT2.0 program approval.

Direct Install

- Identify customers to receive DI services through the LIFT program.
- Coordinate DI activities, including maintenance staff training for direct installs, with customers and MCE staff.
- Provide MCE with savings data from DI activities.
- Verify smart thermostat compatibility prior to DI, if offered through the program.

Marketing & Outreach

Contractor will provide marketing and outreach services to support the MFES and LIFT programs. The tasks indicated below will be billed at a T&M rate. The tasks below may be performed by Contractor or a subcontractor to the Contractor. Marketing & Outreach tasks include:

- Development of marketing & outreach plan.
- Development of program collateral.
- Lead generation through targeted outreach (property owners, contractors & partner organizations).
- Report back on marketing and outreach results and progress.

Additional Tasks

Contractor will perform the specific tasks indicated below at a T&M rate. The below tasks may apply to specific customers and/or monthly activities required of the Contractor. The tasks under this rate are:

- Monthly Reporting to CPUC
- Database management
- Non-milestone-based project work (including CAS testing when required and project intake)
- LIFT heat pump technical assistance
- Check-in calls with MCE
- Meetings
- Tenant education development
- LIFT questionnaire development
- Training
- Benchmarking
- Budgeting
- BayREN coordination

3. MCE Healthy Homes Initiative

Contractor will implement and provide technical consulting services for MCE's Healthy Homes Initiative which operates in conjunction with the other Multifamily offerings described herein. The tasks are:

1. Project management

Contractor will oversee current projects in rebate reservation through to completion and manage new projects to spend down program budget.

- Property outreach and unit identification
- Single point of contact for participating properties
- Owner and contractor coordination

- Assessments and identification of upgrade opportunities
- Process Rebate Reservations with the properties
- Monitor project development
- Process Rebate approval packets with the properties

Project management budget not to exceed \$16,500.

2. Administration and Reporting

- Quarterly program and pipeline overview
- Ongoing budget tracking; included in quarterly reports and monthly invoice memos
- Regular meetings with MCE staff

Administration and Reporting budget not to exceed \$3,300.

3. Case Study Development

- Contractor will develop five (5) with client impact case studies that include resident quotes/statements

Case Study Development budget not to exceed \$3,300.

4. Survey development and analysis if LIFT surveys are unavailable

- Develop healthy home surveys to collect relevant resident information

Survey development and analysis budget will not exceed \$3,300.

4. MCE's Electric Vehicle (EV) Program

Contractor will perform EV feasibility assessments in conjunction with energy audits done for MCE's multifamily programs. The data collected will include the points listed below. The additional time needed beyond what is done for the multifamily programs will be billed at a T&M rate.

- Property Name
- Owner
- # of properties in that Owner's portfolio
- Owner Contact Information
- Property Manager Contact Information
- Facilities Manager Contact Information
- Address
- Property Class
- # of Units
- % of units that are deemed affordable housing
- # of total parking spaces
- # of non-designated (not assigned to a unit) parking spaces and % of those spaces that are open day-to-day
- # of ADA parking spaces
- # of EV charging ports currently installed
- available electrical capacity on the house (or common) panel(s) (most important technical data point)

Billing:

1. Multifamily Energy Savings (MFES) Program: \$427,000

Single Measure Rebates and DI: \$185,000

For implementing the MFES Program, Contractor will be compensated based on milestones achieved (Table 1). If the customer is also qualified for LIFT, Contractor will receive the LIFT adder as additional compensation due to the complexity of the requirements of LIFT. Units that receive direct install will be billed at a lower rate due to the elimination of the site visits and report.

Coordination with BayREN's BAMBE Program: \$100,000

When leveraging MCE's multifamily offerings with BAMBE projects, MCE will partially compensate Contractor, as BAMBE will cover other technical assistance costs. MCE will compensate Contractor as follows:

- For any LIFT customers also participating in the BAMBE Program, MCE will pay Contractor \$30 per apartment unit for energy audit report milestones due to the complexity of energy audit report requirements

around LIFT. MCE will also pay Contractor \$55 per unit that completes measures through LIFT. All other compensation shall be from BAMBE.

- MCE will provide rebates directly to customers in the MFES Program and LIFT program.
- Contractor will be reimbursed on a per unit basis if the property participates in an MCE multifamily program as outlined in Table 1.
- The NTE amount for this partnership is for a 2-year period.

Marketing & Outreach: Not to Exceed \$10,000

Additional Tasks: Not to Exceed \$132,000

2. Low Income Families and Tenants Pilot Program (LIFT): \$82,700

LIFT Measure Rebates and Direct Install: \$50,000

LIFT technical assistance will be provided in conjunction with the BAMBE program and/or MCE's MFES Program.

- For MCE-only LIFT projects (no BAMBE), Contractor will be reimbursed for each of the LIFT adders identified per the milestones achieved in Table 1, in addition to the standard Contractor Compensation values.
- When LIFT is paired with BAMBE, Contractor will only be reimbursed by MCE for the per apartment unit LIFT adder per the milestones achieved in Table 1.
- The NTE for LIFT is through July 31, 2021, unless otherwise notified in writing by MCE Contract Manager.

Table 1. Compensation for Milestone(s) achieves – MFES Measure & LIFT Program

Program Offering	Milestone	Contractor Compensation	LIFT adder
Single Measure Rebates	Intake	Time and Materials Rate (See Table 4)	
	Site Visit	\$35	\$40
	Energy Audit Report	\$25	\$30
	Rebate Reservation	\$0	\$0
	Rebate Approved	\$55	
Direct Install	Direct Install	\$40	

Marketing & Outreach: Not to Exceed \$8,000

Additional Tasks: Not to exceed \$24,700

3. MCE Healthy Homes: \$26,400

For implementing MCE Healthy Homes, Contractor will be compensated on a Time and Materials basis per the rate schedule in Section 5 with a not to exceed budget of \$26,400. Incentives for this sub-program will be dispersed separately between MCE and the customer. The tasks under this rate are:

Tasks	Estimated Hours	Not to Exceed Budget
2.1 Project Management	100	\$16,500
2.2 Administration/Reporting	20	\$3,300
2.3 Case Study Development	20	\$3,300
Additional Services:		
2.4 Survey Development & Analysis	20	\$3,300

4. MCE's EV Program: \$12,375

Contractor will perform EV feasibility assessments in conjunction with energy audits done for MCE's multifamily programs. The additional time needed beyond what is done for the multifamily programs will be billed based on T&M at the rate schedule listed in Exhibit B of the Master Services Agreement.

5. Overall Budget

The following are the budget amounts for each of the tasks and subprograms described herein. Budget amounts listed include both 2021 and 2022 program years. In situations where a budget amount may be exceeded, funds may be moved between categories with written approval of the MCE Customer Programs Manager, prior to Contractor exceeding those budgets.

Program	Task	Per Task NTE	Total Budget
MFES Program (Through April 2023)	Single Measure Rebates & Direct Install	\$185,000	\$427,500
	Coordination with BAMBE Program	\$100,000	
	Marketing & Outreach	\$10,000	
	Additional Tasks	\$132,500	
LIFT (Through July 2021) *	LIFT Measure Rebates & Direct Install	\$50,000	\$82,700
	Marketing & Outreach	\$8,000	
	Additional Tasks	\$24,700	
MCE Healthy Homes Program			\$26,400
MCE EV Program (Through April 2022) *			\$12,375
TOTAL CONTRACT			\$548,975

*unless otherwise noted in writing by MCE Contract Manager

Contractor shall bill monthly and all time and materials rates shall be according to the rate schedule listed in Exhibit B of the MSA dated **March 18, 2021**. In no event shall the total cost to MCE for the services provided under this Statement of Work exceed the maximum sum of **\$548,975** for the term of the Agreement.

Term of Statement of Work:

This Statement of Work shall commence on **May 1, 2021** and shall terminate on **April 30, 2023**.

IN WITNESS WHEREOF, the parties have executed this Statement of Work – Schedule A.2 on the date first above written.

APPROVED BY

Marin Clean Energy:

DocuSigned by:
By: *Dawn Weisz*
A59878416EBC4F8...

Name: _____

Date: 3/22/2021

DocuSigned by:
By: *[Signature]*
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Chairperson

Date: 3/20/2021

CONTRACTOR:

DocuSigned by:
By: *Andrew Brooks*
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Name: Andrew Brooks

Date: 3/31/2021

Schedule A.3

Statement of Work for Workforce Education and Training Program

This Schedule A.3 is entered into on **March 18, 2021** ("Agreement") pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and ASSOCIATION FOR ENERGY AFFORDABILITY, hereinafter referred to as "Contractor", dated **March 18, 2021** ("MSA").

Contractor will provide the following technical assistance services as part of the Workforce Education and Training Program (Program) as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

Task 1: Administration

Contractor will:

- Manage team project coordination meetings
 - General program meetings related to more than one task listed below, e.g. Workforce Engagement, Contractor Education, or Developing the Contractor Market; these meetings topics could be about budgets, reporting, invoicing, planning or other program-wide issues
- Develop and maintain Program database
- Respond to data requests regarding the Program
- Program accounting and invoicing
- Develop reports and documentation on overall Program achievements

Task 2: Workforce Engagement

Task 2.a. – Partner with Inclusive Economics: Contractor will work with Betony Jones of Inclusive Economics as a subcontractor to ensure the training and workforce development activities undertaken will improve conditions for workers. MCE may direct Contractor to work with a different individual of Inclusive Economics if the need arises.

Inclusive Economics' role will ensure any training designed by Contractor will have a positive impact on work quality under the Program, as well as help create more high-road jobs for workers.

***Task 2.a. 2021 Deliverables:** Meet with Inclusive Economics as needed to further inform Program development, and provide a summary report to MCE on Inclusive Economics' recommendations on program design to address workforce needs.*

Task 2.b. – Industry Roundtables: Contractor will leverage existing relationships with industry groups, such as MCE Community Power Coalition, Marin Builders Association, Rising Sun, Franklin Energy, trade unions, manufacturers, and others, to increase contractor participation in high-performance building training. These events will target participating contractor groups to get their perspective on high-performance buildings and the challenges they face as the industry continues to change.

To foster diversity, Contractor will ensure that a representative sample of participating contractor groups in MCE's service territory are invited to the event. Outreach efforts will include participating contractors from disadvantaged communities and minority-focused groups to ensure diversity, equity, and inclusion. These groups will be identified by leveraging partnerships with community-based organizations, properties located in disadvantaged communities that have participated in MCE's multifamily programs, and existing trade relationships.

***Task 2.b. 2021 Deliverables:** Provide a summary of roundtable discussion from final roundtable and the contact list of participants.*

Task 2.c. – Direct Vendor Outreach: Contractor will work with participating contractors and other vendors to determine the reasons why some declined to bid on MCE's Low-Income Families and Tenants (LIFT) Program. Contractor will qualitatively assess how much contingency and risk aversion was built into a vendor's bid and what actions can be taken to reduce vendor uncertainty around the project. Lastly, for winning participating contractors, Contractor will learn about some of the challenges participating contractors faced within the LIFT Program as they installed the heat pumps.

Contractor will leverage existing and develop new relationships with participating contractors and other vendors to gain more insight into the barriers to electrification and high-performance building work.

The information gathered will be used to: (a) inform future program design; (b) help identify the practical barriers to heat pump adoption that the installation community faces, and; (c) guide the development of training materials for participating contractors that have little experience in electrification.

***Task 2.c. 2021 Deliverables:** Summary of any additional participating contractor narratives or interviews that show recurring challenges that have been a barrier to electrification and high-performance building best practices.*

Task 3: Participating Contractor Education

Task 3.a. – Participating Contractor Field Management: Specific to the contractor trade, and with an aim to provide contractors with the fundamental building performance knowledge they need to understand, Contractor shall provide field mentorship based on 1) how to deliver maximum value and performance within their trade and 2) how their work can impact other building systems or trades that they do not work on.

Contractor will provide participating contractors with field mentorships through in-person or virtual field meetings. Each participating contractor field mentorship will consist of one session lasting one to four hours with a Contractor-provided trainer and the participating contractor. When possible, participating contractor field mentorships will be performed at a building site, but a separate classroom location or at the participating contractor's place of business will be used when necessary. Virtual field meetings will be performed when in-person field mentorships are not possible due to COVID-19 constraints.

Topics covered will include:

- Building science fundamentals:
 - Building Performance Institute (BPI) combustion safety & depressurization
 - Air sealing & insulation
 - Health & safety
 - Heat transfer and thermodynamics
- Review and explanation of minimum performance requirements
- Trade- or measure-specific best practices (as needed):
 - Ductless mini-split heat pumps
 - Heat pump water heaters (individual and/or central)
 - Hot water recirculation controls
 - Electric induction cooking
 - Air sealing and insulation
- Contractor-created handouts on basic building science (as necessary)

Contractor will track and report on the number of sessions and participating contractor participants.

Task 3.a. 2021 Deliverables: Perform at least ten participating contractor field mentorship sessions.

Task 3.b. – Electrification Topic Workshops:

Develop and Deliver Workshops: Contractor will develop and deliver workshops for each of the identified topics by either using either existing materials or creating original materials. Contractor will share developed workshop materials with MCE. Contractor will record the number of workshops given and participants in each workshop. Contractor will develop a tracking sheet that outlines each of the resources selected and/or developed.

Task 3.b. 2021 Deliverables: Contractor will deliver six electrification workshops and maintain records on the number and type of attendees, as well as continue providing a resources tracking sheet to avoid duplicative educational efforts.

Task 3.c. – Electrification Topic Guides: Using materials identified and developed through Tasks 3.a. and 3.b., Contractor will compile Electrification Topic Guides for individual topics, similar to those covered in the workshops.

Task 3.c. 2021 Deliverables: Contractor will continue to create Electrification Topic Guides, creating documents that can be disseminated to program participants.

Task 4: Develop New Workforce for Participating Contractors

Task 4.a – Funded Contractor/Trades Internship: Based on feedback from industry roundtables, participating contractor field mentorships, and direct vendor outreach, Contractor will prepare and provide a list of potential partners for a participating contractor on-the-job training opportunity for job seekers. Contractor will also prepare an outline of how the on-the-job training would operate.

The participating contractor/trade internship will provide job seekers with on-the-job training and education regarding high-performance building and the job seeker's specific trade.

On-the-job training opportunities will be funded by the Program. The 2020 program will begin development of the participating contractor on-the-job training opportunity to be launched in 2021.

Task 4.a. 2021 Deliverables: Contractor will maintain a list of on-the-job training partners and update the on-the-job training operation outline as needed.

Task 4.b. – New Workforce Development Training Coordination: Contractor will work with MCE and workforce development providers to develop a training and job procurement plan.

Task 4.b. 2021 Deliverables: Contractor will maintain a database showing that contractor partners meet the qualification requirements for the program.

Program Timeline

Q1 2021*	<ul style="list-style-type: none"> Host industry roundtable to share program insight and solicit feedback Host 2 electrification topic workshops Perform 1 participating contractor field mentorship sessions 	<ul style="list-style-type: none"> Participating contractor on-the-job training begins Engage with workforce development organizations
Q2 2021*	<ul style="list-style-type: none"> Host 2 electrification topic workshops Perform 3 participating contractor field mentorship sessions 	
Q3 2021*	<ul style="list-style-type: none"> Host 1 electrification topic workshop Perform 3 participating contractor field mentorship sessions 	
Q4 2021*	<ul style="list-style-type: none"> Host 1 electrification topic workshop Perform 3 participating contractor field mentorship sessions 	

* Program Timeline subject to change at the mutual agreement of the parties.

Billing:

For services provided under this Schedule A.3 Contractor shall bill monthly for all hours where services were rendered according to the fee schedule below and the rate schedule included in Exhibit B of the Master Services Agreement.

		2021 Program Year Fee Schedule*	
Task	Subtask	Estimated Hours	Estimated Budget
Task 1: Administrative		90	\$15,300
Task 2: Workforce Engagement	Task 2.a.	10	\$1,700
	Task 2.b.	20	\$3,400
	Task 2.c.	10	\$1,700
	Task 2 Total	50	\$6,800
Task 3: Contractor Education	Task 3.a.	180	\$30,600
	Task 3.b.	220	\$37,400
	Task 3.c.	100	\$17,000
	Task 3 Total	500	\$85,000
Task 4: Develop Contractor Market	Task 4.a.	100	\$17,000
	Task 4.b.	210	\$35,700
	Task 4 Total	300	\$52,700
PROGRAM TOTAL		940	\$159,800

*Fees billed shall include any necessary materials and mileage for onsite visits at the applicable standard reimbursement rate.

In no event shall the total cost to MCE for the services provided under this Statement of Work exceed the maximum sum of **\$160,000** for the term of the Agreement.

Special Terms:

Contractor agrees, and shall cause its subcontractors to agree, to not make any written or verbal statements about MCE that are disparaging, untrue, or inaccurate; doing so will allow MCE terminate this Schedule A.3 pursuant to Section 12 of the Master Services Agreement.

Term of Statement of Work:

This Statement of Work shall commence on **March 18, 2021** and shall terminate on **March 31, 2022**.

IN WITNESS WHEREOF, the parties have executed this Statement of Work – Schedule A.3 on the date first above written.

APPROVED BY**Marin Clean Energy:**

DocuSigned by:
By: *Dawn Weisz*
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Name: _____

Date: 3/22/2021

DocuSigned by:
By: *[Signature]*
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Chairperson

Date: 3/20/2021

CONTRACTOR:

DocuSigned by:
By: *Andrew Brooks*
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Name: Andrew Brooks

Date: 3/31/2021

**FIRST AMENDMENT TO MASTER SERVICES AGREEMENT
BY AND BETWEEN MARIN CLEAN ENERGY
AND ASSOCIATION FOR ENERGY AFFORDABILITY (AEA)**

This FIRST AMENDMENT is made and entered into on 3/10/2022, by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and ASSOCIATION FOR ENERGY AFFORDABILITY (AEA) (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and Contractor entered into a master services agreement on March 18, 2021 to provide energy efficiency technical assistance services ("MSA"); and

WHEREAS, Section 4 of the MSA stated the MSA shall terminate on March 31, 2023; and

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

WHEREAS, pursuant to Senate Bill 255, MCE is now required to submit to the California Public Utilities Commission an annual report regarding its procurement from women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises; and

WHEREAS, "Section 27. Diversity Survey" has been added to MCE's standard form to reflect this requirement; and

WHEREAS, MCE requires contractors to comply with certain protocols in order to access MCE's Customer Relationship Management software ("CRM Access Protocols"); and

WHEREAS, Contractor intends to access MCE's Customer Relationship Management software for programmatic needs; and

WHEREAS, the parties desire to amend the Agreement to add as Exhibit C the CRM Access Protocols;

NOW, THEREFORE, the parties agree to modify Section 4, add Section 27, modify Section 28, and add Exhibit C, as set forth below.

AGREEMENT

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

TERM OF AGREEMENT:

This Agreement shall commence on **March 18, 2021** (Effective Date"), and shall terminate on **March 31, 2024**, unless earlier terminated pursuant the terms and conditions set forth in Section 12.

2. The following "Section 27. Diversity Survey" is hereby added to the Agreement to follow "Section 26. Preparation of Agreement":

27. DIVERSITY SURVEY:

Pursuant to Senate Bill 255 which amends Section 366.2 of the California Public Utilities Code, MCE is required to submit to the California Public Utilities Commission an annual report regarding its procurement from women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises ("WMDVLGBTBE"). Consistent with these requirements, Contractor agrees to provide information to MCE regarding Contractor's status as a WMDVLGBTBE and any engagement of WMDVLGBTBEs in its provision of Services under this Agreement. Concurrently with the execution of this Agreement, Contractor agrees to complete and deliver MCE's Supplier Diversity Survey, found at the following link: <https://forms.gle/DUBkcdFCskb7NNcA8> (the "Diversity Survey"). Because MCE is required to submit annual reports and/or because the Diversity Survey may be updated or revised during the term of this

Agreement, Contractor agrees to complete and deliver the Diversity Survey, an updated or revised version of the Diversity Survey or a similar survey at the reasonable request of MCE and to otherwise reasonably cooperate with MCE to provide the information described above. Contractor shall provide all such information in the timeframe reasonably requested by MCE.

3. The previous "Section 27. Counterparts" is now "Section 28. Counterparts."
4. The following Exhibit C is hereby added to the Agreement to follow Exhibit B:

EXHIBIT C
MCE CRM ACCESS PROTOCOLS

Contractor shall provide the following protective measures under the Agreement in order to access the MCE Customer Relationship Management software ("MCE CRM") according to program needs up to the time/fees allowed under this Agreement.

This Exhibit C is applicable to all existing and any future schedules under this MSA.

In order for Contractor to access MCE CRM, Contractor must first agree to and comply with the following protocols:

1. MCE CRM access is subject to the NDA between the Parties dated January 1, 2017.
 2. MCE CRM login information, passwords, and any information retrieved from MCE CRM shall be treated as Confidential Information.
 - Confidential Information shall have the same meaning as defined in the MCE NDA between the Parties dated January 1, 2017.
 - No Contractor employee is to give, tell, or hint at their login information or password to another person under any circumstance.
 - MCE CRM passwords are required to be changed every 90 days.
 - MCE encourages strong passwords (such as minimum character length, and use of special characters) that are not reused for other logins.
 - MCE CRM shall only be accessed from an Internet Protocol (IP) address in the United States.
 3. MCE CRM access shall be provided through MCE's selected Single Sign-On (SSO) provider, Okta, Inc. or any MCE-designated SSO provider.
 4. MCE CRM access shall be restricted.
 - MCE CRM access shall only be provided to those employees of Contractor who have a "need to access" such information in the course of their duties with respect to Contractor's Services.
 - Contractor employees who access MCE CRM shall only update or view fields related to the tasks assigned.
 - Contractor shall maintain a list of Contractor employees that have been authorized to access MCE CRM.
 - The list shall be updated and verified by Contractor quarterly, upon Contractor employee turnover, and upon MCE's request.
 - Contractor employees who access MCE CRM shall first review and agree to be bound by these MCE CRM Access Protocols.
 5. In the event of an employment status change for a Contractor employee who had been granted access to MCE CRM, Contractor shall provide the following information to MCE:
 - Name and email of pertinent Contractor employee.
 - Notification to MCE within 3 days of employment status change.
 6. Information retrieved from MCE CRM shall not be recorded or reproduced in any way.
5. Except as otherwise provided herein all terms and conditions of the MSA shall remain in full force and effect.

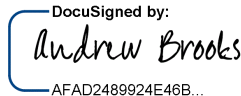
IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the day first written above.

MARIN CLEAN ENERGY:

By:  ACC4B8FA2E834F3...

Date: 3/8/2022

CONTRACTOR:

By:  AFAD2489924E46B...

Date: 3/10/2022



March 17, 2022

TO: MCE Board of Directors

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

RE: Fiscal Year 2022/23 Proposed Budgets (Agenda Item #06)

ATTACHMENTS: A. Proposed FY 2022/23 Operating Fund Budget
B. Proposed FY 2022/23 Local Renewable Energy and Program Development Fund Budget
C. Proposed FY 2022/23 Resiliency Fund Budget and Proposed FY 2022/23 Energy Efficiency Program Fund Budget
D. MCE Policy 013: Reserve Policy

Dear Board of Directors:

Summary:

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

1. Spend funds within the limits set forth in each budget line item and apply budgeted contingency amounts if necessary;
2. Fund MCE's Local Renewable Energy and Program Development Fund, Electric Vehicle and other customer programs;
3. Fund MCE's Resiliency Fund; and
4. Move closer to reaching MCE's reserve targets by funding MCE's Operating Fund balances and reserves.

The attached Proposed Budgets reflect MCE's projected revenue, expenditures and contingencies for FY 2022/23, and are anticipated to allow MCE to continue delivering a minimum of 60% renewable energy and a further goal of 90% greenhouse gas (GHG)-free energy to our customers. MCE's territory growth alongside with this year's rate increase is

anticipated to result in an increase in revenues. These additional revenues will enable us to cover increasing costs for energy and resource adequacy (RA), to make progress on reaching Board Reserve Policy Goals and to bring in-house analytics, marketing and call center services that had been outsourced in the past.

The proposed FY 2022/23 Operating Fund Budget is projected to result in an increase of \$98,000,000 to MCE's Net Position at the end of the fiscal year, assuming continuation of the current rate schedule, assuming no further increases in market prices and assuming a summer void of system emergencies. An addition to MCE's Net Position of \$98,000,000 would result in achieving 94% of the Board Reserve Policy Goals and 95% of the Board liquidity goal by the end of the fiscal year in March, 2023. At the conclusion of the 2022/23 fiscal year, the Board could consider deferring some of this projected revenue into the Operating Reserve Fund for use in future years. Any deferral into the Operating Reserve Fund would reduce the addition to Net Position by a like amount.

If the Board would like to consider extending the MCE Cares targeted cost relief program, staff would recommend extending it for an additional six months through September of 2022 at an estimated cost of \$5,000,000. If the Board decides to fund an extension of the MCE Cares program in the amount of \$5,000,000, the projected addition to the net position would decline to \$93,000,000.

Staff brought the proposed Budgets to the Executive Committee on March 4, 2022. The Executive Committee voted to recommend approval by the full Board. Staff recommends that MCE Board of Directors approve the Fiscal Year 2022/23 Proposed Budgets at its March 17, 2022 meeting.

2022/23 Operating Fund Budget Highlights:

Attached is the proposed FY 2022/23 Operating Fund Budget (Attachment A). For comparison purposes, FY 2022/23 is shown alongside the current years' Approved Budget and actual results through December 2021 and projections through March 31, 2022.

Revenue – Electricity (+\$145,000,000, 30% increase): Sales volume (GWh) is projected to increase producing an additional \$145,000,000 over the current budget (about \$128,000,000 over currently projected total electricity revenues) due to the addition of 38,000 customers in the City of Fairfield, which represents a 7% increase in our customer base, and this year's rate increase. Projected Net Electricity Revenue is adjusted downward by an assumed delinquency rate of 3% of Electricity Revenues. The 3% delinquency assumption is an increase of an additional 1% over the current fiscal year and is in response to the increased delinquencies MCE has been experiencing. This delinquency assumption of 3% represents over \$18.45 million in uncollectible revenue.

Cost of energy (+\$85,000,000, 21% increase): Cost of energy is expected to go up by \$85 million over the current budget and about \$45 million over the projected actuals for the current fiscal year. Expenses associated with the purchase of energy include our power

purchase agreements, charges by the California Independent Systems Operator (CAISO) for MCE load, services performed by the CAISO, RA costs and other regulatory energy requirements necessary to meet the energy needs of our customers. Energy costs are anticipated to increase related to serving 38,000 new customers in the City of Fairfield, and higher prices for system energy and RA.

Personnel (+\$3,337,000, 26% increase): This increase is reflective of cost-of-living adjustments to salaries, promotions, a budgeted assumption of merit increases for staff in 2023, fully integrating the full year's costs of new FTEs added last year and the anticipated addition of 13 FTEs over the course of the fiscal year. This increase in FTEs would increase headcount from 76 to 89. The additional headcount and increase in the personnel budget are due to a culmination of needs, including; the backfill hiring for unfilled positions, bringing services in-house that have historically been contracted out to increase overall agency savings and added efficiency, and increasing workforce development opportunities within the agency.

Areas where MCE is backfilling or bringing in-house services that have previously been outsourced include:

- 1) Public Affairs: MCE is creating its own call center that was historically managed by our Data Manager (see Data Manager below). This will result in four new hires and savings to the agency of \$920,000 and will allow more control, accuracy, and quality assurance in messaging MCE's numerous customer programs and value proposition. Additionally, in the Public Affairs Department, there are cost savings by transitioning from external consultants for brand design to hiring a full-time staff member to cover these duties in a more cost-effective way, allowing MCE to have greater control over the messaging and branding.
- 2) Customer Programs: Additional headcount is needed on this team to support the expanding programs. This includes MCE's work on Transportation Electrification programs and other programs where personnel costs are not able to be allocated to grants or CPUC Energy Efficiency funding sources, but have a positive impact on MCE's service area.
- 3) Legal and Policy: By adding positions here the agency is able to save substantial amounts on external counsel and can add long-term efficiency within the agency by having in-house support.
- 4) Technology and Analytics: MCE is bringing in-house a new Director of Technology and Analytics to manage the implementation of the Customer Relationship Management ("CRM") software and Data Warehouse.
- 5) Workforce Development: Another factor in the increase in personnel cost is the addition of internal workforce development. MCE has launched a paid internship program (part time employees) that allows members of MCE's service area, who may not have otherwise had the opportunity to work in the renewable energy industry, to get professional development and education about the industry. We are hoping to hire 10 part-time interns for this upcoming fiscal year.

Overall, the proposed personnel costs represent 2.6% of the total Operating Fund Budget,

which is slightly less than the current fiscal year. Personnel costs are net of a \$1.7 million allocation of MCE staff time to Energy Efficiency Program and other grant program administration.

Data Manager (- \$458,000, 7% decrease): This decrease is reflective of the net amount of moving some of the outsourced call center activities to the in-house service (-\$920,000), and the increased cost of serving additional customer accounts. Our Data Manager charges on a net account basis so with additional customer accounts in newly added communities, fees charged by our data manager increase.

Legal and Policy Services (+\$24,000, 2% increase): Legal counsel expenses support MCE's contracting, human resources, financial and regulatory activities including market restructuring issues. Certain legal counsel expenses are expected to be down slightly due to changing counsel to more cost-effective firms. Additionally, CalCCA continues to take on a number of the regulatory and policy issues on behalf of all CCAs in California thus reducing the expenses that were previously borne directly by MCE. These reductions in legal costs have been offset by additional costs to support/advise MCE's staff on issues related to employment law, storage technologies and financing matters such as MCE's bonding activities, MCE's electricity prepayment transaction and complex contracting needs related to MCE's energy storage program.

Communications Services (-\$741,000, 26% decrease): Communications and related services include the costs associated with advertising including print, online, and digital; printing and mailing customer notices including compliance notices, targeted programs and on-going engagement; maintaining the website; community outreach and sponsorships; and special events. MCE is also investing in customer engagement campaigns targeting vulnerable customers with the MCE Cares cost relief program, financial assistance and resiliency support, to increase diverse customer outreach and to promote our superior product mix and brand value proposition. Costs for Communication Services are expected to be reduced after bringing some previously outsourced services in-house.

Other services (+\$305,000, 15% increase): Other services encompass certain expenses which are not captured in other budget categories, such as consultants and other professional services. These expenses include consulting services related to the implementation of CRM software, and the consulting and implementation of the Digital Analytics Platform (DAP) developed by the Technology and Analytics Department.

General and Administration (+\$544,000, 25% increase): General and administration costs include office supplies, data, travel, dues and subscriptions, support for California Community Choice Association (CalCCA), and other related expenses. Increased costs are associated with increased regulatory and legislative activities, CRM licenses for use by our Public Affairs Department, Customer Programs Department, and Legal and Policy Department, and load forecasting tools for use by the Power Resources Department to allow for more sophisticated resource allocation, improved performance and decreased cost of energy load scheduling.

Finance and Contingency (+\$250,000, 20% increase): Finance continues to be focused on enhancing MCE's credit ratings and liquidity, maximizing investment earnings/returns and managing credit risk across our platform with our renewable energy providers and numerous contractual counterparties and service providers. Additionally, improved budgetary accuracy, discipline and accountability will continue to be a primary function of the Finance Department. As the operating components of the Finance Department are allocated in all of the other budget line items, only the Contingency is represented here. This year Finance is recommending that we reduce the contingency amount to .0025% of the total Operating Fund Budget but with the larger overall budget the Contingency amount increases to \$1,500,000 and that it once again be managed/allocated based upon actual outcomes and needs within the group budgets throughout the fiscal year.

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

Grant income (\$2,281,000, 231% increase): MCE receives grants from government and non-profit organizations to support certain activities connected to MCE's mission. Grant income varies year to year as grants can be "one time" or can be provided to MCE under multiple year agreements. A number of grants expired in the current fiscal year with others starting in the 2022/23 fiscal year. Included are:

- 1) \$417,000 for MCE's EV Ready Phase 2 Grant funded by the California Energy Commission (CEC). This grant was awarded to the Contra Costa Transit Authority (CCTA) to implement strategies in CCTA's EV Readiness Blueprint. MCE is partnering with CCTA on this grant to oversee the installation of Level 1 and Level 2 electric vehicle supply equipment (EVSE) in multi-family dwellings, workplaces, and public locations in underserved communities in Contra Costa County. MCE's match portion of this three-year grant is \$417,000, while the CEC grant is \$1,504,500 with an additional match by CCTA of \$42,753.
- 2) \$1,864,000 for Disadvantaged Communities Green Tariff and Community Solar Green Tariff Programs (DACG-GT). The program enables income-qualified, residential customers in disadvantaged communities who may be unable to install solar on their roof to benefit from utility scale clean energy and receive a 20% bill discount.

Interest income (+\$1,500,000, +50% increase): Increased interest income is expected to result from a targeted investment strategy to take advantage of the increase in interest rates over the last 6-8 months and additions to our reserves over the course of the fiscal year.

MCE Cares Targeted Cost Relief Program: Included in our FY 2022/23 budget is a placeholder of \$5,000,000 for the Board to consider extending energy bill support for our most vulnerable residential and small commercial customers through September of 2022. This program would continue to help mitigate impacts of energy costs exacerbated by the effects of COVID-19, increases in the cost of energy, the MCE rate adjustment and PG&E

transmission and distribution rate increases scheduled to go into effect on March 1. The proposed extension of the MCE Cares Program could support up to 115,000 CARE/FERA residential customers and 42,000 small commercial customers for a 6-month period. If approved by your Board at the March 17th meeting, this program would be extended beginning in April 1st and run through September 30th.

Energy Efficiency Program Fund

The Energy Efficiency Program Fund uses funding authorized by the California Public Utilities Commission (CPUC) to support multifamily, commercial, agricultural, industrial, single family and workforce development sub-programs. The Energy Efficiency Program Fund supports the activities of the Energy Efficiency (EE) Program and the Low-Income Families and Tenants (LIFT) Pilot Program. Both programs involve the reimbursement of eligible expenses by the CPUC and accordingly, revenues and expenses for these programs offset each other. MCE LIFT Pilot Program was originally scheduled to end in 2021 but MCE received additional funding from the CPUC to extend the program through 2023. The Energy Efficiency Program received an additional \$4,000,000 to expand the successful Commercial Efficiency Marketplace and an additional \$3,854,000 to continue the Peak FLEXMarket Program to support summer reliability. CPUC funding for Equity and Market Support programs also increased by \$1,700,000 as a result of updates to EE cost effectiveness policy. The funds awarded from the CPUC have increased from \$8,614,000 in FY 2021/22 to \$20,183,000 in FY 2022/2023.

Local Renewable Energy and Program Development Fund

The Local Renewable Energy Development Fund (LREDF) is financed by a transfer from the Operating Fund equal to 50% of the 1¢/kWh premium for Deep Green service and additional amounts if approved by the Board. For the 2022/23 budget year, in addition to a \$942,000 transfer representing 50% of the incremental 1¢/kWh, staff is recommending an additional \$770,000 transfer from the Operating fund. These resources are used to plan and develop local renewable energy projects including:

MCEv: MCE's electric vehicle program (MCEv) promotes EV adoption through rebates for charging infrastructure at work places and multifamily dwellings, vehicle rebates for low-income customers, a smart charging app, and regional planning and permitting support.

Low Income Solar Program: The low-income solar program provides rebates for low-income solar installations when paired with storage. Expenditures primarily target residential single-family and multi-family rooftop installations.

Regional Midstream Heat Pump Water Heater Program: MCE is partnering with other Bay Area CCAs, and the Bay Area Regional Energy Network to co-fund a program aimed at engaging regional water heater contractors to increase the adoption rate of electric, grid-enabled heat pump water heaters.

Resiliency Fund

On November 21, 2019, your Board approved the creation of a Resiliency Fund with initial funding in the amount of \$3,000,000, incremental funding of \$3,000,000 in 2020 and \$1,000,000 in 2021. The creation of this fund was in large part a response to PG&E's Public Safety Power Shutoff (PSPS) events. These events significantly impact the safety, reliability, health and welfare of our customers, and disproportionately affect vulnerable populations. MCE is working to help strengthen our communities by piloting battery storage and small-scale microgrids to retain some essential power supply during PSPS events and other outages while minimizing the use of carbon-emitting generators and fossil-fuel technologies. MCE's Energy Storage Program provides funding, technical assistance and monthly bill credits to help our customers install batteries.

Staff is recommending an additional \$2,000,000 in the FY 2022/2023 Fiscal Year for the following items:

- Extending the timeline of the Energy Storage Program.
- Supporting the Richmond Advanced Energy Community Grant.
- Developing the MCE Virtual Power Plant Project in early 2023.

This additional \$2,000,000 for the 2022/23 Fiscal Year would bring the total funding to \$9,000,000.

Fiscal Impacts: The net impact of the Proposed Operating Fund Budget is a projected \$98,000,000 contribution to MCE's net position during FY 2022/23 or an estimated \$93,000,000 assuming a \$5,000,000 Cost Relief Program. The proposed projections assume no change to MCE's current rates and are based on the best available information regarding market prices for any unhedged power supply.

Potential FY 2022/23 Budget Impacts: A number of anticipated and unanticipated events could have a measurable effect on MCE's finances in the coming fiscal year. These include:

- 1) System energy and resource adequacy costs may end up being higher than anticipated due to market volatility, availability and/or due to regulatory changes that can diminish the value of existing contracts, or drive up costs;
- 2) Time-of-Use Rate (voluntary and mandatory) implementation may result in lower peak time revenues as customers respond to price signals;
- 3) Customer Energy Demand – As we experienced in previous summer heat events, extreme weather events can have a significant impact on MCE's finances as energy demand can outpace our hedged energy supply.

Recommendation: Approve the **Fiscal Year 2022/23** proposed Budgets for the Operating Fund, Energy Efficiency Program Fund, Local Renewable Energy and Program Development Fund, and Resiliency Fund.



MCE Operating Fund
Proposed Budget Fiscal Year 2022/23
From April 1, 2022 through March 31, 2023

	Fiscal Year 2021/22 Approved Budget	Fiscal Year 2021/22 Projected Budget	Fiscal Year 2022/23 Proposed Budget	% Variance (Under) Over	As % of Net Electricity Revenue
ENERGY REVENUE					
Operating Revenues	\$ 493,501,000	\$ 509,079,000	\$ 647,152,000	31.1%	
Uncollectible Accounts	(9,545,000)	(9,740,000)	(18,459,000)	93.4%	
REVENUE - ELECTRICITY NET	483,956,000	499,339,000	628,693,000	29.9%	100.0%
ENERGY EXPENSES					
Cost of Energy	410,657,000	449,768,000	495,310,000	20.6%	78.8%
NET ENERGY REVENUE	73,299,000	49,571,000	133,383,000	82.0%	21.2%
OPERATING EXPENSES					
Personnel	12,830,000	13,406,000	16,167,000	26.0%	2.6%
Data Manager	6,220,000	6,255,000	5,762,000	-7.4%	0.9%
Technical and Scheduling Consultants	1,040,000	910,000	1,028,000	-1.2%	0.2%
Service Fees - PG&E	2,372,000	2,290,000	2,465,000	3.9%	0.4%
Legal and Policy Services	1,379,000	881,000	1,403,000	1.7%	0.2%
Communication Services	2,893,000	1,398,000	2,152,000	-25.6%	0.3%
Other Professional Services	2,013,000	2,123,000	2,318,000	15.2%	0.4%
General and Administrative	2,144,000	1,680,000	2,688,000	25.4%	0.4%
Occupancy	995,000	908,000	1,028,000	3.3%	0.2%
Contingency	1,250,000	576,000	1,500,000	20.0%	0.2%
TOTAL OPERATING EXPENSES	33,136,000	30,427,000	36,511,000	10.2%	5.8%
OPERATING INCOME	40,163,000	19,144,000	96,872,000	141.2%	15.4%
NONOPERATING REVENUES					
Grant Income	689,000	279,000	2,281,000	231.1%	0.4%
Other Income	-	6,717,000	-		0.0%
Interest Income	1,000,000	594,000	1,500,000	50.0%	0.2%
TOTAL NONOPERATING REVENUES	1,689,000	7,590,000	3,781,000	123.9%	0.6%
NONOPERATING EXPENSES					
Banking Fees and Financing Costs	220,000	182,000	222,000	0.9%	0.0%
Grant Expenses	689,000	245,000	2,281,000	231.1%	0.4%
TOTAL NONOPERATING EXPENSES	909,000	427,000	2,503,000	175.4%	0.4%
CHANGE IN NET POSITION	40,943,000	26,307,000	98,150,000	139.7%	15.6%
Budgeted Net Position Beginning of Period	189,350,000	189,350,000	215,657,000	13.9%	-
Change in Net Position	40,943,000	26,307,000	98,150,000	139.7%	15.6%
BUDGETED NET POSITION END OF PERIOD	230,293,000	215,657,000	313,807,000	36.3%	-
CAPITAL EXPENDITURES, INTERFUND TRANSFERS & OTHER					
Capital Outlay	132,500	11,000	75,000	-43.4%	0.0%
Transfer to Resiliency Fund	1,000,000	1,000,000	2,000,000	100.0%	0.3%
Transfer to Local Renewable Development Fund	1,100,000	1,100,000	1,712,000	55.6%	0.3%
CARES	10,000,000	4,820,000	5,000,000	-50.0%	0.8%
TOTAL CAPITAL EXPENDITURES, INTERFUND TRANSFERS & OTHER	12,232,500	6,931,000	8,787,000	-28.2%	1.4%
BUDGETED NET INCREASE IN OPERATING FUND BALANCE	28,710,500	19,376,000	89,363,000	211.3%	14.2%



MCE
Local Renewable Energy & Program Development Fund
Proposed Budget Fiscal Year 2022/23
From April 1, 2022 to March 31, 2023

	Fiscal Year 2021/22 Approved Budget	Fiscal Year 2022/23 Proposed Budget
REVENUE AND OTHER SOURCES		
Transfer from Operating Fund	\$ -	\$ 770,000
Deep Green Transfer	1,100,000	942,000
TOTAL REVENUE AND OTHER SOURCES	1,100,000	1,712,000
EXPENDITURES AND OTHER USES		
Local Pilot Programs	1,500,000	3,436,000
Low Income Solar Programs	190,000	100,000
Regional Heat Pump Water Heater Program	300,000	200,000
TOTAL EXPENDITURES AND OTHER USES	1,990,000	3,736,000
Net Increase (Decrease) in Fund Balance	(890,000)	(2,024,000)
Fund Balance at Beginning of Period*	1,040,000	2,033,000
Fund Balance at End of Period	150,000	9,000

*Beginning balance for FY 2022/23 differs from budget FY 2021/22 ending balance due to delays in actual fund spending.



MCE
Resiliency Fund
Proposed Budget Fiscal Year 2022/23
From April 1, 2022 to March 31, 2023

	Fiscal Year 2021/22 Approved Budget	Fiscal Year 2022/23 Proposed Budget
REVENUE AND OTHER SOURCES		
Marin Community Foundation Grant	\$ 750,000	\$ -
Transfer from Operating Fund	1,000,000	2,000,000
Total Revenue and Other Sources	1,750,000	2,000,000
EXPENDITURES AND OTHER USES		
Efforts Related to Marin Community Foundation Grant	750,000	485,000
Resiliency Efforts	4,926,000	3,379,000
TOTAL EXPENDITURES AND OTHER USES	5,676,000	3,864,000
Net Increase (Decrease) in Fund Balance	1,750,000	2,000,000
Fund Balance at Beginning of Period*	4,466,000	2,838,000
Fund Balance at End of Period	540,000	974,000

*Beginning balance for FY 2022/23 differs from budget FY 2021/22 ending balance due to delays in actual fund spending.

MCE
Energy Efficiency Fund
Proposed Budget Fiscal Year 2022/23
From April 1, 2022 to March 31, 2023

	Fiscal Year 2021/22 Approved Budget	Fiscal Year 2022/23 Proposed Budget
REVENUE AND OTHER SOURCES		
Public Purpose Energy Efficiency Program	\$ 7,564,000	\$ 14,705,000
Public Purpose Low Income Families and Tenants Pilot Program	1,050,000	1,625,000
Peak FLEXmarket	-	3,854,000
TOTAL REVENUE AND OTHER SOURCES	8,614,000	20,184,000
EXPENDITURE AND OTHER USES		
Public Purpose Energy Efficiency Program	7,564,000	14,705,000
Public Purpose Low Income Families and Tenants Pilot Program	1,050,000	1,625,000
Peak FLEXmarket	-	3,854,000
TOTAL EXPENDITURES AND OTHER USES	8,614,000	20,184,000



POLICY 013: Reserve Policy

Policy Statement

MCE will adopt budgets and establish rates that provide for a growing Reserve until target funding levels are met.

The Reserve will grow to and be maintained at a funding level equal to or exceeding 60% of projected energy and operating expenses for the current fiscal year. The Reserve will be accounted for as the Net Position in MCE's financial statements.

The MCE Board will adopt budgets and establish rates for MCE with the goal of building and maintaining Reserves at or above the target level by March 2022, subject to MCE's ability to meet operational expenditures and maintain competitive rates.

Policy Purpose

MCE will prudently manage its operations in a manner that supports its long-term financial independence and stability while providing sufficient financial capacity to meet short term obligations. This Reserve Policy is important in meeting MCE's strategic objectives, securing favorable commercial terms from both third-party service providers and lenders and in the maintenance and potential improvement in MCE's stand-alone credit ratings.

Adequate Reserves will enable MCE to satisfy working capital requirements, procure energy at competitive rates, adhere to loan or bond covenants, cover unanticipated expenditures, and support rate stability.

Relationship to the Budget, Liquidity and Periodic Review

By setting rates and authorizing expenditures through approved Budgets, MCE determines targeted additions to Reserves. Staff will carefully monitor MCE's liquidity to ensure it meets the objectives of the organization with the goal of securing 240 days liquidity on hand¹. Staff will review the Reserve Policy annually to ensure it meets the needs of the agency. The future development of MCE may require the expansion of reserve requirements to support new activities such as major expansion of MCE activities or the acquisition of generating assets.

¹ Days liquidity on hand = (unrestricted cash and investments + unused bank lines of credit) x 365 / (operating expenses + cost of energy, each for the current fiscal year)



March 17, 2022

TO: MCE Board of Directors

FROM: Vicken Kasarjian, COO

RE: Resolution No. 2022-05 Appointing Director of Finance as Treasurer (Agenda Item #07)

ATTACHMENT: Proposed Resolution No. 2022-05 Appointing Director of Finance as Treasurer

Dear Board Members:

Summary:

MCE has relied on Garth Salisbury, Director of Finance, to serve as its Treasurer in accordance with Government Code 6505.5, since being appointed by your Board in March 2020. Pursuant to Government Code Section 53607 authority delegated to a treasurer may be delegated by your Board for a one-year period. The Director of Finance, Garth Salisbury, who is currently serving as Treasurer, has the requisite qualifications and experience to continue to serve as MCE Treasurer.

1. Responsibilities and Duties of Treasurer:

Government Code Section 6505.5 identifies the duties of an agency treasurer:

- a. Receive and receipt for all money of the agency or entity and place it in the treasury of the treasurer so designated to the credit of the agency or entity.
- b. Be responsible, upon his official bond, for the safekeeping and disbursement of all agency or entity money so held by him.
- c. Pay, when due, out of money of the agency or entity held by him, all sums payable on outstanding bonds and coupons of the agency or entity.
- d. Pay any other sums due from the agency or entity from agency or entity money, or any portion thereof, only upon warrants of the public officer performing the functions of auditor or controller who has been designated by the agreement.
- e. Verify and report in writing on the first day of July, October, January, and April of each year to the agency or entity and to the contracting parties to the

agreement the amount of money he holds for the agency or entity, the amount of receipts since his last report, and the amount paid out since his last report.

2. Authority to Appoint Officer

Government Code Section 6505.6 and Section 4.13.3 of the MCE Joint Powers Agreement provide that MCE may appoint one of its own officers or staff to serve as its Treasurer. Following his appointment, the officer must contract with a certified public accountant to conduct an annual independent audit pursuant to Government Code Section 6505.

3. Qualifications of Director of Finance

Garth Salisbury, MCE's Director of Finance, has over 35 years of municipal finance experience as a Public Finance Investment Banker, Municipal Advisor and Municipal Consultant. He has worked at Lehman Brothers (7 years) JPMorgan (17 years) and Royal Bank of Canada (7 years) and Sperry Capital (2 years). He has structured over \$35 billion in bond issues and over \$12 billion of investment portfolios and hedging contracts. He maintains FINRA Series 7, 24, 50, 53 and 63 Securities Licenses and is current on all continuing education. As MCE's Director of Finance, he oversees all of MCE's financial matters and has been appointed as MCE Treasurer for the past two years.

Fiscal Impacts:

None.

Recommendation:

Adopt Resolution No. 2022-05 Appointing Director of Finance as Treasurer.

RESOLUTION 2022-05

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY APPOINTING DIRECTOR OF FINANCE AS TREASURER

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, pursuant to Government Code Section 6505.6 and Section 4.13.3 of MCE's Joint Powers Agreement, as amended, dated December 19, 2008 (JPA), MCE may appoint one of its officers or employees to either or both of the positions of Treasurer or Auditor-Controller, and such person or persons shall comply with the duties and responsibilities of the office or officers as set forth in subdivisions (a) to (e), inclusive, of Government Code Section 6505.5; and

WHEREAS, Garth Salisbury, the Director of Finance of MCE, is currently serving as Treasurer of MCE, as appointed by the Board in March 2021 under Resolution 2021-02, and has the authority to invest or reinvest funds of a local agency, or to sell or exchange securities so purchased in accordance with MCE's Investment Policy. Pursuant to Government Code Section 53607, this authority may be delegated for a one-year period; and

WHEREAS, Garth Salisbury continues to be qualified to serve as Treasurer and can perform the required functions and duties of Treasurer.

NOW, THEREFORE, BE IT RESOLVED, by the MCE Board of Directors, as authorized by Government Code Section 6505.6 and Section 4.13.3 of the MCE JPA, and pursuant to Government Code Section 53607, the appointment of the Director of Finance, Garth Salisbury, as Treasurer of MCE is hereby renewed, effective immediately upon the passage and adoption of this resolution.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 17th day of March, 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



March 17, 2022

TO: MCE Board of Directors

FROM: Shalini Swaroop, Chief Legal and Policy Officer

RE: Policy Update of Regulatory and Legislative Items (Agenda Item #08)

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**

a. **State Legislative Advocacy**

The 2022 state legislative session is underway, with bills having been introduced in February and being heard in policy committees this month and next. While many bills are either still under development or undergoing analysis, staff have identified a few early priorities:

- AB 1814 (Grayson) - Would give CCAs access to CPUC funding to support transportation electrification. Sponsored by CalCCA.
- SB 881 (Min) - Would make electric sector greenhouse gas targets enforceable.
- SB 1158 (Becker) - Would change Power Source Disclosure reporting rules to support achievement of hourly electric sector greenhouse gas targets.
- SB 1287 (Bradford) - Would increase the Financial Security Requirements applicable to CCAs.

Staff have also identified several strong themes at this stage, with several bills addressing various aspects of solar access, building electrification, electric

vehicles, wildfire risk reduction, reliability, and support for a range of clean energy technologies.

Finally, SB 612 (Portantino) was introduced last year to reform the PCIA, but did not advance to the Governor's desk. It remains "live" and eligible to be brought back this year. CalCCA is in conversation with Sen. Portantino's office to determine his intentions for the bill this year.

b. Federal Legislative Advocacy

MCE has been ramping up federal legislative advocacy efforts in partnership with its new lobbying firm based in Washington D.C., ThornRun Partners. Primarily, MCE has been investigating funding opportunities. This includes supporting green hydrogen procurement, emergency resiliency, healthy homes, electric vehicles, and cutting edge technologies. MCE has begun meeting with Congressional delegation members and their staff and plan to make earmark requests as well.

II. California Public Utilities Commission

a. Energy Efficiency

On March 4, 2022, MCE filed an Application for Approval of its Energy Efficiency Business Plan and Portfolio Plan (EE Business Plan) with the CPUC. The eight-year EE Business Plan application proposes an \$188 million investment from 2024 to 2031 in energy efficiency and demand management programs to benefit MCE customers, reduce greenhouse gas emissions, and support grid resiliency. It comprehensively addresses the needs of MCE's agricultural, commercial, industrial, public agency, and residential customers, extends MCE's groundbreaking Peak FLEXmarket Program, and creates new equity offerings for residents in environmental justice communities in MCE's service area that have faced historic barriers to access.

MCE's EE Business Plan outlines a holistic vision of energy efficiency that advances decarbonization, improves grid reliability, delivers energy savings, and provides community benefits. MCE combines traditional energy efficiency approaches with meter-measured and performance-based strategies, strategic energy management education, load shaping and demand response measures, building electrification measures, and an optimized layering of related clean energy programs to provide significant benefits to its customers and the grid.

MCE estimates this \$188 million plan will permanently reduce 192,473 megawatt-hours of energy consumption and provide over \$148 million in benefits between 2024 and 2031. Additional projected benefits include reducing energy bills, improving environmental health, and supporting critical workforce development.

MCE will advocate for CPUC approval of its EE Business Plan over the next year. MCE anticipates a Final Decision in Fall of 2023.

b. Affordability OIR

In 2018, the CPUC opened a proceeding to develop a quantitative framework to analyze affordability for all of the services under its jurisdiction – electric, gas, water, telecommunications, and broadband. The proceeding is also a venue for identifying strategies to manage rates and promote affordability. To this end, the CPUC held a two-day hearing on February 28 and March 1, attended by all of the CPUC Commissioners and several CEC Commissioners. In addition to ensuring that customers are not jeopardized by high utility rates, the CPUC seeks to ensure that high electric rates do not stifle efforts to move away from fossil fuels in favor of clean electricity for transportation and buildings. The proceeding remains open for the CPUC to consider several proposals raised by a range of stakeholders, which include:

- Funding certain initiatives through the general fund, cap-and-trade revenues, or other off-bill charges, rather than through electric rates,
- Public ownership and/or financing of transmission,
- Percentage of Income Payment Plans for the customers at greatest risk of disconnection,
- Higher fixed charges on electric bills, and
- Reducing IOU return on equity (shareholder profits).

Staff will continue to participate in the proceeding to ensure that MCE customer needs are well represented.

c. Commission Approves MCE's Integrated Resources Plan (IRP) Adopts a 2021 Preferred System Plan in the IRP Proceeding

On February 10, 2022, the Commission adopted a Preferred System Plan (PSP) in the IRP proceeding via Decision 22-02-004 to set forth its preference for procurement resources on the grid for the next decade. The decision also evaluated the IRPs filed by all the load serving entities (LSEs) under the Commission's jurisdiction and approved MCE's IRP. The decision noted that MCE's IRP was exemplary with respect to its discussion of: (1) MCE's focus on disadvantaged communities; (2) hydroelectric generation risk management; and (3) procurement activities.

The PSP covers the combined service areas of all the LSE's that submit IRPs to the Commission. The PSP is based first on all the filed IRPs, and then staff adjustments to reflect an existing procurement order (*i.e.*, mid-term reliability) from the Commission. The PSP seeks to continue to reduce greenhouse gas emissions in the electricity sector to 38 million metric tons (MMT) by 2030 and 35 MMT by 2032.

The PSP also includes indications of where additional transmission capacity is needed for planning purposes and indicates additional procurement of specified resources is needed over the planning horizon (e.g., 1.7 gigawatts of offshore wind by 2032). In the same decision, the Commission made additional adjustments to its IRP modeling assumptions and IRP process.

d. Resource Adequacy

i. RA Implementation Track: Proposed Decision Revising the Central Procurement Entity Framework

On February 10, 2022 the CPUC issued a Proposed Decision (PD) addressing near-term implementation issues affecting the Central Procurement Entities' (CPE) procurement of 2023 local Resource Adequacy (RA) resources.

The CPUC adopted the CPE framework in 2020. The framework is in its first implementation year and is focused on local RA procurement for RA compliance year 2023. Under the adopted CPE framework, Pacific Gas and Electric Company (PG&E) and Southern California Edison (SCE) must procure all RA needed to meet their respective distributions areas' local RA needs. In November 2021, however, compliance reports filed by PG&E and SCE, as the CPEs, indicated insufficient procured local RA procurement for 2023. In PG&E's case, it fell short of its CPE requirements by as much as 6,000 MW for 2023.

The PD responds to structural and procedural flaws in the CPE framework identified as a result of these procurement deficiencies. The PD would: (a) authorize the CPEs to engage in additional procurement activities to fill local RA open positions; (b) alter CPE procedural timelines to better align with procurement and compliance timelines; and (c) address incentives for Load Serving Entities (LSE) to provide local RA resources to the CPE to meet local RA requirements.

MCE, in coordination with CalCCA, filed comments at the CPUC on March 2, 2022. The comments highlighted flaws in the PD that: (a) interfere with CCA RA procurement efforts; (b) increase RA procurement uncertainty for LSEs, which could increase the risk of RA non-compliance and penalties; (c) disincentivize LSEs from providing local RA resources to the CPE; and (d) potentially raise RA costs and drive over-procurement. Given the demonstrated flaws in the CPE framework, the comments also request the CPUC re-evaluate the CPE framework in its entirety to confirm whether it is the optimal means to meet the state's local RA procurement needs.

A Final Decision is expected by the end of the month.

ii. RA Reform Track: Final Working Group Report on RA Reform

In July 2021, the CPUC directed stakeholders to develop proposals to reform the CPUC's RA compliance program. On February 28, 2022, stakeholders filed a Final Working Group Report summarizing progress made towards this effort over the course of 10 CPUC workshops held since September 2021.

By 2024, the CPUC is looking to transition to an RA compliance program based on meeting capacity needs during specific hours of the day (this approach is referred to as a slice-of-day framework) as opposed to the current RA compliance program that focuses on meeting monthly peak load. Two structural proposals are being debated among stakeholders: (1) a 24-Slice proposal whereby an LSE would have to procure sufficient capacity to meet its hour-specific capacity needs; and (2) a 2-Slice proposal whereby an LSE would procure sufficient capacity to meet its share of (i) a monthly peak load and (ii) a monthly net peak load that occurs later in the evening when solar generation is largely unavailable.

Currently there is no consensus among LSEs or among CCAs as to which of the RA framework proposals would best support the state's reliability needs.

On February 7, 2022, MCE, along with a number of CCAs, submitted informal comments generally supporting continued refinement of the 24-Slice proposal. However, the informal comments emphasize that a 2024 implementation date is likely unachievable and that additional analysis needs to be done to ensure: (a) the 24-Slice approach fosters a liquid and transactable RA market; (b) that resource technologies are appropriately valued according to their contribution to reliability in specific hours; and (c) that the framework is sufficiently resilient to evolve according to changing grid needs.

The CPUC is expected to issue a PD providing additional guidance to stakeholders on how to proceed with RA reform in the coming months.

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

On February 10, 2022, the CPUC adopted a Decision in PG&E's 2022 Energy Resource Recovery Account (ERRA) Application. The Decision authorized PG&E to recover costs associated with its 2022 forecast of electric procurement costs and expected revenue requirement for bundled and unbundled customers in rates, including the Power Charge Indifferent Adjustment (PCIA).

On February 18, 2022, PG&E filed an Advice Letter (AL) to implement the Commission authorized changes to its electric rates, effective March 1, 2022.

As a result of the authorized changes, beginning March 1, 2022, PG&E bundled customers received an average rate increase of 2.63 cents per kWh, or a 10.5% increase, over previous rates. For Direct Access and CCA customers, the authorized changes result in an average rate decrease (on the PG&E side) of 16.4%.

This rate decrease for CCA customers is driven by a significant reduction to the PCIA. On average, PCIA vintage year rates for 2022 dropped by more than 50% . For example, MCE residential customers with a 2012 vintage year received a 55% reduction in their PCIA rate, from 4.42 cents per kWh, to 2.07 cents per kWh beginning March 1, 2022.

f. 2021 PG&E's 2021 ERRR Compliance Proceeding

On February 28, 2022, PG&E filed its 2021 ERRR Compliance Application. This proceeding will review PG&E's compliance with its procurement plan from the 2021 ERRR Forecast proceeding, and will include a review of:

- Accounting records of PG&E's expenses and revenues;
- Energy procurement activities of contract administration; and
- Economic procurement of electric resources.

MCE staff plan to engage in this proceeding through CalCCA. Staff will continue to provide updates to the Board as they become available.

Recommendation: Information only. No action required.