

Board of Directors Meeting
Thursday, April 20, 2023
7:00 P.M.

Charles F. McGlashan Board Room, 1125 Tamalpais Avenue, San Rafael, CA 94901
Mt. Diablo Room, 2300 Clayton Road, Suite 1150, Concord, CA 94920

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:

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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 3.16.23 Meeting Minutes
 - C.2 Approved Contracts for Energy Update
 - C.3 Master Services Agreement and Schedule A.1 with Franklin Energy Services, LLC
 - C.4 Resolution No. 2023-03 Authorizing the CEO to Negotiate and Execute a Vendor Services Agreement with GRID Alternatives Bay Area, Inc. and Schedule A.2 to the Master Services Agreement with Franklin Energy Services, LLC for the Richmond Rising Program

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C.5 Resolution No. 2023-04 Appointing Chief Financial Officer as Treasurer

6. Richmond Virtual Power Plant Briefing by Director Beckman (Discussion)
7. Addition of Board Members to Committees (Discussion/Action)
8. Resolution No. 2023-05 Accepting Community Project Funding from the Congressional Grants Division of the U.S. Department of Housing and Urban Development (Discussion/Action)
9. Resolution No. 2023-06 Approval of Revolving Credit Agreement with Royal Bank of Canada (Discussion/Action)
10. Public Affairs and Customer Programs Update (Discussion)
11. Policy Update (Discussion)
12. Board Matters & Staff Matters (Discussion)
13. 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 call MCE at 1 (888) 632-3674 at least 72 hours before the meeting start time to ensure arrangements for accommodation.

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MCE BOARD MEETING MINUTES
Thursday, March 16, 2023
7:00 P.M.

Present:

Kari Birdseye, City of Benicia
Eli Beckman, Town of Corte Madera
Barbara Coler, Town of Fairfax
Cindy Darling, City of Walnut Creek
Alexis Fineman, Town of San Anselmo
David Fong, Town of Danville
Ryan Gregory, County of Napa and All Four Napa Cities
Kevin Haroff, City of Larkspur
Kerry Hillis, Town of Moraga
Eduardo Martinez, City of Richmond
J.R. Matulac, Alternate, City of Vallejo
Aaron Meadows, City of Oakley
Scott Perkins, City of San Ramon
Elizabeth Pabon-Alvarado, Alternate, City of San Pablo
Katie Rice, County of Marin
Matt Rinn, City of Pleasant Hill
Shanelle Scales-Preston, City of Pittsburg
Maureen Toms, Alternate, City of Pinole
John Vasquez, County of Solano
Sally Wilkinson, City of Belvedere
K. Patrice Williams, City of Fairfield
Brienne Zorn, City of Martinez

Absent:

John Gioia, Contra Costa County
Edi Birsan, City of Concord
Gabriel Quinto, City of El Cerrito
Gina Dawson, City of Lafayette
Max Perrey, City of Mill Valley
Beth Painter, City of Napa
C. William Kircher, Town of Ross
Maika Llorens Gulati, City of San Rafael
Janelle Kellman, City of Sausalito
Holli Thier, Town of Tiburon
City of Novato

**Staff
& Others:**

Alice Havenar-Daughton, Director of Customer Programs
Darlene Jackson, Lead Board Clerk

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Vicken Kasarjian, COO
Tanya Lomas, Internal Operations Assistant
Vidhi Chawla, Manager of Power Resources
Garth Salisbury, CFO and Treasurer
Lindsay Saxby, Director of Power Resources
Enyonam Senyo-Mensah, Office Manager
Daniel Settlemyer, Internal Operations Coordinator
Dawn Weisz, CEO

1. Roll Call

Chair Scales-Preston called the regular meeting to order at 7:03 p.m. with quorum established by roll call.

2. Board Announcements (Discussion)

There were comments from Director Rice.

3. Public Open Time (Discussion)

Chair Scales-Preston opened the public comment period and there were comments from Member of the Public, Rebecca Collins.

4. Report from Chief Executive Officer (Discussion)

CEO Dawn Weisz introduced this item and addressed questions from Board members.

Chair Scales-Preston opened the public comment period and there were no comments.

5. Consent Calendar (Discussion/Action)

- C.1 2.16.23 Meeting Minutes
- C.2 Approved Contracts for Energy Update
- C.3 Proposed Second Amendment to Master Services Agreement with R Systems International Limited

Chair Scales-Preston opened the public comment period and there were no comments.

Action: It was M/S/C (Rinn/Perkins) to **approve Consent Calendar items C.1 - C.3**. Motion carried by unanimous roll call vote. (Absent: Directors Birsan, Dawson, Gioia, Kellman, Kircher, Llorens-Gulati, Painter, Perrey, Quinto, Thier, and City of Novato.

6. Fiscal Year 2023/24 Proposed Budgets (Discussion/Action)

CFO and Treasurer Garth Salisbury introduced this item and addressed questions from Board members.

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Chair Scales-Preston opened the public comment period and there were no comments.

Action: It was M/S/C (Haroff/Perkins) to approve the Fiscal Year 2023/24 Proposed Budgets. Motion carried by unanimous roll call vote. (Absent: Directors Birsan, Dawson, Gioia, Kellman, Kircher, Llorens-Gulati, Painter, Perrey, Quinto, Thier, and City of Novato.)

7. Proposed Amendments to MCE Policy 014: Investment Policy (Discussion/Action)

CFO and Treasurer Garth Salisbury introduced this item and addressed questions from Board members.

Chair Scales-Preston opened the public comment period and there were no comments.

Action: It was M/S/C (Coler/Perkins) to approve Proposed Amendments to MCE Policy 014: Investment Policy. Motion carried by unanimous roll call vote. (Absent: Directors Birsan, Dawson, Gioia, Kellman, Kircher, Llorens-Gulati, Painter, Perrey, Quinto, Thier, and City of Novato.)

8. Deep Green Resource Mix and New Service Offering (Discussion/Action)

Manager of Power Resources Vidhi Chawla introduced this item and addressed questions from Board members.

Chair Scales-Preston opened the public comment period and there were no comments.

Action: It was M/S/C (Perkins/Rinn) to approve Deep Green Resource Mix and New Service Offering. Motion carried by unanimous roll call vote. (Absent: Directors Birsan, Dawson, Gioia, Kellman, Kircher, Llorens-Gulati, Painter, Perrey, Quinto, Thier, and City of Novato.)

9. Board Matters & Staff Matters (Discussion)

There were none.

10. Adjournment

Chair Scales-Preston adjourned the meeting at 9:47 p.m. to the next scheduled Board Meeting on April 20, 2023.

DRAFT

Shanelle Scales-Preston, Chair

Attest:

Dawn Weisz, Secretary



April 20, 2023

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 March. 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 CEO 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	March 2023	Purchase of Resource Adequacy	\$188,000	Under 1 Year
2	March 2023	Purchase of Resource Adequacy	\$36,400	Under 1 Year
3	March 2023	Purchase of Resource Adequacy	\$3,890,000	Under 1 Year
4	March 2023	Purchase of Resource Adequacy	\$352,500	Under 1 Year
5	March 2023	Purchase of Resource Adequacy	\$282,000	Under 1 Year
6	March 2023	Purchase of Resource Adequacy	\$141,000	Under 1 Year
7	March 2023	Amendment of Agreement to Sell Additional Renewable Energy	\$479,789	1-5 Years

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>
David Potovsky (MCE, Manager of Power Resources)	Procurement/Commercial
John Dalessi (Pacific Energy Advisors)	Technical Review
Steve Hall (Hall Energy Law)	Legal
Nathaniel Malcolm (MCE, Senior Policy Counsel)	Legal/CPUC Compliance

Garth Salisbury (MCE, Chief Financial Officer & Treasurer)	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 2022/23 are within the FY 2022/23 Operating Fund Budget. Expenses and revenue associated with future years will be incorporated into budget planning as appropriate.

Recommendation: Information only. No action required.



April 20, 2023

TO: MCE Board of Directors

FROM: Jennifer Green, Manager of Customer Programs

RE: Master Services Agreement and Schedule A.1 with Franklin Energy Services, LLC (Agenda Item 05 C.3)

ATTACHMENTS: A. Proposed Master Services Agreement with Franklin Energy Services, LLC
B. Proposed Schedule A.1 to the Master Services Agreement with Franklin Energy Services, LLC
C. Third Agreement with Franklin Energy Services, LLC

Dear Board Members:

Summary:

Staff is proposing to transfer the current Third Agreement with Franklin Energy Services, LLC ("Franklin") to the proposed Master Services Agreement ("MSA"). The proposed MSA with Franklin would provide MCE with continued energy efficiency and electrification services for the implementation of MCE's Home Energy Savings ("HES") program and provide a nimble contracting mechanism for future work that MCE anticipates contracting with Franklin for, including expanding MCE's Healthy Homes program.

Background

MCE's HES program provides no-cost energy efficiency services to moderate income households across MCE's service area. MCE received funding from the California Public Utility Commission ("CPUC") to continue this program through 2024 and has applied for funding to continue this program through 2027. MCE has contracted with Franklin since May 2019 and the Third Agreement with Franklin, which your Board approved in December 2021 (see Attachment C), authorizes them to implement MCE's HES program.

Schedule A.1 of the proposed MSA would replace the Third Agreement with Franklin with

no additional scope of work or budget. Under the proposed Schedule A.1 Franklin would continue offering no-cost home assessments and comprehensive energy upgrades to an estimated 350 to 400 eligible single-family homeowners and renters per year through MCE's HES program. HES provides deep energy savings, electrification adoption, and health, comfort, safety, energy, and cost benefits to customers in coordination with other regional programs—ensuring that all income brackets within MCE's service area have access to energy efficiency opportunities.

Rationale for MSA

As MCE's program portfolio expands, Franklin could be a partner in the implementation of several programs and projects with multiple funding streams and unique scopes of work. MCE is looking to partner with Franklin on an upcoming initiative with the City of Richmond, Richmond Rising initiative for MCE's Healthy Homes component. By the end of 2023, MCE would again look to partner with Franklin on expansion of the MCE Healthy Homes program to MCE's entire service area making use of federal earmark funding. By utilizing an MSA instead of a simple form contract, MCE could be more nimble and agile with approving current and future scopes of work with Franklin, rather than drawing up new contracts with potentially differing terms and conditions each time new tasks and programs are added.

Fiscal Impacts:

The duration of the proposed MSA would be from contract execution through December 31, 2027. The maximum cost to MCE would be \$1,785,847.76, with \$1,334,469.52 allocated to customer incentives.

Expenditures related to the proposed MSA and Schedule A.1 with Franklin would be funded from energy efficiency program funds allocated by the CPUC.

Recommendation:

Approve the proposed MSA and Schedule A.1 with Franklin Energy Services, LLC.

MASTER SERVICES AGREEMENT BY AND BETWEEN MARIN CLEAN ENERGY AND FRANKLIN ENERGY SERVICES, LLC

THIS MASTER SERVICES AGREEMENT ("Agreement") is made and entered into on April 20, 2023 by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and Franklin Energy Services, LLC, a Delaware limited liability company with principal address at: 102 North Franklin Street, Port Washington, WI 53074 (hereinafter referred to as "Implementer") (each, a "Party," and, together, the "Parties").

RECITALS:

WHEREAS, MCE desires to retain Implementer to provide the services described in this Agreement and each statement of work ("Statement of Work"), which shall be considered Schedules hereto, which are attached hereto and by this reference made a part hereof ("Services");

WHEREAS, MCE and Franklin Energy had a previous agreement, known as the "Third Agreement by and between Marin Clean Energy and Franklin Energy Services, LLC" dated December 3, 2021 ("Third Agreement"), which is hereby terminated as of April 20, 2023, and replaced with this Master Service Agreement. MCE and Franklin agree that the termination period required by the Third Agreement between the parties has been waived to accommodate such immediate termination and start of this new Agreement.

WHEREAS, Implementer desires to provide the Services to MCE;

WHEREAS, Implementer warrants that it is qualified and competent to render the Services set forth herein;

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

1. SCOPE OF SERVICES:

Implementer agrees to provide all of the Services in accordance with the terms and conditions of this Agreement and each Statement of Work entered into by the Parties. The form of Statement of Work is set forth as **Exhibit A**. Services shall also include any other work performed by Implementer pursuant to this Agreement and Statement of Work. In connection with Implementer's provision of the Services, MCE agrees to make available to Implementer all pertinent data and records for review.

2. FEES AND PAYMENT SCHEDULE; INVOICING:

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

3. MAXIMUM COST TO MCE:

In no event will the cost to MCE for the Services to be provided herein exceed the maximum sum identified in each Statement of Work.

4. TERM OF AGREEMENT:

This Agreement shall commence on **May 1, 2023** ("Effective Date") and shall terminate on **December 31, 2028**, unless earlier terminated pursuant to the terms and conditions set forth in Section 12.

5. REPRESENTATIONS; WARRANTIES; COVENANTS:

5.1. IMPLEMENTER REPRESENTATIONS AND WARRANTIES. Implementer represents, warrants and covenants that (a) it is a limited liability company duly organized, validly existing and in good standing under the laws of the State of **Delaware**, (b) it has full power and authority and all regulatory authorizations required to execute, deliver and perform its obligations under this Agreement and all exhibits and addenda and to engage in the business it presently conducts and contemplates conducting, (c) it is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder, (d)

it is qualified and competent to render the Services and possesses the requisite expertise to perform its obligations hereunder, (e) the execution, delivery and performance of this Agreement and all exhibits and addenda hereto are within its powers and do not violate the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, (f) this Agreement and each exhibit and addendum constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, and (g) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

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

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

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

5.5. PERFORMANCE ASSURANCE; BONDING. At all times during the performance of the Services, Implementer represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all bonding requirements of the California Implementers State License Board ("CSLB"), as may be applicable.

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

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

5.7. BACKGROUND CHECKS.

- a) Implementer hereby represents, warrants and covenants that any employees, members, officers, contractors, Subcontractors and agents of Implementer (each, a "Implementer Party," and, collectively, the "Implementer 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 Implementer permit any Covered Personnel to have one or more convictions during the seven (7) year period immediately preceding the individual's date of assignment to perform the Services, or at any time after the individual's date of, assignment to perform the Services, for any of the following ("Serious Offense"): (i) a "serious felony," similar to those defined in California Penal Code Sections 1192.7(c) and 1192.8(a), or a successor statute, or (ii) any crime involving fraud (such as, but not limited to, crimes covered by California Penal Code Sections 476, 530.5, 550, and 2945, California Corporations Code 25540), embezzlement (such as, but not limited to, crimes covered by California Penal Code Sections 484 and 503 et seq.), or

racketeering (such as, but not limited to, crimes covered by California Penal Code Section 186 or the Racketeer Influenced and Corrupt Organizations ("RICO") Statute (18 U.S.C. Sections 1961-1968)).

- c) To the maximum extent permitted by applicable law, Implementer shall maintain documentation related to such background and drug screening for all Covered Personnel and make it available to MCE for audit if required pursuant to the audit provisions of this Agreement.
- d) To the extent permitted by applicable law, Implementer shall notify MCE if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Implementer shall also immediately prevent that employee, representative, or agent from performing any Services.

5.8. FITNESS FOR DUTY. Implementer shall ensure that all Covered Personnel report to work fit for their job. Covered Personnel may not consume alcohol while on duty and/or be under the influence of drugs or controlled substances that impair their ability to perform the Services properly and safely. Implementer shall, and shall cause its Subcontractors to, have policies in place that require their employees, 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. Implementer shall comply with the following requirements (the "Quality Assurance Procedures"): Additionally, Quality Assurance Procedures must include, but are not limited to: (i) industry standard best practices; (ii) procedures that ensure customer satisfaction; and (iii) any additional written direction from MCE.

5.10. ASSIGNMENT OF PERSONNEL. The Implementer shall not substitute any personnel for those specifically named in Exhibit B, 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. Implementer shall be responsible for obtaining any and all access rights for Implementer Parties, from customers and other third parties to the extent necessary to perform the Services. Implementer shall also procure any and all access rights from Implementer Parties, customers and other third parties in order for MCE and CPUC employees, representatives, agents, designees and contractors to inspect the Services.

6. INSURANCE:

At all times during the Term and the performance of the Services, Implementer shall maintain the insurance coverages set forth below. All such insurance coverage shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, directors, officers, and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of Services. Certificate(s) of insurance must be current as of the Effective Date, and shall remain in full force and effect through the Term. If scheduled to lapse prior to termination date, certificate(s) of insurance must be updated before final payment may be made to Implementer. Each certificate of insurance shall provide for thirty (30) days' advance written notice to MCE of any cancellation, except for ten (10) days' notice for non-payment of premium. Implementer will provide advance written notice to MCE of any reduction in coverage. Insurance coverages shall be payable on a per occurrence basis only.

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

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

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

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

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

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

7. INTENTIONALLY OMITTED.

8. SUBCONTRACTING:

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

- 8.1.** Subcontractor shall comply with the following terms of this Agreement: Sections 9, 10, and the applicable SOW.
- 8.2.** Subcontractor shall provide, maintain and be bound by the representations, warranties and covenants of Implementer contained in Section 5 hereof (only as, and if, applicable to the services to be provided by Subcontractor, and as may be modified to be applicable to Subcontractor, including with respect to Section 5.1(a) hereof) at all times during the Term of such subcontract and its provision of Services.
- 8.3.** Subcontractor shall comply with the terms of Section 6 above, including, but not limited to providing and maintaining insurance coverage(s) identical to what is required of Implementer under this Agreement, and shall name MCE as an additional insured under such policies. Implementer shall collect, maintain, and promptly forward to MCE current evidence of such insurance provided by its Subcontractor. Such evidence of insurance shall be included in the records and is therefore subject to audit as described in Section 9 hereof.
- 8.4.** Subcontractor shall be contractually obligated to indemnify the MCE Parties (as defined in Section 17 hereof) pursuant to the terms and conditions of Section 17 hereof.
- 8.5.** Subcontractors shall not be permitted to further subcontract any obligations under this Agreement.

Implementer shall be solely responsible for ensuring its Subcontractors' compliance with the terms and conditions of this Agreement made applicable above and to collect and maintain all documentation and current evidence of such compliance. Upon request by MCE, Implementer shall promptly forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the Parties shall create any legal or contractual relationship between MCE and any Subcontractor, and no subcontract shall relieve Implementer of any of its duties or obligations under this Agreement. Implementer's obligation to pay its Subcontractors is an independent obligation from MCE's obligation to make payments to Implementer. As a result, MCE shall have no obligation to pay or to enforce the payment of any monies to any Subcontractor.

9. RETENTION OF RECORDS AND AUDIT PROVISION:

Implementer shall keep and maintain on a current basis full and complete records and documentation pertaining to this Agreement and the Services, whether stored electronically or otherwise, including, but not limited to, valuation records, accounting records, documents supporting all invoices, employees' time sheets, receipts and expenses, and all customer documentation and correspondence (the "Records"). Provided that MCE has agreed in writing to confidentiality terms acceptable to Implementer to protect the confidentiality of such Records, MCE shall have the right, during regular business hours, to review and audit all Records during the Term and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Implementer's premises or, at MCE's option, Implementer shall provide all records within a maximum of thirty (30) days upon receipt of written request from MCE. Implementer shall refund any monies erroneously charged. Implementer shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

10. DATA, CONFIDENTIALITY AND INTELLECTUAL PROPERTY:

- 10.1. DEFINITION OF "MCE DATA".** "MCE Data" shall mean all data or information provided by or on behalf of MCE, including but not limited to, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to Implementer as MCE may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Implementer. MCE Data shall also include all data and materials provided by or made available

to Implementer by MCE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors.

"Confidential Information" under this Agreement shall have the same meaning as defined in the Marin Clean Energy Non-Disclosure Agreement between the Parties dated **April 12, 2023**.

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

10.3. MCE DATA SECURITY MEASURES. Prior to Implementer receiving any MCE Data, Implementer shall comply, and at all times thereafter continue to comply, in compliance with MCE's Data security policies set forth in MCE Policy 009 (available upon request) and MCE's Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy ("Security Measures") and pursuant to MCE's Confidentiality provisions in Section 5 of the Marin Clean Energy Non-Disclosure Agreement between the parties dated **April __, 2023**, and as set forth in MCE Policy 001 - Confidentiality. MCE's Security Measures and Confidentiality provisions require Implementer to adhere to reasonable administrative, technical, and physical safeguard protocols to protect the MCE's Data from unauthorized handling, access, destruction, use, modification or disclosure.

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

10.5. RETURN OF MCE DATA. Promptly after this Agreement terminates, (i) Implementer shall securely destroy all MCE Data in its possession and certify the secure destruction in writing to MCE, and (ii) each Party shall return (or if requested by the disclosing Party, destroy) all other Confidential Information and property of the other (if any). Notwithstanding the foregoing, Implementer may retain whatever MCE Data or Confidential Information is necessary to exercise any of Implementer's surviving rights or obligations hereunder.

10.6. OWNERSHIP AND USE RIGHTS.

- a) **MCE Data.** Unless otherwise expressly agreed to in writing by the Parties, MCE shall retain all of its rights, title and interest in MCE'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 Implementer or any Implementer Party under this Agreement with MCE funds ("Intellectual Property"), including finished and unfinished inventions, processes, templates, documents, drawings, computer programs, designs, calculations, valuations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be owned by MCE. In addition, Implementer may keep file reference copies of all Intellectual Property and all documents prepared by Implementer for MCE so long as MCE data is not included.
- c) **Intellectual Property shall be owned by MCE upon its creation.** Implementer agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Intellectual Property.
- d) **Implementer's Pre-Existing Materials.** If, and to the extent Implementer incorporates any preexisting ownership rights ("Implementer's Pre-Existing Materials") in any of the materials furnished or used to create, develop, and prepare the Intellectual Property, Implementer hereby grants MCE on behalf of its customers and the CPUC for governmental and regulatory purposes an irrevocable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free license to use any such Implementer's Pre-Existing Materials for the sole purpose of using such Intellectual Property for the conduct of MCE's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Implementer shall retain all of its rights, title and interest in Implementer's Pre-Existing Materials, including improvements thereto and derivatives thereof. Any and all claims to Implementer's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Intellectual Property must be expressly disclosed to MCE prior to performing any Services under this Agreement.

Implementer's Pre-Existing Materials include:

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

- Healthy Home Connect
- California Multifamily Existing Building training content
- NGAGE™ system software, including Efficiency Manager™, Efficiency Contact™, and Efficiency Clipboard™

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

11. FORCE MAJEURE:

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

12. TERMINATION:

- 12.1.** If the Implementer fails to provide in any manner the Services required under this Agreement, otherwise fails to comply with the terms of this Agreement, or violates any Applicable Law which applies to its performance hereunder, then MCE may terminate this Agreement by giving twenty (20) business days' written notice to Implementer, provided that Implementer does not cure such default within such twenty (20) day period after receipt of notice from MCE.
- 12.2.** Either Party hereto may terminate this Agreement for any reason by giving thirty (30) calendar days' written notice to the other Party. Notice of termination shall be by written notice to the other Party and be sent by registered mail or by email to the email address listed in Section 19.
- 12.3.** In the event of termination not the fault of the Implementer, the Implementer shall be paid for Services performed up to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s). Notwithstanding anything contained in this Section 12, in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Services. Implementer shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12, Implementer shall have delivered to MCE any and all Intellectual Property (as defined in Section 10.6(b)) prepared for MCE that MCE has paid for before the effective date of such termination.
- 12.4.** MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.
- 12.5.** Intentionally Omitted.
- 12.6.** Upon termination of this Agreement for any reason, Implementer shall and shall cause each Implementer Party to bring the Services to an orderly conclusion as directed by MCE.
- 12.7.** Notwithstanding the foregoing, this Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such order or directive.
- 12.8.** Notwithstanding any provision herein to the contrary, Sections 2, 3, 8.4, 9, 10, 12, 15, 16, 17, 18, 19, 20, 21, 22, 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 Implementer and may not be transferred or assigned without the express prior written consent of MCE, provided, however, that Implementer may in its discretion assign this Agreement or any of its rights under this Agreement to any parent, subsidiary or affiliated business entity of Implementer, with timely written notice to MCE.

14. AMENDMENT; NO WAIVER:

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

15. DISPUTES:

Either Party may give the other Party written notice of any dispute which has not been resolved at a working level. Any dispute that cannot be resolved between Implementer's contract representative and MCE's contract representative by good faith negotiation efforts shall be referred to Legal Counsel of MCE and an officer of Implementer for resolution. Within 20 calendar days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If MCE and Implementer cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and Implementer shall have the right to pursue all rights and remedies that may be

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

16. JURISDICTION AND VENUE:

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

17. INDEMNIFICATION:

To the fullest extent permitted by Applicable Law, Implementer shall indemnify, defend, and hold MCE and its employees, officers, and agents ("MCE Parties"), harmless from and against any and all claims, liabilities, losses, and damages (including, but not limited to, reasonable litigation costs, attorney's fees and costs, and injury or death of any person) arising out of, resulting from, or caused by: a) the negligence, recklessness, intentional misconduct, fraud of all Implementer Parties; b) the failure of a Implementer 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 Implementer Party, provided however, that if such claim, liability, loss or damage is caused by the negligence, recklessness or willful misconduct of both MCE and Implementer, then Implementer's indemnification obligation shall be limited to the proportional extent that such liabilities arise from Implementer's negligence, recklessness or willful misconduct.

EXCEPT WITH REGARD TO IMPLEMENTER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL IMPLEMENTER BE LIABLE HEREUNDER FOR ANY PUNITIVE, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES.

18. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

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

19. INVOICES; NOTICES:

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

Email Address: invoices@mcecleanenergy.org

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

Contract Manager: Troy Nordquist

MCE Address: 1125 Tamalpais Avenue
San Rafael, CA 94901

Email Address: contracts@mcecleanenergy.org

Telephone No.: (925) 378-6767

Notices shall be given to Implementer at the following address:

Implementer: Dean Laube

Address: 102 North Franklin Street
Port Washington, WI 53074

Email Address: dlaube@franklinenergy.com

Telephone No.: (715) 304-0366

With a copy to:

Implementer:	Corporate Counsel
Address:	102 North Franklin Street Port Washington, WI 53074
Email Address:	legal@franklinenergy.com
Telephone No.:	(262) 284-3838

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		
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Rate Schedule		
<u>EXHIBIT C.</u>	<input checked="" type="checkbox"/>	Energy Efficiency Program Terms		

21. SEVERABILITY:

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

22. INDEPENDENT CONTRACTOR:

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

23. INTENTIONALLY OMITTED.

24. THIRD PARTY BENEFICIARIES:

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

25. FURTHER ACTIONS:

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

26. PREPARATION OF AGREEMENT:

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

27. 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, Implementer agrees to provide

information to MCE regarding Implementer'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, Implementer agrees to complete and deliver MCE's Supplier Diversity Survey, found at the following link: <https://form.asana.com/?k=jSGYk4x3sf2dHfSzywc2fg&d=163567039999692> (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, Implementer 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. Implementer 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.

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: Grace Wu

Title:

Title: Chief Operations Officer

Date:

Date:

By:

Chairperson

Date:

MODIFICATIONS TO MASTER SERVICES AGREEMENT SHORT FORM

☒ Master Services Agreement Form Content Has Been Modified

List sections affected: 1, 5.1, 5.2, 5.5, 5.10, 6, 7 (omitted), 8, 9, 10.5, 10.6(b) and (d), 10.7, 11, 12.1, 12.3, 12.5 (omitted), 12.6, 13, 15, 17, and 23 (omitted)

Approved by MCE Counsel: _____

Date: _____

**EXHIBIT A
FORM OF STATEMENT OF WORK**

Statement of Work – Schedule A.[#]

This Schedule A. ("Schedule A.1" or "Statement of Work" or "SOW") is entered into on **[Date]** pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and FRANKLIN ENERGY SERVICES, LLC, hereinafter referred to as "Implementer", dated **April 20, 2023** ("Agreement").

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

[List scope of services]

Billing:

Implementer 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: Grace Wu, Chief Operations Officer

Date: _____

Date: _____

By: _____

Chairperson

Date: _____

EXHIBIT B
RATE SCHEDULE

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

Implementer Key Staff Rates

Name	Title	Hourly Rate (\$/hour)
Isai Reyes	Senior Program Manager	\$160
Justin Kjeldsen	Pacific Regional Director	\$165
Eric Perez	Project Specialist	\$85
Brett Bishop	Director of Contract Services	\$165
Nic Schueller	Engineering Manager	\$101.50
Leonel Campoy	Engineering Manager	\$101.50
Danna Perry	Marketing Manager	\$90
Harrison Fegley	IT Project Manager	\$160
Delfino Quezada	Customer Care Center Supervisor	\$80

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

EXHIBIT C

Energy Efficiency Program Terms

The terms below shall apply to all Implementer Parties providing Services under the Home Energy Savings ("Program").

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

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

2. WORKFORCE STANDARDS.

At all times during the Term of the Agreement, Implementer shall comply with, and shall cause all Implementer Parties to comply with, the workforce qualifications, certifications, standards and requirements set forth in this Exhibit C, Section 2 ("Workforce Standards"). The Workforce Standards shall be included in their entirety in MCE's Final Implementation Plan. If applicable, "Final Implementation Plan" is defined in the deliverables for the Services listed in the applicable SOW. Prior to commencement of any Services, once per calendar year, and at any other time as may be requested by MCE, Implementer shall provide all documentation necessary to demonstrate to MCE's reasonable satisfaction that Implementer has complied with the Workforce Standards.

3. COORDINATION WITH OTHER PROGRAM ADMINISTRATORS.

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

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

Implementer shall:

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

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

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

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

Statement of Work – Schedule A.1

This Schedule A.1 ("Schedule A.1" or "Statement of Work") is entered into on **April 20, 2023** pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, (hereinafter referred to as "MCE"), and FRANKLIN ENERGY SERVICES, LLC, (hereinafter referred to as "Implementer"), dated **April 20, 2023** ("Agreement") and is governed by its terms and conditions. Capitalized but undefined terms shall have the meanings set forth in the Agreement.

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

Overview

Implementer is a third-party program implementer that will implement the Home Energy Savings ("HES") Program by delivering a residential single-family assessment and direct energy efficiency installs for home energy savings ("HES Program" or "Program").

Implementer shall offer the following services to Program participants:

- Electrification assessments and home upgrades to an estimated 350 (and up to 400) customers per year (home upgrades include the delivery of measures included in Table B: HES Program Measure Payment and Incentive Budget set forth below).
- Target moderate-income single-family property owners and tenants, who have property owner's permission, with high utility bills in MCE's service area for participation in the Program.

Implementer will perform the following tasks in accordance with the Energy Efficiency Program Terms described in Exhibit C of the Master Services Agreement dated April 20, 2023.

Task 1: Program Management

- A. **Customer Service Support.** Implementer will provide a live customer support team to respond to Program participant inquiries and requests, provide Program support, connect Program participants to participating trade allies, and connect Program participants to additional program resources. The customer support team will be available from 8:30 a.m. – 5:00 p.m. PST Monday through Friday and will monitor Program emails submitted to mce-energysavings@Franklinenergy.com.
- B. **Trade Ally Engagement.** Implementer will onboard initial trade allies and provide a single point of contact for each participating trade ally by holding a minimum of two check-in calls per month, as-needed office visits, and support with technical Program questions, and mentoring in the field. Implementer will manage the trade allies, relevant contracts and is responsible for all aspects of home upgrade delivery to Program participants.
- C. **Monthly Reporting.** Implementer will ensure all data collected from customers and participating trade allies is shared with MCE's team on an ongoing basis to ensure systems are tested, new data points are added and formatted as needed, and energy savings and payment information is accurate and complete. Implementer will intake all Program assessment questions and CPUC-required data points, and submit monthly reports and invoices to MCE. Implementer will work with MCE as needed to complete the Annual or Biannual Budget Advice Letter ("BBAL") process as required by the CPUC. MCE and Implementer will outline any additional and/or ad hoc reporting as needed throughout the Program year.
- D. **Coordination with Investor Owned Utilities ("IOUs")/Bay Area Regional Energy Network ("BayREN").** Implementer will coordinate with IOUs, BayREN, other Program implementers, and/or local government agencies authorized by the CPUC to implement CPUC-directed energy efficient programs, that are administering energy efficiency programs in the same geographic area as MCE as necessary within MCE's service territory to ensure timely, accurate, and consistent access to data. The CPUC may develop further rules related to coordination between program administrators in the same geographic area, and any implementer party is required to comply with such rules. Upon MCE's request, Implementer will assist MCE with tasks and deliverables as they relate to development of Joint Cooperation Memos. Implementer's activities in this Task 2D include: meeting preparation and attendance; coordination across internal teams at MCE, and/or IOUs; research; analysis; writing; and editing.
- E. Implementer will update the Implementation Plan ("IP"), Program Handbook, and any other necessary program-related documents to reflect ongoing changes to the Program delivery process and trade ally requirements, and to align with this Program Design and CPUC requirements.
- F. **Program Closeout.** If Program is terminated, upon termination of the Program, Implementer will package all project and participant data into a Zip folder and securely transfer it to MCE. Implementer will complete a final Program closeout report and submit it to MCE within 2 business weeks of written notification by MCE of Program termination.

Deliverables:

- Customer service support.
- Manage the installation of home upgrade measures to Program participants.
- Participating contractor engagement.
- Initial trade ally onboarding.

- Mentoring trade allies in the field.
- Monthly reporting to MCE.
- Coordination with implementers and IOUs/BayREN.
- Program closeout (if Program is terminated).

Task 2: Application Platform Support

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

Deliverables:

- Ongoing Program platform support

Task 3: Quality Assurance and Control

Implementer will:

Quality Assurance.

- Review all initial applications submitted to the Program.
- Coordinate with trade ally and/or potential Program participants about incomplete applications.
- Ensure Program applications are accurate and complete.
- Ensure data is formatted to meet ongoing reporting criteria updates requested by MCE.

Quality Control.

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

Deliverables:

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

Task 4: Marketing and Outreach

Implementer will:

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

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

Deliverables:

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

- Design, deliver, and maintain results of customer satisfaction surveys.

Task 5: Electrification Assessments

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

Deliverables:

- Up to 372 electrification assessments

Staff

Key staff who will support the Program include:

- Isai Reyes—Program Management
- Justin Kjeldsen—Program Management
- Eric Perez—Project Management, Quality Assurance
- Brett Bishop—Trade Ally Engagement, Quality Control
- Nic Schueller—Engineering
- Leonel Campoy—Engineering
- Danna Perry—Marketing
- Harrison Fegley—Information Management
- Delfino Quezada—Customer Care Center

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

PAYMENT STRUCTURE**Table A: April to December 2023 HES Program Delivery Billing Schedule**

Task	Payment	Estimated Delivery Date
Program Delivery		
1. Program Management	Time & Materials Estimate: \$25,833 per month Total Annual NTE: \$238,485	Monthly
2. Application Platform Support	\$5,000 per month Total Annual NTE: \$45,000	Monthly
3. Quality Assurance and Control	QA: \$130.75 each QC: \$836 each Total Annual NTE: \$74,247	QA: Per unit, Billed Monthly QC: Per unit, Billed Monthly
4. Marketing and Outreach	Time & Materials Estimate: \$9,500 per month Total Annual NTE: \$93,646.2	Monthly
5. Electrification Assessments	Included in incentive budget with NTE \$46,500 from April to December	
Total 2023 NTE for Program Delivery	\$451,378.24	Final Delivery for 2023: December 31, 2023

Table B: 2023 HES Program Measure Payment and Incentive Budget

Home Upgrade Measure	Payment
Electrification Assessment (372 Assessments)	\$125/each (NTE \$46,500 from April to December)
Home Repair Assessment (25 Assessments)	\$140/each (Annual NTE \$3,500)
Central Air Conditioner	Specified in BBAL
Bathroom Fan LED Lighting Fixture	Specified in BBAL
Duct Sealing – Medium Leakage	Specified in BBAL
Duct Sealing – High Leakage	Specified in BBAL
Fuel Sub Mini-Split Heat Pump	Specified in BBAL
Fuel Sub Central HVAC Heat Pump	Specified in BBAL
Fuel Sub Heat Pump Water Heater	Specified in BBAL
Heat Pump	Specified in BBAL
Furnace	Specified in BBAL
Smart Thermostat (only for customers who did not receive a kit)	Specified in BBAL
Attic Insulation	Specified in BBAL
Small Tankless Water Heater	Specified in BBAL
Heat Pump Water Heater	Specified in BBAL
Natural Gas Storage Water Heater	Specified in BBAL
Residential Pipe Wrap	Specified in BBAL
Low Flow Showerhead w/integral Thermostatic Shower Valve	Specified in BBAL
Wall Insulation w/wall patch & paint	Specified in BBAL
Window Replacement	Specified in BBAL
Deep-Buried-Ducts	Specified in BBAL
Combustion Appliance Safety	Specified in BBAL
Permits	Specified in BBAL
HERS Inspection	Specified in BBAL
Brushless Fan Motor Replacement	Specified in BBAL
MERV13 Air Filters	Specified in BBAL
Total Incentive Budget	\$1,334,469.52

Table C: Overall 2023 Budget for HES Program

Implementation	Total
Program Delivery	\$451,378.24
Incentives	\$1,334,469.52
Total	\$1,785,847.76

Billing:

Implementer shall bill monthly and according to the payment schedule listed herein and the rate schedule listed in Exhibit B of the Agreement. In no event shall the total cost to MCE for the Services provided under this Statement of Work exceed the maximum sum of **\$1,785,847.76** for the term of the Agreement.

Term of Statement of Work:

This Statement of Work shall commence on **April 20, 2023** and shall terminate on **December 31, 2023**.

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:

Franklin Energy Services, LLC:

By:

By:

Name:

Name: Grace Wu, Chief Operations
Officer

Date:

Date:

By:

Chairperson

Date:

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

THIS THIRD AGREEMENT ("Agreement") is made and entered into on December 3, 2021 by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and FRANKLIN ENERGY SERVICES, LLC, a Delaware limited liability company with principal address at: 102 North Franklin Street, Port Washington, WI 53074 (hereinafter referred to as "Implementer") (each, a "Party," and, together, the "Parties").

RECITALS:

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

WHEREAS, Implementer desires to provide the Services to MCE;

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

1. SCOPE OF SERVICES:

Implementer agrees to provide all of the Services in accordance with the terms and conditions of this Agreement. "Services" shall also include any other work performed by Implementer pursuant to this Agreement. In connection with Implementer's provision of the Services, MCE agrees to make available to Implementer all pertinent data and records for review.

2. FEES AND PAYMENT SCHEDULE; INVOICING:

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

3. MAXIMUM COST TO MCE:

In no event will the cost to MCE for the Services to be provided herein exceed the maximum sum of **\$4,150,780**.

4. TERM OF AGREEMENT:

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

5. REPRESENTATIONS; WARRANTIES; COVENANTS:

5.1. IMPLEMENTER REPRESENTATIONS AND WARRANTIES. Implementer represents, warrants and covenants that (a) it is a limited liability company duly organized, validly existing and in good standing under the laws of the State of **Delaware**, (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to engage in the business it presently conducts and contemplates conducting, (c) it is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder, and (d) it is qualified and competent to render the Services and possesses the requisite expertise to perform its obligations hereunder.

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

5.3. LICENSING. At all times during the performance of the Services, Implementer represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all required permits, licenses, certificates and registrations required

for the operation of its business and the performance of the Services. Implementer shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.

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

5.5. PERFORMANCE ASSURANCE; BONDING. At all times during the performance of the Services, Implementer, if providing any direct installation services, represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all bonding requirements of the California Implementers State License Board ("CSLB"), as may be applicable.

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

- a) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;
- b) abide by all applicable MCE security procedures, rules and regulations provided to Implementer by MCE in writing, and cooperate with MCE security personnel whenever on MCE's property;
- c) abide by MCE's reasonable standard safety program contract requirements as may be provided by MCE to Implementer from time to time in writing;
- d) provide all necessary training to its employees, and require Subcontractors to provide training to their employees, about the safety and health rules and standards required under this Agreement;
- e) have in place an effective Injury and Illness Prevention Program that meets the requirements of all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code. Additional safety requirements (including MCE's standard safety program contract requirements) are set forth elsewhere in the Agreement, as applicable, and in MCE's safety handbooks as may be provided by MCE to Implementer from time to time in writing;
- f) be responsible for initiating, maintaining, monitoring and supervising all safety precautions and programs in connection with the performance of the Agreement; and
- g) monitor the safety of the job site(s), if applicable, during the performance of all Services, to comply with all applicable federal, state, and local laws and to follow safe work practices.

5.7. BACKGROUND CHECKS.

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

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

5.9. QUALITY ASSURANCE PROCEDURES. Implementer shall comply with the Quality Assurance Procedures. "Quality Assurance Procedures" means: (i) industry standard best practices; (ii) procedures that ensure customer satisfaction and (iii) the requirements identified by Implementer in the Implementation Plan as required in Exhibit A.

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

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

6. INSURANCE:

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

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

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

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

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

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

6.4. INTENTIONALLY OMITTED

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

7. INTENTIONALLY OMITTED.

8. SUBCONTRACTING:

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

- 8.1.** Subcontractor shall comply with the following terms of this Agreement: Sections 9, 10.1, 10.2, 10.4, 10.7, and Exhibit A, as applicable to the services to be performed by such Subcontractor.
- 8.2.** Subcontractor shall provide, maintain and be bound by the representations, warranties and covenants of Implementer contained in Section 5 hereof (only as, and if, applicable to the services to be provided by Subcontractor, and as may be modified to be applicable to Subcontractor, including with respect to Section 5.1(a) hereof) at all times during the Term of such subcontract and its provision of Services.
- 8.3.** Subcontractor shall comply with the terms of Section 6 above, including, but not limited to providing and maintaining insurance coverage(s) identical to what is required of Implementer under this Agreement, and shall name MCE as an additional insured under such policies. Implementer shall collect, maintain, and promptly forward to MCE current evidence of such insurance provided by its Subcontractor. Such evidence of insurance shall be included in the records and is therefore subject to audit as described in Section 9 hereof.
- 8.4.** Subcontractor shall be contractually obligated to indemnify the MCE Parties (as defined in Section 17 hereof) pursuant to the terms and conditions of Section 17 hereof.

Implementer shall be solely responsible for ensuring its Subcontractors' compliance with the terms and conditions of this Agreement made applicable above and to collect and maintain all documentation and current evidence of such compliance. Upon request by MCE, Implementer shall promptly forward to MCE evidence of the same. Nothing contained in this Agreement or otherwise stated between the Parties shall create any legal or contractual relationship between MCE and any Subcontractor, and no subcontract shall relieve Implementer of any of its duties or obligations under this Agreement. Implementer's obligation to pay its Subcontractors is an independent obligation from MCE's obligation to make payments to Implementer. As a result, MCE shall have no obligation to pay or to enforce the payment of any monies to any Subcontractor.

9. RETENTION OF RECORDS AND AUDIT PROVISION:

Implementer shall keep and maintain on a current basis full and complete records and documentation pertaining to this Agreement and the Services, whether stored electronically or otherwise, including, but not limited to, valuation records, accounting records, documents supporting all invoices, employees' time sheets, receipts and expenses, and all customer documentation and correspondence (the "Records"). Provided that MCE has agreed in writing to confidentiality terms acceptable to Implementer to protect the confidentiality of such Records, MCE shall have the right, during regular business hours, to review and audit all Records during the Term and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Implementer's premises or, at MCE's option, Implementer shall provide all records within a maximum of thirty (30) days upon receipt of written request from MCE. Implementer shall refund any monies erroneously charged. Implementer shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

10. DATA, CONFIDENTIALITY AND INTELLECTUAL PROPERTY:

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

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

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

machines or networks. Implementer shall comply with all applicable federal, state and local laws, rules, and regulations related to the use, collection, storage, and transmission of Personal Information.

10.3. MCE DATA SECURITY MEASURES. Prior to Implementer receiving any MCE Data, Implementer shall comply, and at all times thereafter continue to comply, with MCE's Data security policies set forth in MCE Policy 009 (available upon request) and MCE's Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy ("Security Measures") as provided to Implementer in writing in advance of the execution of this Agreement, and pursuant to MCE's Confidentiality provisions in Section 5 of the Marin Clean Energy Non-Disclosure Agreement between the parties dated **December 11, 2019**, and as set forth in MCE Policy 001 - Confidentiality. MCE's Security Measures and Confidentiality provisions require Implementer to adhere to reasonable administrative, technical, and physical safeguard protocols to protect the MCE's Data from unauthorized handling, access, destruction, use, modification or disclosure.

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

10.5. RETURN OF MCE DATA. Promptly after this Agreement terminates, (i) Implementer shall securely destroy all MCE Data in its possession and, upon the written request of MCE, certify the secure destruction in writing to MCE, and (ii) each Party shall return (or if requested by the disclosing Party, destroy) all other Confidential Information and property of the other (if any). Notwithstanding the foregoing, Implementer may retain whatever MCE Data or Confidential Information is necessary to exercise any of Implementer's surviving rights or obligations hereunder.

10.6. OWNERSHIP AND USE RIGHTS.

- a) **MCE Data.** Unless otherwise expressly agreed to in writing by the Parties, MCE shall retain all of its rights, title and interest in MCE Data.
- b) **Intellectual Property.** Unless otherwise expressly agreed to in writing by the Parties, any and all materials, information, or other intellectual property first created, prepared, accumulated or developed by Implementer or any Implementer Party under this Agreement with MCE funds ("Intellectual Property"), including finished and unfinished inventions, processes, templates, documents, drawings, computer programs, designs, calculations, valuations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be owned by MCE on behalf and for the benefit of MCE's respective customers. Implementer may keep file reference copies of all Intellectual Property and all documents prepared by Implementer for MCE so long as MCE Data is not included.
- c) **Intellectual Property shall be owned by MCE upon its creation.** Implementer agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Intellectual Property.
- d) **Implementer's Pre-Existing Materials.** If, and to the extent, Implementer incorporates any preexisting ownership rights ("Implementer's Pre-Existing Materials") in any of the materials furnished or used to create, develop, and prepare the Intellectual Property, Implementer hereby grants MCE on behalf of its customers, and the CPUC for governmental and regulatory purposes, an irrevocable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, license to use any such Implementer's Pre-Existing Materials for the sole purpose of using such Intellectual Property for the conduct of MCE's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Implementer shall retain all of its rights, title and interest in Implementer's Pre-Existing Materials, including improvements thereto and derivatives thereof. Any and all claims to Implementer's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Intellectual Property must be expressly disclosed to MCE prior to performing any Services under this Agreement.

Implementer's Pre-Existing Materials include:

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

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

11. FORCE MAJEURE:

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

12. TERMINATION:

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

12.2. Either Party hereto may terminate this Agreement for any reason by giving thirty (30) calendar days' written notice to the other Party. Notice of termination shall be by written notice to the other Party and be sent by registered mail or by email to the email address listed in Section 19.

12.3. In the event of termination not the fault of the Implementer, the Implementer shall be paid for Services performed up to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s). Notwithstanding anything contained in this Section 12, in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Services. Implementer shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12, Implementer shall have delivered to MCE any and all Intellectual Property (as defined in Section 10.1(b)) prepared for MCE that MCE has paid for before the effective date of such termination.

12.4. MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

12.5. INTENTIONALLY OMITTED.

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

12.7. Notwithstanding the foregoing, this Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such order or directive.

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

13. ASSIGNMENT:

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

14. AMENDMENT; NO WAIVER:

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

15. DISPUTES:

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

16. JURISDICTION AND VENUE:

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

17. INDEMNIFICATION:

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

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

18. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

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

19. INVOICES; NOTICES:

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

Email Address: invoices@mcecleanenergy.org

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

Contract Manager: Troy Nordquist

MCE Address: 1125 Tamalpais Avenue
San Rafael, CA 94901

Email Address: contracts@mcecleanenergy.org

Telephone No.: (925) 378-6767

Notices shall be given to Implementer at the following address:

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

With a copy to: Franklin Energy Services, LLC

Attn: Legal Department

102 N. Franklin Street

Port Washington, WI 53074

(262) 284-3838

legal@franklinenergy.com

20. ENTIRE AGREEMENT; ACKNOWLEDGMENT OF EXHIBITS:

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

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

21. SEVERABILITY:

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

22. INDEPENDENT CONTRACTOR:

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

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

23. INTENTIONALLY OMITTED.

24. THIRD PARTY BENEFICIARIES:

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

25. FURTHER ACTIONS:

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

26. PREPARATION OF AGREEMENT:

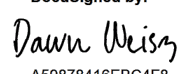
This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and this Agreement shall not be construed against either Party as a result of the manner in which this Agreement was prepared, negotiated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

27. COUNTERPARTS:

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

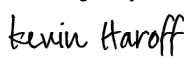
IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written.

APPROVED BY MARIN CLEAN ENERGY:

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


Title: CEO

Date: 12/6/2021

DocuSigned by:
By: 
3C8DE88B7D6543E...
Chairperson

Date: 12/3/2021

IMPLEMENTER:

By: 
Name: Jim Madej

Title: Chief Executive Officer


Date: 12/22/2021

MODIFICATIONS TO STANDARD SHORT FORM

☒ Standard Short Form Content Has Been Modified

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

Approved by MCE Counsel:

DocuSigned by:

A00D5C00BDF144C...

Date: 12/22/2021

EXHIBIT A SCOPE OF SERVICES

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

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

Implementer shall offer the following services to Program participants:

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

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

Task 1: Program Design

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

Final IP will include:

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

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

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

Deliverables:

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

Task 2: Program Management

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

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

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

Deliverables:

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

Task 3: Health and Energy Savings Kits

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

Deliverables:

- Installation of up to 500 Kits annually.

Task 4: Application Platform Support

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

Deliverables:

- Ongoing Program platform support.

Task 5: Quality Assurance and Control

Implementer will:

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

Deliverables:

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

Task 6: Marketing and Outreach

Implementer will:

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

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

Deliverables:

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

Task 7: Electrification Assessments

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

Deliverables:

- Up to 500 electrification assessments

Staff

Key staff who will support the Program include:

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

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

Energy Efficiency Program Terms

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

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

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

2. WORKFORCE STANDARDS:

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

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

Implementer shall:

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

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

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

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

EXHIBIT B**FEES AND PAYMENT SCHEDULE**

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

2022-2023 Implementation Invoice Schedule

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

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

Incentive Budget

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

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

Overall Budget for 2022-2023 Program

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

Implementer Key Staff Rates:

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

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

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

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



April 20, 2023

TO: MCE Board of Directors

FROM: Jennifer Green, Manager of Customer Programs
Catalina Murphy, General Counsel

RE: Resolution No. 2023-03 Authorizing the CEO to Negotiate and Execute a Vendor Services Agreement with GRID Alternatives Bay Area, Inc. and Schedule A.2 to the Master Services Agreement with Franklin Energy Services, LLC for the Richmond Rising Program (Agenda Item #05 C.4)

ATTACHMENT: Proposed Resolution No. 2023-03 Authorizing the CEO to Negotiate and Execute a Vendor Services Agreement with GRID Alternatives Bay Area, Inc. and Schedule A.2 to the Master Services Agreement with Franklin Energy Services, LLC for the Richmond Rising Program

Dear Board Members:

Summary:

In 2022, The City of Richmond ("Richmond") was awarded \$35M by the California Strategic Growth Council to implement a climate-smart community development project, known as Richmond Rising. Richmond Rising will support 10 disadvantaged, unincorporated and tribal communities with capital improvement projects to reduce emissions, improve public health and expand economic activity. Richmond has partnered with the non-profit GRID Alternatives Bay Area, Inc. ("GRID") to perform solar installs in Richmond as a part of Richmond Rising. With Richmond's approval, GRID has asked MCE to provide energy efficiency resources and services as part of and pursuant to Richmond Rising's scope of work. Fulfilling MCE's proposed role in Richmond Rising would require MCE to enter into an agreement with GRID.

The envisioned energy efficiency services would be layered into existing offerings under MCE's Home Energy Savings Program ("HES") which is currently implemented by Franklin Energy Services, Inc. ("Franklin"). MCE staff proposes executing a new statement of work ("SOW") with Franklin to include the additional work enabled by Richmond Rising funding.

The agreement with GRID and the new SOW with Franklin are both still in negotiation and not final at this time. Additionally, any applicable obligations to MCE in the GRID agreement will need to pass through as terms in the SOW with Franklin. Therefore, staff

has prepared the anticipated terms below that would be included in both agreements for your Board to review.

It is anticipated that the agreement with GRID would include the following terms:

- MCE will provide, or will have Franklin provide, Richmond Rising implementation support including, but not limited to: home energy and healthy homes safety assessments; energy upgrades and electrification measures; necessary home rehabilitation work that would prevent a participant from receiving Richmond Rising funding; summaries of home assessments completed; tables of energy upgrades installed including locations and estimated savings, tables of electrification measures and estimated reduction in natural gas use, and tables of home rehabilitation implemented and energy-savings measures that it enabled; and other necessary services to implement Richmond Rising.
- MCE will provide, or will have Franklin provide, Richmond Rising management and administration support including, but not limited to: coordination with key Richmond Rising stakeholders; providing regular reports to GRID and other Richmond Rising partners on a regular basis and as requested; management of all deliverables included within Franklin's SOW; participation in regular communication between MCE, its subcontractors, GRID, and Richmond to ensure the success of the Richmond Rising implementation; and other necessary services to manage and administer Richmond Rising.
- Compliance with applicable federal, state, and local laws regarding the Richmond Rising.
- The agreement with GRID will have a not-to-exceed payment to MCE of up to *\$3,130,350*.
- The agreement with GRID will have a term of *5 years*.
- The agreement with GRID will be subject to MCE receiving adequate funding, as determined by MCE, from the California Public Utilities Commission ("CPUC") for the duration of the terms of the agreement and MCE's HES program remaining active.

In addition to incorporating the terms of the agreement with GRID, it is anticipated that the SOW with Franklin would include the following terms:

- Franklin will lead in-home assessments on MCE's behalf, manage energy efficiency installs, appliance electrification, and home rehabilitation to enable energy measure installations; coordinate with Richmond Rising stakeholders; collect and manage Richmond Rising activity data; ensure installations occur in a timely fashion as determined by project proposals; ensure installation of measures is in accordance with the conditions set forth to installers known as Trade Allies as per predetermined measure applicability requirements, including billing at an applicable rate be it minor, moderate, or major; and installing to Richmond Rising standards as defined in Field Quality Control requirements consistent with HES Program standards.

- Franklin will coordinate with Trade Allies to determine project proposal per site.
- Franklin will ensure permits are executed as determined by project proposal.
- Franklin will facilitate payment to the Trade Allies as determined by project proposal and all of the above.
- Franklin will comply with applicable federal, state, and local laws regarding Richmond Rising.
- The SOW with Franklin will have a not-to-exceed cost to MCE of up to ***\$2,337,273***. The not-to-exceed will be based on the amount MCE will receive in the agreement with GRID.
- The SOW with Franklin will have a term of ***5 years***.
- The SOW with Franklin will be subject to MCE receiving adequate funding, as determined by MCE, from the CPUC for the duration of the terms of the SOW and MCE's HES program remaining active.

Fiscal Impacts:

The agreement between MCE and GRID will have a not-to-exceed payment to MCE of up to ***\$3,130,350***, and will be funded through Richmond Rising. The SOW between MCE and Franklin will have a not-to-exceed cost to MCE of up to ***\$2,337,273***, and will be funded through the payments MCE receives under the MCE-GRID Agreement for Richmond Rising. Under the agreement between MCE and GRID, MCE will also be paid for startup, management, reporting and contingency purposes at a not to exceed of up to ***\$793,077*** over five years.

Recommendation:

Approve proposed Resolution No. 2023-03 Authorizing the CEO to Negotiate and Execute a Vendor Services Agreement with GRID Alternatives Bay Area, Inc. and Schedule A.2 to the Master Services Agreement with Franklin Energy Services, LLC for the Richmond Rising program.

RESOLUTION No. 2023-03

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY AUTHORIZING THE CEO TO NEGOTIATE AND EXECUTE A VENDOR SERVICES AGREEMENT WITH GRID ALTERNATIVES BAY AREA, INC. AND SCHEDULE A.2 TO THE MASTER SERVICES AGREEMENT WITH FRANKLIN ENERGY SERVICES, LLC FOR THE RICHMOND RISING PROGRAM

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, The City of Richmond (“Richmond”) was awarded \$35M by the California Strategic Growth Counsel to implement a climate-smart community development project called Richmond Rising;

WHEREAS, Richmond has partnered with the non-profit GRID Alternatives Bay Area, Inc. (“GRID”) to perform solar installs in Richmond as a part of Richmond Rising; and

WHEREAS, Richmond desires to have MCE offer energy efficiency resources and services to its subcontractor GRID pursuant to Richmond Rising; and

WHEREAS, MCE desires to work with Richmond and GRID to provide energy efficiency resources and services and will subcontract with Franklin Energy Services LLC (“Franklin”) to provide such services; and

WHEREAS, MCE desires to enter into an agreement with GRID to provide energy efficiency resources and services to GRID for Richmond Rising implemented by Richmond; and

WHEREAS, MCE desires to enter into a new statement of work (“SOW”) to supplement the Master Services Agreement with Franklin to assist MCE in providing the agreed upon services to GRID and Richmond.

NOW, THEREFORE, BE IT RESOLVED BY THE MCE BOARD OF DIRECTORS:

1. The Board of Directors finds that the aforementioned recitals are true and correct, and are herein incorporated into this Resolution.
2. CEO is hereby authorized to negotiate and execute a Vendor Services Agreement with GRID, subject to approval by MCE's General Counsel, for the provision of energy efficiency resources and services under Richmond Rising, which may include the following deal points:
 - MCE will provide, or will have Franklin provide, Richmond Rising implementation support including, but not limited to: home energy and healthy homes safety assessments; energy upgrades and electrification measures; necessary home rehabilitation work that would prevent a participant from receiving Richmond Rising funding; summaries of home assessments completed; tables of energy upgrades installed including locations and estimated savings, tables of electrification measures and estimated reduction in natural gas use, and tables of home rehabilitation implemented and energy measure that it enabled; and other necessary services to implement Richmond Rising.
 - MCE will provide, or will have Franklin provide, Richmond Rising management and administration support including, but not limited to: coordination with key Richmond Rising stakeholders; providing regular reports to GRID and other Richmond Rising partners on a regular basis and as requested; management of all deliverables included within MCE's subcontractor Franklin's SOW; participation in regular communication between MCE, its subcontractors, GRID, and Richmond to ensure the success of Richmond Rising implementation; and other necessary services to manage and administer Richmond Rising.
 - Compliance with applicable federal, state, and local laws regarding the TCC Program.
 - The agreement with GRID will have a not-to-exceed cost to MCE of *\$3,130,350*.
 - The agreement with GRID will have a term of **5 years**.
 - The agreement with GRID will be subject to MCE receiving adequate funding, as determined by MCE, from the California Public Utilities Commission ("CPUC") for the duration of the terms of the agreement and MCE's Home Energy Savings ("HES") program remaining active.
3. The CEO is hereby authorized to negotiate and execute an SOW to supplement the Master Services Agreement with Franklin, subject to approval by MCE's General Counsel, for the provision of energy efficiency resources and services under Richmond Rising, which may incorporate the terms of the agreement described above between MCE and GRID, and may include the additional following deal points:
 - Franklin will lead in-home assessments on MCE's behalf, manage energy efficiency installs, appliance electrification, and home rehabilitation to enable energy measure installations; coordinate with Richmond Rising stakeholders; collect and manage Richmond Rising activity data; ensure

installations occur in a timely fashion as determined by project proposals; ensure installation of measures is in accordance with the conditions set forth to installers known as Trade Allies as per predetermined measure applicability requirements, including billing at an applicable rate be it minor, moderate, or major; and installing to Richmond Rising standards as defined in Field Quality Control requirements consistent with HES Program standards.

- Franklin will coordinate with Trade Allies to determine project proposal per site.
- Franklin will ensure permits are executed as determined by project proposal, and
- Franklin will facilitate payment to the Trade Allies as determined by project proposal and all of the above.
- Franklin will comply with applicable federal, state, and local laws regarding Richmond Rising.
- The SOW with Franklin will have a not-to-exceed cost to MCE of **\$2,337,273.**
- The SOW with Franklin will have a term of **5 years.**
- The SOW with Franklin will be subject to MCE receiving adequate funding, as determined by MCE, from the CPUC for the duration of the terms of the SOW and MCE's HES program remaining active.

PASSED AND ADOPTED at a regular meeting of the MCE Board Directors on this 20 day of April, 2023, 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



April 20, 2023

TO: MCE Board of Directors

FROM: Vicken Kasarjian, Chief Operating Officer

RE: Resolution No. 2023-04 Appointing Chief Financial Officer as Treasurer (Agenda Item #05 C.5)

ATTACHMENT: Proposed Resolution No. 2023-04 Appointing Chief Financial Officer as Treasurer

Dear Board Members:

Summary:

MCE has relied on Garth Salisbury, Chief Financial Officer, 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. Garth Salisbury 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 their official bond, for the safekeeping and disbursement of all agency or entity money so held by them.
- c. Pay, when due, out of money of the agency or entity held by them, 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 they hold for the agency or entity, the amount of receipts since their last report, and the amount paid out since their 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 their 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 Chief Financial Officer

Garth Salisbury, MCE's Chief Financial Officer, 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), 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 Financial Industry Regulatory Authority (FINRA) Series 7, 24, 50, 53 and 63 Securities Licenses. As MCE's Chief Financial Officer and head of MCE's Finance department since joining MCE in January 2019, he oversees all of MCE's financial matters and has been appointed as MCE Treasurer for the past three years.

Fiscal Impacts:

None.

Recommendation:

Approve Proposed Resolution No. 2023-04 Appointing Chief Financial Officer as Treasurer.

RESOLUTION No. 2023-04

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY APPOINTING CHIEF FINANCIAL OFFICER 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, 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, MCE's Chief Financial Officer, is currently serving as Treasurer of MCE, as appointed by the Board in March 2022 under Resolution 2022-05, 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 Chief Financial Officer, 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 20th day of April, 2023, 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



MCE Board Offices and Committees

BOARD OFFICES

Chair:	Shanelle Scales-Preston, City of Pittsburg
Vice Chair:	Gabe Quinto, City of El Cerrito
Treasurer:	Garth Salisbury, MCE Chief Financial Officer
Deputy Treasurer:	Vicken Kasarjian, MCE Chief Operating Officer
Secretary:	Dawn Weisz, MCE Chief Executive Officer

EXECUTIVE COMMITTEE

1. Kevin Haroff, Chair	City of Larkspur
2. Edi Birsan	City of Concord
3. Eli Beckman	Town of Corte Madera
4. Barbara Coler	Town of Fairfax
5. Cindy Darling	City of Walnut Creek
6. Dave Fong	City of Danville
7. Eduardo Martinez	City of Richmond
8. Devin Murphy	City of Pinole
9. Max Perrey	City of Mill Valley
10. Gabe Quinto	City of El Cerrito
11. Shanelle Scales-Preston	City of Pittsburg
12. Holli Thier	Town of Tiburon
13. Sally Wilkinson	Town of Belvedere

TECHNICAL COMMITTEE

1. Devin Murphy, Chair	City of Pinole
2. Gina Dawson	City of Lafayette
3. John Gioia	County of Contra Costa
4. Kevin Haroff	City of Larkspur
5. Eduardo Martinez	City of Richmond
6. Charles Palmares	City of Vallejo
7. Scott Perkins	City of San Ramon
8. Katie Rice	County of Marin
9. <i>Alexis Fineman</i>	<i>Town of San Anselmo (Interested)</i>

AD HOC CONTRACTS COMMITTEE, 2023

- | | |
|------------------|-------------------|
| 1. Barbara Coler | Town of Fairfax |
| 2. Kevin Haroff | City of Larkspur |
| 3. Scott Perkins | City of San Ramon |

AD HOC COMMITTEE FOR VIRTUAL POWER PLANT, 2023

- | | |
|---------------------|----------------------|
| 1. Eli Beckman | Town of Corte Madera |
| 2. Gina Dawson | City of Lafayette |
| 3. Eduardo Martinez | City of Richmond |
| 4. Devin Murphy | City of Pinole |
| 5. Max Perrey | City of Mill Valley |
| 6. Katie Rice | County of Marin |
| 7. Holli Thier | Town of Tiburon |

AD HOC AUDIT COMMITTEE, 2023

- | | |
|--------------------|-------------------|
| 1. Dave Fong | Town of Danville |
| 2. Kevin Haroff | City of Larkspur |
| 3. Sally Wilkinson | City of Belvedere |



MCE Executive Committee Overview and Scope

Current Membership: 13

Current Members:

- Kevin Haroff, City of Larkspur (Chair)
- Eli Beckman, Town of Corte Madera
- Edi Birsan, City of Concord
- Barbara Coler, Town of Fairfax
- Cindy Darling, City of Walnut Creek
- Dave Fong, Town of Danville
- Eduardo Martinez, City of Richmond
- Devin Murphy, City of Pinole
- Max Perrey, City of Mill Valley
- Gabriel Quinto, City of El Cerrito
- Shanelle Scales-Preston, City of Pittsburg
- Holli Thier, Town of Tiburon
- Sally Wilkinson, City of Belvedere

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

Current meeting date: First Wednesday of each month at 12:00pm

Scope

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

Authority of Executive Committee

Executive Committee is authorized to make decisions regarding:

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

- Compensation and evaluation of the CEO
- Ad hoc committees
- Honorary awards

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

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



MCE Technical Committee Overview and Scope

Current Membership: 8

Current Members:

- Devin Murphy, City of Pinole (Chair)
- Gina Dawson, City of Lafayette
- John Gioia, County of Contra Costa
- Kevin Haroff, City of Larkspur
- Eduardo Martinez, City of Richmond
- Charles Palmares, City of Vallejo
- Scott Perkins, City of San Ramon
- Katie Rice, County of Marin

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

Current meeting date: First Friday of each month at 10:00 am

Scope

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

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

Authority of Technical Committee

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



April 20, 2023

TO: MCE Board of Directors

FROM: Catalina Murphy, General Counsel

RE: Resolution No. 2023-05 Accepting Community Project Funding from the Congressional Grants Division of the U.S. Department of Housing and Urban Development (Agenda Item #08)

ATTACHMENTS: A. Proposed Resolution No. 2023-05 Accepting Community Project Funding from the Congressional Grants Division of the U.S. Department of Housing and Urban Development
B. FY 2023 Community Project Funding Grant Agreement No. B-23-CP-CA-0119 (MCE Healthy Homes Expansion Project)
C. FY 2023 Community Project Funding Grant Agreement No. 23-CP-CA-0137 (MCEv Program Expansion Project)

Dear Board Members:

Summary:

Every year, the Appropriations Committee is responsible for reviewing the President's budget request and drafting appropriations bills for the coming fiscal year. Members of Congress can submit community project funding requests to the Appropriations Committee in hopes of getting funds included in appropriations legislation. Often, Congress packages all 12 appropriations bills into an omnibus spending bill (aka Consolidated Appropriations Act), prior to final passage, which funds the federal government for the fiscal year.

In early 2022, MCE submitted community project funding requests to our congressional representatives in MCE's service area to support and expand existing customer program offerings. In April 2022, Vice Chair Quinto, Director Murphy, and MCE Staff went to Washington, D.C. to meet with the various congressional representatives and lobby in support of MCE's requests. The requests submitted by Representative John Garamendi, who selected the MCE Healthy Homes Expansion project, and Representative Jared Huffman, who selected the MCEv Program Expansion project, successfully moved through the Appropriations Committee and were included in the Consolidated Appropriations Act 2023 (Public Law 117-328) ("FY2023 Act") under the Economic

Development Initiative.

The Economic Development Initiative of the FY2023 Act contains \$2,982,285,641 in funding for the purpose of making community project funding/congressionally-directed grants. These community project funding grants ("CPF Grants") will be administered by the Congressional Grants Division of the U.S. Department of Housing and Urban Development ("HUD").

Under the FY2023 Act, MCE has been awarded two CPF Grants to fund: 1) the MCE Healthy Homes Expansion project to assist low-income households in Marin, Solano, Contra Costa, and Napa counties in acquiring energy-efficient technologies, mitigating associated health and safety hazards and necessary home repairs; and 2) the MCEv Program Expansion project to increase the number of charging stations in Marin, Solano Contra Costa, and Napa counties; (collectively referred to as the "MCE Awarded Funds").

The Proposed Resolution No. 2023-05 Accepting Community Project Funding from the Congressional Grants Division of the U.S. Department of Housing and Urban Development ("Proposed Resolution") would allow MCE to accept the MCE Awarded Funds and enter into the necessary agreements with HUD to use the funding for the applicable projects in MCE's current customer program offerings, consistent with the CPF Grant requirements. Staff recommends approval of the Proposed Resolution.

Fiscal Impacts:

If approved, MCE will receive \$750,000 to fund the MCE Healthy Homes Expansion project, and \$2,000,000 to fund the MCEv Program Expansion project.

Recommendation:

Approve proposed Resolution No. 2023-05 Accepting Community Project Funding from the Congressional Grants Division of the U.S. Department of Housing and Urban Development.

RESOLUTION No. 2023-05

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY ACCEPTING COMMUNITY PROJECT FUNDING FROM THE CONGRESSIONAL GRANTS DIVISION OF THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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, The Consolidated Appropriations Act 2023 (Public Law 117-328) (“FY2023 Act”) contains \$2,982,285,641 in Economic Development Initiative funding for the purpose of making community project funding/congressionally-directed grants (also commonly referred to as Federal Earmarks). These Fiscal Year 2023 Community Project Funding grants (“CPF Grants”) will be administered by the Congressional Grants Division of the U.S. Department of Housing and Urban Development (“HUD”); and

WHEREAS, MCE submitted project proposals that support existing MCE customer programs to its congressional representatives for the CPF Grants. Representative John Garamendi and Representative Jared Huffman selected the MCE Healthy Homes Expansion project and the MCEv Program Expansion project, respectively, to move through the Appropriations Committee pursuant to the FY2023 Act;

WHEREAS, MCE has been awarded two CPF grants by HUD to fund: 1) the MCE Healthy Homes Expansion, and 2) the MCEv Program Expansion; (collectively referred to as the “MCE Awarded Funds”); and

WHEREAS, HUD may approve funding allocations for the MCE Awarded Funds, subject to the terms and conditions of the FY2023 Act requirements, the Grant Agreements, and the CPF Grant Guide between HUD and MCE.

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

1. If MCE receives the MCE Awarded Funds from HUD pursuant to the above referenced FY2023 Act, it represents and certifies that it will use all such funds in a manner consistent and in compliance with all applicable state and

federal statutes, rules, regulations, and laws, including without limitation all rules and laws regarding the FY2023 Act, as well as the Grant Agreements, and the CPF Grant Guide between HUD and MCE.

2. The Chief Executive Officer of MCE (“CEO”) is hereby authorized and directed to receive the MCE Awarded Funds, in an amount not to exceed \$750,000 for the MCE Healthy Homes Expansion and \$2,000,000 for the MCEv Program Expansion, in accordance with all applicable rules and laws.
3. The CEO hereby agrees to use the MCE Awarded Funds for eligible activities as approved by HUD and in accordance with all program requirements, and other rules and laws, as well as in a manner consistent and in compliance with the Grant Agreements and other HUD CPF Grant requirements.
4. The CEO is authorized to execute the Grant Agreements and any subsequent or modifications thereto, as well as any other documents which are related to the MCE Awarded Funds, as HUD may deem appropriate.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 20th day of April, 2023, 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

**FY 2023 COMMUNITY PROJECT FUNDING
GRANT AGREEMENT NO. B-23-CP-CA-0119**

Grantee Name: Marin Clean Energy

Grantee Address: 1125 Tamalpais Ave. San Rafael, CA 94901

Grantee's Unique Entity Identifier (UEI):

Grantee's Employer Identification Number (EIN)

Federal Award Identification Number (FAIN) B-23-CP-CA-0119

Assistance Listing Number and Name 14.251 Economic Development Initiative,
Community Project Funding, and Miscellaneous Grants

Period of Performance/Budget Period Start Date Date of grant obligation

Period of Performance/Budget Period End Date August 31, 2031

This Grant Agreement between the Department of Housing and Urban Development (HUD) and Marin Clean Energy (the Grantee) is made pursuant to the authority of the Consolidated Appropriations Act, 2023 (Public Law 117-328) and the Explanatory Statement for Division L of that Act, which was printed in the Senate section of the Congressional Record on December 20, 2022 (Explanatory Statement).

In reliance upon and in consideration of the mutual representations and obligations under this Grant Agreement, HUD and the Grantee agree as follows:

ARTICLE I. Definitions

The definitions at 2 CFR 200.1 apply to this Grant Agreement, except where this Grant Agreement specifically states otherwise.

Budget period is defined in 2 CFR 200.1 and begins and ends on the dates specified above for the Period of Performance/Budget Period Start Date and Period of Performance/Budget Period End Date.

Period of Performance is defined in 2 CFR 200.1 and begins and ends on the dates specified above for the Period of Performance/Budget Period Start Date and Period of Performance/Budget Period End Date.

ARTICLE II. Total Grant Amount

Subject to the provisions of the Grant Agreement, HUD will make grant funds in the amount of \$750,000 available to the Grantee.

ARTICLE III. Award-Specific Requirements

A. Federal Award Description. The Grantee must use the Federal funds provided under this Grant Agreement (Grant Funds) to carry out the Grantee's "Project." Unless changed in accordance with Article III, section C of this Grant Agreement, the Grantee's Project shall be as described in the Project Narrative that is approved by HUD as of the date that HUD signs this Grant Agreement. For reference, HUD will attach this approved Project Narrative as Appendix 1 to the Grant Agreement on the date that HUD signs this Grant Agreement.

**FY 2023 COMMUNITY PROJECT FUNDING
GRANT AGREEMENT NO. B-23-CP-CA-0119**

B. Approved Budget. The Grantee must use the Grant Funds as provided by the Approved Budget. Unless changed in accordance with Article III, section C of this Grant Agreement, the Approved Budget shall be the line-item budget that is approved by HUD as of the date that HUD signs this Grant Agreement. For reference, HUD will attach this approved line-item budget as Appendix 2 to this Grant Agreement on the date that HUD signs this Grant Agreement.

C. Project and Budget Changes. All changes to the Grantee's Project or Approved Budget must be made in accordance with 2 CFR 200.308 and this Grant Agreement. To request HUD's approval for a change in the Project or Approved Budget, the Grantee must submit a formal letter to the Director of HUD's Office of Economic Development - Congressional Grants Division through the assigned Grant Officer. The letter must be submitted by email to the assigned Grant Officer and must provide justification for the change. The email submitting the letter must also include a revised project narrative or revised line-item budget, as applicable, that includes the requested change. The Grantee is prohibited from making project or budget changes that would conflict with the Applicable Appropriations Act Conditions described in Article III, section D of this Grant Agreement. The assigned Grant Officer for this grant is provided in the Award Letter for this grant and found on HUD's website. The HUD Office of Economic Development – Congressional Grants Division will notify the Grantee in writing, by email, whether HUD approves or disapproves the change. Before the Grantee expends Grant Funds in accordance with any change approved by HUD or otherwise allowed by 2 CFR 200.308, the Grantee must update its grant information in Disaster Recovery Grant Reporting (DRGR) to reflect that change.

D. Applicable Appropriations Act Conditions. The conditions that apply to the Grant Funds as provided by the Consolidated Appropriations Act, 2023 and the Explanatory Statement are hereby incorporated and made part of this Grant Agreement. In the event of a conflict between those conditions, the conditions provided by the Act will govern. The Grant Funds are not subject to the Community Development Block Grants regulations at 24 CFR part 570 or Title I of the Housing and Community Development Act of 1974.

E. In accordance with 2 CFR 200.307(b), costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the grant. As authorized under 2 CFR 200.307(e)(2), program income may be treated as an addition to the Federal award, provided that the Grantee uses that income for allowable costs under this Grant Agreement. In accordance with 2 CFR 200.307(b), costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the grant. Any program income that cannot be expended on allowable costs under this Grant Agreement must be paid to HUD before closeout of the grant, unless otherwise specified by an applicable Federal statute.

**FY 2023 COMMUNITY PROJECT FUNDING
GRANT AGREEMENT NO. B-23-CP-CA-0119**

F. The Grantee must use the Grant Funds only for costs (including indirect costs) that meet the applicable requirements in 2 CFR part 200 (including appendices). The Grantee's indirect cost rate information is as provided in Appendix 3 to this Grant Agreement. Unless the Grantee is an Institution of Higher Education, the Grantee must immediately notify HUD upon any change in the Grantee's indirect cost rate during the Period of Performance, so that HUD can amend the Grant Agreement to reflect the change if necessary. Consistent with 2 CFR Part 200, Appendix III (C.7), if the Grantee is an Institution of Higher Education and has a negotiated rate in effect on the date this Grant Agreement is signed by HUD, the Grantee may use only that rate for its indirect costs during the Period of Performance.

G. The Grantee must comply with any specific award conditions that HUD may attach to this Grant Agreement as provided by 2 CFR 200.208. If applicable, these conditions will be listed or added as Appendix 5 to this Grant Agreement.

H. The Grantee is responsible for managing the Project and ensuring the proper use of the Grant Funds. The Grantee is also responsible for ensuring the completion of the Project, the grant closeout, and compliance with all applicable federal requirements. The Grantee may subaward all or a portion of its funds to one or more subrecipients, as identified in the Project Narrative (Appendix 1) or as may be approved by HUD in accordance with 2 CFR 200.308. All subawards made with funding under this Grant Agreement are subject to the subaward requirements under 2 CFR Part 200, including 2 CFR 200.332, and other requirements provided by this Grant Agreement. The Grantee is responsible for ensuring each subrecipient complies with all requirements under this Grant Agreement, including the general federal requirements in Article IV. A subaward may be made to a for-profit entity only if HUD expressly approves that subaward and the for-profit entity is made subject to the same Federal requirements that apply to all other subrecipients, including the requirements 2 CFR part 200 provides for a "non-Federal entity" that receives a subaward.

ARTICLE IV. General Federal Requirements

A. If the Grantee is a unit of general local government, a State, an Indian Tribe, or an Alaskan Native Village, the Grantee is the Responsible Entity (as defined in 24 CFR part 58) and agrees to assume all of the responsibilities for environmental review and decision-making and action, as specified and required in regulations issued by the Secretary pursuant to section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 and published in 24 CFR Part 58.

B. If the Grantee is a housing authority, redevelopment agency, academic institution, hospital or other non-profit organization, the Grantee shall request the unit of general local government, Indian Tribe or Alaskan Native Village, within which the Project is located and which exercises land use responsibility, to act as Responsible Entity and assume all of the responsibilities for environmental review and decision-making and action as specified in paragraph A above, and the Grantee shall carry out all of the responsibilities of a grantee under 24 CFR Part 58.

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C. After December 29, 2022, neither the Grantee nor any of its contractors, subrecipients and other funding and development partners may undertake, or commit or expend Grant Funds or local funds for, project activities (other than for planning, management, development and administration activities), unless a contract requiring those activities was already executed on or before December 29, 2022, until one of the following occurs: (i) the Responsible Entity has completed the environmental review procedures required by 24 CFR part 58, and HUD has approved the environmental certification and given a release of funds; (ii) the Responsible Entity has determined and documented in its environmental review record that the activities are exempt under 24 CFR 58.34 or are categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b); or (iii) HUD has performed an environmental review under 24 CFR part 50 and has notified Grantee in writing of environmental approval of the activities.

D. Following completion of the environmental review process, the Grantee (recipient) shall exercise oversight, monitoring, and enforcement as necessary to assure that decisions and mitigation measures adopted through the environmental review process are carried out during project development and implementation.

E. The Grantee must comply with the generally applicable HUD and CPD requirements in 24 CFR Part 5, subpart A, including all applicable fair housing, and civil rights requirements. If the Grantee is a Tribe or a Tribally Designated Housing Entity (TDHE) as established under 24 CFR 1000.206, the Grantee must comply with the nondiscrimination requirements in 24 CFR 1000.12 in lieu of the nondiscrimination requirements in 24 CFR 5.105(a). The Grantee must report data on the race, color, religion, sex, national origin, age, disability, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of the Grantee's Project, consistent with the instructions and forms provided by HUD in order to carry out its responsibilities under the Fair Housing Act, Executive Order 11063, Title VI of the Civil Rights Act of 1964, and Section 562 of the Housing and Community Development Act of 1987 (e.g. HUD-27061).

F. The Grantee must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 CFR part 200, as may be amended from time to time. If 2 CFR part 200 is amended to replace or renumber sections of part 200 that are cited specifically in this Grant Agreement, the part 200 requirements as renumbered or replaced by the amendments will govern the obligations of HUD and the Grantee after those amendments become effective.

G. The Grantee must comply with the Award Term in Appendix A to 2 CFR Part 25 ("System for Award Management and Universal Identifier Requirements") and the Award Term in Appendix A to 2 CFR Part 170 ("Reporting Subawards and Executive Compensation"), which are hereby incorporated into and made part of this Grant Agreement.

H. If the Total Grant Amount, as provided in Article II of this Grant Agreement, is greater than \$500,000, the Grantee must comply with the Award Term and Condition for Grantee Integrity and Performance Matters in Appendix 4 to this Grant Agreement.

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I. Unless the Grantee is exempt from the Byrd Amendment as explained below, the Grantee must comply with the provisions of Section 319 of Public Law 101-121, 31 U.S.C. 1352, (the Byrd Amendment) and 24 CFR Part 87, which prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, loan, or cooperative agreement. The Grantee must include in its award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements), the requirements for the certification required by Appendix A to 24 CFR Part 87 and for disclosure using Standard Form- LLL (SF-LLL), "Disclosure of Lobbying Activities." In addition, the Grantee must obtain the executed certification required by Appendix A and an SF-LLL from all covered persons. "Person" is as defined by 24 CFR Part 87. Federally recognized Indian tribes and TDHEs established by Federally recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment. State-recognized Indian tribes and TDHEs established only under state law must comply with this requirement.

J. The Grantee must comply with drug-free workplace requirements in Subpart B of 2 CFR Part 2429, which adopts the governmentwide implementation (2 CFR Part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988, Pub. L. 100-690, Title V, Subtitle D (41 U.S.C. 701-707).

K. The Grantee must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) as implemented by regulations at 49 CFR Part 24. The URA applies to acquisitions of real property and relocation occurring as a direct result of the acquisition, rehabilitation, or demolition of real property for Federal or Federally funded programs or projects. Real property acquisition that receives Federal financial assistance for a program or project, as defined in 49 CFR 24.2, must comply with the acquisition requirements contained in 49 CFR part 24, subpart B. Unless otherwise specified in law, the relocation requirements of the URA and its implementing regulations at 49 CFR part 24, cover any displaced person who moves from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD financial assistance

L. If Grant Funds are used for purchase, lease, support services, operation, or work that may disturb painted surfaces, of pre-1978 housing, you must comply with the lead-based paint evaluation and hazard reduction requirements of HUD's lead- based paint rules (Lead Disclosure; and Lead Safe Housing (24 CFR part 35)), and EPA's lead- based paint rules (e.g., Repair, Renovation and Painting; Pre-Renovation Education; and Lead Training and Certification (40 CFR part 745)).

M. The Grantee must comply with Section 3 of the Housing and Urban Development Act of 1968 (Section 3), 12 U.S.C. 1701u, and HUD's regulations at 24 CFR part 75, as applicable, including the reporting requirements in 24 CFR 75.25. Grants made to Tribes and TDHEs are subject to Indian Preference requirements in Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)). As stated in 24 CFR 75.3(c), grants to Tribes and TDHEs are subject to Indian Preference requirements in lieu of Section 3. Grantees that are not exempt from Section 3 must submit annual reports of Section 3

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accomplishment Performance Measures in DRGR in January of the calendar year. This report reflects Section 3 accomplishments for the previous calendar year.

N. The Grantee must not use any Grant Funds to support any Federal, state, or local project that seeks to use the power of eminent domain, unless eminent domain is employed only for a public use. Public use includes use of funds for mass transit, railroad, airport, seaport, or highway projects, and utility projects which benefit or serve the general public (including energy-related, communication-related, water-related, and waste water-related infrastructure), other structures designated for use by the general public or with other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields, as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107-118). Public use does not include economic development that primarily benefits private entities.

O. The Grantee must not use any Grant Funds to maintain or establish a computer network that does not block the viewing, downloading, and exchanging of pornography. This requirement does not limit the use of funds necessary for any Federal, State, tribal, or local law enforcement agency or any other entity carrying out criminal investigations, prosecution, or adjudication activities.

P. The Grantee must administer its Grant Funds in accordance with the Conflict of Interest requirements set forth in Appendix 6 of this Grant Agreement.

Q. The Grantee must comply with the governmentwide debarment and suspension requirements in 2 CFR part 180 as incorporated and supplemented by HUD's regulations at 2 CFR part 2424.

R. The Grantee must comply with the award term and condition regarding trafficking in persons in Appendix 7 of this Grant Agreement.

S. The assurances and certifications the Grantee has made and submitted to HUD are incorporated by this reference and made part of this Grant Agreement.

ARTICLE V. Drawdown Requirements

A. The Grantee may not draw down Grant Funds until HUD has received and approved any certifications and disclosures required by 24 CFR 87.100 concerning lobbying, if applicable.

B. The Grantee must use HUD's Disaster Recovery Grant Reporting (DRGR) system to draw down Grant Funds and report to HUD on activities.

C. The Grantee must enter activity and budget information in DRGR that is consistent with the Grantee's Project and Approved Budget as described in Article III, sections A and B of this Grant Agreement and complies with HUD's instructions for entering information in DRGR found in the document titled "Grant Award Instructions" that accompanies the Grant Agreement.

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D. The Grantee must only enter activities in DRGR that are described in the Approved Budget.

E. The Grantee must expend all Grant Funds in accordance with the activity and budget information in DRGR.

F. Each drawdown of Grant Funds constitutes a representation by the Grantee that the funds will be used in accordance with this Grant Agreement.

G. The Grantee must use DRGR to track the use of program income and must report the receipt and use of program income in the reports the Grantee submits to HUD under Article VI of this Grant Agreement. The Grantee must expend program income before drawing down Grant Funds through DRGR.

H. Notwithstanding any other provision of this grant agreement, HUD will not be responsible for payment of any Grant Funds after the date Treasury closes the account in accordance with 31 U.S.C. § 1552. Because Treasury may close the account up to one week before the September 30 date specified by 31 U.S.C. § 1552, the Grantee is advised to make its final request for payment under the grant no later than September 15, 2031.

ARTICLE VI. Program-Specific Reporting Requirements

In addition to the general reporting requirements that apply under other provisions of this Agreement, the following program-specific reporting requirements apply to the Grantee:

A. The Grantee must submit a performance report in DRGR on a semi-annual basis and must include a completed Federal financial report as an attachment to each performance report in DRGR. Performance reports shall consist of a narrative of work accomplished during the reporting period. During the Period of Performance, the Grantee must submit these reports in DRGR no later than 30 calendar days after the end of the 6-month reporting period. The first of these reporting periods begins on the first of January or June (whichever occurs first) after the date this Grant Agreement is signed by HUD.

B. The performance report must contain the information required for reporting program performance under 2 CFR 200.329(c)(2) and (d), including a comparison of actual accomplishments to the objectives of the Project as described in Article III, section A of this Grant Agreement, the reasons why established goals were not met, if appropriate, and additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

C. Financial reports must be submitted using DRGR or such future collections HUD may require and as approved by OMB and listed on the Grants.gov website (<https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>).

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D. The performance and financial reports will undergo review and approval by HUD. If a report submission is insufficient, HUD will reject the report in DRGR and identify the corrections the Grantee must make.

E. No drawdown of funds will be allowed through DRGR while the Grantee has an overdue performance or financial report.

F. The Grantee must report and account for all property acquired or improved with Grant Funds as provided by 2 CFR part 200 using the applicable common forms approved by OMB and provided on the Grants.gov website (<https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>). This reporting obligation includes submitting status reports on real property at least annually as provided by 2 CFR 200.330, accounting for real and personal property acquired or improved with Grant Funds as part of Project Closeout, and promptly submitting requests for disposition instructions as provided by 2 CFR 200.311(c), 200.313(e), and 200.314(a).

ARTICLE VII. Project Closeout

A. The grant will be closed out in accordance with 2 CFR part 200, as may be amended from time to time, except as otherwise specified in this Grant Agreement.

B. The Grantee must submit to HUD a written request to closeout the grant no later than 30 calendar days after the Grantee has drawn down all Grant Funds and completed the Project as described in Article III, section A of this Grant Agreement. HUD will then send the Closeout Agreement and Closeout Certification to the Grantee.

C. At HUD's option, the Grantee may delay initiation of project closeout until the resolution of any findings as a result of the review of semi-annual activity reports in DRGR. If HUD exercises this option, the Grantee must promptly resolve the findings.

D. The Grantee recognizes that the closeout process may entail a review by HUD to determine compliance with the Grant Agreement by the Grantee and all participating parties. The Grantee agrees to cooperate with any HUD review, including reasonable requests for on-site inspection of property acquired or improved with Grant Funds.

E. No later than 120 calendar days after the Period of Performance, Grantees shall provide to HUD the following documentation:

1. A Certification of Project Completion.
2. A Grant Closeout Agreement.
3. A final financial report giving the amount and types of project costs charged to the grant (that meet the allowability and allocability

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requirements of 2 CFR part 200, subpart E); a certification of the costs; and the amounts and sources of other project funds.

4. A final performance report providing a comparison of actual accomplishments with the objectives of the Project, the reasons for slippage if established objectives were not met and additional pertinent information including explanation of significant cost overruns.
5. A final property report, if specifically requested by HUD at the time of closeout.

ARTICLE VIII. Default

A default under this Grant Agreement shall consist of any use of Grant Funds for a purpose other than as authorized by this Grant Agreement, any noncompliance with statutory, regulatory, or other requirements applicable to the Grant Funds, any other material breach of this Grant Agreement, or any material misrepresentation in the Grantee's submissions to HUD in anticipation of this award. If the Grantee fails to comply with the terms and conditions of the Grant Agreement, HUD may adjust specific conditions of this Grant Agreement as described in 2 CFR part 200, as may be amended from time to time. If HUD determines that noncompliance cannot be remedied by imposing additional conditions, HUD may take one or more of the remedies for noncompliance described in 2 CFR part 200, as may be amended from time to time. HUD may also terminate all or a part of this award as provided by 2 CFR 200.340 and other applicable provisions of 2 CFR part 200, as may be amended from time to time. Nothing in this Grant Agreement shall be construed as creating or justifying any claim against the Federal government or the Grantee by any third party.

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ARTICLE IX. HUD Contact Information

Except where this Grant Agreement specifically states otherwise, all requests, submissions, and reports the Grantee is required to make to HUD under this Grant Agreement must be made in writing via email to CPFGGrants@hud.gov.

This agreement is hereby executed on behalf of the Grantee and HUD as follows:

GRANTEE

(Name of Organization)

BY: _____
(Signature of Authorized Official)

(Typed Name and Title of Authorized Official)

(Date)

HUD

BY: _____
Robin J. Keegan,
Deputy Assistant Secretary for Economic Development

(Date)

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APPENDIX 1 – Project Narrative

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APPENDIX 2 – Approved Budget

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APPENDIX 3 – Grantee’s Indirect Cost Rate Information

Subject to the applicable requirements in 2 CFR part 200 (including its appendices), the Grantee will use an indirect cost rate as represented by the Grantee below:

- ☐ The Grantee will not use an indirect cost rate to charge its indirect costs to the grant.
- ☐ The Grantee will use the indirect cost rate(s) identified in the table below to charge its indirect costs to the grant.

Agency/Dept./Major Function	Indirect cost rate	Direct Cost Base
_____	_____ %	_____
_____	_____ %	_____

[PLEASE NOTE: The grantee must check one of the two boxes above. If the second box is checked, the corresponding table must be filled out as described below.

The table must include each indirect cost rate that will be used to calculate the Grantee’s indirect costs under the grant. The table must also specify the type of direct cost base to which each included rate applies (for example, Modified Total Direct Costs (MTDC)). Do not include indirect cost rate information for subrecipients.

For government entities, enter each agency or department that will carry out activities under the grant, the indirect cost rate applicable to each department/agency (including if the de minimis rate is used per 2 CFR 200.414), and the type of direct cost base to which the rate will be applied.

For nonprofit organizations that use the Simplified Allocation Method for indirect costs or elects to use the de minimis rate of 10% of Modified Total Direct Costs in accordance with 2 CFR 200.414, enter the applicable indirect cost rate and type of direct cost base in the first row of the table.

For nonprofit organizations that use the Multiple Allocation Base Method, enter each major function of the organization for which a rate was developed and will be used under the grant, the indirect cost rate applicable to that major function, and the type of direct cost base to which the rate will be applied.]

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Reporting of Matters Related to Grantee Integrity and Performance

1. General Reporting Requirement

If the total value of the Grantee's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then during that period of time the Grantee must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which Grantee Must Report

During any period of time when the Grantee is subject to the requirement in paragraph 1 of this award term and condition, the Grantee must submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five-year period; and
- c. Is one of the following:
 - (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and the Grantee's payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - (4) Any other criminal, civil, or administrative proceeding if:
 - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

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(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on the Grantee's part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

During any period of time when the Grantee is subject to the requirement in paragraph 1 of this award term and condition, the Grantee must enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. The Grantee does not need to submit the information a second time under assistance awards that the Grantee received if the Grantee already provided the information through SAM because the Grantee was required to do so under Federal procurement contracts that the Grantee was awarded.

4. Reporting Frequency

During any period of time when the Grantee is subject to the requirement in paragraph 1 of this award term and condition, the Grantee must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that the Grantee has not reported previously or affirm that there is no new information to report. If the Grantee has Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000, the Grantee must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

(1) Only the Federal share of the funding under any Federal award with a cost share or match requirement; and

(2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

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APPENDIX 5 – Specific Award Conditions
NONE.

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1. *Conflicts Subject to Procurement Regulations.* When procuring property or services, the grantee and its subrecipients shall comply with the applicable conflict-of-interest rules in 2 CFR 200.317 and 2 CFR 200.318(c). In all cases not governed by 2 CFR 200.317 and 2 CFR 200.318(c), the Grantee and its subrecipients must follow the requirements contained in paragraphs 2-5 below.

2. *General prohibition.* No person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee or subrecipient and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have a financial interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), sibling (including a stepsibling), grandparent, grandchild, and in-laws of a covered person.

3. *Exceptions.* HUD may grant an exception to the general prohibition in paragraph (ii) upon the Grantee's written request and satisfaction of the threshold requirements in paragraph (iv), if HUD determines the exception will further the Federal purpose of the award and the effective and efficient administration of the Grantee's Project, taking into account the cumulative effects of the factors in paragraph (v).

4. *Threshold requirements for exceptions.* HUD will consider an exception only after the Grantee has provided the following documentation:

- a. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how that disclosure was made; and
- b. An opinion of the Grantee's attorney that the interest for which the exception is sought would not violate state or local law.

5. *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the Grantee has satisfactorily met the threshold requirements in paragraph (iii), HUD will consider the cumulative effect of the following factors, where applicable:

- a. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;
- b. Whether an opportunity was provided for open competitive bidding or negotiation;
- c. Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception

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will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

d. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process regarding the assisted activity in question;

e. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (ii);

f. Whether undue hardship will result either to the Grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

g. Any other relevant considerations.

6. *Disclosure of potential conflicts of interest.* The Grantee must disclose in writing to HUD any potential conflict of interest.

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APPENDIX 7 – Award Term and Condition Regarding Trafficking in Persons

The following award term and condition, which is required by 2 CFR part 175, applies as written:

a. Provisions applicable to a grantee that is a private entity.

1. You as the grantee, your employees, subrecipients under this award, and subrecipients' employees may not—

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- ii. Procure a commercial sex act during the period of time that the award is in effect; or
- iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity:

- i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
- ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

A. Associated with performance under this award; or

B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by HUD at 2 CFR 2424.

b. Provision applicable to a grantee other than a private entity.

We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

- 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
- 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:

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- i. Associated with performance under this award; or
- ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by HUD at 2 CFR 2424.

c. Provisions applicable to any grantee.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. “Employee” means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

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3. “Private entity”:

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

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Grantee Name: Marin Clean Energy

Grantee Address: 1125 Tamalpais Ave. San Rafael, CA 94901

Grantee's Unique Entity Identifier (UEI):

Grantee's Employer Identification Number (EIN)

Federal Award Identification Number (FAIN) B-23-CP-CA-0137

Assistance Listing Number and Name 14.251 Economic Development Initiative,
Community Project Funding, and Miscellaneous Grants

Period of Performance/Budget Period Start Date Date of grant obligation

Period of Performance/Budget Period End Date August 31, 2031

This Grant Agreement between the Department of Housing and Urban Development (HUD) and Marin Clean Energy (the Grantee) is made pursuant to the authority of the Consolidated Appropriations Act, 2023 (Public Law 117-328) and the Explanatory Statement for Division L of that Act, which was printed in the Senate section of the Congressional Record on December 20, 2022 (Explanatory Statement).

In reliance upon and in consideration of the mutual representations and obligations under this Grant Agreement, HUD and the Grantee agree as follows:

ARTICLE I. Definitions

The definitions at 2 CFR 200.1 apply to this Grant Agreement, except where this Grant Agreement specifically states otherwise.

Budget period is defined in 2 CFR 200.1 and begins and ends on the dates specified above for the Period of Performance/Budget Period Start Date and Period of Performance/Budget Period End Date.

Period of Performance is defined in 2 CFR 200.1 and begins and ends on the dates specified above for the Period of Performance/Budget Period Start Date and Period of Performance/Budget Period End Date.

ARTICLE II. Total Grant Amount

Subject to the provisions of the Grant Agreement, HUD will make grant funds in the amount of \$2,000,000 available to the Grantee.

ARTICLE III. Award-Specific Requirements

A. Federal Award Description. The Grantee must use the Federal funds provided under this Grant Agreement (Grant Funds) to carry out the Grantee's "Project." Unless changed in accordance with Article III, section C of this Grant Agreement, the Grantee's Project shall be as described in the Project Narrative that is approved by HUD as of the date that HUD signs this Grant Agreement. For reference, HUD will attach this approved Project Narrative as Appendix 1 to the Grant Agreement on the date that HUD signs this Grant Agreement.

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B. Approved Budget. The Grantee must use the Grant Funds as provided by the Approved Budget. Unless changed in accordance with Article III, section C of this Grant Agreement, the Approved Budget shall be the line-item budget that is approved by HUD as of the date that HUD signs this Grant Agreement. For reference, HUD will attach this approved line-item budget as Appendix 2 to this Grant Agreement on the date that HUD signs this Grant Agreement.

C. Project and Budget Changes. All changes to the Grantee's Project or Approved Budget must be made in accordance with 2 CFR 200.308 and this Grant Agreement. To request HUD's approval for a change in the Project or Approved Budget, the Grantee must submit a formal letter to the Director of HUD's Office of Economic Development - Congressional Grants Division through the assigned Grant Officer. The letter must be submitted by email to the assigned Grant Officer and must provide justification for the change. The email submitting the letter must also include a revised project narrative or revised line-item budget, as applicable, that includes the requested change. The Grantee is prohibited from making project or budget changes that would conflict with the Applicable Appropriations Act Conditions described in Article III, section D of this Grant Agreement. The assigned Grant Officer for this grant is provided in the Award Letter for this grant and found on HUD's website. The HUD Office of Economic Development – Congressional Grants Division will notify the Grantee in writing, by email, whether HUD approves or disapproves the change. Before the Grantee expends Grant Funds in accordance with any change approved by HUD or otherwise allowed by 2 CFR 200.308, the Grantee must update its grant information in Disaster Recovery Grant Reporting (DRGR) to reflect that change.

D. Applicable Appropriations Act Conditions. The conditions that apply to the Grant Funds as provided by the Consolidated Appropriations Act, 2023 and the Explanatory Statement are hereby incorporated and made part of this Grant Agreement. In the event of a conflict between those conditions, the conditions provided by the Act will govern. The Grant Funds are not subject to the Community Development Block Grants regulations at 24 CFR part 570 or Title I of the Housing and Community Development Act of 1974.

E. In accordance with 2 CFR 200.307(b), costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the grant. As authorized under 2 CFR 200.307(e)(2), program income may be treated as an addition to the Federal award, provided that the Grantee uses that income for allowable costs under this Grant Agreement. In accordance with 2 CFR 200.307(b), costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the grant. Any program income that cannot be expended on allowable costs under this Grant Agreement must be paid to HUD before closeout of the grant, unless otherwise specified by an applicable Federal statute.

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F. The Grantee must use the Grant Funds only for costs (including indirect costs) that meet the applicable requirements in 2 CFR part 200 (including appendices). The Grantee's indirect cost rate information is as provided in Appendix 3 to this Grant Agreement. Unless the Grantee is an Institution of Higher Education, the Grantee must immediately notify HUD upon any change in the Grantee's indirect cost rate during the Period of Performance, so that HUD can amend the Grant Agreement to reflect the change if necessary. Consistent with 2 CFR Part 200, Appendix III (C.7), if the Grantee is an Institution of Higher Education and has a negotiated rate in effect on the date this Grant Agreement is signed by HUD, the Grantee may use only that rate for its indirect costs during the Period of Performance.

G. The Grantee must comply with any specific award conditions that HUD may attach to this Grant Agreement as provided by 2 CFR 200.208. If applicable, these conditions will be listed or added as Appendix 5 to this Grant Agreement.

H. The Grantee is responsible for managing the Project and ensuring the proper use of the Grant Funds. The Grantee is also responsible for ensuring the completion of the Project, the grant closeout, and compliance with all applicable federal requirements. The Grantee may subaward all or a portion of its funds to one or more subrecipients, as identified in the Project Narrative (Appendix 1) or as may be approved by HUD in accordance with 2 CFR 200.308. All subawards made with funding under this Grant Agreement are subject to the subaward requirements under 2 CFR Part 200, including 2 CFR 200.332, and other requirements provided by this Grant Agreement. The Grantee is responsible for ensuring each subrecipient complies with all requirements under this Grant Agreement, including the general federal requirements in Article IV. A subaward may be made to a for-profit entity only if HUD expressly approves that subaward and the for-profit entity is made subject to the same Federal requirements that apply to all other subrecipients, including the requirements 2 CFR part 200 provides for a "non-Federal entity" that receives a subaward.

ARTICLE IV. General Federal Requirements

A. If the Grantee is a unit of general local government, a State, an Indian Tribe, or an Alaskan Native Village, the Grantee is the Responsible Entity (as defined in 24 CFR part 58) and agrees to assume all of the responsibilities for environmental review and decision-making and action, as specified and required in regulations issued by the Secretary pursuant to section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 and published in 24 CFR Part 58.

B. If the Grantee is a housing authority, redevelopment agency, academic institution, hospital or other non-profit organization, the Grantee shall request the unit of general local government, Indian Tribe or Alaskan Native Village, within which the Project is located and which exercises land use responsibility, to act as Responsible Entity and assume all of the responsibilities for environmental review and decision-making and action as specified in paragraph A above, and the Grantee shall carry out all of the responsibilities of a grantee under 24 CFR Part 58.

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C. After December 29, 2022, neither the Grantee nor any of its contractors, subrecipients and other funding and development partners may undertake, or commit or expend Grant Funds or local funds for, project activities (other than for planning, management, development and administration activities), unless a contract requiring those activities was already executed on or before December 29, 2022, until one of the following occurs: (i) the Responsible Entity has completed the environmental review procedures required by 24 CFR part 58, and HUD has approved the environmental certification and given a release of funds; (ii) the Responsible Entity has determined and documented in its environmental review record that the activities are exempt under 24 CFR 58.34 or are categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b); or (iii) HUD has performed an environmental review under 24 CFR part 50 and has notified Grantee in writing of environmental approval of the activities.

D. Following completion of the environmental review process, the Grantee (recipient) shall exercise oversight, monitoring, and enforcement as necessary to assure that decisions and mitigation measures adopted through the environmental review process are carried out during project development and implementation.

E. The Grantee must comply with the generally applicable HUD and CPD requirements in 24 CFR Part 5, subpart A, including all applicable fair housing, and civil rights requirements. If the Grantee is a Tribe or a Tribally Designated Housing Entity (TDHE) as established under 24 CFR 1000.206, the Grantee must comply with the nondiscrimination requirements in 24 CFR 1000.12 in lieu of the nondiscrimination requirements in 24 CFR 5.105(a). The Grantee must report data on the race, color, religion, sex, national origin, age, disability, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of the Grantee's Project, consistent with the instructions and forms provided by HUD in order to carry out its responsibilities under the Fair Housing Act, Executive Order 11063, Title VI of the Civil Rights Act of 1964, and Section 562 of the Housing and Community Development Act of 1987 (e.g. HUD-27061).

F. The Grantee must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 CFR part 200, as may be amended from time to time. If 2 CFR part 200 is amended to replace or renumber sections of part 200 that are cited specifically in this Grant Agreement, the part 200 requirements as renumbered or replaced by the amendments will govern the obligations of HUD and the Grantee after those amendments become effective.

G. The Grantee must comply with the Award Term in Appendix A to 2 CFR Part 25 ("System for Award Management and Universal Identifier Requirements") and the Award Term in Appendix A to 2 CFR Part 170 ("Reporting Subawards and Executive Compensation"), which are hereby incorporated into and made part of this Grant Agreement.

H. If the Total Grant Amount, as provided in Article II of this Grant Agreement, is greater than \$500,000, the Grantee must comply with the Award Term and Condition for Grantee Integrity and Performance Matters in Appendix 4 to this Grant Agreement.

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I. Unless the Grantee is exempt from the Byrd Amendment as explained below, the Grantee must comply with the provisions of Section 319 of Public Law 101-121, 31 U.S.C. 1352, (the Byrd Amendment) and 24 CFR Part 87, which prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, loan, or cooperative agreement. The Grantee must include in its award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements), the requirements for the certification required by Appendix A to 24 CFR Part 87 and for disclosure using Standard Form- LLL (SF-LLL), "Disclosure of Lobbying Activities." In addition, the Grantee must obtain the executed certification required by Appendix A and an SF-LLL from all covered persons. "Person" is as defined by 24 CFR Part 87. Federally recognized Indian tribes and TDHEs established by Federally recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment. State-recognized Indian tribes and TDHEs established only under state law must comply with this requirement.

J. The Grantee must comply with drug-free workplace requirements in Subpart B of 2 CFR Part 2429, which adopts the governmentwide implementation (2 CFR Part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988, Pub. L. 100-690, Title V, Subtitle D (41 U.S.C. 701-707).

K. The Grantee must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) as implemented by regulations at 49 CFR Part 24. The URA applies to acquisitions of real property and relocation occurring as a direct result of the acquisition, rehabilitation, or demolition of real property for Federal or Federally funded programs or projects. Real property acquisition that receives Federal financial assistance for a program or project, as defined in 49 CFR 24.2, must comply with the acquisition requirements contained in 49 CFR part 24, subpart B. Unless otherwise specified in law, the relocation requirements of the URA and its implementing regulations at 49 CFR part 24, cover any displaced person who moves from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD financial assistance

L. If Grant Funds are used for purchase, lease, support services, operation, or work that may disturb painted surfaces, of pre-1978 housing, you must comply with the lead-based paint evaluation and hazard reduction requirements of HUD's lead- based paint rules (Lead Disclosure; and Lead Safe Housing (24 CFR part 35)), and EPA's lead- based paint rules (e.g., Repair, Renovation and Painting; Pre-Renovation Education; and Lead Training and Certification (40 CFR part 745)).

M. The Grantee must comply with Section 3 of the Housing and Urban Development Act of 1968 (Section 3), 12 U.S.C. 1701u, and HUD's regulations at 24 CFR part 75, as applicable, including the reporting requirements in 24 CFR 75.25. Grants made to Tribes and TDHEs are subject to Indian Preference requirements in Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)). As stated in 24 CFR 75.3(c), grants to Tribes and TDHEs are subject to Indian Preference requirements in lieu of Section 3. Grantees that are not exempt from Section 3 must submit annual reports of Section 3

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accomplishment Performance Measures in DRGR in January of the calendar year. This report reflects Section 3 accomplishments for the previous calendar year.

N. The Grantee must not use any Grant Funds to support any Federal, state, or local project that seeks to use the power of eminent domain, unless eminent domain is employed only for a public use. Public use includes use of funds for mass transit, railroad, airport, seaport, or highway projects, and utility projects which benefit or serve the general public (including energy-related, communication-related, water-related, and waste water-related infrastructure), other structures designated for use by the general public or with other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields, as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107-118). Public use does not include economic development that primarily benefits private entities.

O. The Grantee must not use any Grant Funds to maintain or establish a computer network that does not block the viewing, downloading, and exchanging of pornography. This requirement does not limit the use of funds necessary for any Federal, State, tribal, or local law enforcement agency or any other entity carrying out criminal investigations, prosecution, or adjudication activities.

P. The Grantee must administer its Grant Funds in accordance with the Conflict of Interest requirements set forth in Appendix 6 of this Grant Agreement.

Q. The Grantee must comply with the governmentwide debarment and suspension requirements in 2 CFR part 180 as incorporated and supplemented by HUD's regulations at 2 CFR part 2424.

R. The Grantee must comply with the award term and condition regarding trafficking in persons in Appendix 7 of this Grant Agreement.

S. The assurances and certifications the Grantee has made and submitted to HUD are incorporated by this reference and made part of this Grant Agreement.

ARTICLE V. Drawdown Requirements

A. The Grantee may not draw down Grant Funds until HUD has received and approved any certifications and disclosures required by 24 CFR 87.100 concerning lobbying, if applicable.

B. The Grantee must use HUD's Disaster Recovery Grant Reporting (DRGR) system to draw down Grant Funds and report to HUD on activities.

C. The Grantee must enter activity and budget information in DRGR that is consistent with the Grantee's Project and Approved Budget as described in Article III, sections A and B of this Grant Agreement and complies with HUD's instructions for entering information in DRGR found in the document titled "Grant Award Instructions" that accompanies the Grant Agreement.

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D. The Grantee must only enter activities in DRGR that are described in the Approved Budget.

E. The Grantee must expend all Grant Funds in accordance with the activity and budget information in DRGR.

F. Each drawdown of Grant Funds constitutes a representation by the Grantee that the funds will be used in accordance with this Grant Agreement.

G. The Grantee must use DRGR to track the use of program income and must report the receipt and use of program income in the reports the Grantee submits to HUD under Article VI of this Grant Agreement. The Grantee must expend program income before drawing down Grant Funds through DRGR.

H. Notwithstanding any other provision of this grant agreement, HUD will not be responsible for payment of any Grant Funds after the date Treasury closes the account in accordance with 31 U.S.C. § 1552. Because Treasury may close the account up to one week before the September 30 date specified by 31 U.S.C. § 1552, the Grantee is advised to make its final request for payment under the grant no later than September 15, 2031.

ARTICLE VI. Program-Specific Reporting Requirements

In addition to the general reporting requirements that apply under other provisions of this Agreement, the following program-specific reporting requirements apply to the Grantee:

A. The Grantee must submit a performance report in DRGR on a semi-annual basis and must include a completed Federal financial report as an attachment to each performance report in DRGR. Performance reports shall consist of a narrative of work accomplished during the reporting period. During the Period of Performance, the Grantee must submit these reports in DRGR no later than 30 calendar days after the end of the 6-month reporting period. The first of these reporting periods begins on the first of January or June (whichever occurs first) after the date this Grant Agreement is signed by HUD.

B. The performance report must contain the information required for reporting program performance under 2 CFR 200.329(c)(2) and (d), including a comparison of actual accomplishments to the objectives of the Project as described in Article III, section A of this Grant Agreement, the reasons why established goals were not met, if appropriate, and additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

C. Financial reports must be submitted using DRGR or such future collections HUD may require and as approved by OMB and listed on the Grants.gov website (<https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>).

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D. The performance and financial reports will undergo review and approval by HUD. If a report submission is insufficient, HUD will reject the report in DRGR and identify the corrections the Grantee must make.

E. No drawdown of funds will be allowed through DRGR while the Grantee has an overdue performance or financial report.

F. The Grantee must report and account for all property acquired or improved with Grant Funds as provided by 2 CFR part 200 using the applicable common forms approved by OMB and provided on the Grants.gov website (<https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>). This reporting obligation includes submitting status reports on real property at least annually as provided by 2 CFR 200.330, accounting for real and personal property acquired or improved with Grant Funds as part of Project Closeout, and promptly submitting requests for disposition instructions as provided by 2 CFR 200.311(c), 200.313(e), and 200.314(a).

ARTICLE VII. Project Closeout

A. The grant will be closed out in accordance with 2 CFR part 200, as may be amended from time to time, except as otherwise specified in this Grant Agreement.

B. The Grantee must submit to HUD a written request to closeout the grant no later than 30 calendar days after the Grantee has drawn down all Grant Funds and completed the Project as described in Article III, section A of this Grant Agreement. HUD will then send the Closeout Agreement and Closeout Certification to the Grantee.

C. At HUD's option, the Grantee may delay initiation of project closeout until the resolution of any findings as a result of the review of semi-annual activity reports in DRGR. If HUD exercises this option, the Grantee must promptly resolve the findings.

D. The Grantee recognizes that the closeout process may entail a review by HUD to determine compliance with the Grant Agreement by the Grantee and all participating parties. The Grantee agrees to cooperate with any HUD review, including reasonable requests for on-site inspection of property acquired or improved with Grant Funds.

E. No later than 120 calendar days after the Period of Performance, Grantees shall provide to HUD the following documentation:

1. A Certification of Project Completion.
2. A Grant Closeout Agreement.
3. A final financial report giving the amount and types of project costs charged to the grant (that meet the allowability and allocability

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requirements of 2 CFR part 200, subpart E); a certification of the costs; and the amounts and sources of other project funds.

4. A final performance report providing a comparison of actual accomplishments with the objectives of the Project, the reasons for slippage if established objectives were not met and additional pertinent information including explanation of significant cost overruns.
5. A final property report, if specifically requested by HUD at the time of closeout.

ARTICLE VIII. Default

A default under this Grant Agreement shall consist of any use of Grant Funds for a purpose other than as authorized by this Grant Agreement, any noncompliance with statutory, regulatory, or other requirements applicable to the Grant Funds, any other material breach of this Grant Agreement, or any material misrepresentation in the Grantee's submissions to HUD in anticipation of this award. If the Grantee fails to comply with the terms and conditions of the Grant Agreement, HUD may adjust specific conditions of this Grant Agreement as described in 2 CFR part 200, as may be amended from time to time. If HUD determines that noncompliance cannot be remedied by imposing additional conditions, HUD may take one or more of the remedies for noncompliance described in 2 CFR part 200, as may be amended from time to time. HUD may also terminate all or a part of this award as provided by 2 CFR 200.340 and other applicable provisions of 2 CFR part 200, as may be amended from time to time. Nothing in this Grant Agreement shall be construed as creating or justifying any claim against the Federal government or the Grantee by any third party.

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ARTICLE IX. HUD Contact Information

Except where this Grant Agreement specifically states otherwise, all requests, submissions, and reports the Grantee is required to make to HUD under this Grant Agreement must be made in writing via email to CPFGGrants@hud.gov.

This agreement is hereby executed on behalf of the Grantee and HUD as follows:

GRANTEE

(Name of Organization)

BY: _____

(Signature of Authorized Official)

(Typed Name and Title of Authorized Official)

(Date)

HUD

BY: _____

Robin J. Keegan,
Deputy Assistant Secretary for Economic Development

(Date)

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APPENDIX 1 – Project Narrative

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APPENDIX 2 – Approved Budget

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APPENDIX 3 – Grantee’s Indirect Cost Rate Information

Subject to the applicable requirements in 2 CFR part 200 (including its appendices), the Grantee will use an indirect cost rate as represented by the Grantee below:

- ☐ The Grantee will not use an indirect cost rate to charge its indirect costs to the grant.
- ☐ The Grantee will use the indirect cost rate(s) identified in the table below to charge its indirect costs to the grant.

Agency/Dept./Major Function	Indirect cost rate	Direct Cost Base
_____	%	_____
_____	%	_____

[PLEASE NOTE: The grantee must check one of the two boxes above. If the second box is checked, the corresponding table must be filled out as described below.

The table must include each indirect cost rate that will be used to calculate the Grantee’s indirect costs under the grant. The table must also specify the type of direct cost base to which each included rate applies (for example, Modified Total Direct Costs (MTDC)). Do not include indirect cost rate information for subrecipients.

For government entities, enter each agency or department that will carry out activities under the grant, the indirect cost rate applicable to each department/agency (including if the de minimis rate is used per 2 CFR 200.414), and the type of direct cost base to which the rate will be applied.

For nonprofit organizations that use the Simplified Allocation Method for indirect costs or elects to use the de minimis rate of 10% of Modified Total Direct Costs in accordance with 2 CFR 200.414, enter the applicable indirect cost rate and type of direct cost base in the first row of the table.

For nonprofit organizations that use the Multiple Allocation Base Method, enter each major function of the organization for which a rate was developed and will be used under the grant, the indirect cost rate applicable to that major function, and the type of direct cost base to which the rate will be applied.]

APPENDIX 4 –**Award Term and Condition for Grantee Integrity and Performance Matters**

Reporting of Matters Related to Grantee Integrity and Performance

1. General Reporting Requirement

If the total value of the Grantee's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then during that period of time the Grantee must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which Grantee Must Report

During any period of time when the Grantee is subject to the requirement in paragraph 1 of this award term and condition, the Grantee must submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five-year period; and
- c. Is one of the following:
 - (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and the Grantee's payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - (4) Any other criminal, civil, or administrative proceeding if:
 - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

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- (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on the Grantee's part; and
- (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

During any period of time when the Grantee is subject to the requirement in paragraph 1 of this award term and condition, the Grantee must enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. The Grantee does not need to submit the information a second time under assistance awards that the Grantee received if the Grantee already provided the information through SAM because the Grantee was required to do so under Federal procurement contracts that the Grantee was awarded.

4. Reporting Frequency

During any period of time when the Grantee is subject to the requirement in paragraph 1 of this award term and condition, the Grantee must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that the Grantee has not reported previously or affirm that there is no new information to report. If the Grantee has Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000, the Grantee must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

(1) Only the Federal share of the funding under any Federal award with a cost share or match requirement; and

(2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

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APPENDIX 5 – Specific Award Conditions
NONE.

APPENDIX 6 – Conflict of Interest Requirements

1. *Conflicts Subject to Procurement Regulations.* When procuring property or services, the grantee and its subrecipients shall comply with the applicable conflict-of-interest rules in 2 CFR 200.317 and 2 CFR 200.318(c). In all cases not governed by 2 CFR 200.317 and 2 CFR 200.318(c), the Grantee and its subrecipients must follow the requirements contained in paragraphs 2-5 below.

2. *General prohibition.* No person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee or subrecipient and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have a financial interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), sibling (including a stepsibling), grandparent, grandchild, and in-laws of a covered person.

3. *Exceptions.* HUD may grant an exception to the general prohibition in paragraph (ii) upon the Grantee's written request and satisfaction of the threshold requirements in paragraph (iv), if HUD determines the exception will further the Federal purpose of the award and the effective and efficient administration of the Grantee's Project, taking into account the cumulative effects of the factors in paragraph (v).

4. *Threshold requirements for exceptions.* HUD will consider an exception only after the Grantee has provided the following documentation:

- a. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how that disclosure was made; and
- b. An opinion of the Grantee's attorney that the interest for which the exception is sought would not violate state or local law.

5. *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the Grantee has satisfactorily met the threshold requirements in paragraph (iii), HUD will consider the cumulative effect of the following factors, where applicable:

- a. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;
- b. Whether an opportunity was provided for open competitive bidding or negotiation;
- c. Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception

**FY 2023 COMMUNITY PROJECT FUNDING
GRANT AGREEMENT NO. B-23-CP-CA-0137**

will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

d. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process regarding the assisted activity in question;

e. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (ii);

f. Whether undue hardship will result either to the Grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

g. Any other relevant considerations.

6. *Disclosure of potential conflicts of interest.* The Grantee must disclose in writing to HUD any potential conflict of interest.

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APPENDIX 7 – Award Term and Condition Regarding Trafficking in Persons

The following award term and condition, which is required by 2 CFR part 175, applies as written:

a. Provisions applicable to a grantee that is a private entity.

1. You as the grantee, your employees, subrecipients under this award, and subrecipients' employees may not—

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- ii. Procure a commercial sex act during the period of time that the award is in effect; or
- iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity:

- i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
- ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

A. Associated with performance under this award; or

B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by HUD at 2 CFR 2424.

b. Provision applicable to a grantee other than a private entity.

We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

- 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
- 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:

**FY 2023 COMMUNITY PROJECT FUNDING
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- i. Associated with performance under this award; or
- ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by HUD at 2 CFR 2424.

c. Provisions applicable to any grantee.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. “Employee” means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

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3. “Private entity”:

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).



April 20, 2023

TO: MCE Board of Directors

FROM: Garth Salisbury, Chief Financial Officer
Maira Strauss, Manager of Finance

RE: Resolution No. 2023-06: Approval of Revolving Credit Agreement with Royal Bank of Canada (Agenda Item #09)

ATTACHMENTS: A. Proposed Resolution No. 2023-06: Approving and Authorizing the Execution and Delivery of a Revolving Credit Agreement with Royal Bank of Canada
B. Draft Revolving Credit Agreement with Royal Bank of Canada
C. Draft Fee Agreement with Royal Bank of Canada

Dear Board Members:

Summary:

Due to the upcoming expiration of the current Revolving Credit Agreement with JPMorgan Chase, staff surveyed the bank market to determine if there were more competitive credit facility options to best meet MCE's financial objectives. Staff received proposals from three (3) banks and has determined the Royal Bank of Canada ("RBC") proposal to be the most advantageous to MCE.

Overview of the RFP Process and Bank Selection Criteria:

RBC was chosen through a competitive Request for Proposal ("RFP") process issued on September 9, 2022, which solicited proposals for a general-purpose credit facility in a minimum amount of \$40 million and up to a maximum of \$60 million for a term of at least three (3) years. The RFP was sent to fifteen (15) banks who met a set of financial and environmental criteria developed internally and in coordination with MCE's municipal advisor, Montague DeRose and Associates.

These criteria included the following:

- Minimum net assets totaling \$25 billion;
- Long-term ratings at least equivalent to A2 and A from two nationally recognized

- credit rating agencies;
- Commitment to environmental sustainability;
- Other financial strength requirements.

Staff analyzed the most recent financial statements to collect information on net assets, credit ratings, and overall financial strengths to select banks commensurate with MCE's strong financial standing. Due to MCE's stringent financial criteria, the list of qualified banks was limited primarily to large multi-national banks. Staff recognizes that these banks may also finance fossil fuel projects. Nonetheless, these were the only banks that could meet MCE's financial requirements and provide a satisfactory credit facility that would allow the agency to continue meeting its liquidity objectives.

Importantly, most of the banks on MCE's RFP list are also actively involved in financing the transition away from fossil fuels and greenhouse gas emitting industries. Many of these same banks are being sanctioned by US states with large oil, gas, and coal industries, such as Texas, Oklahoma, and West Virginia, for reducing and eventually eliminating their funding of fossil fuels. Consequently, the universe of financial institutions that meet MCE's stringent financial criteria, are in alignment with MCE's mission and objectives and are interested in providing credit to the CCA industry is particularly limited.

Selection of RBC to be MCE's Next Credit Provider:

On or before September 30, 2022, MCE received proposals from three (3) banks: JPMorgan Chase Bank, River City Bank, and RBC. Each proposal was reviewed using an evaluation matrix that compared the product overview, fee schedules, and pricing. Consideration was also given to the banks' responses to environmental sustainability commitments.

RBC's proposal offered the most attractive and competitive terms of the three (3) banks.

- Of the three (3) banks, RBC is the highest rated (Aa1/AA-/AA);
- RBC offered the most competitive costs for the standby facility and for rates to borrow or issue letters of credit under the facility.
- Term out period of three years;
- RBC has also committed to provide \$500 billion in sustainable financing by 2025 and plans to source 100% of their electricity from renewable and non-emitting sources by 2025 among other sustainability commitments.

MCE Staff, with assistance from our municipal advisor and outside counsel, have negotiated a new three-year Revolving Credit Agreement with RBC. The new Agreement would replace MCE's current Revolving Credit Agreement with JPMorgan Chase Bank which will expire on May 29, 2023. The new Agreement will increase the amount of the credit facility, allow MCE to borrow funds if needed, and order the issuance of letters of credit to support power purchase contracts.

Highlights of the proposed Revolving Credit Agreement (Attachment A):

- Increases MCE's available credit line from \$40,000,000 to \$60,000,000 which enhances MCE's overall liquidity for any short-term working capital needs;
- Is priced such that MCE can secure a \$60,000,000 facility at a lower cost than the current \$40,000,000 facility with JPMorgan;
- Supports MCE's power procurement program. It can be used to meet collateral requirements of individual power contracts with higher-rated Letters of Credit provided by RBC (Aa1/ AA-/ AA);
- Enhances MCE's investment grade credit ratings and the potential for an upgrade. Liquidity is one of the primary factors considered when credit agencies determine their rating. Solid investment grade ratings allow MCE to negotiate more favorable financial terms with power suppliers and vendors;
- The three-year term provides some protection against credit market disruptions and locks in pricing;
- The facility includes a three year "term-out" arrangement, which will allow MCE to amortize any loans from the facility over a three-year period starting from the facility termination date;
- Provides favorable credit terms and covenants that are in alignment with MCE's current draft form of Bond Indenture.

Fiscal Impact:

The cost of the proposed Revolving Credit Agreement is \$198,000 (0.33%) annually for the three-year term of the facility and represents the lowest fee MCE has ever paid for a credit facility. Additional costs would be incurred if MCE borrows under the facility or requests that Letters of Credit be issued under the facility. The costs for the proposed Revolving Credit Agreement are included in the FY 2023/24 budget under Non-Operating Expenses.

Recommendation:

Recommend the Board adopt proposed Resolution No. 2023-06 Approving and Authorizing the Execution and Delivery of a Revolving Credit Agreement with Royal Bank of Canada.

RESOLUTION No. 2023-06

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY AUTHORIZING AND APPROVING ENTRY INTO A REVOLVING CREDIT AGREEMENT AND FEE AGREEMENT RELATED THERETO WITH ROYAL BANK OF CANADA, AND TERMINATION OF THE EXISTING CREDIT AGREEMENT AND RELATED DOCUMENTS WITH JPMORGAN CHASE BANK, N.A., AND DELEGATING AUTHORITY TO THE MARIN CLEAN ENERGY AUTHORIZED REPRESENTATIVES TO EXECUTE AND DELIVER SUCH AGREEMENTS AND OTHER DOCUMENTS RELATED THERETO

WHEREAS, Marin Clean Energy (MCE) is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act (California Government Code Section 6500 et seq.) as amended and supplemented; 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 duly organized, validly existing, and in good standing under and by virtue of the laws of the State of California, is duly authorized to transact business, having obtained all necessary filings, governmental licenses and approvals in the State of California, and has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage;

WHEREAS, MCE previously entered into that certain Revolving Credit Agreement with JPMorgan Chase Bank, N.A. (the "JPMorgan Credit Agreement") and certain other related documents and agreements;

WHEREAS, the MCE Board of Directors wishes to authorize and approve (a) the termination of the JPMorgan Credit Agreement and (b) the entry into by MCE of (i) a Revolving Credit Agreement (the "Royal Bank Credit Agreement") with Royal Bank of Canada (the "Lender") and (ii) a Fee Agreement with the Lender related thereto (the "Royal Bank Fee Agreement" and, together with the Royal Bank Credit Agreement, together, the "Royal Bank Agreements"), and to authorize the Authorized Representatives, specified below, to execute and deliver the Royal Bank Agreements in substantially the forms presented to this Board, with such modifications as the Authorized Representatives shall approve as in the best interest of MCE, and such letter of termination or other documents as may be required for the termination of the JPMorgan Credit Agreement and related documents;

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED AS FOLLOWS:

1. APPROVAL OF ROYAL BANK AGREEMENTS AND TERMINATION OF JPMORGAN CREDIT AGREEMENT AND RELATED DOCUMENTS. The Royal Bank Agreements, in substantially the forms provided to the MCE Board of Directors in this meeting, are hereby authorized and approved, subject to such modifications as may be approved by an Authorized Representative as set forth below, and the termination of the JPMorgan Credit Agreement and related documents, simultaneously with or subsequent to the execution and delivery of the Royal Bank Agreements, is hereby authorized and approved.

2. AUTHORIZED REPRESENTATIVES. The following named individuals are the authorized representatives of MCE with the respective titles specified below (collectively referred to as “**Authorized Representatives**” and individually referred to as an “**Authorized Representative**”):

<u>NAMES</u>	<u>TITLES</u>
Dawn Weisz	Chief Executive Officer
Vicken Kasarjian	Chief Operating Officer
Garth Salisbury	Chief Financial Officer & Treasurer
Catalina Murphy	General Counsel

3. ACTIONS AUTHORIZED. Any one of the Authorized Representatives are authorized and approved to execute and deliver (a) the Royal Bank Agreements in substantially the forms presented in this meeting, with such modifications thereto as the Authorized Representative shall approve as in the best interest of MCE, such approval to be conclusively evidenced by the Authorized Representative’s execution and delivery thereof, and (b) any termination letter or similar document evidencing termination of the JPMorgan Credit Agreement and related documents.

4. FURTHER ACTIONS AUTHORIZED RELATING TO THE ROYAL BANK AGREEMENTS. Each of the Authorized Representatives is further authorized, approved, empowered, and directed to do any of the following for and on behalf of MCE with respect to the Royal Bank Agreements:

- A. Borrow Money.** To borrow and authorize advances, letters of credit and other lending accommodations from time to time from Lender under the Royal Bank Credit Agreement, such sum or sums of money as in its judgment should be borrowed for the permitted purposes set forth in the Royal Bank Credit Agreement, in the aggregate principal amount not to exceed the commitment under the Royal Bank Credit Agreement of \$60,000,000.
- B. Execute Notes and Other Documents.** To enter into, execute and deliver, in the name and on behalf of MCE, any promissory note or notes, letter of credit applications, borrowing requests, or other evidence of MCE’s credit accommodations under the Royal Bank Credit Agreement, in form and substance

acceptable to Lender, at such rates of interest, not to exceed the maximum rate allowed by law, and on such terms as are set forth in the Royal Bank Credit Agreement, evidencing the sums of money so borrowed or any of MCE's indebtedness to Lender, and also to execute and deliver to Lender one or more renewals, extensions, amendments, modifications, amendments and restatements, refinancings, consolidations, or substitutions for one or more of the notes, any portion of the notes, or any other evidence of credit accommodations.

- C. Execute Financing Statements.** To execute and deliver to Lender any financing statements and other documents which Lender may require and which shall evidence the terms and conditions under and pursuant to which the lien on net revenues is given.
- D. Further Acts.** In the case of the Royal Bank Credit Agreement, to designate additional or alternate individuals as being authorized to request advances thereunder, and in all cases, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements as any Authorized Representative may in his or her discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Resolution relating to the Royal Bank Agreements.

5. FURTHER ACTIONS AUTHORIZED RELATING TO THE TERMINATION OF THE JPMORGAN CREDIT AGREEMENT. Each of the Authorized Representative is further authorized, approved, empowered, and directed to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements as any Authorized Representative may in his or her discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Resolution relating to the termination of the JPMorgan Credit Agreement and related documents.

IT IS HEREBY FURTHER DETERMINED AND ORDERED that the Authorized Representatives are duly elected, appointed, or employed by or for MCE, as the case may be. This Resolution now stands of record on the books of the MCE, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

IT IS HEREBY FURTHER DETERMINED AND ORDERED that any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved.

IT IS FURTHER DETERMINED AND ORDERED that this Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 20th day of April, 2023, 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				
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CHAIR, MCE

Attest:

SECRETARY, MCE

KUTAK ROCK LLP
DRAFT 04/06/2023

REVOLVING CREDIT AGREEMENT

Dated as of April __, 2023,

by and between

MARIN CLEAN ENERGY,

as Borrower

and

ROYAL BANK OF CANADA,

as Lender

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REVOLVING CREDIT AGREEMENT

This **REVOLVING CREDIT AGREEMENT**, dated as of April __, 2023 (together with all amendments and supplements hereafter, this “*Agreement*”) is by and between MARIN CLEAN ENERGY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (together with its successors and assigns, “*Borrower*”), and ROYAL BANK OF CANADA (together with its successors and assigns, the “*Lender*”).

WITNESSETH:

WHEREAS, Borrower has requested, and Lender has agreed to make available to Borrower, a revolving credit facility upon and subject to the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained, the Borrower and the Lender agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. As used in this Agreement:

“*Affiliate*” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“*Agreement*” has the meaning set forth in the introductory paragraph hereof.

“*Alternate Base Rate*” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day plus 1.00%, (b) the Federal Funds Effective Rate in effect on such day plus 2.00%; (c) Term SOFR for a one-month tenor in effect for such day plus 1.00% and (d) 8.00%; *provided* that to the extent such highest rate as calculated above shall, at any time, be less than the Floor, such rate shall be deemed to be Floor for all purposes herein. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or Term SOFR shall be effective on the opening of business on the day specified in the public announcement of such change in the Prime Rate, the Federal Funds Effective Rate or Term SOFR, respectively.

“*Amortization Amount*” shall have the meaning assigned to such term in Section 2.07(d).

“*Amortization End Date*” means the first to occur of (a) as to each Amortization Amount, the third anniversary of the beginning of the Amortization Period related to such Amortization Amount and (b) the date upon which an Event of Default shall occur and the Lender exercises the remedy of acceleration in accordance with Section 6.02.

“*Amortization Interest Payment Date*” means the first Business Day of each month and the Amortization End Date.

“*Amortization Period*” shall have the meaning assigned to such term in Section 2.07(d).

“*Amortization Principal Payment*” shall have the meaning assigned to such term in Section 2.07(d).

“Amortization Principal Payment Date” means (a) the first Business Day of each January, April, July and October that occurs during an Amortization Period commencing with the first such date that occurs at least 90 days after the beginning of the Amortization Period and (b) the Amortization End Date.

“Annual Debt Service” means the total amount of Debt Service payable on System Debt in any Fiscal Year or other designated four fiscal quarter period.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower from time to time concerning or relating to bribery or corruption.

“Applicable Law” means (i) all applicable common law and principles of equity and (ii) all applicable provisions of all (A) constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, (B) Governmental Approvals and (C) orders, decisions, judgments and decrees of all courts (whether at law or in equity) and arbitrators.

“Applicable Margin” has the meaning set forth in the Fee Agreement.

“Audited Financial Statements” has the meaning set forth in Section 4.06.

“Authorized Representative” means any individual designated from time to time as an “Authorized Representative” in a certificate executed by the secretary or an assistant secretary of the Borrower and delivered to the Lender.

“Available Commitment” means, at any time, an amount equal to (a) the Commitment less (b) the sum of the principal amount of all Loans then outstanding plus the amount available to be drawn under all Letters of Credit then outstanding plus the LC Exposure.

“Availability Period” means the period from and including the Closing Date to but excluding the earlier of (a) the Maturity Date and (b) the date of termination of the Commitment.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an Interest Period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date, and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (f) of Section 2.11.

“Bank Agreement” means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement, bond purchase agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) to make or provide funds to make payment of, or to purchase or provide credit enhancement for, bonds or notes of the Borrower secured by or payable from Revenues (including Net Revenues) on parity with, or subordinate to the payment of, the Obligations.

“Bank Rate” means, for any day during any Amortization Period, a rate per annum equal to (a) for the first 90 days of such Amortization Period the Alternate Base Rate and (b) beginning on the 91st day of such Amortization Period until the end of the Amortization Period, the Alternate Base Rate plus 2.00%, subject in each case to Section 2.10(d).

“*Base Rate*” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day plus 1.00%, (b) the Federal Funds Effective Rate in effect on such day plus 2.00%; and (c) Term SOFR for a one-month tenor in effect for such day plus 1.00%; *provided* that to the extent such highest rate as calculated above shall, at any time, be less than the Floor, such rate shall be deemed to be Floor for all purposes herein. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or Term SOFR shall be effective on the opening of business on the day specified in the public announcement of such change in the Prime Rate, the Federal Funds Effective Rate or Term SOFR, respectively.

“*Base Rate Borrowing*” when used in reference to any Loan or Borrowing of a Loan, refers to whether such Loan or Borrowing bears interest based upon the Base Rate.

“*Base Rate Loan*” means any Loan that bears interest based upon the Base Rate.

“*Basic Documents*” means, at any time, each of the following documents and agreements as in effect or as outstanding, as the case may be, at such time: (a) this Agreement, including schedules and exhibits hereto and (b) the Fee Agreement.

“*Benchmark*” means, initially, Term SOFR for Term SOFR Loans and Daily Simple SOFR for Daily Simple SOFR Loans; *provided* that if a Benchmark Transition Event has occurred with respect to Term SOFR or Daily Simple SOFR, as applicable, or the then-current Benchmark, then “*Benchmark*” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (a) of Section 2.11.

“*Benchmark Replacement*” means with respect to any Benchmark Transition Event, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Lender for the applicable Benchmark Replacement Date:

(a) Daily Simple SOFR; or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Lender and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Basic Documents.

“*Benchmark Replacement Adjustment*” means, with respect to any replacement of the then- current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Lender and the Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such

Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar- denominated syndicated credit facilities at such time.

“Benchmark Replacement Date” means, a date and time determined by the Lender, which date shall be no later than, with respect to any Benchmark, the earliest to occur of the following events with respect to the then-current Benchmark:

- (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or
- (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; *provided*, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

- (1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);
- (2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, the Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or
- (3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that

all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Unavailability Period*” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Basic Document in accordance with Section 2.11 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Basic Document in accordance with Section 2.11.

“*Board*” means the Board of Directors of the Borrower.

“*Borrower*” has the meaning set forth in the introductory paragraph hereof.

“*Borrowing*” means the making, conversion or continuation of a Loan.

“*Borrowing Request*” means a request by the Borrower for a Borrowing in accordance with Section 2.03 and in the form of Exhibit C hereto.

“*Business Day*” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City or San Francisco are authorized or required by law to remain closed; *provided* that, when used in connection with a SOFR Loan, or any other calculation or determination involving SOFR, the term “Business Day” means any day which is a U.S. Government Securities Business Day.

“*Cash Collateral Account*” has the meaning set forth in Section 6.03.

“*Change in Law*” means the occurrence after the date of this Agreement of (a) the adoption of or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority or (c) compliance by the Lender (or, for purposes of Section 2.12(b), by any lending office of the Lender or its holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; *provided* that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Lender for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“*Closing Date*” means the first date on which the conditions precedent set forth in Section 3.01 hereof are satisfied and/or waived in writing by the Lender.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, including regulations, rulings and judicial decisions promulgated thereunder.

“*Collateralization Date*” means the date determined in accordance with Section 6.02.

“*Collateralization Requirement*” means the requirement that the Borrower deliver U.S. Dollars to the Lender for deposit in the Cash Collateral Account and maintain the amount therein equal to 105% of the sum of the stated amount of all Letters of Credit outstanding.

“*Commitment*” means the commitment of the Lender to make Loans, as such commitment may be reduced from time to time pursuant to Section 2.06 or Section 6.02. The amount of the Commitment on the Closing Date is \$60,000,000.

“*Commitment Fee*” has the meaning set forth in the Fee Agreement.

“*Conforming Changes*” means, with respect to either the use or administration of Term SOFR or Daily Simple SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.11 and other technical, administrative or operational matters) that the Lender decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Lender in a manner substantially consistent with market practice (or, if the Lender decides that adoption of any portion of such market practice is not administratively feasible or if the Lender determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Lender decides is necessary in connection with the administration of this Agreement and the other Basic Documents).

“*Connection Income Taxes*” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“*Consulting Engineer*” means the engineer, engineering firm or consulting firm retained from time to time by Borrower to provide independent analysis and planning advice regarding the business strategy and operations of Borrower.

“*Control*” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “*Controlling*” and “*Controlled*” have meanings correlative thereto.

“*Daily Simple SOFR*” means, for any day (a “*SOFR Rate Day*”), a rate per annum equal to SOFR for the day (such day, the “*SOFR Determination Day*”), that is five (5) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website; *provided, however*, that if as of 5:00 p.m. (New York City time) on any SOFR Determination Day Daily Simple SOFR for the applicable tenor has not been published by the SOFR Administrator and a Benchmark Replacement Date with respect to Daily Simple SOFR has not occurred, then Daily Simple SOFR will be Daily Simple SOFR as published by the SOFR Administrator on the first preceding U.S. Government Securities Business Day for which Daily Simple SOFR was published by the SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such SOFR Determination Day; *provided*, that to the extent such rate as determined above shall, at any time, be less than the Floor, such rate shall be deemed to be Floor for all purposes herein.

“Daily Simple SOFR Borrowing”, when used in reference to any Loan or Borrowing of a Loan, refers to whether such Loan or Borrowing bears interest based upon the Daily Simple SOFR.

“Daily Simple SOFR Loan” means any Loan that bears interest based upon the Daily Simple SOFR.

“Debt” of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person as lessee under capital leases, (e) all debt of others secured by a Lien on any asset of such Person, whether or not such debt is assumed by such Person, (f) all Guarantees by such Person of debt of other Persons, (g) the net obligations of such Person under any Swap Contract and (h) all obligations of such Person to reimburse or repay any bank or other Person in respect of amounts paid or advanced under a letter of credit, credit agreement, liquidity facility or other instrument. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“Debt Service” means, with respect to any System Debt, as of any date of calculation and any designated period, the sum of all principal, interest and fees (including facility fees, letter of credit fees, undrawn fees and commitment fees) due and payable on such System Debt (or, in the case of projected Annual Debt Service, projected to be due and payable) in such period; *provided that*:

(a) With respect to any System Debt that is subject to an interest rate Swap Contract which (i) will be in place throughout the designated period and (ii) is provided by a counterparty that is currently assigned a long-term rating of at least [A3 or A-] by Fitch, Moody’s or S&P and who is not in default of its obligations under such Swap Contract, the interest rate used to calculate projected Annual Debt Service with respect to such System Debt shall be the interest rate payable by the Borrower under such Swap Contract; and

(b) With respect to System Debt that (i) bears a variable rate of interest that is not subject to a Swap Contract described in subparagraph (a) above or (ii) that bears a fixed rate of interest and is subject to a Swap Contract described in subparagraph (a) above, the rate of interest used to calculate projected Annual Debt Service on such System Debt shall be the average rate of interest borne by such System Debt (or in the case of System Debt described in clause (ii) of this subparagraph (b), that is payable by the Borrower under such Swap Contract) during the year preceding the date of calculation or, if such System Debt has been outstanding for less than a year, during the period such Debt has been outstanding.

“Debt Service Coverage Ratio” means, for any fiscal quarter of the Borrower, the quotient obtained by dividing Net Revenues by Annual Debt Service, in each case as determined for (i) the four consecutive fiscal quarter period ended on the last day of such fiscal quarter and (ii) the four consecutive fiscal quarter period following the last day of such fiscal quarter. For purposes of the foregoing clause (ii) Net Revenues may be adjusted to reflect Revenues expected to be generated during the relevant period pursuant to rates and charges that have been adopted by an approved rate action and are not subject to further authorization, approval or consent.

“Debt Service Coverage Ratio Notice” has the meaning set forth in Section 5.01(p) hereof.

“Default” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Rate” means a per annum rate of interest equal to the Alternate Base Rate plus 4.00%.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“dollars” or *“\$”* refers to lawful money of the United States of America.

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

“Employee Plan” means an employee benefit plan covered by Title W of ERISA and maintained for employees of the Borrower.

“Environmental Laws” means any and all federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

“Event of Default” has the meaning set forth in Section 6.01 hereof

“Excluded Taxes” means, with respect to the Lender or any Participant, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Lender or such Participant is organized or in which its principal office is located and (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

“Federal Funds Effective Rate” means for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided*, (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to the Lender on such day on such transactions as determined by Lender; *provided* that if the Federal Funds Effective Rate as so determined would be less than 0.00%, such rate shall be deemed to be 0.00% for the purposes of this Agreement.

"Federal Reserve Bank of New York's Website" means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.

"Fee Agreement" means the Fee Agreement of even date herewith between the Borrower and the Lender, as supplemented and amended from time to time.

"Fiscal Year" means each twelve-month period commencing on April 1 of a calendar year and ending on March 31 of the following calendar year.

"Fitch" means Fitch Ratings, Inc.

"Floor" means the benchmark rate floor, if any, provided in this Agreement. For the avoidance of doubt, the initial Floor shall be 0.00%.

"GAAP" means generally accepted accounting principles in the United States of America from time to time as set forth in (a) the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and (b) statements and pronouncements of the Government Accounting Standards Board, as modified by the opinions, statements and pronouncements of any similar accounting body of comparable standing having authority over accounting by governmental entities.

"Governmental Approval" means an authorization, consent, approval, license or exemption of, registration or filing with, or report to, any Governmental Authority.

"Governmental Authority" means the government of the United States or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

"Guarantees" means, for any Person, all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations of such Person to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor of another Person against loss.

"Illegality Notice" shall have the meaning set forth in Section 2.19.

"Indemnified Taxes" means (a) Taxes other than Excluded Taxes and (b) to the extent not otherwise described in (a) hereof, Other Taxes.

"Interest Election Request" means a request by the Borrower, in the form of Exhibit D hereto, to convert or continue a Loan in accordance with Section 2.05.

"Interest Payment Date" means, (a) with respect to any Base Rate Loan or Daily Simple SOFR Loan, the first Business Day of the month, and (b) with respect to any Term SOFR Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part, and, if such Interest Period is longer than three months, at three-month intervals following the first day of any such Interest Period.

"Interest Period" means, in respect of each Term SOFR Loan, a period of one, three or six months; *provided that* (i) the Interest Period shall commence on the date of an advance of or a conversion to a Term SOFR Loan and, in the case of immediately successive Interest Periods, each successive Interest Period

shall commence on the date on which the next preceding Interest Period expires; (ii) if any Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; *provided*, that if any Interest Period with respect to a Term SOFR Loan would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day; (iii) any Interest Period with respect to a Term SOFR Loan that begins on the last Business Day of a calendar month (or on a day for which there is not numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the relevant calendar month at the end of such Interest Period; (iv) no Interest Period shall extend beyond the Maturity Date; and (v) no tenor that has been removed from this definition pursuant to Section 2.11 shall be available for specification in such Borrowing Request or interest election.

“Issuance Date” means, with respect to each Loan, the date on which such Loan is to be disbursed as specified in the related Borrowing Request and in compliance with the terms hereof and, with respect to each Letter of Credit, the date on which the Letter of Credit is to be issued as specified in the related Letter of Credit Request and in compliance with the terms hereof.

“Investment Policy” means the investment guidelines of the Borrower as in effect on the date hereof, as such investment guidelines may be amended from time to time in accordance with State laws.

“Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et. seq.)

“Joint Powers Agreement” means the Joint Powers Agreement of Borrower effective as of December 19, 2008, and as amended from time to time.

“Law” means any treaty or any Federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, policy, guideline, supervisory standard, order or decree of any court or other Governmental Authority.

“LC Disbursement” means a payment made by the Lender pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements for which the Lender has not been reimbursed.

“Letter of Credit” means any letter of credit issued by the Lender pursuant to this Agreement.

“Letter of Credit Request” means a written notice from the Borrower to the Lender requesting that the Lender issue a Letter of Credit hereunder, such written notice to be in the form of Exhibit E hereto.

“Letter of Credit Fee” has the meaning set forth in the Fee Agreement.

“Lender” has the meaning set forth in the introductory paragraph hereof.

“Lien” means, with respect to any asset, (a) any lien, charge, claim, mortgage, security interest, pledge or assignment of revenues of any kind in respect of such asset or (b) the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“Loans” means the loans made by the Lender to the Borrower pursuant to this Agreement, including, without limitation, Base Rate Loans, Daily Simple SOFR Loans and Term SOFR Loans.

“Material Adverse Effect” means (a) a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Borrower; (b) a material impairment of the rights and remedies of the Lender under this Agreement or any other Basic Document, or of the ability of the Borrower to perform its Borrower’s Obligations under this Agreement and any other Basic Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability of Borrower’s Obligations under this Agreement or any other Basic Document to which Borrower is a party.

“Material Litigation” shall have the meaning assigned to such term in Section 4.05.

“Maturity Date” means the date on which the Commitment is scheduled to expire pursuant to its terms, initially 5:00 p.m. (New York time) on the third anniversary of the Closing Date (i.e., April __, 2026), or such later date to which the Maturity Date may be extended pursuant to Section 2.17 and, if any such date is not a Business Day, the next preceding Business Day.

“Maximum Lawful Rate” means the maximum non-usurious interest rate that may, under applicable federal law and applicable state law, be contracted for, charged or received under such laws.

“Maximum Rate” means the lesser of 15.00% per annum and the Maximum Lawful Rate.

“Moody’s” means Moody’s Investors Service, Inc.

“Net Revenues” means, for any period and as of any date of determination, the amount Revenues remaining after payment of Operating and Maintenance Costs paid from Revenues, in each case for such period as of such date.

“Obligations” means all obligations of the Borrower to the Lender or any Participant arising under or in relation to this Agreement and the Fee Agreement, including, without limitation, repayment of Loans, Amortization Amounts and LC Disbursement with interest as provided herein, payment of fees and reimbursement for cost and expenses.

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

“Operating Reserve Fund” means the rate stabilization reserve fund established by the Borrower to provide a reserve, funded from excess Revenues in prior fiscal years, that can be utilized by the Borrower for any purpose for which current fiscal year Revenues are insufficient.

“Operating Reserve Fund Requirement” means, for any Fiscal Year of the Borrower, an amount equal to \$15,000,000.

“Other Connection Taxes” means, with respect to the Lender, Taxes imposed as a result of a present or former connection between the Lender and the jurisdiction imposing such Tax (other than connections arising from the Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Basic Document, or sold or assigned or participated an interest in any Loan or Basic Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Basic Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

“Parity Debt” means any System Debt issued or incurred by the Borrower the payment of which is on parity with the Borrower’s payment Obligations under this Agreement and shall include the Loans.

“Participant” has the meaning set forth in Section 7.03(b) hereof

“Participation” has the meaning set forth in Section 7.03(b) hereof.

“Person” means an individual, a firm, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof

“PPA” means a power purchase agreement executed between the Borrower and a PPA Counterparty.

“PPA Counterparty” means a party to a PPA other than the Borrower.

“Prime Rate” means the rate of interest per annum publicly determined by Royal Bank of Canada from time to time as its prime commercial lending rate for United States Dollar loans in the United States for such day. The Prime Rate is not necessarily the lowest rate that Royal Bank of Canada is charging any corporate customer.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“Rating Agency” and *“Rating Agencies”* means, individually or collectively, as applicable, any nationally recognized rating agency (such as Fitch, Moody’s and S&P) that has provided and is maintaining a solicited and participating rating on any long-term unenhanced System Debt.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“Relevant Governmental Body” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“*Revenues*” means all income and revenue derived by the Borrower from any source whatsoever except for any income or revenue of the Borrower which the Borrower is prohibited from pledging to secure the payment of System Debt by operation of applicable Law, and shall include amounts on deposit in the Operating Reserve Fund.

“*S&P*” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business.

“*Sanction(s)*” means any and all economic sanctions administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“*Senior Debt*” means any System Debt issued or incurred by the Borrower, whether secured or unsecured, the payment of which is senior to the payment in full of the Borrower’s payment Obligations under this Agreement.

“*SOFR*” means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

“*SOFR Administrator*” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“*SOFR Administrator’s Website*” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“*SOFR Determination Day*” has the meaning set forth in the definition of “Daily Simple SOFR”.

“*SOFR Loan*” means any Daily Simple SOFR Loan or Term SOFR Loan.

“*SOFR Rate Day*” has the meaning set forth in the definition of “Daily Simple SOFR”.

“*State*” means the State of California.

“*Subordinate Debt*” means any System Debt issued or incurred by the Borrower, whether secured or unsecured, the payment of which is expressly subordinate to the payment in full of the Borrower’s payment Obligations under this Agreement and under any other Parity Debt.

“*Swap Contract*” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include the Lender or any Affiliate of the Lender).

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

“System Debt” means Debt of the Borrower secured by a Lien on Revenues, including Net Revenues.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), value added taxes, or any other goods and services, use or sales taxes, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term SOFR” means, for any Interest Period for a Term SOFR Loan, the greater of (a) the Term SOFR Reference Rate (rounded upward to the next one-sixteenth (1/16th) of one percent (0.0625%), if necessary) for a tenor comparable to the applicable Interest Period on the day (the *“Term SOFR Determination Day”*) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator and (b) the Floor; *provided, however*, that if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Term SOFR Determination Day.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Lender in its reasonable discretion).

“Term SOFR Borrowing”, when used in reference to any Loan or Borrowing of a Loan, refers to whether such Loan or Borrowing bears interest based upon Term SOFR.

“Term SOFR Determination Day” has the meaning assigned to it under the definition of Term SOFR.

“Term SOFR Loan” means a Loan that bears interest at a rate based upon Term SOFR, other than pursuant to clause (iii) of the definition of “Base Rate”.

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“2022 Audited Financial Statements” means the statements of net position of the System on March 31, 2022 and March 31, 2021, the statements of revenues, expenses and changes in net position of the System for the years ended March 31, 2022 and March 31, 2021, and the statements of cash flows of the System for the years ended March 31, 2022 and March 31, 2021, together with unqualified audit opinion of Baker Tilly US, LLP.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Daily Simple SOFR, Term SOFR (other than pursuant to clause (iii) of the definition of *“Alternate Base Rate”* or *“Base Rate”*) or the Base Rate.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

Section 1.02. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 1.03. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided that*, if the Borrower notifies the Lender that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Lender requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

Section 1.04. Interest Rates; Benchmark Notifications. The interest rate on a Loan may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the

subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 2.11 provides a mechanism for determining an alternative rate of interest. The Lender does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, the administration of, submission of, calculation of, performance of or any other matter related to any interest rate used in this Agreement (including, without limitation, the Base Rate, Daily Simple SOFR, Daily Simple SOFR, SOFR, the Term SOFR Reference Rate, Term SOFR or Term SOFR) or any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative or successor rate thereto, or replacement rate thereof (including any Benchmark Replacement), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, or have the same value or economic equivalence of as the existing interest rate (or any component thereof) being replaced or have the same volume or liquidity as did any existing interest rate (or any component thereof) prior to its discontinuance or unavailability. The Lender and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate (or component thereof) used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Lender may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

ARTICLE II

THE CREDITS

Section 2.01. Commitments. Subject to the terms and conditions set forth herein, the Lender agrees to make Loans to the Borrower from time to time during the Availability Period in an aggregate principal amount that does not exceed the Available Commitment on the Issuance Date for such Loan, taking into account all Loans made, Letters of Credit issued, unreimbursed LC Disbursements made and the repayment of the principal of outstanding Loans and LC Disbursements on such Issuance Date. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Loans.

Section 2.02. Loans and Borrowings.

(a) Subject to Section 2.04(d) and Section 2.11, at the time of each Borrowing, the Borrower may elect to incur a Loan as a Base Rate Loan, a Daily Simple SOFR Loan or a Term SOFR Loan.

(b) At the commencement of each Interest Period for any Term SOFR Loan, such Loan shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000. At the time that each Daily Simple SOFR Borrowing is made or any Loan is converted to a Daily Simple SOFR Loan, such Borrowing or Loan shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000. At the time that each Base Rate Borrowing is made or any Loan is converted to a Base Rate Loan, such Borrowing or Loan shall be in an aggregate amount that is an integral multiple of \$50,000 and not less than \$200,000.

(c) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Term SOFR Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

Section 2.03. Requests for Loans. To request a Borrowing, the Borrower shall notify the Lender of such request by delivery of Borrowing Request (a) in the case of a Term SOFR Borrowing or Daily Simple SOFR Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the applicable Issuance Date of the proposed Borrowing or (b) in the case of a Base Rate Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the applicable Issuance Date of the proposed Borrowing. Each such Borrowing Request shall be executed by Authorized Representatives and, once delivered to the Lender, shall be irrevocable.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a Base Rate Borrowing. If no Interest Period is specified with respect to any requested Term SOFR Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Subject to satisfaction of the terms and conditions of Section 3.02, the Lender shall make available to, or for the account of, the Borrower, pursuant to the disbursement instructions set for the in the related Borrowing Request, the amount of each Borrowing no later than 2:00 p.m., New York City time, on the applicable Issuance Date.

Notwithstanding the forgoing provisions in this Section 2.03 and the provisions of Section 2.04(a), after the Borrower submits a Borrowing Request or a Letter of Credit Request, the Lender may, not later than 4:00 p.m., New York City time, on the date that is one (1) Business Day prior to the date the requested Loan is to be advanced or the requested Letter of Credit is to be issued, as applicable, deliver a written notice to the Borrower of its intention to fund the related Loan (the "*Delayed Loan*") or issue the related Letter of Credit (the "*Delayed Letter of Credit*") on a date (the date of such funding or issuance, as applicable, the "*Delayed Issuance Date*") that is on or before the thirty (30th) day following the date specified in such Borrowing Request as the Issuance Date for the Loan requested or specified in the Letter of Credit Request as the Issuance Date for the requested Letter of Credit (or if any such Delayed Issuance Date is not a Business Day, then on the next succeeding Business Day) rather than on the Issuance Date requested in the Borrowing Request for the advance of such Loan or the Issuance Date requested in the Letter of Credit Request for the issuance of such Letter of Credit. On each Delayed Issuance Date, the Lender shall fund the Delayed Loan as specified in the related Borrowing Request or issue the Delayed Letter of Credit as specified in the Letter of Credit Request, as applicable, if on such date the conditions to the funding of such Loan or issuance of such Letter of Credit, as applicable, specified herein are satisfied.

Section 2.04. Letters of Credit.

(a) *General.* Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit as the applicant thereof for the support of its PPA payment obligations, by delivering a Letter of Credit Request to the Lender at any time and from time to time during the Availability Period no less than five Business Days prior to the proposed Issuance Date for the requested Letter of Credit; *provided, however*, that prior to the issuance of the initial Letter of Credit hereunder, if requested by Lender, the Borrower and the Lender shall execute a Continuing Agreement for Standby Letters of Credit in the form provided by the Lender. If requested by the Lender, the Borrower also shall submit a letter of credit application on the Lender's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered

into by the Borrower with, the Lender relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Notwithstanding anything herein to the contrary, the Lender shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit the proceeds of which would be made available to any Person (i) to fund any activity or business of or with any Person that is the subject of Sanctions, or in any country or territory that, at the time of such funding, is the subject of any Sanctions or (ii) in any manner that would result in a violation of any Sanctions by any party to this Agreement. A Letter of Credit shall not be issued unless, after giving effect to the issuance of proposed Letter of Credit, the aggregate principal amount of all Loans and LC Exposure outstanding under the Agreement as of the Issuance Date for the Letter of Credit will not exceed the Commitment. Notwithstanding anything herein to the contrary, the Lender/RBC shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit that is in a form other than a standby letter of credit, except as may be agreed by the Lender.

(b) *Notice of Amendment, Renewal, Extension; Certain Conditions.* To request the amendment, renewal or extension of an outstanding Letter of Credit, the Borrower shall deliver written notice to the Lender (reasonably in advance of the requested date of amendment, renewal or extension, but in any event no less than five Business Days) a notice identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to amend, renew or extend such Letter of Credit. If requested by the Lender, the Borrower also shall submit a letter of credit application on the Lender's standard form in connection with any such request with respect a Letter of Credit. A Letter of Credit shall be amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension the sum of the principal amount of Loans outstanding plus the LC Exposure shall not exceed the Commitment.

(c) *Expiration Date.* Unless otherwise expressly agreed to by the Lender, each Letter of Credit shall expire (or be subject to termination by notice from the Lender to the beneficiary thereof) at or prior to the close of business on the date that is five Business Days prior to the Maturity Date.

(d) *Reimbursement.* If the Lender shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Lender an amount equal to such LC Disbursement not later than 1:00 p.m., New York City time, on the date on which the Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., New York City time, except as otherwise provided in Section 2.07(d). If the Lender is not reimbursed for the amount of any LC Disbursement on the date disbursed by the Lender, the amount of such LC Disbursement shall accrue interest at the Base Rate from date disbursed by the Lender until the date on which the repayment of the LC Disbursement is due pursuant to this Section 2.04(d) and shall thereafter accrue interest at the Default Rate except as otherwise provided in Section 2.07(d).

(e) *Obligations Absolute.* The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (d) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all

circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Lender under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Lender nor any of its Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Lender; *provided* that the foregoing shall not be construed to excuse the Lender from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Lender's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Lender (as finally determined by a court of competent jurisdiction), the Lender shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Lender may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(f) *Disbursement Procedures.* The Lender shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Lender shall promptly notify the Borrower by telephone (confirmed by electronic communication) or electronic communication of such demand for payment and whether the Lender has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Lender with respect to any such LC Disbursement.

Section 2.05. Interest Elections.

(a) Each Loan initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Term SOFR Loan, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Loan to a different Type or to continue such Loan and, in the case of a Term SOFR Loan, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Loan and the Loan comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Lender of such election by delivery of an Interest Election Request, executed by Authorized Representatives, by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election. Each such Interest Election Request shall be irrevocable.

(c) Each Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be a Base Rate Borrowing, a Daily Simple SOFR Borrowing or a Term SOFR Borrowing; and

(iv) if the resulting Borrowing is a Term SOFR Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term “*Interest Period*”.

If any such Interest Election Request requests a Term SOFR Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration.

(d) If the Borrower fails to deliver a timely Interest Election Request with respect to a Term SOFR Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Daily Simple SOFR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Lender so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Term SOFR Borrowing, (ii) unless repaid, each Daily Simple SOFR Borrowing shall be converted to a Base Rate Borrowing upon the occurrence of such Event Default and each Term SOFR Borrowing shall be converted to a Base Rate Borrowing at the end of the Interest Period applicable thereto and (iii) all Loans shall bear interest at the Default Rate; *provided, however*, that the actions specified in clauses (i) and (ii) immediately above shall apply automatically without notice from the Lender if the Event of Default that has occurred and is continuing is an Event of Default described in Section 6.01(e) or Section 6.01(f).

Section 2.06. Termination and Reduction of Commitment.

(a) Unless previously terminated, the Commitment shall terminate on the Maturity Date.

(b) Subject to the provisions of the Fee Agreement, the Borrower may at any time terminate, or from time to time reduce, the Commitment; *provided* that (i) each reduction of the Commitment shall be in an amount that is an integral multiple of \$100,000 and not less than \$1,000,000 and (ii) the Borrower shall not terminate or reduce the Commitment if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.08, the sum of the principal amount of Loans outstanding plus the LC Exposure would exceed the Commitment as so reduced or terminated.

(c) The Borrower shall notify the Lender of any election to terminate or reduce the Commitment under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; *provided* that a notice of termination of the Commitment delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Lender on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitment shall be permanent.

Section 2.07. Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay to the Lender the then unpaid principal amount of each Loan on the Maturity Date except to the extent otherwise permitted by the terms of section 2.07(d).

(b) The Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to the Lender resulting from each Loan made by the Lender, the Type of each Loan and the Interest Period, if any, applicable thereto and the amounts of principal and interest payable and paid to the Lender from time to time hereunder. The entries made in such account or accounts shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of the Lender to maintain such account or accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(c) The Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to the Lender a promissory note payable to the Lender and in a form approved by the Lender. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 7.03) be represented by one or more promissory notes in such form.

(d) (i) In the event the Lender does not receive payment of the amount of Loans outstanding on the Maturity Date pursuant to Section 2.07(a) or the amount of any LC Disbursement on the date due pursuant to Section 2.04(d), and on such date no Default or Event of Default has occurred and is continuing and the representations and warranties of the Borrower set forth in this Agreement are true and correct in all material respects, assuming they are made on the Maturity Date or such due date pursuant to Section 2.04(d), as applicable, an amount equal to the principal amount of Loans outstanding or the LC Disbursement, as applicable, (the “*Amortization Amount*”) shall be due and payable to the Lender in installments payable on each Amortization Principal Payment Date (each such payment, an “*Amortization Principal Payment*”), with the final installment in an amount equal to the remaining balance of the Amortization Amount on the

Amortization End Date (the period commencing on the Maturity Date or the date an LC Disbursement is due pursuant to Section 2.04(d), as applicable, and ending on the Amortization End Date and related to an Amortization Amount is herein referred to as the “*Amortization Period*” for such Amortization Amount). Each Amortization Principal Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Amortization Principal Payments over the Amortization Period so the Amortization Amount is fully repaid by the end of the Amortization Period.

(ii) During the Amortization Period, interest on the Amortization Amount shall accrue at the Bank Rate and shall be payable in arrears on each Amortization Interest Payment Date.

(iii) Notwithstanding the first sentence of Section 2.08(b), the Amortization Amount may be prepaid at any time upon the Borrower providing one (1) Business Day’s prior written notice to the Lender, such prepayment to be accompanied by interest accrued thereon at the Bank Rate to the date of prepayment.

Section 2.08. Prepayment of Loans.

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section and payment of any amounts due and owing pursuant to Section 2.13 of this Agreement in connection with such prepayment.

(b) The Borrower shall notify the Lender by telephone (confirmed by electronic communication) of any prepayment hereunder (i) in the case of prepayment of a Daily Simple SOFR Borrowing or a Term SOFR Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment, or (ii) in the case of prepayment of a Base Rate Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; *provided* that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitment as contemplated by Section 2.06, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.06. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.10 and any amounts owing in connection therewith pursuant to Section 2.13.

Section 2.09. Fees. The Borrower agrees to pay to the Lender the fees and other amounts set forth in the Fee Agreement at the time and in the manner set forth in the Fee Agreement, including, but not limited to, the Commitment Fee and Letter of Credit Fees. The Fee Agreement is, by this reference, incorporated herein in its entirety as if set forth herein in full. All fees and other amounts payable under the Fee Agreement shall be paid in immediately available funds. Fees paid shall not be refundable under any circumstances.

Section 2.10. Interest.

(a) The Loans comprising each Base Rate Borrowing shall bear interest at the Base Rate.

(b) The Daily Simple SOFR Loans shall bear interest at an interest rate equal to Daily Simple SOFR plus the Applicable Margin.

(c) The Term SOFR Loans shall bear interest at an interest rate equal to Term SOFR plus the Applicable Margin.

(d) Upon the occurrence and continuance of an Event of Default hereunder, all Loans shall bear interest at the Default Rate. Interest accruing at the Default Rate shall be payable on demand of the Lender. Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder or under the Fee Agreement is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at the Default Rate. In addition, in the event that (i) the long-term rating assigned to System Debt by Fitch, Moody's or S&P (A) is withdrawn or suspended or (B) is reduced below BBB-, Baa3 or BBB-, respectively, or (ii) any event or change shall be in effect or shall have occurred that could reasonably be expected to have a Material Adverse Effect with respect to the Borrower's ability to receive Revenues or its ability to perform its obligations under the Agreement or the other Basic Documents, all Loans and other amounts owing to the Lender hereunder or under the Fee Agreement shall bear interest at the Default Rate. Notwithstanding clause (i) in the preceding sentence, any rating assigned by a Rating Agency to System Debt shall be disregarded for purposes of determining the interest rate borne by amounts owing hereunder and under the Fee Agreement until such time as the Borrower notifies the Lender that it has solicited such Rating Agency for such rating on System Debt and such Rating Agency assigns a participating rating to System Debt. For the avoidance of doubt the parties agree that, as of the Closing Date, the ratings assigned by Fitch and S&P to System Debt have been solicited by the Borrower and are participating ratings and shall not be disregarded. Further, the ratings assigned to System Debt by Fitch and S&P shall not be disregarded during the term of this Agreement without the prior written consent of the Lender, given or withheld in the sole discretion of the Lender.

(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitment; *provided* that (i) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a Base Rate Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Term SOFR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) All interest hereunder shall be computed on the basis of a year of 360 days and the actual number of days elapsed, except that interest computed by reference to the Base Rate at times when the Base Rate is based on the Prime Rate or Federal Funds Effective Rate shall be computed on the basis of a year of 365 days and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Base Rate and Daily Simple SOFR and Term SOFR shall be determined by the Lender, and such determination shall be conclusive absent manifest error.

(g) If the rate of interest payable hereunder shall exceed the Maximum Rate for any period for which interest is payable, then (i) interest at the Maximum Rate shall be due and payable with respect to such interest period, and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof and (B) the Maximum Rate (the “*Excess Interest*”), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Rate, at which time the Borrower shall pay to the Lender, with respect to amounts then payable to the Lender that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Lender to equal the Maximum Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until the earlier of (x) the date of payment in full of all Obligations (other than Excess Interest which has not been recaptured) and this Agreement is no longer in effect, and (y) the date on which all deferred Excess Interest is fully paid to the Lender.

Section 2.11. Benchmark Replacement Setting. (a) If prior to the commencement of any Interest Period for a Term SOFR Borrowing or at any time for a Daily Simple SOFR Borrowing, the Lender determines (which determination shall be conclusive absent manifest error) that (i) adequate and reasonable means do not exist for ascertaining Daily Simple SOFR or Term SOFR, as applicable, or (ii) Daily Simple SOFR or Term SOFR, as applicable, for such Interest Period (in the case of Term SOFR) will not adequately and fairly reflect the cost to the Lender of making or maintaining its Loan included in such Borrowing for such Interest Period (in the case of Term SOFR); then the Lender shall give notice thereof to the Borrower by telephone or by electronic communication as promptly as practicable thereafter and, until the Lender notifies the Borrower that the circumstances giving rise to such notice no longer exist or a Benchmark Replacement is established as provided below in this Section, (A) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term SOFR Borrowing shall be ineffective and at the end of the current Interest Period such Borrowing shall automatically be converted to a Base Rate Borrowing, (B) each Daily Simple SOFR Borrowing shall be automatically converted to a Base Rate Borrowing and (C) if any Borrowing Request requests a Term SOFR Borrowing or Daily Simple SOFR Borrowing, such Borrowing shall be made as a Base Rate Borrowing.

(b) If at any time the Lender determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (a)(i) have arisen and such circumstances are unlikely to be temporary, a Benchmark Replacement shall be established as provided below in this Section.

(c) Notwithstanding anything to the contrary herein or in any other Basic Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of “*Benchmark Replacement*” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Basic Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Basic Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of “*Benchmark Replacement*” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Basic Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark

Replacement is provided to the Borrower without any amendment to, or further action or consent of any other party to, this Agreement or any other Basic Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis. No Swap Contract shall be deemed to be a “*Basic Document*” for purposes of this Section 2.11).

(d) In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Lender will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Basic Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Basic Document.

(e) The Lender will promptly notify the Borrower of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Lender will promptly notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.11(f) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Lender pursuant to this Section 2.11, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Basic Document, except, in each case, as expressly required pursuant to this Section 2.11.

(f) Notwithstanding anything to the contrary herein or in any other Basic Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Lender may modify the definition of “*Interest Period*” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is no longer a non-representative tenor, then the Lender may modify the definition of “*Interest Period*” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(g) Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a SOFR Loan of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

Section 2.12. Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, the Lender;

(ii) impose on the Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by the Lender; or

(iii) subject the Lender to any Taxes (other than (A) Indemnified Taxes, (B) Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to the Lender of making, continuing, converting or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to the Lender of issuing or maintaining the Commitment or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered. If the Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company, if any, as a consequence of this Agreement or the Loans made by the Lender, to a level below that which the Lender or the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company for any such reduction suffered.

(b) In the event that any Change in Law or compliance by the Lender and the office or branch where the Lender makes or maintains any SOFR Loans with any request or directive regarding capital or liquidity requirements (whether or not having the force of law) of any authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the Lender's capital as a consequence of its obligations hereunder to a level below that which the Lender could have achieved but for such Change in Law (taking into consideration the Lender's policies with respect to capital adequacy), then, from time to time, the Borrower shall pay upon demand to the Lender such additional amount or amounts as will compensate the Lender for such reduction actually suffered. In determining such amount or amounts, the Lender may use any reasonable averaging or attribution methods.

(c) A certificate of the Lender setting forth a detailed accounting of the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender, as the case may be, the amount shown as due on any such certificate within 60 days after receipt thereof.

(d) Failure or delay on the part of the Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate the Lender pursuant to this Section for any increased costs or reductions incurred more than 90 days prior to the date that the Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefor; *provided further* that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 90-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.13. Break Funding Payments. In the event of (a) the payment of any principal of any Term SOFR Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Term SOFR Loan other than on the last day of the Interest Period applicable thereto or (c) the failure to borrow, convert, continue or prepay any Term SOFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.08(b) and is revoked in accordance therewith), then, in any such event, the Borrower shall compensate the Lender for the loss, cost and expense attributable to such event. A certificate of the Lender setting forth any amount or amounts that the Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

Section 2.14. Payments Free of Taxes.

(a) Any and all payments by or on account of any obligation of the Borrower under any Basic Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of the Borrower) requires the deduction or withholding of any Tax from any such payment by the Borrower, then the Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.14) the Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Lender timely reimburse the Lender for, Other Taxes.

(c) As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 2.14, the Borrower shall deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

(d) The Borrower shall indemnify the Lender, within 30 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by the Lender or required to be withheld or deducted from a payment to the Lender and any reasonable expenses arising

therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by the Lender shall be conclusive absent manifest error.

(e) If the Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.14 (including by the payment of additional amounts pursuant to this Section 2.14), it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.14 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). The Borrower, upon the request of the Lender, shall repay to the Lender the amount paid over pursuant to this paragraph (e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that the Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Lender be required to pay any amount to the Borrower pursuant to this paragraph (e) the payment of which would place the Lender in a less favorable net after-Tax position than the Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require the Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person.

(f) Each party's obligations under this Section 2.14 shall survive any assignment of rights by the Lender, the termination of the Commitment and the repayment, satisfaction or discharge of all obligations under any Basic Document.

(g) For purposes of this Section 2.14, the term "*applicable law*" includes FATCA.

Section 2.15. Payments Generally.

(a) The Borrower shall make each payment required to be made by it hereunder or under the Fee Agreement (whether of principal, interest, fees or reimbursement of costs and expenses, or of amounts payable under Section 2.12, 2.13 or 2.14, or otherwise) prior to 12:00 noon, New York City time, on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Lender at its offices at 200 Vesey Street, New York, New York 10281, except that payments pursuant to Sections 2.12, 2.13, 2.14 and 7.05 shall be made directly to the Persons entitled thereto. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder and under the Fee Agreement shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Lender to pay fully all amounts then due hereunder, such funds shall be applied (i) first, towards payment of fees

then due under the Fee Agreement, as set forth in the Fee Agreement, (ii) second, towards the payment of interest then due hereunder (iii) third towards payment of principal then due hereunder and (iv) fourth towards any other amounts owing hereunder.

Section 2.16. Mitigation Obligation. If the Lender requests compensation under Section 2.12, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to the Lender or any Governmental Authority for the account of the Lender pursuant to Section 2.14, then the Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of the Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 2.12 or 2.14, as the case may be, in the future and (ii) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to the Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by the Lender in connection with any such designation or assignment.

Section 2.17. Extension of Maturity Date. The Maturity Date may be extended an unlimited number of times, in each case in the manner set forth in this Section 2.17. Upon receipt of written request of the Borrower to extend the Maturity Date, received no more than ninety (90) days and no less than sixty (60) days prior to the then current Maturity Date, the Lender will use its commercially reasonable efforts to notify the Borrower of its response within thirty (30) days of receipt of the request therefor (the Lender's decision to be made in its sole and absolute discretion and on such terms and conditions as to which the Lender and the Borrower may agree); *provided, however*, that the failure of the Borrower to receive a written confirmation from the Lender within the time established therefor shall be deemed a denial of such request. Any extension of the Maturity Date will be deemed to be on the existing terms of this Agreement unless the Lender and the Borrower have entered into a written agreement confirming a change in any term of this Agreement.

Section 2.18. Pledge; Security of Obligations. The Net Revenues are hereby pledged by the Borrower to the payment of the Obligations without priority or distinction of one Obligation over another Obligation. The pledge of the Net Revenues herein made shall be irrevocable until the Commitment has expired or been terminated, all Letters of Credit shall have expired or been terminated, in each case without any pending draw, and all Obligations shall have been paid in full. Notwithstanding any other provision of this Agreement to the contrary, all Obligations are limited obligations of the Borrower payable solely from Net Revenues.

Section 2.19. Illegality. If the Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to Daily Simple SOFR or Term SOFR, or to determine or charge interest rates based upon Daily Simple SOFR or Term SOFR, then, upon notice thereof by the Lender to the Borrower (such notice, an "*Illegality Notice*"), (a) any obligation of the Lender to make or continue SOFR Loans or to convert Base Rate Loans to SOFR Loans shall be suspended, and (b) if such notice asserts the illegality of the Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Lender without reference to the Term SOFR component of the Base Rate, in each case until such Lender notifies the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of an Illegality Notice, the Borrower shall prepay or, if applicable, convert all SOFR Loans to Base Rate Loans (the interest rate on which Base Rate Loans shall, if necessary to avoid such illegality, be determined

by the lender without reference to the Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor, if the Lender may lawfully continue to maintain such SOFR Loan to such day, or immediately, if the Lender may not lawfully continue to maintain such SOFR Loan, in each case, until it is no longer illegal for the Lender to determine or charge interest rates based upon SOFR. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.13.

ARTICLE III

CONDITIONS PRECEDENT

Section 3.01. Conditions Precedent to Effectiveness. The obligation of the Lender to make Loans and to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied:

(a) *Opinions.* The Lender has received an opinion of Chapman and Cutler LLP, special counsel to the Borrower, dated the Closing Date and addressed to the Lender in the form attached hereto as Exhibit A.

(b) *Documents.* (i) The Lender has received executed copies of the Basic Documents executed by the Borrower on or prior to the Closing Date certified by the Secretary of the Borrower, the Clerk of the Board or any Authorized Representative of the Board, as applicable, as being complete and in full force and effect on and as of the Closing Date. (ii) The Lender has received a certified copy of the Joint Powers Agreement, including a FTB certificate or related state certification of the Borrower's status.

(c) *Defaults; Representations and Warranties.* On and as of the Closing Date, the representations of the Borrower set forth in Article 4 hereof are true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of such date, and no Default or Event of Default has occurred and is continuing or would result from the execution and delivery of this Agreement, the Fee Agreement, and the other Basic Documents, if any.

(d) *No Litigation.* No action, suit, investigation or proceeding is pending or, to the knowledge of the Borrower, threatened in writing (i) in connection with the Basic Documents or any transactions contemplated thereby or (ii) against or affecting the Borrower, the result of which could have a Material Adverse Effect.

(e) *No Material Adverse Effect.* Since the date of the 2022 Audited Financial Statements, (i) no event or circumstance shall have occurred that has had a Material Adverse Effect and (ii) to the best of its knowledge, no law, regulation, ruling or other action (or interpretation or administration thereof) of the United States, the State of California or any political subdivision or authority therein or thereof is in effect or has occurred, the effect of which would be to prevent the Lender from fulfilling its obligations under this Agreement or any Letter of Credit.

(f) *Certificate.* The Lender has received (i) certified copies of all proceedings of the Borrower authorizing the execution, delivery and performance of the Basic Documents and the transactions contemplated thereby and (ii) a certificate or certificates of one or more Authorized

Representatives dated the Closing Date certifying the accuracy of the statements made in Section 3.01(c), (d), and (e) hereof and further certifying the name, incumbency and signature of each Authorized Representative authorized to sign this Agreement, the Fee Agreement, the other Basic Documents, if any, and the other documents or certificates to be delivered by the Borrower pursuant hereto or thereto, on which certification the Lender may conclusively rely until a revised certificate is similarly delivered, and further certifying that the conditions precedent set forth in this Section 3.01 have been satisfied.

(g) *Financial Statements.* The Lender has received the 2022 Audited Financial Statements and internally prepared quarterly budget reports of the Borrower for the most recent fiscal quarter end, if not previously provided.

(h) *JPMorgan Agreement.* The Lender shall be provided evidence satisfactory to the Lender that all existing obligations owed by the Borrower to JPMorgan Chase Bank, National Association (“JPMorgan”) under the Revolving Credit Agreement dated as of November 29, 2019 between the Borrower and JPMorgan, as amended, have been paid in full, no letters of credit issued by JPMorgan under such Revolving Credit Agreement are outstanding and such Revolving Credit Agreement shall have terminated.

(i) *Other Matters.* The Lender has received such other statements, certificates, agreements, documents, opinions, and information with respect to the Borrower and matters contemplated by this Agreement as the Lender may have requested.

The execution and delivery of this Agreement by the Lender signifies its satisfaction with the conditions precedent set forth in this Section 3.01.

Section 3.02. Conditions Precedent to Each Loan. The obligation of the Lender to make a Loan and of the Lender to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Borrower set forth in this Agreement shall be true and correct on and as of the date of such Borrowing or the Issuance Date.

(b) At the time of and immediately after giving effect to such Borrowing no Default or Event of Default shall have occurred and be continuing.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section 3.02.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

In order to induce the Lender to make Loans, the Borrower represents and warrants to the Lender as follows:

Section 4.01. Organization, Powers, Etc. The Borrower (a) is a public agency formed under the provisions of the Joint Powers Act that is qualified to be a community choice aggregator pursuant to

California Public Utilities Code Section 366.2; and (b) has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying unless the failure to be so licensed or qualified would not have a Material Adverse Effect. The Borrower has (i) the power to (A) execute, deliver and perform its obligations under the Basic Documents and (B) provide for the security of this Agreement and the Fee Agreement pursuant to the Joint Powers Act; and (iii) complied with all Laws in all matters related to such actions of the Borrower as are contemplated by the Basic Documents.

Section 4.02. Authorization, Absence of Conflicts, Etc. The execution, delivery and performance by the Borrower of the Basic Documents (a) have been duly authorized by all necessary action on the part of the Borrower, (b) do not conflict with, or result in a violation of, any Laws, including the Joint Powers Agreement, or any order, writ, rule or regulation of any court or governmental agency or instrumentality binding upon or applicable to the Borrower which violation would result in a Material Adverse Effect and (c) do not conflict with, result in a violation of, or constitute a default under, any resolution, agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property is bound which, in any case, would result in a Material Adverse Effect.

Section 4.03. Binding Obligations. The Basic Documents are valid and binding obligations of the Borrower (assuming due authorization, execution and delivery by the other parties thereto) enforceable against the Borrower in accordance with their respective terms, except to the extent, if any, that the enforceability thereof may be limited by (i) any applicable bankruptcy, insolvency, reorganization, moratorium or other similar law of the State or Federal government affecting the enforcement of creditors' rights generally heretofore or hereafter enacted, (ii) the fact that enforcement may also be subject to the exercise of judicial discretion in appropriate cases and (iii) the limitations on legal remedies against public agencies of the State.

Section 4.04. Governmental Consent or Approval. No consent, approval, permit, authorization or order of, or registration or filing with, any court or government agency, authority or other instrumentality not already obtained, given or made is required on the part of the Borrower for execution, delivery and performance by the Borrower of the Basic Documents.

Section 4.05. Absence of Material Litigation. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, arbitrator or Governmental Authority or other board, body or official pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower questioning the validity of the Joint Powers Agreement, the execution, delivery and performance by the Borrower of the Basic Documents or any proceeding taken or to be taken by the Borrower or the Board in connection therewith, or seeking to prohibit, restrain or enjoin the execution, delivery and performance by the Borrower of the Basic Documents, or wherein an unfavorable decision, ruling or finding could in any way have a Material Adverse Effect (any such action or proceeding being herein referred to as "*Material Litigation*").

Section 4.06. Financial Condition. The most recent audited financial statements of the System delivered (or deemed delivered) to the Lender (the "*Audited Financial Statements*") were prepared in accordance with GAAP applied on a consistent basis throughout the periods involved and were subject to certification by independent certified public accountants of nationally recognized standing or by independent certified public accountants otherwise acceptable to the Lender. The most recent unaudited financial statements of the System delivered (or deemed delivered) to the Lender were prepared on a

consistent basis and, unless otherwise specified in Schedule 5.1(a), in accordance with GAAP. The data on which such financial statements and budget reports are based were true and correct in all material respects. The Audited Financial Statements and the budget reports present fairly the net position of the System as of the date they purport to represent and the revenues, expenses and changes in fund balances and in net position for the periods then ended. Since the date of the most recent Audited Financial Statements delivered to the Lender, no event or circumstance has occurred that has had Material Adverse Effect.

Section 4.07. [RESERVED]

Section 4.08. Accuracy and Completeness of Information. The Basic Documents and all certificates, financial statements, documents and other written information furnished to the Lender by or on behalf of the Borrower in connection with the transactions contemplated hereby were, as of their respective dates, complete and correct in all material respects to the extent necessary to give the Lender true and accurate knowledge of the subject matter thereof and did not contain any untrue statement of a material fact.

Section 4.09. No Default.

(a) No Default or Event of Default under this Agreement has occurred and is continuing.

(b) No “event of default” in respect of the Borrower has occurred and is continuing under any other material mortgage, indenture, contract, agreement or undertaking respecting the System (including, but not limited to, any PPA) to which the Borrower is a party or which purports to be binding on the Borrower or on any of the property of the System.

Section 4.10. No Proposed Legal Changes. There is no amendment or, to the knowledge of the Borrower, proposed amendment to the Constitution of the State, any State law or the Joint Powers Agreement or any administrative interpretation of the Constitution of the State, any State law, or the Joint Powers Agreement, or any judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have a Material Adverse Effect.

Section 4.11. Compliance with Laws, Etc. The Borrower is in compliance with the Investment Policy and all Laws applicable to the Borrower, non-compliance with which could reasonably be expected to have a Material Adverse Effect. In addition, no benefit plan maintained by the Borrower for its employees is subject to the provisions of ERISA, and the Borrower is in compliance with all Laws in respect of each such benefit plan.

Section 4.12. Environmental Matters. In the ordinary course of its business, the Borrower conducts an ongoing review of Environmental Laws on the business, operations and the condition of its property, in the course of which it identifies and evaluates associated liabilities and costs (including, but not limited to, any capital or operating expenditures required for clean-up or closure of properties currently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, any related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted thereat and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On

the basis of such review, the Borrower does not believe that Environmental Laws are likely to have a Material Adverse Effect.

Section 4.13. Regulation U. The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System).

Section 4.14. Liens. This Agreement creates a valid Lien on and pledge of the Net Revenues to secure the payment and performance of the Borrower's Obligations under this Agreement and the Fee Agreement, and no filings, recordings, registrations or other actions are necessary on the part of the Borrower, the Lender or any other Person to create or perfect such Lien. Except for the Lien over Net Revenues contained in this Agreement and Liens over Net Revenues securing Parity Debt and Subordinate Debt permitted by this Agreement, there is no pledge of or Lien on Net Revenues. All System Debt outstanding on the Closing Date is listed in Exhibit F hereto. There is no Senior Debt outstanding.

Section 4.15. Sovereign Immunity. The Borrower is not entitled to immunity from legal proceedings to enforce the Basic Documents (including, without limitation, immunity from service of process or immunity from jurisdiction of any court otherwise having jurisdiction) and is subject to claims and suits for damages in connection with its obligations under the Basic Documents.

Section 4.16. Usury. The terms of the Basic Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

Section 4.17. Insurance. As of the Closing Date, the Borrower maintains such insurance, including self-insurance, as is required by Section 5.01(j) hereof

Section 4.18. ERISA. The Borrower does not maintain or contribute to, and has not maintained or contributed to, any Employee Plan that is subject to Title IV of ERISA.

Section 4.19. Sanctions Concerns and Anti-Corruption Laws.

(a) Neither the Borrower, nor, to the knowledge of the Borrower, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(b) The Borrower and its officers and employees and to the knowledge of the Borrower, its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. The Borrower has conducted its business in compliance with the United States Foreign Corrupt Practices Act of 1977 and other similar Anti-Corruption Laws in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

Section 4.20. System Debt. The Borrower has not incurred or issued any System Debt other than the System Debt, if any, incurred or issued in accordance with Section 5.02(j).

ARTICLE V

COVENANTS

Section 5.01. Affirmative Covenants. Until the Commitment has expired or been terminated, all Letters of Credit shall have expired or been terminated, in each case, without any pending draw, and all Obligations payable hereunder shall have been paid in full and, the Borrower covenants and agrees with the Lender that:

(a) *Accounting and Reports.* The Borrower shall maintain a standard system of accounting in accordance with GAAP consistently applied and furnish to the Lender:

(i) as soon as available, and in any event within sixty (60) days after the close of each fiscal quarter, an unaudited balance sheet of Borrower as of the last day of the period then ended and the statements of income, retained earnings and cash flows of Borrower for the period then ended, prepared in accordance with GAAP and in a form acceptable to Lender;

(ii) as soon as available, and in any event within six (6) months after the close of each annual accounting period of Borrower, a copy of the audited balance sheet of Borrower as of the last day of the period then ended and the statements of income, retained earnings and cash flows of Borrower for the period then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous fiscal year, accompanied by an unqualified opinion thereon of Borrower's independent public accountants, to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such fiscal year and the results of its operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;

(iii) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower's operations and financial affairs given to it by its independent public accountants;

(iv) promptly after knowledge thereof shall have come to the attention of any responsible officer of Borrower, written notice of any litigation threatened in writing or any pending litigation or governmental proceeding or labor controversy against Borrower which constitutes Material Litigation or, if adversely determined, would result in the occurrence of a Default or Event of Default hereunder;

(v) as soon as available, the Borrower shall provide the Lender its annual budget; and

(vi) promptly after the request therefore, all such other information as Lender may reasonably request.

Each of the financial statements furnished to Lender pursuant to subsection (a)(i) and (ii) of this Section 5.01 shall be accompanied by a compliance certificate, substantially in the form of Exhibit B hereto, signed by an Authorized Representative stating that no Event of Default or Default has occurred or if any Event of Default or Default has occurred, specifying the nature of such Event of Default or Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Event of Default or Default, and such compliance certificate shall also include the Debt Service Coverage Ratio test required by Section 5.01(p) hereof and the amount then on deposit in the Operating Reserve Fund.

(b) *Access to Records.* At any reasonable time and from time to time, during normal business hours and, so long as no Event of Default has occurred and is continuing, on at least five (5) Business Days' notice, the Borrower shall permit the Lender or any of its agents or representatives to visit and inspect any of the properties of the Borrower and the other assets of the Borrower, to examine the books of account of the Borrower (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of the Borrower with, and to be advised as to the same by, its officers, all at such reasonable times and intervals as the Lender may reasonably request. For the avoidance of doubt, no such notice shall be required if an Event of Default has occurred and is continuing.

(c) *Compliance with Basic Documents; Operation and Maintenance of System.*

(i) The Borrower shall perform and comply with each covenant set forth in any agreement, instrument or document evidencing Parity Debt or Subordinate Debt. By the terms of this Agreement, the Lender is hereby made a third party beneficiary of the covenants set forth in each such covenant, together with the related definitions of terms contained therein, is incorporated by reference in this Section 5.01(c) with the same effect as if it were set forth herein in its entirety..

(ii) The Borrower covenants that it will maintain and preserve the System in good repair and working order at all times from the Revenues available for such purposes, in conformity with standards customarily followed for municipal power systems of like size and character. The Borrower will from time to time make all necessary and proper repairs, renewals, replacements and substitutions to the properties of the System, so that at all times business carried on in connection with the System shall and can be properly and advantageously conducted in an efficient manner and at reasonable cost, and will operate the System in an efficient and economical manner and shall not commit or allow any waste with respect to the System.

(d) *Defaults.* The Borrower shall notify the Lender of any Default or Event of Default of which the Borrower has knowledge, as soon as possible and, in any event, within three (3) Business Days of acquiring knowledge thereof, setting forth the details of such Default or Event of Default and the action which the Borrower has taken and proposes to take with respect thereto.

(e) *Compliance with Laws.* The Borrower shall comply in all material respects with all Laws binding upon or applicable to the Borrower (including Environmental Laws and

Sanctions) and material to the Basic Documents. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower and its respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. The Borrower will not use or allow any tenants or subtenants to use its Property for any business activity that violates any federal or state law or that supports a business that violates any federal or state law.

(f) *Investment Policy and Guidelines.* The Borrower shall promptly notify the Lender in writing, not less than thirty (30) days after the Borrower receives notice of the formal consideration thereof, of any change proposed to the Investment Policy, which proposed change would increase the types of investments permitted thereby as of the Closing Date.

(g) *Bank Agreements.* In the event that Borrower shall enter into or otherwise consent to any amendment, supplement or other modification of any Bank Agreement after the Closing Date which Bank Agreement contains additional or greater security, additional or more restrictive covenants or additional or more restrictive events of default or additional or improved remedies (“*Improved Provisions*,” which for the avoidance of doubt does not include pricing, termination fees and provisions related to interest rates but does include improved term-out provisions), then the Borrower shall provide the Lender with a copy of such Bank Agreement and the Improved Provisions shall automatically be deemed incorporated into this Agreement and the Lender shall have the benefit of the Improved Provisions until such time as the Bank Agreement containing such Improved Provisions terminates. The Borrower shall promptly cooperate with the Lender to enter into an amendment of this Agreement to include such Improved Provisions.

(h) *Further Assurances.* The Borrower shall execute, acknowledge where appropriate and deliver, and cause to be executed, acknowledged where appropriate and delivered, from time to time, promptly at the request of the Lender, all such instruments and documents as are usual and customary or advisable to carry out the intent and purpose of the Basic Documents.

(i) *Notices.* The Borrower shall promptly furnish, or cause to be furnished, to the Lender (i) notice of the occurrence of any “default” or “event of default” or “termination event” under any Basic Document (other than this Agreement and the Fee Agreement) or any document pursuant to which System Debt is incurred or payable, (ii) copies of any communications received from any Governmental Authority with respect to the transactions contemplated by the Basic Documents or any other System Debt which are not restricted or prohibited from being shared with the Lender under the law or the direction of a court of competent jurisdiction or other Governmental Authority, (iii) notice of any proposed amendment to any Basic Document and copies of all such amendments promptly following the execution thereof, (iv) notice of any proposed substitution of any Letter of Credit and (v) notice of the passage of any state or local Law not of general applicability to all Persons of which the Borrower has knowledge, which could reasonably be expected to have a Material Adverse Effect.

(j) *Maintenance of Insurance.* The Borrower shall maintain, or cause to be maintained, at all times, insurance on and with respect to its properties with responsible and reputable insurance companies; *provided, however*, that the Borrower may maintain self-insurance general liability on its properties not covered by the public entity property insurance program policy, for worker’s compensation and vehicle liability and, with the consent of the Lender, such other self-insurance as it deems prudent. Such insurance must include casualty, liability and workers’ compensation and be in amounts and with deductibles and exclusions customary and

reasonable for governmental entities of similar size and with similar operations as the Borrower. The Borrower shall, upon request of the Lender, furnish evidence of such insurance to the Lender. The Borrower shall also procure and maintain at all times adequate fidelity insurance or bonds on all officers and employees handling or responsible for any Revenues or funds of the System, such insurance or bond to be in an aggregate amount at least equal to the maximum amount of such Revenues or funds at any one time in the custody of all such officers and employees or in the amount of one million dollars (\$1,000,000), whichever is less. The insurance described above may be provided as part of any comprehensive fidelity and other insurance and not separately for the System.

(k) *Preservation of Security.* The Borrower shall take any and all actions necessary to preserve and defend the pledge of Net Revenues set forth in this Agreement.

(l) *Rates.* (i) To the fullest extent permitted by law, the Borrower will establish, fix and prescribe, prior to the commencement of each Fiscal Year, rates, fees and charges in the operation of all of its businesses, as long as any Obligations hereunder are outstanding and the Commitment has not been terminated, so as to yield Net Revenues at least sufficient, after making reasonable allowances for contingencies and error in the estimates to pay the following amounts:

(A) The interest on and principal of all Loans, LC Disbursements, Amortization Amounts and other Parity Debt as they become due and payable and past due amounts;

(B) All other amounts payable by the Borrower hereunder, under the Fee Agreement and under any Parity Debt; and

(C) All other amounts payable by the Borrower under the Basic Documents and the documents pursuant to which System Debt is incurred or payable which are secured by a Lien on or are payable from Net Revenues.

(ii) In addition to the requirements in Section 5.01(l)(i), to the fullest extent permitted by law, the Borrower shall establish, fix and prescribe, prior to the commencement of each Fiscal Year, rates, fees and charges in connection with the operation of all of its businesses, which are reasonably expected to be at least sufficient to yield during such Fiscal Year Net Revenues equal to 1.10 times Annual Debt Service payable in such Fiscal Year.

(iii) The Borrower may make adjustments from time to time in such rates, fees and charges and may make such classification thereof as it deems necessary, but shall not reduce such rates, fees and charges below those then in effect unless the Net Revenues after such reduction will at all times be sufficient to meet the requirements set forth in Section 5.1(l)(i) and (ii) above.

(iv) So long as the Borrower has complied with Section 5.01(l)(i) and Section 5.01(l)(ii) at the beginning of a Fiscal Year, neither the failure to yield the amount of Net Revenues as set forth in Section 5.01(l)(i) nor the failure of Net Revenues to equal 1.10 times Annual Debt Service as set forth in Section 5.01(l)(ii) at the end of such Fiscal Year shall constitute a Default or an Event of Default so long as the Borrower complies with

Section 5.01(l)(i) and Section 5.01(l)(ii) at the commencement of the succeeding Fiscal Year.

(m) *Budget.* The Borrower shall include in each annual budget of the Borrower all amounts reasonably anticipated to be necessary to pay all Obligations. If the amounts so budgeted are not adequate for the payment of the Obligations, the Borrower shall take such action as may be necessary to cause such annual budget to be amended, corrected or augmented so as to include therein the amounts required to be paid to the Lender during the course of the Fiscal Year to which such annual budget applies.

(n) *Payment of Taxes, Etc.* The Borrower shall pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Borrower on account of the System or any portion thereof and which, if unpaid, might impair the security of this Agreement and the Fee Agreement, but nothing herein contained will require the Borrower to pay any such tax, assessment or charge so long as it in good faith contests the validity thereof. The Borrower shall duly observe and comply with all valid material requirements of any Governmental Authority relative to the System or any part thereof.

(o) *Rating and Rating Change.* The Borrower shall at all times maintain one rating with a Rating Agency. The Borrower shall use its best efforts to notify the Lender as soon as practicable of any issuance, downgrade, suspension or withdrawal in rating of any System Debt.

(p) *Debt Service Coverage.* The Borrower shall maintain a Debt Service Coverage Ratio of not less than 1.10 for each fiscal year of the Borrower, commencing with the fiscal year ended December 31, 2022. The Debt Service Coverage Ratio shall be tested on a rolling last four fiscal quarter basis and forward for the following four fiscal quarters as of the last day of each fiscal year commencing with the fiscal year ended December 31, 2022. The Borrower shall determine the Debt Service Coverage Ratio at each fiscal year end and provide written notice thereof together with supporting calculations in reasonable detail to the Lender as soon as practicable following the such fiscal year end and in any event no later than the forty-five calendar days following the end of such fiscal year (each such notice, a “*Debt Service Coverage Ratio Notice*”). Notwithstanding the forgoing, so long as the Borrower has complied with its obligations set forth in Section 5.01(l)(i) and (ii) above, the failure of the Borrower to generate Net Revenues during a fiscal year of the Borrower in an amount at least sufficient to satisfy a Debt Service Coverage Ratio of 1.10 by the end of such fiscal year shall not, by itself, constitute a Default or an Event of Default.

(q) *Operating Reserve Fund.* The Borrower shall maintain the Operating Reserve Fund with unrestricted cash and investments at the Operating Reserve Fund Requirement level at all times that amounts are due and owing to the Lender hereunder. [REMAINS UNDER REVIEW WITH RBC-The Borrower may withdraw amounts from the Operating Reserve Fund for any purpose for which current fiscal year Revenues are insufficient. Notwithstanding the first sentence of this paragraph, the failure of the Borrower to maintain the Operating Reserve Fund with unrestricted cash and investments at the Operating Reserve Fund Requirement level shall not, by itself, constitute a Default or an Event of Default, provided that the Operating Reserve Fund is replenished to the Operating Reserve Fund Requirement level not later than one year following such failure.]

(r) *System.* The Borrower shall have in effect, or cause to have in effect, at all times an ordinance or resolution requiring all customers of the Borrower to pay the fees, rates and charges applicable to the services and facilities furnished by the Borrower.

(s) *Ratings.* The Borrower shall maintain long-term ratings on System Debt from at least two of Fitch, Moody's and S&P which are not disregarded pursuant to the provisions of Section 2.10(d).

Section 5.02. Negative Covenants. Until the Commitment has expired or been terminated and the Obligations payable hereunder shall have been paid in full, the Borrower covenants and agrees with the Lender that it will not:

(a) *No Impairment.* Take any action that would have an adverse effect on (i) the ability of the Borrower to pay when due amounts owing to the Lender or any Participant under this Agreement or the Fee Agreement; (ii) the pledge of Net Revenues or the priority of payments from Net Revenues (other than Parity Debt or Subordinate Debt permitted by this Agreement); or (iii) the rights or remedies of the Lender under the Basic Documents.

(b) *Merger, Disposition of Assets.* Consolidate or merge with or into any Person or sell, lease or otherwise transfer all or substantially all of its assets to any Person.

(c) *Abandon.* Take any action to abandon the System or any significant portion thereof.

(d) *Preservation of Corporate Existence, Etc.* Take any action to terminate its existence as a public agency under the Joint Powers Act or its rights and privileges as such entity within the State.

(e) *Liens.* Create or suffer to exist or permit any Lien on the Revenues other than the Liens created or permitted by this Agreement. No Lien on Revenues that is senior to the Lien on Revenues that secures the Obligations shall be permitted. No other Liens on Revenues shall be permitted except for Liens to secure indebtedness of the Borrower incurred in compliance with Section 5.02(j).

(f) *Sovereign Immunity.* Assert the defense of any future right of sovereign immunity in a legal proceeding to enforce or collect upon the obligations of the Borrower under any Basic Document or the transactions contemplated thereby.

(g) *System.* Construct, operate or maintain any system or utility competitive with the System. The Borrower shall not provide any service of the System free of charge to any Person, except (i) to the extent that any such free use is required by the terms of any existing contract or agreement and (ii) for incidental insignificant free use so long as such free use does not prevent the Borrower from satisfying the other covenants of this Agreement.

(h) *Preservation of Existence, Etc.* Take any action to accomplish a merger of the System with any other entity or enterprise, unless and until the Borrower has provided a method for segregating the Revenues from the revenues of said other entity or enterprise in a manner that will, or shall otherwise, preserve the Lien on the Net Revenues for the payment of the Obligations

and has obtained an opinion of counsel from a firm nationally recognized in the practice of municipal financing that such merger will not, in and of itself, cause the pledge of Net Revenues set forth in this Agreement to be no longer valid. If the Borrower does effect such a merger, the Borrower shall provide written notice thereof to the Lender and shall deliver a copy of the aforementioned opinion to the Lender.

(i) *Use of Proceeds.* Use Letters of Credit for any purpose other than to secure the Borrower's obligations under PPAs. Use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, U or X of the Board of Governors of the Federal Reserve System. The Borrower shall not use the proceeds for any Loan for any purposes other than general corporate purposes permitted by the Borrower's organizational documents and applicable law. For the avoidance of doubt, Loan proceeds may not be used for other long-term expenditures or for funding the Operating Reserve Fund. The Borrower shall not use the proceeds of any Loan in violation of any Sanctions or Anti-Corruption Laws.

(j) *System Debt.*

(i) Issue, incur, assume or permit to exist any Senior Debt or any other Debt of the Borrower other than (A) Parity Debt described in clause (ii) below; and (B) Subordinate Debt described in clause (iii) below;

(ii) Issue, incur or assume to exist any Parity Debt except for: (A) the Obligations, and (B) Debt issued or incurred in compliance with the following conditions:

(A) no Default or Event of Default shall have occurred and be continuing immediately before and after the issuance or incurrence of such Parity Debt;

(B) such Parity Debt does not exceed at any time any limitation set forth in the Constitution or other laws of the State, the Joint Powers Agreement, the Ordinances or any other resolutions or ordinances adopted by the Borrower;

(C) the Operating Reserve Fund is funded in an amount at least equal to the Operating Reserve Fund Requirement immediately prior to the issuance or incurrence of such Parity Debt; and

(D) compliance by the Borrower with either (1) or (2) below:

(1) delivery of a written certificate of the Borrower: (i) setting forth Net Revenues for the preceding twelve month period (in reasonable detail and with reasonable assumptions), (ii) setting forth Annual Debt Service for the preceding twelve month period (inclusive of any additional Parity Debt in reasonable detail and with reasonable assumptions) and (iii) demonstrating that Net Revenues for the preceding twelve month period

were at least equal to 1.25 times the Annual Debt Service for such period;
or

(2) in connection with any Debt issued to finance capital projects related to System improvements, additions or expansions, a written certificate of the Borrower (i) setting forth projected Net Revenues for the next succeeding twelve month period (in reasonable detail and with reasonable assumptions), (ii) setting forth projected Annual Debt Service (inclusive of any additional Parity Debt and in reasonable detail and with reasonable assumptions) for such succeeding twelve month period, and (iii) demonstrating that projected Net Revenues for the succeeding twelve month period are at least equal to 1.25 times the Annual Debt Service for such period; *provided, however*, that for purposes of determining the projected Net Revenues for the succeeding twelve month period as set forth in the foregoing clauses (i) and (iii), such Net Revenues may be adjusted to reflect any rates and charges that have been adopted or that are expected to be generated by an approved rate action and any Net Revenues associated with the acquisition or development of power generation assets that were financed with such additional debt;

(iii) Issue, incur or assume to exist any Subordinate Debt except for Debt issued or incurred in compliance with the following conditions:

(A) no Default or Event of Default shall have occurred and be continuing immediately before and after the issuance or incurrence of such Subordinate Debt;

(B) such Subordinate Debt does not exceed at any time any limitation set forth in the Constitution or other laws of the State, the Joint Powers Agreement or any other resolutions or ordinances adopted by the Borrower; and

(C) compliance by the Borrower with either (1) or (2) below:

(1) delivery of a written certificate of the Borrower: (i) setting forth Net Revenues for the preceding twelve month period (in reasonable detail and with reasonable assumptions), (ii) setting forth Annual Debt Service for the preceding twelve month period (inclusive of any additional Subordinate Debt in reasonable detail and with reasonable assumptions) and (iii) demonstrating that Net Revenues for the preceding twelve month period were at least equal to 1.10 times the Annual Debt Service for such period; or

(2) in connection with any Debt issued to finance capital projects related to System improvements, additions or expansions, a written certificate of the Borrower (i) setting forth projected Net Revenues for the succeeding twelve month period (in reasonable detail and with reasonable assumptions), (ii) setting forth projected Annual Debt Service

(inclusive of any additional Subordinate Debt and in reasonable detail and with reasonable assumptions) for the succeeding twelve month period, and (iii) demonstrating that projected Net Revenues for the succeeding twelve month period are at least equal to 1.10 times the Annual Debt Service for such period; *provided, however*, that for purposes of determining the Net Revenues for the projected twelve month period as set forth in the foregoing clause (i) and (iii), such Net Revenues may be adjusted to reflect any rates and charges that have been adopted or that are expected to be generated by an approved rate action and any Net Revenues associated with the acquisition or development of power generation assets that were financed with such additional debt.

(k) *Excess Revenues*. Use excess revenues for any purpose other than: (i) payment of Operating and Maintenance Costs; (ii) payment of Obligations; (iii) payment of debt service on, and fees associated with, other Parity Debt; (iv) funding and replenishment of the Operating Reserve Fund; and (v) so long as no Event of Default has occurred and is continuing, (A) payment of interest on, and fees associated with, Subordinate Debt; (B) capital expenditures in connection with assets that will become part of the System; (C) rebates to System customers; and (D) any other lawful purpose that inures to the direct benefit of the System.

(l) *Master Trust Indenture*. The Borrower shall not enter into any trust agreement or indenture providing for the issuance of bonds, notes or other obligations constituting System Debt without first obtaining the written consent of the Lender, such consent not to be unreasonably withheld.

ARTICLE VI

DEFAULTS

Section 6.01. Events of Default and Remedies. If any of the following events occurs, each such event will be an “*Event of Default*”:

(a) the Borrower fails to pay, or cause to be paid, as and when due, (i) the principal of and interest on any Loan, the principal of or interest on any Amortization Amount or any LC Disbursement or (ii) any Obligation (other than as described in clause (i)) hereunder or under the Fee Agreement and, in such case, such failure continues for three (3) Business Days.

(b) any representation or warranty made by or on behalf of the Borrower in this Agreement or in any other Basic Document or in any certificate or statement delivered hereunder or thereunder is incorrect or untrue in any material respect when made or deemed to have been made or delivered;

(c) the Borrower defaults in the due performance or observance of any of the covenants set forth in Section 5.01(c), 5.01(d), 5.01(j), 5.01(k), 5.01(l), 5.01(p), or 5.02 hereof;

(d) the Borrower defaults in the due performance or observance of any other term, covenant or agreement contained in this Agreement or any other Basic Document and such default remains unremedied for a period of thirty (30) days after the occurrence thereof;

(e) the Borrower, directly or indirectly, (i) has entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) becomes insolvent or does not pay, or is unable to pay, or admits in writing its inability to pay, its debts generally as they become due, (iii) makes an assignment for the benefit of creditors, (iv) applies for, seeks, consents to, or acquiesces in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institutes any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fails to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) takes any corporate action in furtherance of any matter described in clauses (i) through (v) above or (vii) fails to contest in good faith any appointment or proceeding described in Section 6.01(f) of this Agreement;

(f) a custodian, receiver, trustee, examiner, liquidator or similar official is appointed for the Borrower or any substantial part of its Property, or a proceeding described in Section 6.01(e)(v) is instituted against the Borrower and such proceeding continues undischarged, undismissed and unstayed for a period of thirty (30) days;

(g) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any Debt of the Borrower by the Borrower or any Governmental Authority with appropriate jurisdiction;

(h) any material provision of this Agreement, any other Basic Document or the Joint Powers Agreement at any time for any reason ceases to be valid and binding on the Borrower as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or is declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid or unenforceable, or the validity or enforceability thereof is publicly contested by the Borrower, or the Borrower publicly contests the validity or enforceability of any obligation to pay System Debt, or any Authorized Representative publicly repudiates or otherwise denies in writing that it has any further liability or obligation under or with respect to any provision of this Agreement, any other Basic Document or the Joint Powers Agreement or any operative document related to System Debt;

(i) dissolution or termination of the existence of the Borrower;

(j) the Borrower (i) defaults on the payment of the principal of or interest on any System Debt beyond the period of grace, if any, provided in the instrument or agreement under which such System Debt was created or incurred or (ii) defaults in the observance or performance of any agreement or condition relating to any System Debt, including, without limitation, any Bank Agreement, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event occurs or condition exists, the effect of which default, event of default or similar event or condition is to permit (determined without regard to whether any notice is required) any such System Debt to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such System Debt; and

(k) any final, nonappealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, in an aggregate amount not less than \$10,000,000 are entered or filed against the Borrower or against any of its Property and remain unpaid, unvacated, unbonded and unstayed for a period of sixty (60) days.

Section 6.02. Remedies. Upon the occurrence of any Event of Default, and at any time thereafter during the continuance of such event, the Lender may by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitment, and thereupon the Commitment shall terminate immediately, (ii) declare that the Collateralization Date has occurred thereby requiring the delivery of cash collateral in the amount of the Collateralization Requirement pursuant to Section 6.03 (iii) to the extent permitted by the terms of the Letters of Credit, deliver written notice to the beneficiaries of the Letters of Credit that the Letters of Credit shall terminate on the 30th day following the date of delivery of such notice and on such 30th day the Letters of Credit with respect to which such notice is given will terminate and (iv) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and, in addition, in case of any Event of Default described in Section 6.01(e), 6.01(f) or 6.01(g), the Commitment shall automatically terminate, the Collateralization Date shall automatically occur and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. In addition, upon the occurrence of an Event of Default the Lender may exercise, or cause to be exercised, any and all remedies as it may have under this Agreement or the Basic Documents and as otherwise available at law and at equity.

Section 6.03. Remedies related to Letters of Credit. (a) On the Collateralization Date the Borrower shall pay to the Lender in immediately available funds at the Lender's office designated in such demand, for deposit by the Lender in a special noninterest bearing cash collateral account (the "Cash Collateral Account") to be maintained at such office of the Lender as may be designated by the Lender, an amount equal to the Collateralization Requirement. The Cash Collateral Account shall be in the name of the Borrower (as a cash collateral account), but under the sole dominion and control of the Lender and subject to the terms of this Agreement.

(b) If at any time the Lender reasonably determines that any funds held in the Cash Collateral Account are subject to any right or claim of any Person other than the Lender or that the total amount of such funds is less than the Collateralization Requirement, the Borrower will, forthwith upon demand by the Lender, pay to the Lender, as additional funds to be deposited and held in the Cash Collateral Account, an amount necessary to cause the balance then held in the Cash Collateral Account which the Lender determines to be free and clear of any such right and claim to equal the Collateralization Requirement.

(c) The Borrower hereby pledges, and grants to the Lender a security interest in, all funds held in the Cash Collateral Account from time to time and all proceeds thereof, as security for the payment of the Obligations.

(d) The Lender may, at any time or from time to time after funds are deposited in the Cash Collateral Account, apply funds then held in the Cash Collateral Account to the payment of the Obligations, in such order as the Lender may elect, as shall have become or shall become due and payable by the Borrower to the Lender under this Agreement.

(e) Neither the Borrower nor any Person claiming on behalf of or through the Borrower shall have any right to withdraw any of the funds held in the Cash Collateral Account, except as otherwise provided in Section 6.03(f) below and except that after the termination of all of the Commitment and the Letters of Credit, without a pending draw thereunder, in accordance with their terms and the payment of all Obligations, any funds remaining in the Cash Collateral Account shall be returned by the Lender to the Borrower or paid to whomever may be legally entitled thereto.

(f) So long as no Default has occurred and is continuing, the Lender will release to the Borrower or at its order at the written request of the Borrower, funds held in the Cash Collateral Account in an amount up to but not exceeding the excess, if any (immediately prior to the release of any such funds), of (x) the total amount of funds held in the Cash Collateral Account over (y) the Collateralization Requirement.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Amendments, Waivers, Etc. No amendment or waiver of any provision of this Agreement, or consent to any departure by the Borrower therefrom, will in any event be effective unless the same is in writing and signed by the Lender and an Authorized Representative of the Borrower, and then such waiver or consent is effective only in the specific instance and for the specific purpose for which given.

Section 7.02. Notices. All notices and other communications provided for hereunder must be in writing (including required copies) and sent by courier (including Federal Express or other receipted courier service), facsimile transmission or regular mail, as follows:

(a) if to the Borrower:

Marin Clean Energy
1125 Tamalpais Avenue
San Rafael, California 94901
Attention: Vicken Kasarjian, Chief Operating Officer
Telephone: (415) 464-6659
Facsimile:
Email:

with a copy to:

Chapman and Cutler LLP
1270 Avenue of the Americas, 30th Floor
New York, New York 10020
Attention: Douglas A. Bird

Telephone: (212) 655-2519

Email:

(b) if to the Lender:

Royal Bank of Canada
200 Vesey Street, 12th Floor
New York, New York 10281
Attention: Laurent Mastey
Telephone: (212) 428-6534
Facsimile: (212) 428-6201
Email: laurent.mastey@rbccm.com

or, as to each Person named above, at such other address, including email address, or telephone or facsimile number as is designated by such Person in a written notice to the parties hereto. Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications to the Lender hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Lender. The Lender or the Borrower agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Lender otherwise prescribes, (a) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (b) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (a) of notification that such notice or communication is available and identifying the website address therefor.

Section 7.03. Survival of Covenants; Successors and Assigns.

(a) All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto will survive the making of any Loan, and will continue in full force and effect until all of the Obligations hereunder are paid in full. Whenever in this Agreement any of the parties hereto is referred to, such reference will, subject to the last sentence of this Section, be deemed to include the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Agreement will inure to the benefit of the successors and assigns of the Lender. The Borrower may not transfer its rights or obligations under this Agreement without the prior written consent of the Lender. The Lender may transfer or assign some or all of its rights and obligations under this Agreement and the Fee Agreement with, so long as no Event of Default has occurred and is continuing, the prior written consent of the Borrower (which consent may not be withheld unreasonably), *provided* that the Lender shall be responsible for all costs solely relating to such transfer or assignment. For the avoidance of doubt, the Borrower's prior written consent shall not be required if an Event of Default

has occurred and is continuing. This Agreement is made solely for the benefit of the Borrower and the Lender, and no other Person (including, without limitation, any PPA Counterparty) will have any right, benefit or interest under or because of the existence of this Agreement.

(b) Notwithstanding the foregoing, the Lender will be permitted to grant to one or more financial institutions (each a “*Participant*”) a participation or participations in all or any part of the Lender’s rights and benefits and obligations under this Agreement, the Fee Agreement, the Loans and the Letters of Credit on a participating basis but not as a party to this Agreement (a “*Participation*”) without the consent of the Borrower. In the event of any such grant by the Lender of a Participation to a Participant, the Lender shall remain responsible for the performance of its obligations hereunder and under the Letters of Credit, and the Borrower may continue to deal solely and directly with the Lender in connection with the Lender’s rights and obligations under this Agreement, under the Fee Agreement and under the Letters of Credit. The Borrower agrees that each Participant will, to the extent of its Participation, be entitled to the benefits of this Agreement as if such Participant were the Lender; *provided* that no Participant will have the right to declare, or to take actions in response to, an Event of Default under Section 6.01 hereof; and *provided, further*, that the Borrower’s liability to any Participant (including, without limitation, amounts payable pursuant to Sections 2.12, 2.13 and 2.14) will not in any event exceed that liability which the Borrower would owe to the Lender but for such participation.

Section 7.04. Liability of Lender; Indemnification.

(a) To the extent permitted by the law of the State, the Borrower assumes all risk of the acts or omissions of the PPA Counterparties with respect to the use of the Letters of Credit or the proceeds thereunder; provided that this provision is not intended to and will not preclude the Borrower from pursuing such rights and remedies as it may have against the PPA Counterparties under any other agreement. Neither the Lender nor any of its respective officers or directors will be liable or responsible for (i) the use of any Letter of Credit, the LC Disbursements or the proceeds of any Loans or the transactions contemplated hereby and by the other Basic Documents or the acts or omissions of any PPA Counterparty, (ii) the validity, sufficiency or genuineness of any documents determined in good faith by the Lender to be valid, sufficient or genuine, even if such documents, in fact, prove to be in any or all respects invalid, fraudulent, forged or insufficient, (iii) payments by the Lender against presentation of requests for LC Disbursements or Borrowing Requests which the Lender in good faith has determined to be valid, sufficient or genuine and which subsequently are found not to comply with the terms of this Agreement or (iv) any other circumstances whatsoever in making or failing to make payment hereunder; *provided* that the Borrower is not required to indemnify the Lender for any claims, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the gross negligence or willful misconduct of the Lender as determined by a court of competent jurisdiction in a final and non-appealable decision.

(b) To the extent permitted by the law of the State, the Borrower indemnifies and holds harmless the Lender from and against any and all direct, as opposed to consequential, claims, damages, losses, liabilities, costs and expenses (including specifically reasonable attorneys’ fees) which the Lender may incur (or which may be claimed against the Lender by any Person whatsoever) by reason of or in connection with the execution, delivery and performance of the Basic Documents, the Letters of Credit and the transactions contemplated thereby; *provided* that the Borrower is not required to indemnify the Lender to the extent, but only to the extent, any such

claim, damage, loss, liability, cost or expense is caused by the Lender's willful misconduct or gross negligence as determined by a final and non-appealable order of a court of competent jurisdiction. The Lender is expressly authorized and directed to honor any demand for payment which is made under any Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between the Borrower, any PPA Counterparty or any other Person or the respective rights, duties or liabilities of any of them or whether any facts or occurrences represented in any of the documents presented under any Letter of Credit are true and correct.

(c) To the fullest extent permitted by Applicable Law, the Borrower shall not assert, and waives, any claim against the Lender, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Basic Document or any agreement or instrument contemplated thereby, the transactions contemplated thereby or the use of the proceeds thereof.

(d) The obligations of the Borrower under this Section 7.04 will survive the termination of this Agreement.

Section 7.05. Expenses. Upon receipt of a written invoice, the Borrower shall promptly pay (i) the reasonable fees and expenses of counsel to the Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Fee Agreement and the other Basic Documents as set forth in the Fee Agreement, (ii) the reasonable out-of-pocket expenses of the Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents (*provided* that such expenses to be paid in connection with the preparation and execution and delivery will not exceed the amount specified in the Fee Agreement), (iii) the fees and disbursements of counsel to the Lender with respect to advising the Lender as to its rights and responsibilities under the Basic Documents after the occurrence of a Default or an Event of Default and (iv) all costs and expenses, if any, in connection with the administration and enforcement of the Basic Documents, including in each case the fees and disbursements of counsel to the Lender. In addition, and notwithstanding the foregoing, the Borrower agrees to pay, after the occurrence of an Event of Default, all costs and expenses (including attorneys' fees and costs of settlement) incurred by the Lender in enforcing any obligations or in collecting any payments due from the Borrower hereunder or under the Fee Agreement by reason of such Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "workout" or of any insolvency or bankruptcy proceedings. The obligations of the Borrower under this Section 7.05 will survive the termination of this Agreement.

Section 7.06. No Waiver; Conflict. Neither any failure nor any delay on the part of the Lender in exercising any right, power or privilege hereunder, nor any course of dealing with respect to any of the same, will operate as a waiver thereof or preclude any other or further exercise thereof, nor will a single or partial exercise thereof, preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. To the extent of any conflict between this Agreement and any other Basic Documents, this Agreement will control solely as between the Borrower and the Lender.

Section 7.07. Modification, Amendment Waiver, Etc. No modification, amendment or waiver of any provision of this Agreement will be effective unless the same is in writing and signed in accordance with Section 7.01 hereof

Section 7.08. Dealings. The Lender and its affiliates may accept deposits from, extend credit to and generally engage in any kind of banking, trust or other business with the Borrower regardless of the capacity of the Lender hereunder.

Section 7.09. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and all other remaining provisions hereof will be construed to render them enforceable to the fullest extent permitted by law. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic or legal effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7.10. Counterparts. This Agreement may be executed in two or more counterparts, each of which constitutes an original, but when taken together constitute but one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Agreement by facsimile, emailed pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; *provided* that nothing herein shall require the Lender to accept Electronic Signatures in any form or format without its prior written consent.

Section 7.11. Table of Contents; Headings. The table of contents and the section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement.

Section 7.12. Entire Agreement. This Agreement and the Fee Agreement represents the final agreement between the parties hereto with respect to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties hereto as to such subject matter.

Section 7.13. Governing Law Waiver of Jury Trial.

(a) THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS (OTHER THAN NEW YORK GENERAL OBLIGATIONS LAWS 5-1401 AND 5-1402); *PROVIDED*, THAT THE OBLIGATIONS OF THE BORROWER HEREUNDER (INLCUDING THE PLEDGE OF REVENUES) SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CHOICE OF LAW RULES.

(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE BASIC DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, EACH OF THE PARTIES HERETO CONSENTS TO THE ADJUDICATION OF ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE IS EMPOWERED TO HEAR AND DETERMINE ALL ISSUES IN SUCH REFERENCE, WHETHER FACT OR LAW. EACH OF THE PARTIES HERETO REPRESENTS THAT IT HAS REVIEWED THIS WAIVER AND CONSENT AND, FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS, KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

(c) The covenants and waivers made pursuant to this Section 7.13 are irrevocable and unmodifiable, whether in writing or orally, and are applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 7.14. Governmental Regulations. The Borrower shall (a) ensure that no Person who owns a controlling interest in or otherwise controls the Borrower is or will be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (“OFAC”), the Department of the Treasury or included in any Executive Order that prohibits or limits the Lender from making any advance or extension of credit to the Borrower or from otherwise conducting business with the Borrower and (b) ensure that the proceeds of Loans or the LC Disbursements are not used to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto. Further, the Borrower shall comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

Section 7.15. USA PATRIOT Act. The Lender notifies the Borrower that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Act. The Borrower agrees to provide such documentary and other evidence of the Borrower’s identity as may be requested by the Lender at any time to enable the Lender to verify the Borrower’s identity or to comply with any Applicable Law or regulation, including, without limitation, the Act.

Section 7.16. Electronic Transmissions. The Lender is authorized to accept and process any amendments, transfers, assignments of proceeds, LC Disbursements, consents, waivers and all documents relating to the Letters of Credit which are sent to Lender by electronic transmission, including SWIFT, electronic mail, telex, facsimile, courier, mail or other computer generated telecommunications and such electronic communication will have the same legal effect as if written and will be binding upon and

enforceable against the Borrower. The Lender may, but shall not be obligated to, require authentication of such electronic transmission or that the Lender receives original documents prior to acting on such electronic transmission

Section 7.17. Assignment to Federal Reserve Bank. The Lender may assign and pledge all or any portion of the obligations owing to it hereunder to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, *provided* that any payment in respect of such assigned obligations made by the Borrower to the Lender in accordance with the terms of this Agreement will satisfy the Borrower's obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment will release the Lender from its obligations hereunder.

Section 7.18. Arm's Length Transaction. The transaction described in this Agreement is an arm's length, commercial transaction between the Borrower and the Lender in which: (i) the Lender is acting solely as a principal (i.e., as a lender) and for its own interest; (ii) the Lender is not acting as a municipal advisor or financial advisor to the Borrower; (iii) the Lender has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the Borrower with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether the Lender or any of its affiliates has provided other services or is currently providing other services to the Borrower on other matters); (iv) the only obligations the Lender has to the Borrower with respect to this transaction are set forth in this Agreement, the Fee Agreement and the other Basic Documents; and (v) the Lender is not recommending that the Borrower take an action with respect to the transaction described in this Agreement and the other Basic Documents, and before taking any action with respect to the this transaction, the Borrower should discuss the information contained herein with the Borrower's own legal, accounting, tax, financial and other advisors, as the Borrower deems appropriate.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Borrower and the Lender have duly executed this Agreement as of the date first written above.

MARIN CLEAN ENERGY

By: _____

Name: _____

Title: _____

MARIN CLEAN ENERGY

By: _____

Name: _____

Title: _____

ROYAL BANK OF CANADA

By: _____

Name: Laurent Mastey

Title: Authorized Signatory

EXHIBIT A

FORM OF OPINION OF CHAPMAN AND CUTLER LLP

April __, 2023

Royal Bank of Canada
200 Vesey Street, 12th Floor
New York, New York 10281

Marin Clean Energy
1125 Tamalpais Avenue
San Rafael, California 94901

Re: Marin Clean Energy and Royal Bank of Canada— Revolving Credit Agreement and Fee Agreement

Ladies and Gentlemen:

We have acted as special counsel to Marin Clean Energy, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (“MCE”), in connection with:

(i) the Revolving Credit Agreement, dated as of April __, 2023 (the “Revolving Credit Agreement”) and the Fee Agreement, dated April __, 2023 (the “Fee Agreement” and together with the Revolving Credit Agreement, the “Loan Documents”) each between MCE, as borrower, and Royal Bank of Canada, as lender (the “Lender”);

In connection with this opinion, we have examined, among other documents, copies of the Loan Documents and the following additional documents, instruments and agreements, each in the form executed as of the dates set forth below:

- (a) the Joint Powers Agreement of MCE, effective as of December 19, 2008, as amended;
- (b) Resolution No. [-], adopted by MCE on April __, 2023;
- (c) [Investment Policy (Policy 014) of MCE];
- (d) [FTB certificate or related state certification] of MCE’s status, dated April __, 2023; and
- (e) []

Subject to the assumptions and qualifications contained herein, we have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of MCE, agreements and such other instruments and certificates of public or governmental officials and of officers and representatives of MCE, and made such investigations of law, as we have deemed necessary or appropriate as a basis for the opinions expressed below. We have relied as to factual matters upon representations of officers and representatives of MCE, including the representations of MCE in the Loan Documents. We have not independently investigated or verified the facts represented and do not opine as to the accuracy of any such facts.

In rendering the following opinions, we have assumed, without investigation, the authenticity of any document or instrument submitted to us as original, the conformity to the originals of any document or

instrument submitted to us as a copy, the authenticity of the originals of such latter documents, the legal capacity of natural persons and the genuineness of all signatures on such originals or copies, and that all documents executed by a party other than MCE were duly and validly authorized, executed and delivered by such party and are the legal, valid and binding obligations of such party enforceable against such party in accordance with their respective terms.

We have further assumed that the Loan Documents accurately reflect the intent and business purposes of the parties thereto and the complete understanding of the parties thereto with respect to the transactions contemplated thereby and the rights and obligations of the parties thereunder. The terms and conditions of the transactions described in the Loan Documents have not been amended, modified or supplemented by any (a) other agreement, negotiations or understanding of the parties thereto or (b) waiver of any of the material provisions of the Loan Documents.

We have assumed that the Lender has complied with all legal requirements pertaining to its status as such status relates to its power to enter into and make advances under the Loan Documents and enforce its remedies under the Loan Documents. In addition, we have assumed the Lender is either exempt from or has complied with all state and federal laws and regulations applicable to it as a result of entering into and making advances under the Loan Documents. Further, we have assumed the Lender (a) is a person exempt from the restrictions of Section 1 of Article XV of the California Constitution relating to rates of interest upon a loan or forbearance, and (b) has no present intent to transfer the Loan Documents to a person or entity that is not exempt from the usury laws of the State of California. Finally, we have assumed that all of the conditions to, and all of the requirements for, the effectiveness of the Loan Documents have been satisfied or waived.

Where statements in this opinion are qualified by the term “material” or “materially,” those statements involve judgments and opinions as to the materiality or lack of materiality of any matter to MCE’s business, assets, results of operations or financial condition that are entirely those of MCE and its officers.

Members of our firm involved in the preparation of this opinion are licensed to practice law in the State of California and, in rendering the following opinions, do not purport to be experts on, or to express an opinion herein concerning, any law other than (i) the law of the State of California and (ii) the federal law of the United States, in each case, as in effect on the date hereof and in our experience as are normally applicable to the transactions of the type contemplated by the Loan Documents (the foregoing laws, subject to the exceptions and qualifications herein, are referred to herein collectively as the “Applicable Laws”). We express no opinion as to whether the laws of any particular jurisdiction apply, and no opinion to the extent that the laws of any jurisdiction other than those identified above are applicable to the Loan Documents or the transactions contemplated thereby.

We express no opinion herein with respect to any document, instrument or agreement other than the Loan Documents.

Based upon and subject to the foregoing and the other assumptions and qualifications hereinafter contained, we are of the opinion that the Loan Documents constitute the legal, valid and binding obligations of MCE, enforceable against MCE in accordance with their terms.

This opinion is qualified by, and we render no opinion with respect to, the following:

(i) We express no opinion as to the effect of bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting the relief of debtors or the rights and remedies of creditors

generally, including without limitation the effect of statutory or other law regarding fraudulent conveyances, preferential transfers and equitable subordination;

(ii) Our opinions are qualified by the limitations imposed by general principles of equity upon the availability of equitable remedies for the enforcement of provisions of any of the Loan Documents, and by the effect of judicial decisions which have held that certain provisions are unenforceable when their enforcement would violate the implied covenant of good faith and fair dealing, or would be commercially unreasonable, or where their breach is not material;

(iii) We express no opinion as to the effect of Section 1670.5 of the California Civil Code or any other California law or equitable principle which provides that a court may refuse to enforce, or may limit the application of, a contract or any clause thereof which the court finds to have been unconscionable at the time it was made or contrary to public policy;

(iv) We express no opinion as to the enforceability of provisions of any of the Loan Documents expressly or by implication waiving broadly or vaguely stated rights or unknown future rights, or waiving rights granted by law where such waivers are against public policy;

(v) We express no opinion as to the enforceability of any provision of any of the Loan Documents purporting to (a) waive rights to trial by jury, service of process or objections to the laying of venue or to forum in connection with any litigation arising out of or pertaining to any of the Loan Documents, (b) exclude conflict of law principles under California law, (c) establish particular courts as the forum for the adjudication of any controversy relating to any of the Loan Documents or (d) establish the laws of any particular state or jurisdiction for the adjudication of any controversy relating to any of the Loan Documents;

(vi) We express no opinion as to the effect of judicial decisions that may permit the introduction of extrinsic evidence to modify the terms or the interpretation of any of the Loan Documents;

(vii) We express no opinion as to the enforceability of any provisions of any of the Loan Documents providing that (a) rights or remedies are not exclusive, (b) rights or remedies may be exercised without notice, (c) every right or remedy is cumulative and may be exercised in addition to or with any other right or remedy, (d) the election of a particular remedy or remedies does not preclude recourse to one or more other remedies or (e) the failure to exercise, or any delay in exercising, rights or remedies available under any of the Loan Documents will not operate as a waiver of any such right or remedy;

(viii) We note that a requirement that provisions of any of the Loan Documents may only be waived in writing may not be binding or enforceable if an oral agreement has been created modifying any such provision or an implied agreement by trade practice or course of conduct has given rise to a waiver;

(ix) We express no opinion as to any provision of the Loan Documents which provides for indemnification, contribution, waiver or release to the extent such provision may be limited or rendered unenforceable, in whole or in part, by applicable federal or state securities laws, criminal statutes, or the policies underlying such laws and by the effect of general rules of contract law that limit the enforceability of provisions releasing, exculpating or exempting a party from, or requiring indemnification for liability for action or inaction, to the extent the action or inaction involves negligence, gross negligence, recklessness, willful misconduct or unlawful conduct of any person to be indemnified, exculpated, released, or exempted, or waivers of unmatured claims or rights;

(x) We express no opinion as to the creation, attachment, priority, enforceability or perfection of any security interest, including, without limitation, any security interest in the Debt Service Reserve Account or any security interest created by the Assignment; and

(xi) The opinions expressed herein are subject to the qualification that actions taken or determinations made by the parties to the Loan Documents be taken in good faith and be reasonable in view of the circumstances.

Our opinions expressed herein are rendered as of the date hereof and do not address the passage of time or other events subsequent to the date hereof. We disclaim any undertaking to advise you of any change in law or fact which may affect the continued correctness of any opinion as of a later date.

No opinion expressed herein may be cited, quoted or otherwise referenced in any financial statement, prospectus, private placement memorandum or other similar document, nor may copies of this opinion be delivered to any person other than the addressees hereto, without our prior written consent.

The addressees hereto may rely on the opinions expressed herein (subject to the assumptions and qualifications set forth herein) only in connection with the transactions contemplated by the Loan Documents. No other person may rely on the opinions expressed herein for any purpose without our prior written consent. This opinion is not to be filed with any governmental agency or other person or entity without our prior written consent.]

Very truly yours,

CHAPMAN AND CUTLER LLP

EXHIBIT B

FORM OF COMPLIANCE CERTIFICATE

This Compliance Certificate (this “*Certificate*”) is furnished to Royal Bank of Canada (including its successors and assigns, the “*Lender*”) pursuant to the Revolving Credit Agreement, dated as of April __, 2023 (together with all amendments and supplements thereto, the “*Agreement*”), by and between Marin Clean Energy (including its successors and assigns, the “*Borrower*”) and the Lender. Unless otherwise defined herein, the terms used in this Certificate have the meanings assigned thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am an Authorized Representative of the Borrower;
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Borrower during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below; and
4. To the best of my knowledge the financial statements required by Section 5.01(a) of the Agreement and being furnished to you concurrently with this certificate fairly represent the consolidated financial condition of the Marin Clean Energy System in accordance with GAAP as of the date and for the period covered thereby.

[Describe below the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the Borrower has taken, is taking, or proposes to take with respect to each such condition or event:

5. The Debt Service Coverage test calculation pursuant to Section 5.01(p) is as follows

6. Amounts held in the Operating Reserve Fund are as follows: \$

[Remainder of page intentionally left blank]

The foregoing certifications and the financial statements delivered with this Certificate in support hereof, are made and delivered this _____ day of __, 20__.

MARIN CLEAN ENERGY

By: _____

Name: _____

Title: _____

EXHIBIT C
FORM OF BORROWING REQUEST

_____, 20__

Royal Bank of Canada 200 Vesey Street, 12 th Floor New York, New York 10281 Attention: Laurent Mastey	
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Ladies and Gentlemen:

The undersigned refers to the Revolving Credit Agreement, dated as of April __, 2023 (together with any amendments or supplements thereto, the “*Agreement*”), by and between Marin Clean Energy (with its successors and assigns, the “*Borrower*”) and Royal Bank of Canada (with its successors and assigns, the “*Lender*”) (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.03 of the Agreement, that the Lender make a Loan under the Agreement and disburse such funds as set forth in #6 below, and in that connection sets forth below the following information relating to such Loan (the “*Proposed Loan*”):

1. The Business Day on which the Proposed Loan is to be disbursed, _____, 20__ (the “*Issuance Date*”).

2. The principal amount of the Proposed Loan is \$_____, which is not greater than the Available Commitment as of the Issuance Date set forth in 1 above. After giving effect to the Proposed Loan, the aggregate principal amount of all Loans outstanding under the Agreement will not exceed the Commitment as of the Issuance Date.

3. The interest rate with respect to the Proposed Loan shall be a [Base Rate Loan][Daily Simple SOFR Loan] [Term SOFR Loan] [.]; [IN THE CASE OF A TERM SOFR BORROWING] the initial Interest Period shall be for [one month][three months][six months].

4. The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Issuance Date, before and after giving effect to the Proposed Loan:

(a) The representations and warranties of the Borrower set forth in Article IV of the Agreement are true and correct in all material respects (or in the case of any representation qualified by materiality, in all respects) on the date hereof, as if made on the date hereof; and

(b) No Event of Default has occurred and is continuing.

5. The proceeds for Proposed Loan are being used for the general corporate purposes in compliance with the terms of the Agreement.

6. The Proposed Loan shall be made by the Lender by wire transfer of immediately available funds or deposited [in the amount of \$] into Borrower’s account at the Lender in accordance with the instructions set forth in the Agreement or to or on behalf of the Borrower in accordance with the instructions set forth below and the Borrower hereby confirms that the Lender is authorized to make said disbursements:

[Borrowing Request]

[Insert wire instructions and amounts]

MARIN CLEAN ENERGY

By: _____
Name: _____
Title: _____

MARIN CLEAN ENERGY

By: _____
Name: _____
Title: _____

Approved by the Lender:

ROYAL BANK OF CANADA

By: _____
Name: _____
Title: _____

EXHIBIT D
FORM OF INTEREST ELECTION REQUEST

_____, 20__

Royal Bank of Canada 200 Vesey Street, 12 th Floor New York, New York 10281 Attention: Laurent Mastey	
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Ladies and Gentlemen:

The undersigned are Authorized Representatives and refer to the Revolving Credit Agreement, dated as of April __, 2023 (together with any amendments or supplements thereto, the “*Agreement*”), by and between Marin Clean Energy (with its successors and assigns, the “*Borrower*”) and Royal Bank of Canada (with its successors and assigns, the “*Lender*”) (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.05 of the Agreement, that the Loan(s) under the Agreement and specified below be converted/continued as described below:

1. The Loans to which this Interest Election Request applies that being converted are as follows:

Type of Loan to be Converted	Principal Amount	Type of Resulting Loan

2. The forgoing Loans converted to a Term SOFR Loan shall have the following Interest Period(s): [Specify Interest Period(s) for Loans converted to Term SOFR Loans]

3. The date on which such conversion of the referenced Loans shall occur: _____.

4. The Term SOFR Loans to be continued to a new Interest Period pursuant to this Interest Election Request and the new interest period are as follows:

Last day of Current Interest Period	Principal Amount	New Interest Period to become effective on the last day of the Current Interest Period

5. The date on which the forgoing Term SOFR Loans shall be continued, if not the last day of the current Interest Period, shall be _____.

The Interest Election Request is effective on the date first written above.

MARIN CLEAN ENERGY

By: _____

Name: _____

Title: _____

MARIN CLEAN ENERGY

By: _____

Name: _____

Title: _____

EXHIBIT E
FORM OF LETTER OF CREDIT REQUEST

_____, 20__

Royal Bank of Canada 200 Vesey Street, 12 th Floor New York, New York 10281 Attention: Laurent Mastey	
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Ladies and Gentlemen:

The undersigned are Authorized Representatives and refer to the Revolving Credit Agreement, dated as of April __, 2023 (together with any amendments or supplements thereto, the “*Agreement*”), by and between Marin Clean Energy (with its successors and assigns, the “*Borrower*”) and Royal Bank of Canada (with its successors and assigns, the “*Lender*”) (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.04 of the Agreement, that the Lender issue a Letter of Credit under the Agreement, and in that connection sets forth below the following information relating to such Letter of Credit (the “*Proposed Letter of Credit*”):

1. The Business Day of the Proposed Letter of Credit is _____, 20__ (the “*Issuance Date*”).
2. The principal amount of the Proposed Letter of Credit is \$_____, which is not greater than the Available Commitment as of the Issuance Date set forth in 1 above. After giving effect to the Proposed Letter of Credit, the aggregate principal amount of all Loans and LC Exposure outstanding under the Agreement will not exceed the Commitment as of the Issuance Date set forth in 1 above.
3. The tenor of the Proposed Letter of Credit shall be for [one][two][three] year[s], but in no event shall the term of the Letter of Credit end later than the fifth Business Day prior to the Maturity Date.
4. The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Issuance Date, before and after giving effect thereto:
 - (a) The representations and warranties of the Borrower set forth in Article IV of the Agreement (other than in Section 4.07 thereof) are true and correct in all material respects on the date hereof, as if made on the date hereof; and
 - (b) No Event of Default has occurred and is continuing.
5. [The undersigned hereby confirms that the Borrower has submitted a Standby Letter of Credit Application, a form of which is on file with the Borrower and the Lender.]

[Signature page to Letter of Credit Request]

MARIN CLEAN ENERGY

By: _____
Name: _____
Title: _____

MARIN CLEAN ENERGY

By: _____
Name: _____
Title: _____

EXHIBIT F
OUTSTANDING SYSTEM DEBT

MCE COMMENTS TO
KUTAK ROCK LLP
DRAFT 03/02/2023

FEE AGREEMENT

April __, 2023

Marin Clean Energy
1125 Tamalpais Avenue
San Rafael, California 94901
Attention: Vicken Kasarjian, Chief Operating Officer

Ladies and Gentlemen:

Reference is made to that certain Revolving Credit Agreement dated as of April __, 2023 (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “*Credit Agreement*”), between Marin Clean Energy (the “*Borrower*”), and Royal Bank of Canada, together with its permitted successors and assigns (the “*Lender*”). Section 2.09 of the Credit Agreement refers to the Borrower paying certain fees under the Fee Agreement. This letter (the “*Fee Agreement*”) is the Fee Agreement described in the Credit Agreement. Except as otherwise defined herein, capitalized terms shall have the meanings given to such terms in the Credit Agreement.

The purpose of this Fee Agreement is to confirm the agreement between the Lender and the Borrower with respect to the Commitment Fees (as defined below), certain definitions and certain other fees payable by the Borrower to the Lender from time to time in connection with the Credit Agreement.

SECTION I. COMMITMENT FEES.

Commitment Fees. The Borrower hereby agrees to pay to the Lender on the first Business Day of each calendar quarter commencing on July 3, 2023 (each, a “*Quarterly Payment Date*”) until the last day of the Availability Period and on the last day of the Availability Period, for each day during the immediately preceding Fee Period, as defined below, a non-refundable commitment fee (the “*Commitment Fee*”), computed in arrears (on the basis of a 360 day year for the actual number of days elapsed per the applicable Fee Period) in an amount equal to the product of the Available Commitment for each day during the related Fee Period and the rate per annum on the Level in the pricing matrix below containing the relevant Rating determined as provided below (the “*Commitment Fee Rate*”) from time to time in effect for each day during each related Fee Period.

“*Fee Period*” means, (a) with respect to the Commitment Fee, the period from and including the Closing Date through June 30, 2023, each period from and including the first day of a calendar quarter through the last day of such calendar quarter and the period from and including the first day of the calendar quarter in which the Availability Period ends to the last day of the Availability Period and, (b) with respect to each Letter of Credit, the period from and including the date the Letter of Credit issued through the last day of the calendar quarter in which the Letter of Credit is issued, each period from and including the first day of a calendar quarter through the last day of such calendar quarter and the period from and including the first day of the calendar quarter in which a Letter of Credit expires or is terminated to the expiration or termination date of such Letter of Credit.

LEVEL	MOODY'S RATING	S&P RATING	FITCH RATING	COMMITMENT FEE RATE
I	Baa1 or above	BBB+ or above	BBB+ or above	0.33%
II	Baa2	BBB	BBB	0.48%
III	Baa3	BBB-	BBB-	0.73%

The term “*Rating*” shall mean the long-term rating assigned to the Borrower’s long-term Parity Debt (without regard to any bond insurance or other credit enhancement) by each of the Rating Agencies. Notwithstanding the preceding sentence, for purposes of determining the applicable Rating hereunder, any long-term rating assigned by a Rating Agency to the Borrower’s long-term Parity Debt shall be disregarded until such time as the Borrower notifies the Lender in writing that it has solicited such Rating Agency for such rating on such Parity Debt and such Rating Agency assigns a participating rating to such Parity Debt. In the case of a split in the Ratings (i.e., the Rating of one Rating Agency is on a different Level than the Rating of another Rating Agency), the Commitment Fee shall be determined using the Commitment Fee Rate on the Level reflecting the lowest Rating (resulting in the highest Commitment Fee Rate). Any change in the Commitment Fee Rate resulting from a change in a Rating shall be and become effective as of and on the Business Day following the date on which the Lender is notified of the change in such Rating. References to the Ratings of each Rating Agency above are references to rating categories as determined by the Rating Agencies on the Closing Date and in the event of adoption of any new or changed rating system by any such Rating Agency, including, without limitation, any recalibration of the applicable Rating in connection with the adoption of a “global” rating scale, the Rating from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as in effect on the Closing Date. The Borrower acknowledges, and the Lender agrees, that as of the date hereof the current Rating is that specified above for Level I. Upon the occurrence and during the continuance of an Event of Default or the events described in the penultimate sentence of Section 2.10(d) of the Credit Agreement, the Commitment Fee Rate shall automatically, immediately and without notice be increased to two hundred basis points (2.00%) and such increase shall remain in effect for so long as such Event of Default or such events described in the penultimate sentence of Section 2.10(d) of the Credit Agreement exist.

Commitment Fees that are not paid when due shall accrue interest at the Default Rate from the date payment is due until such Commitment Fees are paid in full.

(b) *Draw/Issuance Fee.* The Borrower hereby agrees to pay to the Lender in connection with each and every Loan advanced or Letter of Credit issued under the Credit Agreement, a non-refundable draw fee of \$500, payable without any requirement of notice or demand by the Lender on the date of the related Loan advanced or Letter of Credit issued. The Borrower shall also pay to Lender's legal counsel the reasonable fees and disbursements of such legal counsel incurred in connection with the issuance of any Letter of Credit.

(c) *Amendments, Waivers, Extension etc.* The Borrower agrees to pay to the Lender on the date of each amendment, modification, supplement, waiver or consent to the Credit Agreement or any other Basic Document requiring the waiver or consent of the Lender, and in connection with any transfer of a Letter of Credit, a non-refundable amendment, modification, supplement, waiver or consent fee, as applicable, in the amount agreed to by the Lender and the Borrower. No such fee shall be due and payable by reason of the extension of the Maturity Date pursuant to Section 2.17 of the Credit Agreement. The Borrower shall also pay to Lender's legal counsel the reasonable fees and disbursements of such legal counsel incurred in connection with any amendment, modification, supplement, waiver or consent to the Credit Agreement, including the extension of the Maturity Date, or any other Basic Document requiring the waiver or consent of the Lender.

SECTION II. APPLICABLE MARGIN; LETTER OF CREDIT FEES.

The Credit Agreement provides that the term Applicable Margin has the meaning assigned in the Fee Agreement. That term is defined as follows:

"Applicable Margin" means, as of any date, the number of basis points set forth on the Level in the pricing matrix below in the applicable Column entitled "Applicable Margin/Letter of Credit Fee Rate" which contains the relevant Rating, determined as provided below. At such time as the sum of the principal amount of Loans outstanding under the Credit Agreement plus the LC Exposure is less than or equal to 25% of the Commitment, the Applicable Margin shall be determined using Column A below. At such time as the sum of the principal amount of Loans outstanding under the Credit Agreement plus the LC Exposure is greater than 25% of the Commitment, the Applicable Margin shall be determined using Column B below.

Letter of Credit Fee. The Borrower Agrees to pay to the Lender a nonrefundable fee (the "Letter of Credit Fee") with respect to each Letter of Credit issued under the Credit Agreement, such fee to be payable in arrears on each Quarterly Payment Date and on the date on which the related Letter of Credit expires or is terminated, commencing with the first Quarterly Payment Date to occur following the Issuance Date of such Letter Credit. The Letter of Credit Fee shall be computed in arrears (on the basis of a 360 day year for the actual number of days elapsed per the applicable Fee Period) in an amount equal to the product of the principal amount available to be drawn under such Letter of Credit on the first day of the related Fee Period and the rate per annum on the Level in the pricing matrix below in the applicable Column entitled "Applicable Margin/Letter of Credit Fee Rate" which contains the relevant Rating (*"Letter of Credit Fee Rate"*), determined as provided below. At such time as the sum of the principal amount of Loans

outstanding under the Credit Agreement plus the LC Exposure is less than or equal to 25% of the Commitment, the Letter of Credit Fee Rate shall be determined using Column A below. At such time as the sum of the principal amount of Loans outstanding under the Credit Agreement plus the LC Exposure is greater than 25% of the Commitment, the Letter of Credit Fee Rate shall be determined using Column B below.

LEVEL	MOODY'S RATING	S&P RATING	FITCH RATING	APPLICABLE MARGIN / LETTER OF CREDIT FEE RATE COLUMN A	APPLICABLE MARGIN / LETTER OF CREDIT FEE RATE COLUMN B
I	Baa1 or higher	BBB+ or higher	BBB+ or higher	120 basis points (1.20%)	130 basis points (1.30%)
II	Baa2	BBB	BBB	160 basis points (1.60%)	170 basis points (1.70%)
III	Baa3	BBB-	BBB-	210 basis points (2.10%)	220 basis points (2.20%)

Rating shall have the meaning assigned in Section I above. For purposes of determining the applicable Rating, any long-term rating assigned by a Rating Agency to the Borrower's long-term Parity Debt shall be disregarded until such time as the Borrower notifies the Lender in writing that it has solicited such Rating Agency for such rating on such Parity Debt and such Rating Agency assigns a participating rating to such Parity Debt. In the case of a split in the Ratings (i.e., the Rating of one Rating Agency is on a different Level than the Rating of another Rating Agency), then the Applicable Margin and the Letter of Credit Fee Rate shall be that on the Level reflecting the lowest Rating (resulting in the highest Applicable Margin and Letter of Credit Fee Rate). Any change in the Applicable Margin and Letter of Credit Fee Rate resulting from a change in a Rating shall be and become effective as of and on the Business Day following the date on which the Lender is notified of the change in such Rating. References to the Ratings of each Rating Agency above are references to rating categories as determined by the Rating Agencies on the Closing Date and in the event of adoption of any new or changed rating system by any such Rating Agency, including, without limitation, any recalibration of the applicable Rating in connection with the adoption of a "global" rating scale, the Rating from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as in effect on the Closing Date. The Borrower acknowledges, and the Lender agrees, that as of the date hereof the current Rating is that specified above for Level I. Upon the occurrence and during the continuance of an Event of Default or the events described in the last sentence of Section 2.10(d) of the Credit Agreement, the Applicable Margin and Letter of Credit Fee Rate shall automatically, immediately and without notice be increased to the Level III in the pricing matrix above in this Section II. Letter of Credit Fees that are not paid when due shall accrue interest at the Default Rate from the date payment is due until such Letter of Credit Fees are paid in full.

SECTION III. MISCELLANEOUS.

(a) *Out-of-Pocket Expenses; Legal Fees.* The Borrower shall pay upon receipt of invoice the reasonable legal fees and expenses of the Lender incurred in connection with the preparation and negotiation of the Credit Agreement and this Fee Agreement (in an amount not to exceed \$40,000). Legal fees shall be paid directly to the Lender's counsel, Kutak Rock LLP, in accordance with the instructions provided by Kutak Rock LLP.

(b) *Fees Generally.* All fees payable under this Fee Agreement and the Credit Agreement are to compensate the Lender for its commitment to lend, will be nonrefundable and will be deemed earned when paid.

(c) *Governing Law.* **THIS FEE AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS (OTHER THAN NEW YORK GENERAL OBLIGATIONS LAWS 5-1401 AND 5-1402); PROVIDED, THAT THE OBLIGATIONS OF THE BORROWER HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CHOICE OF LAW RULES.**

(d) *Counterparts; Severability.* This Fee Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one agreement. This Fee Agreement may be executed and delivered in the manner described in Section 7.10 of the Credit Agreement and upon such execution and delivery this Fee Agreement shall become effective. Any provision of this Fee Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

(e) *Amendments.* No amendment to this Fee Agreement shall become effective unless in writing and signed by the Borrower and the Lender.

(f) *No Disclosure.* Unless required by law, the Borrower shall not deliver or permit, authorize or consent to the delivery of this Fee Agreement to a broker, dealer, underwriter or any other Person for delivery to the Municipal Securities Rulemaking Board unless the Lender provides its prior written consent.

Please confirm that the foregoing is the Borrower's mutual understanding by signing and returning to the Lender an executed counterpart of this Fee Agreement. This Fee Agreement shall become effective as of the date first above referenced upon the Lender's receipt of an executed counterpart of this Fee Agreement from the Borrower.

[SIGNATURE PAGES FOLLOW]

If the foregoing accurately reflects our agreement, please indicate the same by signing in the space provided below.

Very truly yours,

ROYAL BANK OF CANADA

By: _____
Name: Laurent Mastey
Title: Authorized Signatory

Acknowledged and agreed to
as of the date first written above.

MARIN CLEAN ENERGY

By: _____
Name:
Title:

By: _____
Name:
Title:



April 20, 2023

TO: MCE Board of Directors

FROM: Michael Callahan, Associate General Counsel

RE: Policy Update of Regulatory and Legislative Items
(Agenda Item #11)

ATTACHMENT: Regulatory Packet with March & April Filings

Dear Board Members:

Summary:

Below is a summary of the key activities at the state and federal legislatures and the California Public Utilities Commission (CPUC), the California Independent System Operator (CAISO), and the United States Department of Energy (DOE) impacting Community Choice Aggregation (CCA) and MCE.

I. **Legislative Advocacy**

a. **State Legislative Advocacy**

The 2023 legislative session is currently in progress, with bills being heard in policy committees as they advance through the political process. While many bills are either still under development or undergoing analysis, MCE is supporting the following priority bills and has submitted Letters of Support for each of them:

- AB 998 (Connolly) - This bill will help the biomass industry in California identify and act on opportunities to upgrade existing and shuttered biomass combustion plants to newer, cleaner technologies, which will support greenhouse gas reduction and air quality improvements in nearby communities. Notably, Assemblymember Connolly represents MCE across Marin County and some communities in Napa.
- AB 625 (Aguilar-Curry) - This bill will extend the CPUC's Bioenergy Market Adjusting Tariff program, which helps CCAs accelerate the development of

renewable baseload resources, promoting grid reliability. Notably, Assemblymember Aguiar-Curry represents some MCE communities in Napa and Solano counties.

- AB 593 (Haney) - This bill will direct the California Energy Commission (CEC) to identify and implement an emissions reduction strategy to advance California's path towards carbon neutrality by 2045. MCE signed onto the coalition Letter of Support led by The Building Decarbonization Coalition.
- SB 507 (Gonzalez) - This bill will require the CEC to quantify EV charging infrastructure needs for underserved communities, including but not limited to low-income, disadvantaged, and rural communities, as well as carsharing and ridesharing drivers and drivers living in multifamily housing. MCE signed onto the coalition Letter of Support led by FLO, a residential EV charging company.
- SB 529 (Gonzalez) - This bill will expand EV access for low-income Californians by creating a dedicated grant program to deploy EV car-sharing programs at 100 public and low-income housing facilities. MCE signed onto the coalition Letter of Support led by the Los Angeles Cleantech Incubator.
- SB 511 (Blakespear) - This bill will direct the California Air Resources Board to prepare and provide greenhouse gas inventories to local governments for their use in preparing Climate Action Plans and in determining the best opportunities for investing resources to reduce greenhouse gas emissions. MCE signed onto the coalition Letter of Support led by CivicWell.
- SB 57 (Gonzalez) - This bill will prohibit residential utility shutoffs for nonpayment in extreme weather conditions, when the temperature rises above 95 degrees Fahrenheit or falls below 32 degrees Fahrenheit over a 72-hour period. MCE signed onto the coalition Letter of Support led by Physicians for Social Responsibility Los Angeles.

SB 306 Equitable Building Decarbonization Program Amendments

MCE has been closely engaged in SB 306 (Caballero) and collaborated with Senator Caballero's staff to add beneficial bill language amendments to strengthen the CEC's Equitable Building Decarbonization Program. The program consists of two sub-programs: (1) a program that directly installs measures for low-to-moderate income residents and; (2) a statewide rebate program to broadly accelerate deployment of low-carbon building technologies. MCE's amendments, reflected in the bill as of March 30, 2023, (1) allow regional (e.g. CCA) administration under the program; (2) strengthen the program's focus on delivering health, safety and comfort benefits; and (3) work to ensure the CEC permits and prioritizes the layering of decarbonization incentives to produce holistic household upgrades. These improvements will make it possible for CCAs to apply to administer this funding and focus the programs on maximizing energy and non-energy benefits to improve affordability and quality of life while addressing climate change in MCE's member communities. MCE submitted a Letter of Support on the bill as amended on April 05, 2023.

b. Federal Legislative Advocacy

In March, MCE staff and Directors Quinto and Gioia traveled to Washington, D.C. to meet with MCE's Congressional delegation and key agency representatives. The trip was part of MCE's efforts to:

- Continue raising MCE's national profile;
- Position MCE to be competitive for the forthcoming grants to be issued under the Infrastructure Investment and Jobs Act and the Inflation Reduction Act; and
- Support two requests MCE submitted for Community-Directed Spending:
 - \$1.67M for electrical panel upgrades and associated rehabilitation work in 300 MCE income-qualified homes to support upgrades like energy efficiency improvements, EV chargers, and battery storage systems; and
 - \$1.6M for 400 shared-used electric vehicle charging stations at multifamily and workplace properties in low-income communities and 375 smart home chargers for income-qualified drivers.

II. California Public Utilities Commission

a. Power Charge Indifference Adjustment (PCIA)

The PCIA is a fee that former customers of Investor Owned Utilities (IOUs) must pay to the IOUs after they have departed for other providers (e.g. CCAs). The PCIA accounts for high-priced commitments IOUs made on certain generation resources before those customers departed. CCA customers and IOU customers have the same exposure to these costs but CCA customers do not receive the same benefits as IOU customers from the resources. Some of these generation resources are greenhouse-gas free (GHG-free) including large hydroelectric dams and nuclear energy.

On March 17, 2023, stakeholders submitted comments in the PCIA proceeding responding to a proposal that would allow IOUs to choose how to transfer more of the benefit of the resources to CCA customers by either: (1) allocating the GHG-free energy to CCAs; or (2) to apply a credit equal to the market value of the GHG-free energy to the PCIA fee.

Currently, Pacific Gas & Electric (PG&E) is required to offer MCE separate, voluntary allocations of large hydropower and nuclear resources, but this treatment is set to end in 2023 and the Commission is currently evaluating how to handle these resources in 2024 and beyond. MCE's Board has adopted a policy to not make specific purchases of nuclear energy¹ and has rejected the voluntary nuclear energy allocation.

¹ MCE Board of Directors Resolution No. 2011-09.

California Community Choice Association (CalCCA) and Southern California Edison (SCE) both filed comments noting that if IOUs elect to offer an allocation, voluntary allocations of nuclear resources should also be permitted, in addition to large hydroelectric resources, to ensure that customers continue to be able to receive the benefits of all the resources they pay for as required by California law.

On March 24, 2023, MCE submitted reply comments agreeing with CalCCA and SCE that IOUs be permitted to continue voluntary allocations of GHG-free resources. MCE further advocated that benefits still need to be shared in the event that a CCA does not accept its nuclear allocation (as MCE has done in the past). MCE proposed the Commission should also apply a credit equal to the market value of the nuclear GHG-Free attributes, which would serve as an offset to customers' rates through the PCIA. This would ensure that: (1) MCE customers would receive the full benefit of resources they pay for; (2) that no costs are shifted from IOU to CCA customers; and (3) local government authority to make procurement decisions regarding their portfolio is upheld.

Staff expects the CPUC to address this issue via a Proposed and Final Decision in the coming months.

b. Energy Efficiency

On April 6, 2023 the CPUC voted unanimously to approve a Final Decision to phase-out non-cost-effective natural gas incentives in the general energy efficiency programs, in response to a January 2022 Motion from the Sierra Club. The Decision offers a timeline beginning in 2024 and a framework to eliminate these measures while also allowing for 'exempt measures' that do not burn gas, but provide gas savings (e.g. ceiling insulation) to continue.

The Decision orders the investor-owned utilities (IOUs) to complete three related studies: (a) infrastructure costs needed for electrification for low-income customers; (b) the impact of incentives on customer fuel substitution for market rate customers; and (c) the impact of incentives on customer fuel substitution for low-income customers. The Decision exempts the equity-focused energy efficiency programs from the natural gas phase-out policy while the Commission studies and works to better understand the complex and distinct barriers low-income, and environmental and social justice communities face in accessing and benefiting from electrification.

MCE advocated for a pathway that would not create unintended consequences for vulnerable customers that may not be able to afford to electrify. MCE advocated for: (1) greater studying of the barriers and opportunities for these customers related to electrification; (2) greater community engagement with these customers directly on fuel substitution and decarbonization efforts; and (3) greater coordination with complimentary local, state, and federal decarbonization programs and incentives to mitigate existing barriers. Each of these points is reflected in the Commission's Final Decision.

c. Resource Adequacy

Resource Adequacy (RA) is a CPUC requirement for CCAs and other electricity providers to procure 116% of their expected generating resources to ensure there is a buffer of resources to maintain grid reliability.

On April 6, 2023, the CPUC adopted a Final Decision addressing the RA program's transition from a monthly to an hourly compliance framework in 2025. MCE is evaluating the impact of this decision and will be working over the next year to adjust its RA portfolio to accommodate the new hourly RA framework.

III. California Independent System Operator

On March 27, 2023 MCE submitted comments on the CAISO Interconnection Process Enhancements initiative which is evaluating ways to streamline CAISO's interconnection process to maximize the number of new-build projects that can be interconnected to the grid to achieve RA and state reliability needs.

In recent years, the number of new projects requesting CAISO interconnection has outpaced CAISO's ability to study and interconnect the projects creating timeline challenges. MCE's comments largely supported CAISO's efforts in this initiative. However, MCE opposed CAISO's proposal to require new generation projects to have an executed contract with a CCA or other electricity providers to move forward in the interconnection process. MCE argued that requiring such early stage contracts would put increased and unreasonable risk on providers as project viability is very uncertain until the interconnection study process is completed. MCE has historically used project interconnection as a critical factor in evaluating new projects. This requirement would undermine this critical procurement evaluation factor leading to potential cost increases and procurement inefficiencies.

MCE will continue to monitor and engage with the CAISO as this initiative develops. The CAISO is expected to issue a Final Proposal in mid-April.

IV. United States Department of Energy

On March 3, 2023 MCE submitted a response to the DOE's Request for Information on the Home Energy Rebate programs within the Inflation Reduction Act (IRA). Later that month while lobbying in Washington, D.C., MCE staff met with DOE staff to provide feedback.

California is expected to receive more than \$582 million for the whole-house Homeowner Managing Energy Savings (HOMES) rebate program and point-of-sale High-Efficiency

Electric Home Rebate (HEEHRA) program. Further program guidance is expected in the spring and summer of 2023 and programs are expected to launch in 2024.

MCE offered recommendations on: (1) accessible and equitable program design; (2) the value of community engagement; (3) program design strategies for maximum impact; (4) how best to integrate existing incentives and programs; (5) technical assistance best practices; (6) relevant program evaluations and research to consider; (7) strategies to limit the administrative burden of program administration; and (8) the unique value of partnering with CCAs like MCE.

Fiscal Impacts:

It is not yet possible to quantify precise fiscal impacts for the items covered in this report. The bills MCE supported will have various impacts with some potentially leading to additional programmatic funding opportunities for MCE and others simply seeking to enhance planning or recommend new strategies to reduce greenhouse-gas emissions. The utility shutoff bill will not have a direct fiscal impact because CCAs do not have the ability to shut off customers at any time. The earmark requests may provide additional funding for MCE programs. The PCIA issue may resolve an ongoing cost shift to CCA customers that pay for resources without getting benefits. The energy efficiency gas measure decision will not have a direct impact on MCE due to the lack of existing non-cost-effective gas measures in MCE's programs. The RA issue is likely to increase costs in order to comply with more granular hourly showings. The CAISO interconnection proposal may increase procurement costs due to increasing the risk of project failure for MCE-contracted resources that are not yet constructed. The DOE opportunities may provide additional programmatic funding for MCE. The remaining policy issues will result in uncertain or no direct fiscal impacts.

Recommendation:

There are no recommended actions at this time.