



**Marin Energy Authority
Board of Directors Meeting
Thursday, December 5, 2013
7:00 P.M.**

Dawn Weisz
Executive Officer

Damon Connolly
Chair
City of San Rafael

Kathrin Sears
Vice Chair
County of Marin

Bob McCaskill
City of Belvedere

Sloan C. Bailey
Town of Corte Madera

Larry Bragman
Town of Fairfax

Len Rifkind
City of Larkspur

Ken Wachtel
City of Mill Valley

Denise Athas
City of Novato

Tom Butt
City of Richmond

Carla Small
Town of Ross

Ford Greene
Town of San Anselmo

Ray Withy
City of Sausalito

Emmett O'Donnell
Town of Tiburon

781 Lincoln Avenue
Suite 320
San Rafael, CA 94901

1 (888) 632-3674
mceCleanEnergy.com

**San Rafael Corporate Center, Tamalpais Room
750 Lindaro St., San Rafael, CA 94901**

Agenda Page 1 of 3

- 1. Board Announcements (Discussion)**
- 2. Public Open Time (Discussion)**
- 3. Report from Executive Officer (Discussion)**
- 4. Consent Calendar (Discussion/Action)**
 - C.1 11.7.13 Board Minutes**
 - C.2 Monthly Budget Report**
 - C.3 Approved Contract Update**
 - C.4 Records Retention**
 - C.5 Second Addendum to Second Agreement with Jay Marshall**
 - C.6 First Agreement with Micro-Documentaries**
 - C.7 Addendum to Second Agreement with Planet Ecosystems**
 - C.8 Agreement with Pacific Energy Advisors, Inc. for Technical and Advisory Services**
 - C.9 First Addendum to Power Purchase Agreement with EDF Renewable Energy**
 - C.10 Job Descriptions and Compensation Studies for MCE Staff**
- 5. Resolution 2013-10 Honoring Board Member Leonard Rifkind (Discussion/Action)**





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Agenda Page 2 of 3

- 6. Membership Changes for Technical Committee and Executive Committee (Discussion/Action)**
- 7. Creation of Ad Hoc Ratesetting Committee (Discussion/Action)**
- 8. Resolution 2013-11 Adopting Amendment No. 7 to the JPA Changing the Name Marin Energy Authority to Marin Clean Energy (Discussion/Action)**
- 9. Resolution 2013-12 Approving Revisions to Net Energy Metering Tariff (Discussion/Action)**
- 10. Budget Adjustment for FY 2013/14 (Discussion/Action)**
- 11. Request from the County of Napa and City of Albany for Membership Analysis and Consideration as a Member of MCE (Discussion/Action)**
- 12. Policy 009: Information Technology Security (Discussion/Action)**
- 13. Policy 010: Infants in the Workplace (Discussion/Action)**





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14. Regulatory Update (Discussion)

15. Members & Staff Matters (Discussion)

16. Adjourn



**MARIN ENERGY AUTHORITY
BOARD MEETING
THURSDAY, November 7, 2013
7:00 P.M.
SAN RAFAEL CORPORATE CENTER, TAMALPAIS ROOM
750 LINDARO STREET, SAN RAFAEL, CA 94901**

Roll Call

Present: Damon Connolly, City of San Rafael, Chair
Kathrin Sears, County of Marin
Bob McCaskill, City of Belvedere
Sloan Bailey, Town of Corte Madera
Larry Bragman, Town of Fairfax
Len Rifkind, City of Larkspur
Denise Athas, City of Novato
Tom Butt, City of Richmond
Carla Small, Town of Ross
Ford Greene, Town of San Anselmo
Emmett O'Donnell, Town of Tiburon

Absent: Ray Withy, City of Sausalito
Ken Wachtel, City of Mill Valley

Staff: Dawn Weisz, Executive Officer
Elizabeth Kelly, Legal Director
Rafael Silberblatt, Program Coordinator
Jamie Tuckey, Marketing Director
Beckie Menten, Energy Efficiency Coordinator
Jeremy Waen, Regulatory Analyst II
Greg Brehm, Resource Coordinator
Alex DiGiorgio, Community Affairs Coordinator
Meaghan Doran, Energy Efficiency Specialist
John Dalessi, Technical Consultant
Kirby Dusel, Technical Consultant
Emily Goodwin, Internal Operations Coordinator
Darlene Jackson, Clerk

Public Session: 7:11PM

A moment of silence was held in honor of Barbara George, Founder and Director of Women's Energy Matters who passed away this morning. Chair Connolly, Executive Officer Dawn Weisz along with several members of the public talked about Ms. George and what she meant to MEA and her work in the energy field as a whole. Ms. Weisz shared how Ms. George was one of the early supports and educators on CCA and an active participant in the formation of the Marin Energy Authority. Ms. George worked tirelessly for the past twelve years as an intervener at the CPUC pushing for renewable energy and energy

efficiency. She frequently served as stakeholder in and liaison to, community advocacy groups on matters of energy and CPUC activity. Ms. George was the 1st recipient of MEA's McGlashan Advocacy Award.

David Hastings, Kiki LaPorta, Lori Grace, Leslie Alden and Stan Sparrow had expressions and shared fond memories of Ms. George.

Agenda Item #1- Board Announcements (Discussion)

None

Agenda Item #2 – Public Open Time (Discussion)

None

Agenda Item #3 – Report from Executive Officer (Discussion)

Executive Officer Dawn Weisz reported on the following:

- Thanked those who participated in the October 10th CAISO Tour. It was a success and special thanks to Director Sloan Bailey for joining MEA staff for this informative tour and presentation.
- LEAN Conference coming up in Chicago next week with representation from around the country to discuss the CCA model, accomplishments, challenges and variety of models in the marketplace.
- Reminder to save the date for the MEA annual Holiday Party on Friday, December 20th, at the Falkirk Cultural Center in San Rafael.

Agenda Item #4 – Consent Calendar (Discussion/Action)

- C.1 9.25.13 Board Retreat Minutes
- C.2 10.3.13 Board Minutes
- C.3 Monthly Budget Report
- C.4 Report on Approved Contracts
- C.5 Job Descriptions and Compensation Studies for MCE Positions

M/s Sears/Greene (passed 11-0-0) approved all items on the consent calendar. Directors Withy and Wachtel were absent.

Agenda Item #5 – Policy 008: Accounts Receivable Reserve Policy (Discussion/Action)

Emily Goodwin, Internal Operations Coordinator presented this item.

The policy was drafted to:

- Formalize a procedure to reasonably estimate the amount of revenue from customers that will not be collected by MEA and to record that amount in the period that that revenue is recognized (earned).
- Provide a means for late collections of customer payments to be accounted for in the Customer Accounts Receivable database managed by Noble Energy Solutions; also allow the recording of amounts in the financial statements for uncollectible accounts.

Benefits of policy:

- Would enable MEA staff and accountants to accurately report accounts receivable, net assets and earnings, by estimating the rate of collection amounts billed to customers; this is accomplished by evaluating and monitoring historical rates of collection of amount billed to customers.

- Consideration for changes in the ratio of commercial to residential customers, demographics and other factors that might influence changes from historical rates.
- Data would be reviewed no less than twice per year.

Ms. Goodwin and Ms. Weisz responded to questions from the Board.

M/s Athas/Greene (passed 11-0-0) Approved draft Policy 008 - Accounts Receivable Reserve Policy. Directors Withy and Wachtel were absent.

Agenda Item #6 MCE Integrated Resource Plan (Discussion/Action)

John Dalessi, Technical Consultant presented this item. He provided summary and background on the Integrated Resource Plan (IRP). It has always been the plan to update the IRP on an annual basis. The update at this time each year will ultimately feed into the upcoming year's open season and assist in determining what power supply (amount, type, location, etc.) MCE will need going forward.

Purpose of Integrated Resource

- Three primary purposes:
 - ✓ Quantify resource needs over the planning period.
 - ✓ Prioritize resource preferences and establish other relevant power procurement policies.
 - ✓ Provide guidance to power procurement process undertaken by management.
- Key MEA Resource Plan Policies:
 - ✓ Reduce emissions of greenhouse gasses and other pollutants through increased use of renewable energy resources and reduced reliance on fossil fueled resources.
 - ✓ Maintain competitive electric rates and increase control over energy costs through management of diverse resource mix.
 - ✓ Benefit area's economy through investments in local infrastructure and energy programs.
 - ✓ Help customers reduce energy consumption and bills through energy efficiency, distributed generation, and other demand-side reduction programs.
 - ✓ Enhance system reliability through investment in supply and demand-side reduction strategies.
- Highlights of Draft IRP:
 - ✓ Resource Targets
 - ✓ Resource Mix
 - ✓ Resource Need
 - ✓ Procurement Methods

Chair Connolly inquired about the need to fill a small gap in previously contracted supply and subsequent 2014 procurement to fill that gap. Mr. Dalessi advised that he's confident in the process of meeting that need and conversations with prospective developers are ongoing but it is too early to discuss specifics.

Mr. Dalessi and Ms. Weisz responded to questions from the Board and member of the public.

M/s Sears/Greene (passed 11-0-0) approved the 2013 Marin Clean Energy Integrated Resource Plan. Directors Withy and Wachtel were absent.

Agenda Item #7 Energy Efficiency Update (Discussion)

Energy Efficiency Coordinator, Beckie Menten presented this item.

Multi-Family Program Update

- Project Profile
 - ✓ Home Owners Association Property with 248 units
 - ✓ Major boiler replacements, individual water heaters
 - ✓ Direct installation in units: compact fluorescent bulbs, showerheads, pipe wrap insulation
 - ✓ Coordinating with Marin Municipal Water District to upgrade older, less efficient toilets
- Incentive Revisions
 - ✓ Additional \$25/unit receiving direct install
 - ✓ Additional \$50/unit benefitting from in-unit measure
 - ✓ Additional 15% for three or more measures
- Initial Program Results

Small Commercial Program Update

- Sausalito Saturation Campaign
 - ✓ Customers very receptive
- Conclusion of Richmond Saturation Campaign
 - ✓ 399 businesses touched
 - ✓ 85 Audits
- Deep Green customer Catahoula Coffee is a recent participant in our Energy Efficiency program (lighting project)
- Incentive Redesign
- Initial Program Results

Financing Programs

- Two applications already submitted for single family program following recent earned media
- Significant breakthrough in discussions with PG&E
 - ✓ On-bill financing will be extended to non MCE customers
- Exploring renewable energy financing options

Contracts Coming Soon – Before Board tonight

- Association for Energy Affordability
- Community Energy Services Corporation
- Marin City Community Development Corporation

Ms. Menten responded to questions from the Board. She also reassured Director Butt that an EE case study, on one of Director Rifkind's property, is near completion. Director Bailey suggested that specific goals be established for each aspect of the EE program.

Agenda Item #8 – Third Agreement with Association for Energy Affordability for Energy Efficiency Contract Services (Discussion/Action).

Energy Efficiency Coordinator, Beckie Menten presented this item by providing history and a summary of MEA's relationship with AEA.

- The proposed Third Agreement includes support for AEA to continue in their role as technical consultant for the program. AEA would continue to provide energy audits on behalf of the program, interfacing with property owners and managers to explain the opportunities represented in the audit report.
- Will continue to work closely with the Marin City Community Development Corporation (MCCDC) to identify workforce development opportunities in energy efficiency program implementation and to utilize

locally trained workers where possible.

- AEA would provide the oversight for the installation of energy efficiency measures to ensure property owners, managers, and the MEA program are getting the highest quality work products that will deliver the estimated energy savings.
- The requested contract amount of \$106,000 represents less than 1% of the energy efficiency program budget and 13% of the multi-family budget. This contract would be funded completely by the EE program funds allocated by the CPUC.

Ms. Menten responded to questions from the Board.

M/s Green/Athas (passed 11-0-0) Authorize Execution of the Third Agreement with Association for Energy Affordability to provide Energy Efficiency Contract Services. Directors Withy and Wachtel were absent.

Agenda Item #9 – Third Agreement between MEA and the Community Energy Services Corporation (CESC) for Energy Efficiency Contract Services. (Discussion/Action)

Energy Efficiency Coordinator, Beckie Menten presented this item by providing history and a summary of MEA's relationship with Community Energy Services Corporation (CESC).

- Under the proposed Third Agreement, CESC would continue to be the lead program implementer for the MEA program.
- CESC would provide energy evaluations at no cost to small businesses, prepare and deliver energy evaluation reports, identify qualified contractors from a pool of pre-determined professionals who have agreed to specific terms, and oversee the installation of the efficiency measures for quality control.
- SmartLights would also be able to provide savings estimations for lighting in the MEA multifamily EE program.
- The requested contract amount of \$200,000 represents 5% of the total EE program budget, and 14% of the small commercial program budget. This contract would be funded completely by the EE program funds allocated by the CPUC.

Ms. Menten responded to questions from the Board.

M/s Sears/Greene (passed 11-0-0) Authorize Execution of the Third Agreement with CESC to provide Energy Efficiency Contract Services. Directors Withy and Wachtel were absent.

Agenda Item #10 – Third Agreement with Marin City Community Development Corporation (MCCDC) for Energy Efficiency Contract Services (Discussion/Action)

Energy Efficiency Coordinator, Beckie Menten presented this item by providing history and a summary of MEA's relationship with Marin City Community Development Corporation (MCCDC).

- In the past year, MCCDC has exhausted the majority of the programs funds previously allocated and expects to deplete the balance of the contract amount by mid-December 2013. Thus, MEA is seeking for the term of the proposed Third Agreement to cover December 1, 2013 to December 31, 2014.
- The requested contract amount of \$50,000 is less than 1% of the EE program budget and 6% of the multi-family program budget. The contract would be funded completely by the EE program funds allocated from the CPUC.

Ms. Menten responded to questions from the Board. Approval of this item is subject to amendment changing

contract effective date from December 1, 2013 to November 7, 2013 as requested by Ms. Menten.

M/s Green/Sears (passed 11-0-0) Authorize Execution of the Third Agreement with Marin City Community Development Corporation (MCCDC) for Energy Efficiency Contract Services amended to reflect commencement of services effective November 7, 2013. Directors Withy and Wachtel were absent.

Agenda Item #11 Solar Rebate Program Low Income Distribution (Discussion/Action)

Program Coordinator, Rafael Silberblatt presented this item by providing background, a summary of the program, and the reason for recommending specialized eligibility.

Mr. Silberblatt responded to questions from Board.

M/s Butt/Sears (passed 11-0-0) Approved restricting eligibility for MCE's Solar Rebate Program to low income customers (as determined by proof of SASH/MASH eligibility) for an initial four month period before making any remaining rebates available to other residential customers. Directors Withy and Wachtel were absent.

Agenda Item #12 - Communications Update (Discussion)

Jamie Tuckey, Communications Director presented this item providing the following:

Highlights & Accomplishments

- 120+ community meetings since January 2013
- 50+ new stories published
- Redesigned MCE website & marketing materials
- MCE service launched to 35,000 Richmond customers
- Accredited by Better Business Bureau
- Climate Change Business Journal Solar Power Achievement Award

Serving 124,000+ MCE Customers

- 122,000~ Light Green Customers
- 1,800~ Deep Green Customers
- Since October 2012, MCE's Deep Green customer base has increased by 42%

MCE Call Center

- 22,000+ customer service calls (9/2012 – 8/2013)
- 15% retention rate for opt out requests
- 8% of calls are foreign language
 - ✓ Spanish (8%)
 - ✓ Tagalog (.2%)
 - ✓ Mandarin (.2%)
 - ✓ Vietnamese (.16%)
 - ✓ Lao (.05%)
 - ✓ Cantonese (0)

Latino Outreach

- Connected with 2,000+ Richmond Latino community members

Miscellaneous Meetings & Events

Print Advertisements

- Richmond Pulse
- Richmond Post
- La Voz
- SF Business Times Richmond Special
- Marin Independent Journal
- Pacific Sun
- Marin Magazine
- Marin Center Magazine

Electronic Advertisements

Google Adword Campaign

- 1,012 clicks between 6/1/13 and 8/31/13
- Top 5 keyword searches
 - ✓ marin clean energy
 - ✓ mce clean energy
 - ✓ solar wind energy
 - ✓ how to save energy
 - ✓ mce

Past Year: Website Traffic

- ~50,000 site visits between 10/2012 and 09/2013
- 43% new visitors
- 12% mobile/tablet users

Year Ahead: Focus Areas

- Retain Light Green customers
- Return Light Green customer opt outs
- Increase Deep Green customer enrollments
- Increase Energy Efficiency program participation
- Expand Latino outreach
- Improve PG&E billing & custom service

Year Ahead: Planned Activities

- Create Deep Green business marketing package
- Launch Deep Green & Energy Efficiency advertising campaigns
- Direct outreach to business customers
- Deepen engagement in business communities
- Build enhance advocacy relationships
- Simplify and build interactive web tools
- Improve Net Energy Metering billing process
- Create and disseminate video ads

Ms. Tuckey spoke about MCE expansion

City of Albany – Discussions planned for their 11/18 Council Meeting

City of San Ramon – Discussions planned for their 11/26 Council Meeting

City of Piedmont – Discussions planned for their 12/02 Council Meeting

MCE has also responded to questions and provided information to representatives in the Cities of El Cerrito, San Pablo, Benicia, Oakland and Dublin, as well as the counties of San Luis Obispo and Santa Barbara.

Ms. Tuckey responded to questions from the Board. Chair Connolly encouraged the team to keep pushing in the direction they are going.

Agenda Item #13 - Regulatory Update (Discussion)

Legal Director, Beth Kelly presented this item and reported there is quite a bit of activity on the CPUC front. She mentioned various key proceedings and the steps taken in the past month:

- Energy Storage: Decision set new target for all load-serving entities (LSEs), for CCAs: 1% of load by 2020
- Residential Rate Design Rulemaking: In accordance with new legislation (AB 327), the investor-owned utilities will propose interim residential rate changes
- New Demand Response Rulemaking: Workshops and filings underway; MEA has been an active participant
- Long Term Procurement Plan Proceeding (LTPP) related to the offlining of the San Onofre Nuclear Generating Station (SONGS): IOUs propose replacement resources receive Cost Allocation Mechanism (CAM) treatment
- Cap and Trade: The Commission has determined that 2013 outreach and education will be undertaken by California Center for Sustainable Energy (CCSE), not the IOUs
- New Energy Efficiency Rulemaking: A new energy efficiency Rulemaking is on the Commission's agenda which proposes to extend MEA's EE 2013-2014 programs to 2015 and introduce a rolling portfolio cycle.

Ms. Kelly also extensively discussed the pending Proposed Decision on CCA and Energy Efficiency. The Proposed Decision takes several positive steps. It (i) continues treatment of CCAs as "Administrators"; (ii) allows timing flexibility in a CCA's first energy efficiency application; and (iii) allows retroactive energy efficiency funding.

However, the Proposed Decision raises several concerns for MEA. Specifically, the Proposed Decision:

- Excludes CCAs from the vast majority of funding for the "elect to administer" CCA pathway due to the broad definitions of Statewide and Regional Programs
- Excludes CCAs from accessing gas funds and running energy efficiency programs which reduce gas usage
- Proposed TRC Ratios of 1.0 or 1.25 could be overly burdensome depending on the overall CCA administration structure for energy efficiency
- Proposed Decision would impose all other Decisions tailored to IOUs on CCAs with limited exceptions

With regards to this Proposed Decision, MEA has raised the need for a CPUC Ombudsman to address energy efficiency issues as they arise for CCAs.

Ms. Kelly responded to questions from the Board. She thanked Director Bailey for attending a key meeting at the CPUC with a Commissioner Advisor.

Agenda Item #14 – Board Member & Staff Matters (Discussion)

None

Agenda Item #15 – Adjourn

9:52PM

Damon Connolly, Chair

ATTEST:

Dawn Weisz, Executive Officer



December 5, 2013

TO: Marin Energy Authority Board
FROM: Greg Morse, Data Analyst
RE: Monthly FY 14 Budget Report (Agenda Item #4 - C.2)
ATTACHMENT: October 2013 Budget Update (Unaudited)

Dear Board Members:

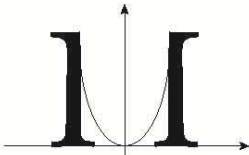
SUMMARY:

The attached budget update compares the FY 2014 budget to the unaudited revenue and expenses of MEA for the month ending October 2013.

Expenditures over the last month have been stable. The notable Other Services line expenditures arise from completion of contracts pertaining to exploration of MCE's initial credit rating and bond issuance exploration as well as the external Information Technology (IT) audit. General and Administrative line expenditures were slightly higher than usual this month, mostly stemming from subtle increases in miscellaneous fees.

Overall, MEA continues to spend below projections, as reflected in year-to-date figures.

Recommendation: No action needed. Informational only.



MAHER ACCOUNTANCY 1101 FIFTH AVENUE • SUITE 200 • SAN RAFAEL, CA 94901

Financial Plumline

ACCOUNTANTS' COMPILATION REPORT

Board of Directors
Marin Energy Authority

We have compiled the accompanying budgetary comparison schedules of Marin Energy Authority (a California Joint Powers Authority) for the period ended October 31, 2013. We have not audited or reviewed the accompanying financial statement and, accordingly, do not express an opinion or provide any assurance about whether the financial statement is in accordance with accounting principles generally accepted in the United States of America.

Management is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statements.

Our responsibility is to conduct the compilation in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The objective of a compilation is to assist management in presenting financial information in the form of financial statements with undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statement.

We are not independent with respect to Marin Energy Authority.

Maher Accountancy

November 20, 2013

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MARIN ENERGY AUTHORITY
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2013 through October 31, 2013

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Revenue - Electricity (net of allowance)	\$ 86,865,000	\$ 48,341,448	\$ 38,523,552	55.65%
EXPENDITURES AND OTHER USES:				
CURRENT EXPENDITURES				
Cost of energy	76,427,000	40,305,371	36,121,629	52.74%
Staffing	1,562,000	766,202	795,798	49.05%
Technical consultants	594,000	321,008	272,992	54.04%
Legal counsel	335,000	67,728	267,272	20.22%
Communications consultants and related expenses	650,000	534,926	115,074	82.30%
Data manager	2,534,000	1,396,477	1,137,523	55.11%
Service fees- PG&E	603,000	315,191	287,809	52.27%
Other services	333,000	169,318	163,682	50.85%
General and administration	297,000	177,805	119,195	59.87%
Marin County green business program	15,000	15,000	-	100.00%
Solar rebates	10,000	-	10,000	0.00%
Total current expenditures	<u>83,360,000</u>	<u>44,069,026</u>	<u>39,290,974</u>	<u>52.87%</u>
CAPITAL OUTLAY	20,000	1,656	18,344	8.28%
DEBT SERVICE	1,195,000	741,644	453,356	62.06%
INTERFUND TRANSFER TO:				
Local Renewable Energy Development Fund	<u>51,536</u>	<u>51,536</u>	-	<u>100.00%</u>
Total expenditures	<u>84,626,536</u>	<u>44,863,862</u>	<u>\$ 39,762,674</u>	<u>53.01%</u>
Net increase (decrease) in available fund balance	<u>\$ 2,238,464</u>	<u>\$ 3,477,586</u>		

**MARIN ENERGY AUTHORITY
ENERGY EFFICIENCY PROGRAM FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2013 through October 31, 2013**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Public purpose energy efficiency program	\$ 2,100,000	\$ 482,866	\$ 1,617,134	22.99%
EXPENDITURES AND OTHER USES:				
CURRENT EXPENDITURES				
Public purpose energy efficiency program	<u>2,100,000</u>	<u>482,866</u>	<u>1,617,134</u>	<u>22.99%</u>
Net increase (decrease) in fund balance	<u>\$ -</u>	<u>\$ -</u>		

* Transfer of \$547,500 for security of On Bill Repayment program not recognized as expenditure.

**LOCAL DEVELOPMENT RENEWABLE ENERGY FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2013 through October 31, 2013**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Transfer from Operating Fund	\$ 51,536	\$ 51,536	\$ -	100.00%
EXPENDITURES AND OTHER USES:				
Capital Outlay	<u>51,536</u>	<u>-</u>	<u>51,536</u>	<u>0.00%</u>
Net increase (decrease) in fund balance	<u>\$ -</u>	<u>\$ 51,536</u>		



December 5, 2013

TO: Marin Energy Authority Board
FROM: Sarah Gardner, Administrative Associate
RE: Report on Approved Contracts (Agenda Item #4 - C.3)

Dear Board Members:

SUMMARY:

On March 7, 2013 your Board adopted Resolution 2013-04 which authorized the Executive Officer to enter into and execute contracts for an amount not to exceed \$25,000 within a fiscal year consistent with the Board approved budget, the Joint Powers Agreement, and the Operating Rules and Regulations.

The following chart summarizes contracts of this nature which have been entered into during the previous month:

Month	Purpose	Contractor	Maximum Contract Amount	Term of Contract
November	Create a database tool for EE internal tracking and regulatory reporting.	Sound Data	\$10,000	4.5 Months
November	Participation in regulatory proceedings on MEA's behalf.	Tosdal Law Firm	\$10,000	4.5 Months

Recommendation: Information only. No action required.



December 5, 2013

TO: Marin Energy Authority Board
FROM: Emily Goodwin, Internal Operations Coordinator
RE: Records Retention Compliance (Agenda Item #4 – C.4)
ATTACHMENT: MEA Records Retention Policy 003

Dear Board Members:

SUMMARY:

On July 7, 2011, your Board adopted Policy No. 003, Records Retention. Pursuant to Policy No. 003, records will be retained according to the schedules set forth therein, after which time all documents or electronic files will be deleted or discarded. Pursuant to Policy No. 003, the following files will be deleted or discarded

1. **Executed Contracts** (retained until 5 years after termination date of the contract)
 - N/A
2. **Invoices from Vendors** (retained until 2 years after completion of contract)
 - 55 items
3. **Board Approved Decisions** (retained until 5 years after date of approval or longer for archived materials at staff discretion)
 - N/A
4. **Board and Committee Meeting Materials** (retained for 2 years)
 - N/A
5. **Board Approved Budgets** (retained for 2 years)
 - 1 item

6. **Drafts of Documents** (retained until 30 days after final version is approved)
 - 152 items

7. **General Electronic Correspondence** (retained for 2 years)
 - 10,653

8. **Customer-Specific Usage Information and Data** (retained for 5 years)
 - N/A

9. **Marketing Material** (retained for 2 years after public distribution)
 - N/A

10. **General Educational or Informational Material** (retained for 2 years)
 - N/A

11. **Personnel Information** (retained for 5 to 10 years after employee end date)
 - N/A

12. **Miscellaneous Retained Documents** (retained for 2 years)
 - 1 item

Recommendation: Approve the deletion or discarding of documents according to Policy No. 003.



renewable. reliable. affordable.

POLICY NO. 003 – RECORDS RETENTION

Records will be retained according to the following schedule. After the required retention date has passed all documents or electronic files will be deleted or discarded.

Record Type	Required Retention	Sample Descriptions
Executed Contracts	5 years after termination date of the contract	Power supply contracts, contracts with vendors or consultants
Invoices from Vendors	2 years after completion of contract	Vendor invoices for payment
Non-Disclosure Agreements	In perpetuity	NDA with vendor, employee, Board member or advisor
Board Approved Decisions	5 years after date of approval or longer for archived materials at staff discretion	Resolutions, meeting minutes, and other items approved at regular or special Board meetings
Board and Committee Meeting Materials	2 years	Agendas, staff reports and other material provided to Board members in preparation for meetings
Board Approved Budgets	2 years	Final, approved budgets
Drafts of Documents	30 days after final version is approved	Draft of contracts, programs, RFPs, etc.
General Electronic Correspondence	2 years	Email correspondence
Customer-Specific Usage Information and Data	5 years	Electronic information and reporting from Data Manager, bill analyses
Marketing Material	2 years after public distribution	Flyers, brochures, electronic advertisements
General Educational or Informational Material	2 years	Brochures, reports, electronic information
Personnel Information	5 to 10 years after employee end date	Offer letter, resume, evaluations



December 5, 2013

TO: Marin Energy Authority Board

FROM: Sarah Gardner, Administrative Associate

RE: Second Addendum to Second Agreement with Jay Marshall
(Agenda Item #4 – C.5)

ATTACHMENT: A: Second Addendum to Second Agreement with Jay Marshall
B: First Addendum to Second Agreement with Jay Marshall
C: Second Agreement with Jay Marshall

Dear Board Members:

SUMMARY: Jay Marshall provided Information Technology (IT) support to MEA starting on July 21, 2010 as part of the Turn 11 team. In June, 2012 Turn 11 allocated services elsewhere and Jay Marshall began to provide support directly to MEA. The Board approved the Second Agreement with Jay Marshall on March 7, 2013 for Information Technology (IT) support services for the 2013-2014 fiscal year, with a maximum cost not to exceed \$19,500.

MEA implemented an IT security audit beginning on September 30, 2013. Jay Marshall was a key factor in the success of the security audit and subsequent compliance and will continue to work with MEA to further implement the remaining security enhancements to MEA's computer software and hardware. On October 28, 2013 the First Addendum to the Second Agreement with Jay Marshall was executed under the Executive Officer's signing authority and increased the maximum cost not to exceed \$25,000.

The attached Second Addendum will allow for Jay Marshall to continue providing Information Technology support through the end of the 2013-2014 fiscal year by increasing the contract amount by \$20,000 for an amount not to exceed \$45,000.

Recommendation: Approve the Second Agreement with Jay Marshall.



**SECOND ADDENDUM TO SECOND AGREEMENT
BY AND BETWEEN THE
MARIN ENERGY AUTHORITY AND JAY MARSHALL**

This SECOND ADDENDUM is made and entered into on December 5, 2013, by and between the MARIN ENERGY AUTHORITY, (hereinafter referred to as "MEA") and Jay Marshall (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MEA and the Contractor entered into an agreement to provide general Information Technology (IT) support to MEA dated April 1, 2013 ("Agreement"); and

WHEREAS, Section 4 and Exhibit B to the amendment included a payment schedule with a maximum cost not to exceed \$25,000; and

WHEREAS, the parties desire to amend the agreement to increase the amount of the contract by \$20,000 for a total amount not to exceed \$45,000; and

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

AGREEMENT

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

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

Section 4 Maximum Cost to MEA:

In no event will the total cost to MEA for the services to be provided herein exceed the maximum sum of \$45,000.

Exhibit B – Fees and Payment Schedule

In no event will the total cost to MEA for the services to be provided herein exceed the maximum sum of \$45,000 for the term of the contract.

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

CONTRACTOR:

MARIN ENERGY AUTHORITY:

By: _____

By: _____



**FIRST ADDENDUM TO AGREEMENT
BY AND BETWEEN THE
MARIN ENERGY AUTHORITY AND JAY MARSHALL**

This FIRST ADDENDUM is made and entered into on October 28, 2013, by and between the MARIN ENERGY AUTHORITY, (hereinafter referred to as "MEA") and Jay Marshall (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MEA and the Contractor entered into an agreement to provide general Information Technology (IT) support to MEA dated April 1, 2013 ("Agreement"); and

WHEREAS, Section 4 and Exhibit B to the amendment included a payment schedule with a maximum cost not to exceed \$19,500; and

WHEREAS, the parties desire to amend the agreement to increase the amount of the contract by \$5,500 for a total amount not to exceed \$25,000; and

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

AGREEMENT

1. Except as otherwise provided herein all terms and conditions of the agreement shall remain in full force and effect.
2. Section 4. Maximum Cost to MEA is hereby amended to read as follows:

Section 4 Maximum Cost to MEA:

In no event will the total cost to MEA for the services to be provided herein exceed the maximum sum of \$25,000.

Exhibit B – Fees and Payment Schedule

In no event will the total cost to MEA for the services to be provided herein exceed the maximum sum of \$25,000 for the term of the contract.

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

CONTRACTOR:

By: 

MARIN ENERGY AUTHORITY:

By: 

**MARIN ENERGY AUTHORITY
STANDARD SHORT FORM CONTRACT**

**SECOND AGREEMENT
BY AND BETWEEN
MARIN ENERGY AUTHORITY AND JAY MARSHALL**

THIS SECOND AGREEMENT ("Agreement") is made and entered into this day March 7, 2013 by and between the MARIN ENERGY AUTHORITY, hereinafter referred to as "MEA" and Jay Marshall, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MEA desires to retain a person or firm to provide the following services: Contractor shall provide IT Support Services; and

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

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

1. SCOPE OF SERVICES:

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

2. FURNISHED SERVICES:

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

3. FEES AND PAYMENT SCHEDULE:

The fees and payment schedule for furnishing services under this Contract 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 Contract. Contractor shall provide MEA with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor shall invoice MEA within 90 days of any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable.

4. MAXIMUM COST TO MEA:

In no event will the cost to MEA for the services to be provided herein exceed the maximum sum of **\$19,500**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **April 1, 2013**, and shall terminate on **March 31, 2014**. Certificate(s) of Insurance must be current on day Contract commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor. The final invoice must be submitted within 30 days of completion of the stated scope of services.

6. INSURANCE:

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

Nothing herein shall be construed as a limitation on Contractor's obligations under Section 17 of this Contract to indemnify, defend and hold the MEA harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Contract. MEA agrees to timely notify Contractor of any negligence claim.

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

6.1 GENERAL LIABILITY

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. The MEA 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 Contract involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

6.3 WORKERS' COMPENSATION

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

6.4 PROFESSIONAL LIABILITY INSURANCE

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Contract without prior written approval of the MEA except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to the MEA evidence of same.

9. ASSIGNMENT:

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

10. RETENTION OF RECORDS AND AUDIT PROVISION:

Contractor and any subcontractors authorized by the terms of this Contract shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Contract. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MEA shall have the right, during regular business hours, to review and audit all records relating to this Contract during the Contract period and for at least five (5) years from the date of the completion or termination of this Contract. Any review or audit may be conducted on Contractor's premises or, at MEA's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MEA. Contractor shall refund any monies erroneously charged.

11. WORK PRODUCT:

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of the MEA upon payment to Contractor for such work. The MEA shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at the MEA's expense, provide such reports, plans, studies, documents and writings

to the MEA or any party the MEA may designate, upon written request. Contractor may keep file reference copies of all documents prepared for the MEA.

12. TERMINATION:

- A. If the Contractor fails to provide in any manner the services required under this Contract or otherwise fails to comply with the terms of this Contract or violates any ordinance, regulation or other law which applies to its performance herein, the MEA may terminate this Contract by giving five (5) calendar days written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Contract for any reason by giving thirty (30) calendar days written notice to the other parties. Notice of termination shall be by written notice to the other parties and be sent by registered mail.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Contract so long as proof of required insurance is provided for the periods covered in the Contract or Amendment(s).

13. AMENDMENT:

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

14. ASSIGNMENT OF PERSONNEL:

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

15. JURISDICTION AND VENUE:

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

16. INDEMNIFICATION:

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

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MEA:

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

18. COMPLIANCE WITH APPLICABLE LAWS:

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

19. NOTICES

This Contract shall be managed and administered on MEA's behalf by the Contract Manager named below. All invoices shall be submitted and approved by this Contract Manager and all notices shall be given to MEA at the following location:

Contract Manager: Sarah Gardner

MEA Address: 781 Lincoln Ave., Suite 320

San Rafael, CA 94901

Telephone No.: (415) 464-6028

Notices shall be given to Contractor at the following address:

Contractor: Jay Marshall
 Address: 16 Portola Avenue
 San Rafael, CA 94903
 Telephone No.: (415) 987-7153

20. ACKNOWLEDGEMENT OF EXHIBITS

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

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

APPROVED BY

Marin Energy Authority:

By: [Signature]
 Executive Officer

By: [Signature]
 Chairman

CONTRACTOR:

By: [Signature]
 Name: Lloyd J. Marshall

MEA COUNSEL REVIEW AND APPROVAL (Only required if any of the noted reason(s) applies)

REASON(S) REVIEW:

- Standard Short Form Content Has Been Modified
- Optional Review by MEA Counsel at Marin Energy Authority's Request

MEA Counsel: _____

Date: _____

EXHIBIT A
SCOPE OF SERVICES (required)

Contractor shall provide general information technology (IT) support to MEA. Contractor shall provide support services to MEA personnel for maintaining and addressing issues related to operations of:

- o computer systems, including desktops, networking, internet connectivity
- o File server and Switch/WIFI/Firewall
- o telephone systems, including 17 handsets, voicemail, Allworx version 7.1 telephony software, connections to Internet and SIP provider for telephony
- o Microsoft operating system and a single file/print server and Service Pack installation and updates as required
- o Google Applications and Egnyte file services support (Email and Cloud Back-up)
- o Software, including Office, Acrobat Professional, Dreamweaver, anti-virus and anti-malware, and others
- o Other hardware components

Contractor shall provide IT transitional assistance if the MEA elects to contract IT services through a different contractor. Contractor shall provide and assist in transferring his full knowledge of MEA computer, telephone, and internet systems, settings, and passwords.

Support is available M-F from 9AM to 5PM excluding holidays

EXHIBIT B
FEES AND PAYMENT SCHEDULE (required)

An hourly fee of \$125 will be applied for each hour of service. The contractor shall bill in .25 hour increments on a monthly basis for all services rendered. In no event will the total cost to MEA for the services to be provided herein exceed the maximum sum of \$19,500 for the term of the contract.

EXHIBIT "C"

INSURANCE REDUCTION/WAIVER (if applicable)

CONTRACTOR: Jay Marshall


CONTRACT TITLE: Second Agreement

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

	Check Where Applicable	Requested Limit Amount	MEA Use Only
General Liability Insurance	<input checked="" type="checkbox"/>	\$	
Automobile Liability Insurance	<input checked="" type="checkbox"/>	\$	
Workers' Compensation Insurance	<input checked="" type="checkbox"/>	\$	
Professional Liability Deductible	<input checked="" type="checkbox"/>	\$	

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

The nature of services being provided by this contractor do not place MEA into any significant liability risk.

Contract Manager Signature: 

Date: MARCH 8, 2013

Telephone: (415) 464-6028

Approved by: 

Date: 3-8-2013



December 5, 2013

TO: Marin Energy Authority Board
FROM: Jamie Tuckey, Communications Director
RE: First Agreement with Micro-Documentaries (Agenda Item #4 - C.6)
ATTACHMENT: Draft Agreement with Micro-Documentaries

Dear Board Members:

SUMMARY:

The attached draft agreement will allow Micro-Documentaries to produce four 1-2 minute videos for MCE with the option of reducing any or all of them into 30 second broadcast-ready videos between December 6, 2013 and March 31, 2014, for a total amount not to exceed \$35,750. Micro-Documentaries has also offered a \$4,000 discount to MEA as a first-time customer. The discount is included in the total.

By leveraging the power of documentary filmmaking for short video, Micro-Documentaries can help MCE have a greater impact in the communities we serve. Micro-Documentaries distinguishes itself from other approaches on the market today by producing authentic, actionable, and affordable videos.

Micro-Documentaries specializes in authenticity by humanizing messages and connecting more naturally with our audiences by applying a documentary methodology (rather than the usual commercial methodology). The videos will feature people in the communities that MCE serves in a journalistic way, telling their stories that are core to MCE's mission.

Micro-Documentaries offers affordable options for video development by eliminating the use of actors, storyboards and scripts. Micro-Documentaries utilizes sunlight instead of electric lighting, increasing quality of the productions while significantly dropping price and production time.

The videos that are produced by Micro-Documentaries for MCE will include calls-to-action so that inspiration can be triggered into action. Examples include signing up for Deep Green and participating in our energy efficiency program. The 1-2 minute videos will be broadcast on the MCE website, social media pages, and e-newsletters. The videos may also be shared by our community partners on websites, blogs and e-newsletters. Staff will utilize the videos at public meetings and presentations. In the future MCE may also use the productions to create 30 second videos for use in movie theatre and television advertisements.

Recommendation: Approve and execute the First Agreement by and between the Marin Energy Authority and Micro-Documentaries.

**MARIN ENERGY AUTHORITY
STANDARD SHORT FORM CONTRACT**

**FIRST AGREEMENT
BY AND BETWEEN
MARIN ENERGY AUTHORITY AND MICRO-DOCUMENTARIES, LLC**

THIS FIRST AGREEMENT ("Agreement") is made and entered into this day **DECEMBER 6, 2013** by and between the MARIN ENERGY AUTHORITY, hereinafter referred to as "MEA" and **MICRO-DOCUMENTARIES, LLC**, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MEA desires to retain a person or firm to provide the following services: create and prepare four 1-2 minute micro-documentaries (each a "Video") for the MCE program;

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

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

1. SCOPE OF SERVICES:

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

2. FURNISHED SERVICES:

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

3. FEES AND PAYMENT SCHEDULE:

The fees and payment schedule for furnishing services under this Contract 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 Contract. Contractor shall provide MEA with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor shall invoice MEA within 90 days of any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable.

4. MAXIMUM COST TO MEA:

In no event will the cost to MEA for the services to be provided herein exceed the maximum sum of **\$35,750.00**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **December 6, 2013**, and shall terminate on **March 31, 2014**. Certificate(s) of Insurance must be current on day Contract commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor. The final invoice must be submitted within 30 days of completion of the stated scope of services.

6. WORK PRODUCT:

All rights, title and interest, including all copyrights, intellectual and other proprietary rights, in and to each Video as well all raw footage shot by Contractor, including, without limitation, tapes, out-takes, "b-roll", interviews, location shots and clips ("Raw Footage"), shall be the property of Contractor. Contractor's distribution of the Videos shall be in accordance with Section 11, below. Contractor shall not use the Raw Footage or Videos containing any recognizable people for any purposes other than for future Videos commissioned by MEA without MEA's express written approval. Contractor shall not modify or create derivative works from the Videos without express written approval of MEA.

7. MICRO-DOCUMENTARY LICENSE:

Upon payment of the project fee, Contractor grants MEA a non-exclusive, worldwide, irrevocable license to copy, distribute, transmit and stream the Videos in accordance with Section 11 below.

8. MUSIC:

Contractor or Contractor's third party licensors retain all ownership rights, including copyright, to any music included in any Video by Contractor, including without limitation any original musical compositions created by Contractor and any music licensed by Contractor from a third-party, and all related rights of every kind to such music, including without limitations the rights to the musical composition, sound recording, arrangement, reproduction, transmission, broadcast, dissemination by any manner, performance and moral rights (all

such rights together, "Music"). Contractor shall obtain the appropriate license or licenses to such Music to enable MEA and Contractor to use, distribute, and broadcast the Videos.

9. MEA MATERIALS:

In certain instances, MEA may be able to submit content (e.g., photos, logos, graphics, or music) ("Materials"), to be included in the Video. MEA hereby represents and warrants that (a) MEA has all necessary authority, rights and permissions to submit the Materials and grant the licenses described in this Section and (b) the Materials and the use of the Materials in the Video will not infringe or misappropriate any copyright, trademark, patent or intellectual property right of any third party or violate any other rights of a third party, including, without limitation, any rights of privacy or publicity or any contractual rights. MEA hereby grants to Contractor a revocable, royalty-free, non-exclusive right and license to access, store, copy, display, distribute, perform, and otherwise use and exploit all such Materials in connection with Videos produced for MEA in any form, media, software or technology of any kind now existing or developed in the future. Contractor shall return the Materials to MEA following production of the Videos.

10. WARRANTIES.

Contractor represents and warrants that the Videos created by Contractor under this Agreement, including any Music used in the Videos, will not infringe the copyright, trademark, patent or intellectual property of any third party or violate any other rights of a third party, including, without limitation, any rights of privacy or publicity or any contractual rights; provided that Contractor makes no representation or warranty of non-infringement with regards to any mark, copyright, logo or other element of MEA's business or any Materials provided by MEA to be included in the Video. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, CONTRACTOR DOES NOT MAKE AND CONTRACTOR DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WITH RESPECT TO THE VIDEOS, AND EXPRESSLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11. DISTRIBUTION.

Contractor at its discretion may distribute the Videos, on Contractor's behalf, or on MEA's behalf, on third-party websites which are now, or later become, available ("Third-Party Websites") in any and all media now known or hereafter developed. Except, if MEA desires that one or more of the Videos should no longer be public, the Contractor shall remove the Video or Videos posted on its own website or other Third-Party Websites upon the written request of MEA. Notwithstanding the foregoing, MEA understands that the distribution of the Videos through Third-Party Websites may require that the Video be loaded to third-party servers over which Contractor maintains no control and that once the Video has been loaded to third-party servers that content may continue to be streamed and distributed at the third-party's discretion. Contractor will have no, and hereby disclaims any, liability from any use of the Video by any such third-party. Both parties agree not to distribute, transmit, stream or otherwise display the Video on any website that promotes illegal activities or conduct that is abusive, threatening, obscene, defamatory or libelous or displays pornographic or sexually explicit material of any kind.

12. INSURANCE:

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

Nothing herein shall be construed as a limitation on Contractor's obligations under Section 22 of this Agreement to indemnify, defend and hold the MEA harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. MEA agrees to timely notify Contractor of any negligence claim.

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

12.1 GENERAL LIABILITY

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. The MEA 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).

12.2 AUTO LIABILITY

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

12.3 WORKERS' COMPENSATION

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

13. NONDISCRIMINATORY EMPLOYMENT:

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

14. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of the MEA except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to the MEA evidence of same.

15. ASSIGNMENT:

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

16. RETENTION OF RECORDS AND AUDIT PROVISION:

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MEA shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Agreement period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MEA's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MEA. Contractor shall refund any monies erroneously charged.

17. TERMINATION:

- A. If the Contractor 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 ordinance, regulation or other law which applies to its performance herein, the MEA may terminate this Agreement by giving five (5) calendar days written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Agreement for any reason by giving thirty (30) calendar days written notice to the other parties. Notice of termination shall be by written notice to the other parties and be sent by registered mail.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).

18. AMENDMENT:

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

19. ASSIGNMENT OF PERSONNEL:

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

20. INDEPENDENT CONTRACTOR:

Each party is an independent contractor and not an agent or partner of, or joint venturer with, the other party for any purpose. Neither party by virtue of this Agreement shall have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

21. 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. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

22. INDEMNIFICATION:

Contractor agrees to indemnify, defend and hold harmless MEA and MEA's officers, directors, employees and agents, from and against all third party claims, suits, proceedings, liabilities and costs (including litigation costs and reasonable attorneys' fees) to the extent arising from or based upon (a) Contractor's negligence, recklessness or willful misconduct; (b) a claim that any mark, copyright, logo or other element of Contractor's business or any Raw Footage, Music or other materials provided by or created by the Contractor to be included in the Videos violates the trademark, copyright or other rights of any third party; (c) Contractor's use of the Video that is in breach of this Agreement, provided that such claim is not a result of MEA's breach of warranty provided in Section 9; (d) Contractor's breach of warranty.

MEA shall indemnify, defend and hold harmless Contractor and Contractor's officers, directors, employees and agents, from and against all third party claims, suits, proceedings, liabilities and costs (including litigation costs and reasonable attorneys' fees) to the extent arising from or based upon (a) MEA's gross negligence or willful misconduct; (b) a claim that any mark, copyright, logo or other element of MEA's business or any Materials provided by MEA to be included in the Video violates the trademark, copyright or other rights of any third party; (c) MEA's use of the Video that is in breach of this Agreement, provided that such claim is not a result of Contractor's breach of warranty; (d) any edit, change or other alteration made to the Video as delivered by Contractor; (e) any claim that a Video contains false or misleading statements, or (f) a claim that the Video or any part thereof violates any relevant advertising rules or regulations.

23. LIMITATION OF LIABILITY:

IN NO EVENT SHALL EITHER PARTY OR ITS AGENTS BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR IN ANY WAY CONNECTED WITH ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, WHETHER IN CONTRACT (INCLUDING BREACH OF WARRANTY), TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE) OR OTHERWISE.

24. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MEA:

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

25. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all Federal, State and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement. Copies of any of the above-referenced local laws and resolutions may be secured from the MEA's contact person referenced in Section 27. NOTICES below.

26. FINAL AGREEMENT:

This Agreement contains the final and complete contract of the parties hereto and such Agreement supersedes all prior oral or written promises, undertakings, understandings or negotiations concerning the subject matter of this Agreement. This Agreement shall inure to the benefit of, and be binding upon, MEA and Contractor and our respective successors and assigns.

27. NOTICES

This Agreement shall be managed and administered on MEA's behalf by the Contract Manager named below. All invoices shall be submitted and approved by this Contract Manager and all notices shall be given to MEA at the following location:

Contract Manager:	Sarah Gardner
MEA Address:	781 Lincoln Ave., Suite 320
	San Rafael, CA 94901
Telephone No.:	(415) 464-6028

Notices shall be given to Contractor at the following address:

Contractor:	Micro-Documentaries LLC
Address:	548 Market Street #68415
	San Francisco, CA 94104
Telephone No.:	(415) 295-4707

All notices, requests, demands, and other communications hereunder shall be in writing, whether in hard copy or electronic copy, and shall be deemed to have been duly given if personally delivered or when received if sent electronically or mailed by courier, overnight delivery services or certified or registered mail, postage pre-paid, to the parties at the address set forth in the above. Except, electronic copy sent via e-mail is not sufficient for purposes of formal notice to terminate the Agreement or to revoke any licenses granted hereunder.

28. ACKNOWLEDGEMENT OF EXHIBITS

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

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

APPROVED BY

Marin Energy Authority:

By: _____
Executive Officer

By: _____
Chairman

CONTRACTOR:

By: _____
Name: Natasha Giraudie,

MEA COUNSEL REVIEW AND APPROVAL (Only required if any of the noted reason(s) applies)

REASON(S) REVIEW:

- Standard Short Form Content Has Been Modified
- Optional Review by MEA Counsel at Marin Energy Authority's Request

MEA Counsel: _____

Date: _____

EXHIBIT A
SCOPE OF SERVICES

Micro-documentaries (the Contractor) will prepare four 1-2 minute micro-documentaries (each a "Video") for the MCE program. Upon the request and direction from MEA, Micro-documentaries will also produce a 30-second version of each Video for broadcast in accordance with the terms of the Agreement.

I. Pre-Production.

- a. Strategic Consultation. The Contractor shall hold at least one initial strategic consultation phone call for the four micro-documentaries to understand audience, goals and set plan of action.
- b. Pre-Production Sheet. The Contractor shall create one Pre-Production Sheet per micro-documentary. The Pre-Production Sheet sets forth the narrative arc for each story with a series of interview questions.

II. Scheduling.

- a. Video Production Expiration & Forfeiture. Contractor will attempt to contact MEA over the course of the Video production, or each Video production in a purchased series, to schedule the Strategic Session or other kick-off session, to prepare the necessary pre-production paperwork, to schedule the filming, to collect necessary "Materials" and to film.
- b. The Strategic Session, or other kick-off session, must occur no later than the 15th business day from the Effective Date. Each Video production is to be filmed within eight weeks of the Effective Date. If filming of each Video production is not completed within eight weeks of the Effective Date, "Rush Fees" may apply.
- c. MEA may request up to four weeks of extension for each Video production, if requested in writing within the first eight (8) weeks of the Effective Date. Only one extension request will be granted per Video production. Any additional extension(s) may be granted, at Contractor's sole discretion, but only if a material delay in production is caused by Contractor. Video production(s) that have been granted an extension and are not filmed within 13 weeks of the date of this Agreement will be forfeited, and all outstanding balances for a forfeited Video are immediately due and payable to Contractor.

III. Location and Appearance Releases.

- a. Contractor shall provide the participant appearance waiver and release forms for the filming of the Video content.
- b. MEA shall cooperate with Contractor to help secure filming location and participant appearance waivers and releases for the filming of the Video content, as applicable.

IV. Filming.

- a. The Contractor shall perform at least three consecutive hours of filming per micro-documentary, which amounts to 1 interview (or 5 interviews in the case of a mashup) and supporting footage.

V. Preview of Video and Edits.

- a. Editing. The Contractor shall edit each micro-documentary with music and perform up to an additional two rounds of review per micro-documentary, as provided below.
- b. Once each micro-documentary is ready to preview, Contractor will deliver the project to MEA by e-mailing a link to the Video. By completing the feedback form ("Feedback Form") provided by the Contractor, MEA will have the ability to request two rounds of edits to each Video, provided however, that change requests shall not include requests to shoot additional footage, nor to depart from the document generated and circulated prior to the filming ("Pre-Production Sheet").
- c. MEA shall have no less than 10 business days to submit edit requests after receiving the first version of each Video, and another 10 business days to submit edit requests to a revised version based on the first edit requests, if any. If no edit requests are made within 10 business days of receiving the Video, or within an additional 10 business days of receiving the revised version of each Video, the Video will be deemed complete and final. If MEA makes timely edit requests

through the Feedback Form, Contractor shall use commercially reasonable efforts to make such edits and send MEA the revised Video within 10 business days of receiving any such requests.

- d. For additional fees, Contractor may be available to accept change orders after the project is complete and final. As provided in **Exhibit B**, rush fees may apply to Videos that require expedited processing, and depending upon the type of rush services requested, the number of edit revision requests may be limited to one. Additionally, the number of days to request edit revisions may be reasonable reduced to accommodate the requested rush delivery timeframe.

VI. Deliverables

- a. Contractor shall deliver each micro-documentary through a link to a downloadable, full-resolution version (.mov) of video(s). Each link shall be available for download for one week.
- b. Contractor shall deliver the "Distribution Guidelines," which are Contractor's best practices collected over time of how to leverage micro-documentaries and maximize their impact.

VII. Post Production Services:

- a. After final delivery, any additional editing, additional exports, changing dimensions, changes or modifications to the call-to-action screen, and reposting of the link to downloadable file will be charged at \$250/hour.

EXHIBIT B
FEES AND PAYMENT SCHEDULE

I. Base Fee.

- a. The "project fee" for each video is \$6,000, which reflects a first time series nonprofit credit. The base fee for the production of the 4 videos will be \$24,000. If MEA directs Micro-documentaries to produce a 30 second version of each Video for broadcast, the additional fee will be \$2,500 per video. The total fee for services set forth in Exhibit A shall be **\$34,000**.

II. Base Fee Payment terms:

- a. Seventy-five (75) percent of the Video fee (\$18,000) shall be due within 30 days of the invoice date. The remaining twenty-five (25) percent of the Video fee (\$6,000) shall be due within 45 days of the invoice date.
- b. All other invoices are due within 30 days of the invoice date.

III. Additional Services: The following additional charges may be applied to the additional services listed below. Prior to performing any additional services, the Contractor shall obtain written consent from MEA.

- a. Rescheduling: If MEA reschedules a filming session within three weeks of the shoot date for any reason, the Contractor shall make reasonable efforts to find another client to take that slot. A \$500 rescheduling fee will be charged unless the cancelled time slot is taken by another client. A rescheduling fee of \$750 will be charged if filming is rescheduled by MEA within 48 hours of the shoot date, unless the cancelled time slot is taken by another client.
- b. Additional Strategic Session: \$850 each.
- c. Additional filming: \$850 per additional 3-hour increment
- d. Additional rounds of editing: \$850 per round (3 hrs.)
- e. Additional requests: \$250/hr.
- f. Managing a production in any language other than English: \$500.
- g. Adding up to 2 minutes of subtitles: \$500.
- h. Translation of up to 40 minutes of interview: \$500.
- i. Foreign Language with Translation during Shoot (United States, Canada, Western Europe, Australia only): \$850.
- j. Shooting in a Disaster Area: \$850.
- k. Non-standard Release Form-request to modify Contractor standard release or use client form or other form of non-standard release: \$850.00 each.
- l. Rush Fees.
 - i. A rush fee will be added for any Video that requires either (a) "rush filming" (i.e., less than seven business days from the Strategic Session or the date the persons(s) being featured are identified), or (b) "rush editing" (i.e., within 2-8 weeks following filming for final delivery). A combined rush fee will be added for any Video that requires both rush filming and rush editing. If the final delivery is required less than four weeks following filming, only one round of edit requests (further described in the Section entitled "Preview of Video and Edits" below) may be accommodated. Delivery of the Video in the requested accelerated time frame is also contingent upon your accelerated or timely submission of edit request(s) to allow Contractor sufficient time to make the requested edits.
 - ii. Ultra Rush Service Fee is additional 60% of the project fee for final delivery 2- 4 weeks after filming.
 - iii. Mega Rush Service Fee is additional 100% of the project fee for final delivery less than 2 weeks after filming.

- m. Removal of the Micro-Documentaries credit. If the Contractor's Micro-Documentaries credit is removed then 30% of price of micro-documentary, per micro-documentary may be added to the project price.

IV. Travel & Related:

- a. Local travel expenses shall not exceed \$750.
- b. Travel time is charged at \$50/hr. plus mileage.
- c. Production wait time- non-consecutive shoots at conferences, events, or international locations requiring the producer to standby in-between scheduled shoots is charged as follows: \$375/half day (up to 5 hours) or \$750/full day (5+-10 hours);

V. Cancellations and Refund Credits.

- a. Cancellation Prior to Strategic Session or other kickoff session. If MEA cancels an order in writing before the Strategic Session or other kick-off session, MEA will forfeit 10% of the applicable project fee and the remaining amount may be used for credit towards another Video project, which must begin within 60 days from cancellation.
- b. Cancellation Prior to Filming. If MEA cancels an order in writing after the applicable Strategic Session or other kick-off session, but before the actual filming, MEA will forfeit one-half of the project fee and the remaining amount may be used for credit towards another Video project, which must begin within 60 days from cancellation.
- c. Cancellation After Filming. If MEA cancels an order following the filming of a Video, MEA will forfeit the entire project fee applicable to that Video. If a second Video is cancelled, MEA will forfeit the total fee.
- d. Cancellation by Contractor. In the event that the Contractor cancels an order, or part of any order, at any time, the Contractor shall refund full payment of the project fees and charges applicable to the order.

In no event will the cost to MEA for the services to be provided herein exceed the maximum sum of **\$35,750**.



December 5, 2013

TO: Marin Energy Authority Board

FROM: Beckie Menten, Energy Efficiency Coordinator

RE: First Addendum to Second Agreement with Planet Ecosystems, Inc. (Agenda Item #4 – C.7)

ATTACHMENT: A. First Addendum to Second Agreement with Planet Ecosystems, Inc.
B. Second Agreement with Planet Ecosystems, Inc.

Dear Board Members:

SUMMARY:

In July of 2012, MEA submitted an application for funding under the 2013 -2014 Energy Efficiency Funding Cycle (A. 12-11-007). The application was based on the initial Energy Efficiency Plan, and included the following proposed sub-programs:

1. Multi-family
2. Single family utility demand reduction pilot program
3. Small commercial and
4. Four financing pilot programs: On Bill Repayment for multi-family, small commercial, and single family, and a standard offer pilot.

This application was approved on the 9th of November, 2012, allocating over \$4 million to MEA for the implementation of energy efficiency programs.

The single family utility demand reduction program is one of four program elements proposed to the CPUC, and is funded at a total of \$473,417. The program was developed to comply with CPUC guidance that MEA not overlap existing energy efficiency program offerings, but instead complement existing programs offered by other parties. This program is therefore designed to provide customers with the education and inspiration to take actions to reduce their energy usage, and to connect interested customers with resources needed to implement energy improvements in their homes.

On January 9th, 2013 MEA entered into an initial First Agreement with Planet Ecosystems, Inc to explore development of a web based energy efficiency tool for single family residential customers in Marin and the City of Richmond. On February 7th 2013 your Board approved the Second Agreement with Planet Ecosystems, Inc. to customize their web tool to MEA's program needs and license this tool on a software-as-service

basis. The contract also included funding for outreach efforts necessary to drive participation to the web tool.

The Second Agreement with Planet Ecosystems, Inc. is set to expire in December of this year. This timing falls directly in the midst of major outreach campaigns anticipated to reach over 5,000 MCE customers, resulting in an anticipated 2% drop in energy consumption for these targeted customers. Staff finds that it would benefit the agency to extend the term of the agreement to allow these campaigns to reach completion. Staff additionally finds that there is sufficient remaining budget within the existing contract to support these activities through February of 2014, at which time program success could be reevaluated in the context of a potential Third Agreement.

The attached First Addendum to the Second Agreement with Planet Ecosystems, Inc. would extend the existing contract from December 31, 2013 through March 31, 2014. The proposed addendum does not add additional funding to the contract amount, but would allow Planet Ecosystems, Inc. to continue to use remaining budget to provide services described in Exhibit A of the Agreement.

Recommendation: Approve the First Addendum to the Second Agreement with Planet Ecosystems, Inc.

This FIRST ADDENDUM is made and entered into on December 5, 2012, by and between the MARIN ENERGY AUTHORITY, (hereinafter referred to as "MEA") and Planet EcoSystems (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MEA and the Contractor entered into an agreement to provide energy efficiency technical services as directed by MEA staff dated February 8, 2012 ("Agreement"); and

WHEREAS, Section 5 of the agreement included a termination date of December 31st, 2013; and

WHEREAS, the parties desire to amend the agreement to adjust the termination date to extend through the end of the fiscal year.

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

AGREEMENT

1. Except as otherwise provided herein all terms and conditions of the agreement shall remain in full force and effect.
2. Section 5. Time of Agreement is hereby amended to read as follows:

Section 5. Time of Agreement:

This agreement shall commence on February 8, 2013, and shall terminate on **March 31, 2013.** Certificate(s) of insurance must be current on day contract commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor. The final invoice must be submitted within 30 days of completion of the stated scope of services.

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

CONTRACTOR:

MARIN ENERGY AUTHORITY:

By: _____

By: _____

**MARIN ENERGY AUTHORITY
STANDARD SHORT FORM CONTRACT**

**SECOND AGREEMENT
BY AND BETWEEN
MARIN ENERGY AUTHORITY AND PLANET ECOSYSTEMS**

THIS SECOND AGREEMENT ("Agreement") is made and entered into this day February 8th, 2013 between the MARIN ENERGY AUTHORITY, hereinafter referred to as "MEA" and Planet Ecosystems, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MEA desires to retain a person or firm to provide the following services: energy efficiency technical services; and

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

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

1. SCOPE OF SERVICES:

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

Subject to the terms and conditions of this Agreement, Contractor grants MEA a non-exclusive, non-transferable license to access and use the software described in Exhibit A ("Software") as a service hosted by Contractor ("Service") during the term of this Agreement and to allow MEA's customers to access and use the Service solely for their personal, non-commercial use subject to terms and conditions that comply with Section 14. MEA shall not, and shall not permit any third party to (i) modify, copy or create derivative works of the Software or based on the Service; (ii) frame or mirror any content forming part of the Software or the Service; (iii) reverse engineer the Software; (iv) interfere with, disrupt, alter, translate, or modify the Service or any part thereof, or create an undue burden on the Service or the networks or services connected to the Service, including without limitation, any external websites that are linked to via the Service; (v) without Contractor's express written permission, introduce software or automated agents or scripts to the Service so as to produce multiple accounts, generate automated searches, requests and queries, or to strip or mine data from the Service; or (f) cover or obscure any page or part of the Service via HTML/CSS, scripting, or any other means. Except as expressly set forth herein, no express or implied license or right of any kind is granted to MEA regarding the Software, the Service or any part thereof.

2. FURNISHED SERVICES:

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

3. FEES AND PAYMENT SCHEDULE:

The fees and payment schedule for furnishing services under this Contract 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 Contract. Contractor shall provide MEA with his/her/its Federal Tax I.D. number prior to submitting the first invoice.

4. MAXIMUM COST TO MEA:

In no event will the cost to MEA for the services to be provided herein exceed the maximum sum of **\$250,730**.

5. TIME OF AGREEMENT:

This Agreement shall commence on February 8th, 2013, and shall terminate on December 31, 2013. Certificate(s) of Insurance must be current on day Contract commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor. The final invoice must be submitted within 30 days of completion of the stated scope of services.

6. INSURANCE:

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

Nothing herein shall be construed as a limitation on Contractor's obligations under Section 17 of this Contract to indemnify, defend and hold the MEA harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Contract. MEA agrees to timely notify Contractor of any negligence claim.

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

6.1 GENERAL LIABILITY

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. The MEA 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 Contract involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

6.3 WORKERS' COMPENSATION

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

6.4 PROFESSIONAL LIABILITY INSURANCE

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Contract without prior written approval of the MEA except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to the MEA evidence of same.

9. ASSIGNMENT:

The rights, responsibilities and duties under this Contract are personal to the Contractor and may not be transferred or assigned without the express prior written consent of the MEA, except pursuant to a transfer of all or substantially all of Contractor's business and assets, whether by merger, sale of assets, sale of stock, or otherwise.

10. RETENTION OF RECORDS AND AUDIT PROVISION:

Contractor and any subcontractors authorized by the terms of this Contract shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Contract. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MEA shall have the right, during regular business hours, to review and audit all records relating to this Contract during the Contract period and for at least five (5) years from the date of the completion or termination of this Contract. Any review or audit may be conducted on Contractor's premises or, at MEA's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MEA. Contractor shall refund any monies erroneously charged.

11. WORK PRODUCT:

MEA may develop (or have developed by a third party), and shall retain ownership of all intellectual property rights to hooks, interfaces or similar tools for use with the Software, provided that the hook, interface or tool does not use any part of the Software or require any modification of the Software. MEA shall own that software developed for MEA by Contractor to specifications provided by MEA and specifically identified in a writing signed by both parties ("Custom Software"), and any intellectual property rights to such Custom Software provided by Contractor under this Agreement, which may include hooks, interfaces or similar tools for use with the Software. MEA acknowledges that Contractor exclusively owns all rights, title and interest in and to the Software and its derivatives. MEA further acknowledges that any software developed by Contractor not specifically identified as Custom Software, as evidenced by a writing signed by both parties shall be considered as normal development of Consultant's tools and services and as such remain the exclusive property of Contractor and Contractor shall retain all related rights to said developments. Contractor shall have a royalty free, worldwide, transferable, sublicensable, irrevocable, unlimited, perpetual license to use or incorporate into the Software any suggestions, enhancement requests, recommendations or other feedback provided by MEA, its users or other users relating to the Software.

12. CONFIDENTIALITY:

Contractor acknowledges that MEA is a public agency subject to the California Public records Act (California Government Code section 6250, *et seq.*). MEA acknowledges that the Software and the Service are the sole property of Contractor and it therefore recognizes that any unauthorized disclosure of the Proprietary Information relating to the Software or the Service disclosed to it may cause irreparable harm to Contractor. MEA undertakes not to disclose to any third party without the prior written authorization of Contractor any and all Proprietary Information. "Proprietary Information" means any and all confidential or proprietary information disclosed to MEA or made available to MEA by Contractor or on its behalf, including, without limitation, trade secrets, know-how, client lists, proposed trademarks, patent applications; formulations, techniques, processes, inventions, ideas, designs, formula, methodology, computer software, computer software source codes, machinery, equipment, all prior and future developments, enhancements and improvements to any of the foregoing and information regarding sources of supply, business plans, patent positioning and the existence, scope and activities regarding any research, development, manufacturing, marketing or other projects of Contractor.

13. TERMINATION:

- A. If the Contractor (i) fails to provide in any manner the services required under this Contract or otherwise fails to comply with the terms of this Contract and does not fully cure the failure within ten (10) days after MEA gives notice of the failure to Contractor, or (ii) violates any ordinance, regulation or other law which applies to its performance herein, MEA may terminate this Contract by giving five (5) calendar days written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Contract for any reason by giving thirty (30) calendar days written notice to the other parties. Notice of termination shall be by written notice to the other parties and be sent by registered mail.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Contract so long as proof of required insurance is provided for the periods covered in the Contract or Amendment(s).

14. DISCLAIMER:

Contractor represents and warrants that the Service and all Services provided by Contractor hereunder will be performed in a professional and workmanlike manner. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 14, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE, THE SERVICE, AND ALL SERVICES PROVIDED BY CONTRACTOR HEREUNDER ARE PROVIDED "AS IS," AND CONTRACTOR MAKES NO (AND HEREBY DISCLAIMS ALL) WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE SOFTWARE OR THE SERVICE (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO MEA BY CONTRACTOR. CONTRACTOR DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SOFTWARE OR THE SERVICE SHALL BE UNINTERRUPTED OR ERROR-FREE.

Prior to making the Service available to any end user, MEA shall ensure that such end user is bound by terms of service contains terms no less restrictive than those set forth in Exhibit C and a privacy policy that enables Contractor to provide the Service hereunder. A sample terms of service and privacy policy are attached as Exhibit D and Exhibit E, respectively. THE SAMPLE TERMS OF SERVICE AND PRIVACY POLICY ARE PROVIDED AS IS AND FOR MEA'S CONVENIENCE ONLY, AND ARE NOT PROVIDED AS LEGAL ADVICE. CONTRACTOR DOES NOT REPRESENT, WARRANT, OR GUARANTEE THAT THE SAMPLES COMPLY WITH APPLICABLE LAW, ARE ENFORCEABLE OR ARE SUITABLE FOR MEA. ANY USE OF THE SAMPLES IS AT MEA'S OWN RISK. CONTRACTOR DISCLAIMS ALL LIABILITY OR LOSS IN CONNECTION WITH MEA'S USE OF THE SAMPLES. MEA SHOULD ALWAYS CONSULT ITS OWN ATTORNEY BEFORE MAKING ANY LEGAL DECISIONS.

15. RELATIONSHIP BETWEEN THE PARTIES:

It is expressly understood that in the performances of the services herein, the Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of the MEA. Contractor shall be solely responsible to pay all required taxes, including but not limited to, all withholding social security, and workers' compensation.

16. AMENDMENT:

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

17. ASSIGNMENT OF PERSONNEL:

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

18. JURISDICTION AND VENUE:

This Contract 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.

19. INDEMNIFICATION:

Contractor agrees to indemnify, defend, and hold MEA, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this contract. Notwithstanding anything to the contrary in this Agreement, Contractor's indemnification liability is limited to the greater of the fees paid to Contractor by MEA under this Agreement or the proceeds recovered under Contractor's insurance.

20. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MEA:

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

21. ENERGY SAVINGS:

MEA shall have all right, title and interest in the environmental attributes (including, but not limited to, any and all credits, benefits, emissions reductions, offsets, savings, and allowances, howsoever entitled) attributable to the services performed pursuant to this Agreement.

22. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all Federal, State and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Contract. Copies of any of the above-referenced local laws and resolutions may be secured from the MEA's contact person referenced in paragraph 23. NOTICES below.

23. NOTICES

This Contract shall be managed and administered on MEA's behalf by the Contract Manager named below. All invoices shall be submitted and approved by this Contract Manager and all notices shall be given to MEA at the following location:

Contract Manager:	MEA; Attn.: Beckie Menten
MEA Address:	781 Lincoln Ave., Suite 300
	San Rafael, CA 94901
Telephone No.:	(415) 464-6034

Notices shall be given to Contractor at the following address:

Contractor: PlanetEcosystems, Inc.; Attn.: V. Rory Jones

Address: 2480 Poppy Dr

Burlingame, CA 94010

Telephone No.: (650) 218 4000

24. ACKNOWLEDGEMENT OF EXHIBITS

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

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

APPROVED BY
Marin Energy Authority:

By: 
Executive Officer

By: 
Chairman

CONTRACTOR:

By: 
Name: V. Rory Jones, President, PlanetEcosystems, Inc.

MEA COUNSEL REVIEW AND APPROVAL (Only required if any of the noted reason(s) applies)

REASON(S) REVIEW:

- Standard Short Form Content Has Been Modified
- Optional Review by MEA Counsel at Marin Energy Authority's Request

MEA Counsel: _____

Date: _____

**EXHIBIT A
SCOPE OF SERVICES**

Overview

This Statement of Work for Phase 2 outlines the services to be performed by PlanetEcosystems, Inc. (PEI) in support of Marin Energy Authority's (MEA's) *Energy Efficiency Program for 2013-2014* (EEP), as approved by the California Public Utilities Commission on November 18, 2012. This description of PEI services reflects the program set out in the Program Implementation Plan submitted to the California Public Utilities Commission, and are addressed herein in the following areas:

Web Portal Services: Web services and tools supporting several of MEA's EEP sub-programs; Single Family, Multi-Family, and Finance sub-programs.

Demand Reduction Activities for the Single Family Sub-Program: Activity, technology and management of the four components of the EEP's Single Family sub-program; Direct Engagement, Neighborhood Consultations, High-Load Consultations, and School Program initiatives.

Demand Reduction Activities for Other MEA Sub-Programs: Limited outreach engagement activities supporting MEA's Multi-Family and Finance sub-programs.

These services will be delivered in an integrated fashion across MEA EEP sub-programs for superior program outcomes; demand reduction, consumer savings and other benefits, etc. Moreover, these services will be configured to support and complement the Energy Upgrade California (EUC) program in the MEA service area; substantively reducing the complexity and other consumer barriers to whole-house, basic, and future flex package benefits, while leveraging EUC outreach, branding and other consumer engagement activities.

Web Portal Services

This description of web portal services sets out the various services that will be provided in support of MEA's EEP sub-programs. These services provide a consistent basis and platform for outreach and engagement activities, as well as support certain specific demand reduction initiatives and activities.

A key technology underlying several aspects of PEI's services and related tools is utility system optimization, a process by which utility consumers receive much more from their utility systems (electric, gas and water) for markedly lower costs and consumption. In this approach, consumers are able to manage their utility systems and service supply in a much more rapid, easily understood way than ever before. In short, the approach uses each consumers wants and needs (such as utility bill savings, improved living conditions, lower carbon footprint, etc.) to help them manage and optimize their utility systems. Further, other barriers to consumer action (such as finding contractors, rebates, deals, etc.) are minimized by the technology, which also facilitates deep ongoing relationships to be developed with each consumer.

By maximizing their upside, while minimizing the effort and expense need they need to take action, MEA consumers will both receive superior value and savings from MEA services, and will be maximally inspired to undertake demand reduction actions, such as:

- Early equipment retirement/replacement to lower consumption (e.g. replace fridges)
- Equipment improvements to lower consumption (e.g. installing insulation)
- Behavioral changes to lower consumption (e.g. turning off PCs when not in use)

- Equipment installation to lower service demand (e.g. installing solar panels)

The **technology platform** providing MEA's web portal solution supports EEP sub-programs and their respective stakeholders through the following portals and related tools:

Web Portals

Principal stakeholders gain access to relevant tools and services through portals to the PEI technology platform; each portal is designed for the needs of each principal stakeholder, as described below:

Consumer Portal: An integrated set of tools accessible by MEA customers. This portal provides consumers with the following tools, described subsequently below; a Utility System Optimizer to assist with easy system management and reconfiguration planning; several Marketplace and other tools that enable action by connecting customers to qualified service and equipment vendors, financing, and applicable incentives; and Consumer Relationship tools utilizing social networking and other mechanisms to engage consumers and develop ongoing relationships with them.

Vendor Portal: A set of tools accessible to approved MEA EEP service providers, such as contractors, auditors, Energy Advisors, etc., to promote a consistent and efficient provision of service to consumers. With these tools, contractors and others will have the ability to securely upload company/other material, manage their MEA-related consumer obligations, and even receive information sent by consumers.

Program Administration: MEA program staff will have secure access to on-line tools to administer the MEA EEP. Administrative tools and services include securely accessed custom and ad-hoc reporting, dashboard, analytic tools, and a content management system that provides for information updates and database maintenance.

Site Management and Operations:

PEI provides management and operations activities for the web portal technology platform. This includes website hosting by PEI; security, data management, software and system updates, technical support, and related services.

Key Web Portal Tools

The following suite of tools are made available through the web portals described above, and are designed to provide a consistent service across all stakeholders (consumers, vendors, program administrators, etc.); serving the underlying goals of maximizing consumer benefits, making the process of taking action easy, and thereby inspiring the greatest demand reduction actions.

Utility System Optimizers: As outlined above, these tools prescribe the optimal actions for each consumer, allowing them to capture the most from their utility systems according to their wants and needs. Versions of this technology are manifested in three tools, two of which will be utilized within the web portals described previously:

Campaign Optimizer: This tool is used to compile mass-customized outbound messaging to engage certain groups of consumers; note that all messaging will be developed with full participation and approval of MEA management and marketing. This tool utilizes consumption and other information to remotely derive utility system optimization plans for each consumer engaged; the output information, comprising the likely most attractive outcome for each consumer, is utilized in outbound engagement messaging.

Consumer Optimizer: Pre-filled with each consumer's estimated information, this short, quick tool is available to every consumer to develop optimized action plans, together with the estimated net upside for each consumer to motivate action. This tool is available on the web, and may be used on a tablet.

'Pro' Optimizer: Designed for professionals, such as auditors, contractors, and skilled consumers, this tool's more detailed review of consumer utility systems is very effective for consumers with 'big-ticket' opportunities; in-person advice provides elevated consumer reassurance and confidence.

Service Provider Marketplaces: Connects consumers with service vendors; this tool can refer any consumer to any qualified service provider (HVAC, electrician, etc.), passing along relevant information, bids and scheduling as requested by the consumer. The tool also includes features that allow narrowing down referrals to providers that are relevant to each consumer's plans.

Finance Provider Marketplaces: Helps consumer find financing; choosing between types and vendors (bank, equity credit, PACE, OBF, etc.); passing along information as requested, and includes features that allow a narrowing down to financing that is relevant to the consumer's plans.

Equipment Provider Marketplaces: Connects consumers with vendors of equipment; the tool also includes features that allow narrowing down to equipment and providers that are relevant to each consumer's plans.

Rebate and Incentive Tools: Helps find incentives and rebates; includes features that allow a narrowing down to those that are relevant to each consumer's plans. Automatic rebate and incentive submissions conducted where system capability may be readily set up.

Social Competition & Gaming: Engaging social network-based tools and features that leverage known gamification techniques to bring consumers to the program and motivate action.

Consumer Management Tools: Functionality that helps consumers get a better understanding of their utility bills, manage their projects and goals, and develop a trusted relationship with MEA over the web. Key functions include alerts (highlighting new gains/opportunities, changes in utility status, pricing, etc. and other changes), bill analysis and insights and other functions.

Demand Reduction Activities for the Single Family Sub-Program

PEI will be the primary contractor to MEA for delivery of the four activities of the Single-Family Utility Demand Reduction sub-program. Service descriptions and budget amounts are provided below (note that a budget summary is provided in Appendix A). PEI will provide all Program Management and Technology Services, and will engage, subcontract fulfillment and manage Outreach Activities.

Program Management:

Services: PEI will manage all activities necessary to fulfill MEA's Single-Family Demand Reduction sub-program. This includes engagement and management of outreach and technology platform vendors; website design and integration; education/training for MEA web portal stakeholders including consumers, contractors, administrators, and others; planning and implementation services for technology expansion for additional programs which may include OBR, PACE, Standard Offer Procurement, etc.; and regulatory support.

Deliverable(s): Partner coordination, stakeholder training, technical assistance, reporting

Costs: Program Management costs will be \$42,000.

Total Labor hours: 280

Hourly rate: \$150/hr
Program Manager: \$150/hr for 280 hours

Technology Services:

Services: The Single-Family Demand Reduction sub-program will utilize the services described above in *Web Portal Services*; comprising the three web portals and their tools, supporting the respective outreach engagement activities.

Deliverable(s):

- 1) Software-as-a-service (SaaS), includes use of software (as per PEI Web Portal Services Table), systems operations, hosting, maintenance, hardware, software updates, and stakeholder training.
- 2) Configuration of core and Single-family sub-program functionality features to be implemented including social network tools, consumer management tools, on-line applications, forms setup for low carbon preference, finance marketplace, and content management.
- 3) Technical support for data maintenance and reporting to include utility rates, contractor directory, property, rebates, finance data, and program reporting.

Costs: PEI Technology Service costs for above deliverables include:

1. Subscription (recurring) fees: paid on a monthly basis as per technology the rollout schedule
2. Configuration of remaining features not implemented in Phase 1 and Tech Support for Data Maintenance fees (non-recurring)

Subscription Fees for Single-Family SaaS (Recurring) = \$69,000:

Core License: \$5,000/month

Single-Family License: \$1,900/month

Configuration and Data Maintenance Fees (Non-Recurring) = \$46,200:

Total Labor hours: 308

Hourly rate: \$150/hr

Software Configuration Engineer: \$150/hr for 120 hours

Data Analyst: \$150/hr for 128 hours

Product Manager: \$150/hr for 60 hours

Outreach Activities:

Each of the four engagement activities of MEA's Single-Family Demand Reduction sub-program are described in turn, below; addressing activities, deliverables, and costs:

Direct Engagement

Activity: Pilot of mass-customized out-bound Energy Report mailings to specific consumers, based on the output of the Campaign Optimizer tool. Mailings may be delivered in hard-copy form within existing out-bound monthly envelopes or eMail, as agreed with MEA. The initial pilot offering will focus on 20,000 homes. The outcomes of the initial pilot will inform potential future ramp up of this program offering. Additional funding will be set aside to evaluate the pilot effort; however, no funds can be invoiced against the evaluation line item until the proposed evaluation plan has been approved by MEA staff.

Deliverable(s): Energy Reports initially focusing on 4,380 consumers.

Costs: Fulfillment costs include print, production, delivery, etc. using third party vendors

Cost per Utility Management Report (UMR) = \$0.50/Energy Report.

Total UMRs: 20,000 in 2013

Estimated total cost: \$10,000 for outbound mailer task fulfillment.

Neighborhood Consultations

Activity: Door-to-door canvassing by Energy Advisors (EAs), equipped with utility system optimizer technology on tablets, to specific neighborhoods and households (based on their pre-estimated demand reduction potential). Integrating the web tool into the programs of social groups formed with the goal of reducing greenhouse gas emissions. Likely sub-contract partners include Rising Sun and/or Resilient Neighborhoods. EAs will use optimizer tools (as described previously) to assist consumers in capturing the benefits of undertaking demand reduction measures.

Deliverable(s): On-Line Action Plans (derived via "Consumer Optimizer") to 100 homes in 2013.

Costs: Cost per consumer canvassed estimated to be \$25. Estimated total cost: \$2,500.

High Load Consultations

Activity: Extended in-home 'diagnostic' visits by Advanced EAs (AEAs), also equipped with utility system optimizer technology on tablets, to specific households (based on their pre-estimated demand reduction potential). The AEAs will use the 'Pro' utility system optimizer tool to advise consumers of the benefits and ease of optimizing their utility systems. Likely sub-contract partners include certain Marin and City of Richmond based energy auditors, and/or Rising Sun.

Deliverable: Energy Audits (derived via "Pro Optimizer") to 107 plus homes in 2013

Costs: Cost per consumer diagnosed/audited estimated to be \$140. Estimated total cost: \$15,000.

Schools Program

Activity: Engaging Grade 7-12 students in the Marin and City of Richmond public school system with a variant of the drop-ship install and class-room program provided nationally by Resource Action Programs, Inc. The students will utilize PEI's 'Consumer Tool' to generate Action Plans in a program developed with teachers; including social features for classroom and intra-school competitions.

Deliverable(s): Classroom instruction guides and materials, installation kit for student homes, on-line action plans, competition framework

Costs: \$12,200 to reach 2 schools and a total of 1,225 students in Marin and City of Richmond schools in 2013. An additional estimated \$24,500 to pay for 'kits' for these students, containing light energy efficiency measures to be installed at the home.

Demand Reduction Activities for the Other MEA Sub-Programs

PEI will also provide web-portal services in support of MEA's Multifamily, and Finance Sub-Programs. Service descriptions and budget amounts are provided below (note that a budget summary is provided in Appendix A).

Multi-Family Sub-Program

Program Management:

Services: PEI will manage MEA's Multi-Family sub-program web portal technology.

Deliverable(s): Partner coordination, stakeholder training, technical assistance, reporting

Costs: Program Management costs will be \$4,200 over the contract period.

Total Labor hours: 28

Hourly rate: \$150/hr

Program Manager: \$150/hr for 28 hours

Technology Services:

Services: The Multi-Family Demand Reduction sub-program will utilize the services described above in *Web Portal Services*; comprising the web portals and their tools.

Deliverable(s):

- 1) Software-as-a-service (SaaS), includes use of software (as per PEI Web Portal Services Table), systems operations, hosting, maintenance, hardware, software updates, and stakeholder training.
- 2) Configuration of Multi-family sub-program specific functionality features to be implemented including multi-family forms setup for all customer segments, and property owner/tenant profiles.
- 3) Technical support for data maintenance and reporting to include multi-family contractor directory, multi-family rebates, and multi-family sub-program reporting.

Costs: PEI Technology Service costs for above deliverables include:

1. Subscription (recurring) fees: paid on a monthly basis as per technology the rollout schedule
2. Configuration and Tech Support for Data Maintenance fees (non-recurring)

Subscription Fees for Multi-Family SaaS (Recurring) = \$13,500:

Multi-Family License: \$1350/month

Configuration and Data Maintenance Fees (Non-Recurring) = \$3,600:

Total Labor hours: 24

Hourly rate: \$150/hr

Software Configuration Engineer: \$150/hr for 10 hours

Data Analyst: \$150/hr for 8 hours

Product Manager: \$150/hr for 6 hours

Finance Sub-Program

Program Management:

Services: PEI will manage MEA's Finance sub-program web portal technology.

Deliverable(s): Partner coordination, stakeholder training, technical assistance, reporting

Costs: Program Management costs will be \$1,200 over the contract period.

Total Labor hours: 8

Hourly rate: \$150/hr

Program Manager: \$150/hr for 8 hours

Technology Services:

Services: The Finance sub-program will utilize relevant services described above in *Web Portal Services*; as integrated within the three web portals and their tools.

Deliverable(s):

- 1) Software-as-a-service (SaaS), includes use of software (as per PEI Web Portal Services Table), systems operations, hosting, maintenance, hardware, software updates, and stakeholder training.
- 2) Configuration of finance sub-program functionality to be implemented including administrative support features and on-line applications.
- 3) Technical support for data maintenance and reporting of finance and project data.

Costs: PEI Technology Service costs for above deliverables include:

1. Subscription (recurring) fees: paid on a monthly basis as per technology the rollout schedule
2. Configuration and Tech Support for Data Maintenance fees (non-recurring)

Subscription Fees for Finance SaaS (Recurring) = \$5,500:

Finance License: \$550/month

Configuration and Data Maintenance Fees (Non-Recurring) = \$1350:

Total Labor hours: 9

Hourly rate: \$150/hr

Software Configuration Engineer: \$150/hr for 3 hours

Data Analyst: \$150/hr for 4 hours

Product Manager: \$150/hr for 2 hours

Services Functionality & Roll-Out Schedule

For Phase 2, PEI will provide the Technology Services described above, and associated Program Management, for the Single Family, Multi Family, and Finance sub-programs as depicted in the table below.

	Function	Key Component	Description	Sub-Program		
				SF	MF	FIN
Cross Program Web Portal Services	Consumer	Consumer Optimizer	2 minute' on-line optimizer for prioritization of water/energy actions	Feb	Feb	Jun
		Energy & Water Tips	Tips for health/comfort, maintenance, DIY, etc.	Feb	Feb	Feb
		Contractor Marketplace	Qualified contractors directory	Feb		
		Equipment Provider Marketplace	Consumer access to desired equipment providers	Mar		
		Rebates & Incentives Finder	Rebates and incentives available to customers	Feb		
		Finance Marketplace		Apr	Apr	Jul
		Social Network Tools	Neighborhood comparisons of similar structures, community competitions, contactor reviews, etc.	May		
	On-line Applications	On-line consumer applications for finance and rebates	Apr	Apr	Jul	
	Contractor	Pro Optimizer	Detailed home energy assessment for prioritization of water/energy actions	Feb		
		Contractor Resources	Information for local vendors	Feb		
Portal registration		Input company credentials; access portal resources	Feb	Feb	Jul	
Administrative	Reporting/Dashboard	Tracking of projects/finance/energy/carbon, etc.	Feb	Feb	Feb	
	Content Management System (CMS)	Content/data management, customer support	Mar			
Outreach Activities	Direct (Outbound) Engagement	Campaign Optimizer	Mass custom Energy Reports to target homes	Jul		
	Neighborhood Consultations	Consumer Optimizer	Energy Advisors use 2 minute tool for advising consumers	Jul		
	High Load Consultations	Professional Optimizer	In home 'diagnostic' visits by advanced Energy Advisors	Jul		
	School Challenge	Cons Optimizer/Energy Kits	Drop ship install, curriculum, and student action plans	Jul		

Exhibit B Budget Summary and Projected Payment Schedules

Task	Subtask	Unit	Unit count	Unit cost	Total amount	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
Technology Services	Core Licensing	Month	10	\$ 5,000	\$50,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
	Single Family Licensing	Month	10	\$ 1,900	\$19,000	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900
	Configuration and Tech Support Services	Hours	308	\$ 150		47	47	47	47	47	47	15	15	15	15
		Total Cost			\$46,200	\$6,990	\$6,990	\$6,990	\$6,990	\$6,990	\$2,250	\$2,250	\$2,250	\$2,250	\$2,250
	Program Management	Hours	280	\$ 150		28	28	28	28	28	28	28	28	28	28
	Total Cost			\$42,000	\$4,200	\$4,200	\$4,200	\$4,200	\$4,200	\$4,200	\$4,200	\$4,200	\$4,200	\$4,200	
Total					\$157,200	\$18,090	\$18,090	\$18,090	\$18,090	\$18,090	\$13,350	\$13,350	\$13,350	\$13,350	\$13,350
Direct Engagement	Outbound Mailers	Report	20,000	0.50							3333	3333	3333	3333	3333
		Total Cost			\$10,000					\$1,667	\$1,667	\$1,667	\$1,667	\$1,667	\$1,667
	Neighborhood Canvassing	Home	100	\$ 25						17	17	17	17	17	17
		Total Cost			\$2,500					\$417	\$417	\$417	\$417	\$417	\$417
	High Load Consultations	Home	107	\$ 140						18	18	18	18	18	18
		Total Cost			\$14,980					\$2,497	\$2,497	\$2,497	\$2,497	\$2,497	\$2,497
Schools Program	Schools	Kits	2	\$ 6,100	\$12,200						\$2,033	\$2,033	\$2,033	\$2,033	\$2,033
		Total Cost	1,225	\$ 20	\$24,500					204	204	204	204	204	204
		Total Cost			\$64,180					\$4,083	\$4,083	\$4,083	\$4,083	\$4,083	\$4,083
Total									\$10,697	\$10,697	\$10,697	\$10,697	\$10,697	\$10,697	
Multifamily	Program Management	Hour	28	\$ 150		3	3	3	3	3	3	3	3	3	3
		Total Cost			\$4,200	\$420	\$420	\$420	\$420	\$420	\$420	\$420	\$420	\$420	\$420
	Multifamily licensing	Month	10	\$ 1,350	\$13,500	\$1,350	\$1,350	\$1,350	\$1,350	\$1,350	\$1,350	\$1,350	\$1,350	\$1,350	\$1,350
	Configuration and Tech Support Services	Hour	24	\$ 150		2.40	2.40	2.40	2.40	2.40	2.40	2.40	2.40	2.40	2.40
	Total Cost			\$3,600	\$360	\$360	\$360	\$360	\$360	\$360	\$360	\$360	\$360	\$360	
Total					\$21,300	\$2,130	\$2,130	\$2,130	\$2,130	\$2,130	\$2,130	\$2,130	\$2,130	\$2,130	\$2,130
Financing	Program Management	Hour	8	\$ 150		0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80
		Total Cost			\$1,200	\$120	\$120	\$120	\$120	\$120	\$120	\$120	\$120	\$120	\$120
	Finance Licensing	Month	22	\$ 550	\$5,500	\$550	\$550	\$550	\$550	\$550	\$550	\$550	\$550	\$550	\$550
	Configuration and Tech Support Services	Hour	9	\$ 150		0.90	0.90	0.90	0.90	0.90	0.90	0.90	0.90	0.90	0.90
	Total Cost			\$1,350	\$135	\$135	\$135	\$135	\$135	\$135	\$135	\$135	\$135	\$135	
Total					\$8,050	\$805	\$805	\$805	\$805	\$805	\$805	\$805	\$805	\$805	\$805
Total Budget					\$250,730	\$21,025	\$21,025	\$21,025	\$21,025	\$31,722	\$26,982	\$26,982	\$26,982	\$26,982	\$26,982

Exhibit C

Minimum Terms

- 1.** Use of the Service is limited to the end user's personal, non-commercial use.
- 2.** Title to and ownership of the Software and Service remain with Company and its suppliers.
- 3.** The end user may not (i) modify, copy or create derivative works based on the Service; (ii) frame or mirror any content forming part of the Service; (iii) reverse engineer the Software; (iv) interfere with, disrupt, alter, translate, or modify the Service or any part thereof, or create an undue burden on the Service or the networks or services connected to the Service, including without limitation, any external websites that are linked to via the Service; (v) introduce software or automated agents or scripts to the Service so as to produce multiple accounts, generate automated searches, requests and queries, or to strip or mine data from the Service; (f) cover or obscure any page or part of the Service via HTML/CSS, scripting, or any other means; or (g) make the Service available to any third party as part of any time-sharing or service bureau arrangement.
- 4.** All express and implied warranties regarding the Service by Contractor and its suppliers are disclaimed.
- 5.** All consequential, special, and indirect damages are disclaimed on behalf of Contractor and its suppliers.
- 6.** Contractor is expressly named as an intended third party beneficiary of the terms of service, with the right to enforce its terms directly against the end user.

Exhibit D
Sample Terms of Service

Read these terms and conditions ("Agreement") thoroughly before accessing or using this website or any service or tool it contains including, but not limited to, any information presented, calculators, calculations, descriptions, or any other material contained or to which a referral is made (collectively, the "Service"). All accessing of the Service is governed by this Agreement. If you ("User") do not agree to this Agreement, you should immediately cease all accessing and usage of the Service.

This website is provided by Marin Energy Authority ("Provider"), and contains Tools developed, supplied and maintained by PlanetEcosystems, Inc. and other organizations.

To the fullest extent permitted by applicable law, Provider and any of its service providers including, but not limited to, PlanetEcosystems, Inc. reserve the right, at their sole discretion, at any time, to modify this Agreement in a manner consistent with applicable laws and regulations. Modifications shall become effective thirty days after being posted or dispatch of an email notifying you of such modifications. User's continued accessing of this website and/or any use of any Tool it contains after notice of such amendments constitutes an acknowledgement and acceptance of Agreement and its modifications. It is highly recommended that User checks this Agreement for any changes prior to any accessing and/or usage of the Service.

1. Notice Required By The Information Practices Act

Any personal information collected from you by the Service is subject to the protections established by the California Information Practices Act of 1977 ("Information Practices Act") (Civil Code, sections 1798 et seq.). Personal information includes, but is not limited to, your name, social security number, home address, telephone number, and energy usage.

Provider and associated local energy programs and service providers, provides local residents and business owners with financing and solutions for energy and water efficiency retrofits. The purpose of the Service is to make it easier for applicable utility consumers to get information about the programs and solutions relating to their utility systems, and then, if User specifically requests, to help connect them with contractors and/or vendors to conduct the work and financing for the energy and water efficiency-related improvements. Participation is voluntary. Therefore, if you submit information into the Service, including information that may be considered personal as defined by the Information Practices Act, you agree and acknowledge that you are providing such information voluntarily, and that you are consenting to the disclosure of your personal information subject to the terms and conditions provided in this Agreement.

Pursuant to Section 1798.17 of the Information Practices Act, you are hereby provided the following notice:

1. This information is being requested by Provider.
2. The Provider is responsible for the system of records and shall, upon your request, inform you regarding the location of your records and the categories of any persons who use the information in those records. You have a right to access records with your personal information maintained by Provider.
3. Provider is authorized to maintain your information by California Streets and Highways Code sections 5898.20, et. Seq.
4. Each item of information you submit to Provider is entirely voluntary. This program is optional, and designed to assist you with making and financing energy and water efficiency improvements to your property.
5. The potential consequences of not providing all or any part of the requested information in the Service include but are not limited to; an inability to provide you the best information, and an inability to properly connect you with contractors, utilities, financial institutions and other participating partners to facilitate your energy and water efficiency upgrade project. You may be able to benefit from programs and incentives not provided by Provider contacting the issuing entities directly, outside of the Service.
6. The principal purposes for collecting this information ("Principal Purposes") include but are not limited to:

1. providing you with information about energy and water efficiency system upgrades, incentives, potential savings, contractors and financing;
2. connecting you directly with contractors, utilities, financial institutions and other participating partners to facilitate your energy and water efficiency system upgrade project;
3. reporting program information for activities funded by the American Recovery and Reinvestment Act of 2009 to the U.S. Department of Energy and other similar programs;
4. sharing program information with certain other entities including, state and local governments and related agencies, research organizations and others;
5. monitoring, verification and evaluation of energy and water efficiency system projects;
6. monitoring the expenditure of public funds for fraud, waste and abuse; and
7. research and analysis of the types and effectiveness of energy and water efficiency system upgrade projects;

Participating in Provider programs and submittal of your personal information into the Service requires your voluntary consent to disclose your personal information for the Principle Purposes described above, at any time without limitation after you submit the information, except that your personal information will only be disclosed to those specific contractors or financial institutions which you expressly authorize by further specific consent unless compelled by a court of law.

2. License Grant

Subject to the terms and conditions of this Agreement, Provider grants you a non-exclusive, non-transferable license to use the Service solely for your personal, non-commercial use.

3. Restrictions.

You may not (i) modify, copy or create derivative works based on the Service; (ii) frame or mirror any content forming part of the Service; (iii) reverse engineer or otherwise derive the software underlying the Service; (iv) interfere with, disrupt, alter, translate, or modify the Service or any part thereof, or create an undue burden on the Service or the networks or services connected to the Service, including without limitation, any external websites that are linked to via the Service; (v) introduce software or automated agents or scripts to the Service so as to produce multiple accounts, generate automated searches, requests and queries, or to strip or mine data from the Service; (f) cover or obscure any page or part of the Service via HTML/CSS, scripting, or any other means; or (g) make the Service available to any third party as part of any time-sharing or service bureau arrangement.

4. Warranties

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER AND ANY OF ITS SERVICE PROVIDERS INCLUDING, BUT NOT LIMITED TO, PLANETECOSYSTEMS, INC. MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE USE OR THE RESULTS OF THE SERVICE AND DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. THE SERVICE IS PROVIDED ON AN "AS IS" AND ON AN "AS AVAILABLE" BASIS. CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE EXCLUSION SET FORTH ABOVE MAY NOT APPLY TO YOU.

5. Limitation of Liability

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PROVIDER NOR ANY OF ITS SERVICE PROVIDERS INCLUDING, BUT NOT LIMITED TO, PLANETECOSYSTEMS, INC. OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AFFILIATES, AGENTS, SPONSORS, ENDORSERS, ADVISORS, LICENSORS, OR ANY OTHER PARTY INCLUDING THOSE INVOLVED IN CREATING, PRODUCING, OR DISTRIBUTING THE SERVICE AND/OR RELATED MATERIAL WILL BE HELD RESPONSIBLE OR LIABLE, DIRECTLY OR INDIRECTLY, FOR INCORRECT INFORMATION, TYPOGRAPHICAL ERRORS, ACCURACY, CONTENT, TIMELINESS, COMPLETENESS, LEGALITY, RELIABILITY, AVAILABILITY, QUALITY, SUITABILITY OR DECENCY OF ANY INFORMATION, ADVICE, CONTENT, MATERIAL, SERVICE, PRODUCT OR MERCHANDISE CONTAINED ANYWHERE ON THE SERVICE OR REFERRED TO BY SAME.

NEITHER PROVIDER NOR ANY OF ITS SERVICE PROVIDERS SHALL BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST

PROFITS, LOSS OF REVENUE, LOSS OF GOODWILL OR LOSS OF USE, ARISING OUT OF OR RELATED TO THE SERVICE OR THE INFORMATION CONTAINED IN IT OR REFERRED TO BY IT, WHETHER SUCH DAMAGES ARISE IN CONTRACT, NEGLIGENCE, TORT, UNDER STATUTE, IN EQUITY, AT LAW, OR OTHERWISE, EVEN IF PROVIDER AND/OR ANY OF ITS SERVICE PROVIDERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION APPLIES EVEN IF IT CAUSES ANY REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE. AMONG OTHERS, SUCH DAMAGES MAY RESULT OR ARISE FROM; (A) THE USE OF AND RELIANCE ON INFORMATION PROVIDED THE SERVICE; (B) THE INABILITY TO USE THE SERVICE; (C) MISTAKES, OMISSIONS, INTERRUPTIONS, SUSPENSION, TERMINATION, DELETION OF FILES OR EMAIL, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE WITH RESPECT TO THE SERVICE, INCLUDING WITHOUT LIMITATION THOSE THAT RESULT FROM ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION, OR UNAUTHORIZED ACCESS TO RECORDS, PROGRAMS, OR SERVICE; (D) MERCHANDISE, PRODUCTS, OR SERVICES RECEIVED THROUGH OR ADVERTISED ON THE SERVICE OR AFFILIATED PROPERTIES AND MERCHANDISE, PRODUCTS, OR SERVICES RECEIVED THROUGH OR ADVERTISED OR IN ANY WAY PRESENTED ON ANY LINKS PROVIDED ON THE SERVICE OR ON THOSE AFFILIATED PROPERTIES; (E) INFORMATION OR ADVICE RECEIVED THROUGH OR ADVERTISED ON THE SERVICE OR ITS AFFILIATED PROPERTIES, AND INFORMATION OR ADVICE RECEIVED THROUGH OR ADVERTISED ON ANY LINKS PROVIDED ON THE SERVICE OR ON AFFILIATED PROPERTIES; AND (F) ANY INFORMATION, DATA, TEXT, MESSAGES AND OTHER MATERIALS THAT USER EMAILS, POSTS, UPLOADS, REPRODUCES, TRANSMITS OR OTHERWISE DISTRIBUTES USING THE SERVICE AND/OR RELATED SYSTEMS. BECAUSE SOME JURISDICTIONS DO NOT ALLOW CERTAIN RESTRICTIONS, EXCLUSIONS OR LIMITATIONS OF LIABILITY, IN SUCH JURISDICTIONS LIABILITY IS LIMITED TO THE FULLEST EXTENT PERMITTED BY LAW. IF USER IS DISSATISFIED WITH ANY PORTION OF THE SERVICE, OR WITH ANY PART OF AGREEMENT, USER'S SOLE REMEDY IS TO DISCONTINUE USE OF THE SERVICE.

6. Indemnification

To the fullest extent permitted by applicable law, User agrees to indemnify and hold Provider and its service providers including, but not limited to, PlanetEcosystems, Inc. their respective parents, subsidiaries, affiliates, directors, officers and employees, harmless from any claim or demand, including all fines, suits, proceedings, claims, causes of action, demands, losses or liabilities of any kind or of any nature, and including reasonable attorneys' fees and costs, made by any third party due to or arising out of User's use of the Service, violation of this Agreement, or infringement by User, or other user of the Service using User's facilities, of any intellectual property or any other right of any person or entity.

7. Third-Parties

The Service may include links to other websites on the Internet that are owned and operated by third parties. User acknowledges that Provider and its service providers including, but not limited to, PlanetEcosystems, Inc. are not responsible for any content related to or product obtained from any third-party site including, but not limited to, its correctness, accuracy, timeliness, completeness, legality, reliability, availability, quality, suitability or decency. The User should contact the administrator or webmaster for those third-party websites if User has any concerns regarding such links or the content located thereon. The User's use of third-party websites is subject to the terms and conditions of each of those websites; Users are encouraged to review those terms and conditions. User acknowledges that any reliance on representations and warranties provided by any third party shall be at User's own risk. In addition, Provider and its service providers make no warranties or representations whatsoever with regard to information obtained from third party data sources and used by the Service; User acknowledges that reliance on such information is at User's own risk. Provider and its service providers make no warranties or representations as the accuracy of the information supplied by or to any third parties.

8. Governing Law

This Agreement shall be construed and interpreted according to the substantive law of California and all disputes will be resolved in the state and federal courts located in Marin County, California. Provider and its service providers including, but not limited to, PlanetEcosystems, Inc. make no representation that the Service are appropriate, legal or available for use in other locations. The User is responsible for compliance with any such laws. User may not use the Service in any way that violates state, federal, or international laws, regulations or other government requirements. The User further agrees not to use the Service to transmit any material that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national, or international law or regulation.

9. Modifications and Interruptions

Provider and its service providers including, but not limited to, PlanetEcosystems, Inc. reserve the right to modify or discontinue the Service, in whole or in part, at any time without notice to the User. Provider and its service providers shall not be liable to User or any third party should Provider and/or its service providers exercise their right to modify or discontinue the Service. User acknowledges and accepts that Provider and its service providers do not guarantee continuous, uninterrupted or secure access to the Service, and operation of the Service may be interfered with or adversely affected by numerous factors or circumstances outside its control.

10. Intellectual Property

The Service and all intellectual property rights in the Service, all content included or available on the Service including, but not limited to, trademarks, calculations, algorithms, website design, Tool design, text, graphics, interfaces, and the selection and arrangements thereof ("Content") and any of the Provider's or its service providers' proprietary technology, including software, hardware, products, processes, algorithms, user interfaces, know-how, technologies, designs and other tangible or intangible technical material or information made available to you or used by Provider in providing the Service ("Technology") are the property of Provider and/or its service providers and/or third parties. Any use of such materials including, but not limited to, reproduction for purposes other than those noted herein, modification, distribution, or replication, any form of data extraction or data mining, or other commercial exploitation of any kind, without prior written permission of an authorized officer of Provider and/or its service providers and/or third parties, as appropriate, is strictly prohibited. Except as expressly set forth herein, no express or implied license or right of any kind is granted to you regarding the Service, the Content or the Technology, or any part thereof, including any right to obtain possession of any source code, data or other technical material relating to the Technology. All rights not expressly granted to you are reserved to Provider.

11. Entity

You represent and warrant that you are an actual person, of eighteen years of age or older, that you possess the right to provide the information submitted, and that the information submitted is accurate, complete and truthful.

12. No Recourse against Constituent Members of Provider:

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

13. Privacy

Provider and its service providers will comply with the requirements of California Public Utilities Commission Decision 12-08-045.

13. Notices

You are responsible for updating your data to provide Provider with your most current email address. In the event that the last email address you have provided to Provider is not valid, or for any reason is not capable of delivering to you any notices required by this Agreement, Provider's dispatch of the email containing such notice will nonetheless constitute effective notice of the changes described on the notice. Any notice provided to Provider pursuant to this Agreement should be sent to Marin Energy Authority, 781 Lincoln Ave suite 300, San Rafael, CA 94901.

14. General

This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersede and merge all prior discussions between the parties with respect to such subject matters. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and

enforceable to the maximum extent permitted by law. You acknowledge and agree that Planet Ecosystems is a third party beneficiary of this Agreement.

Exhibit E

Sample Privacy Policy

Your privacy is a critical concern for Provider and its service providers, including PlanetEcosystems, Inc. Except as set forth in the Privacy Policy, under no circumstances will Provider and its service providers sell or share any personal information about you to or with any other person or organization except: as expressly authorized by you or as may be required by law or court order. This Privacy Policy, as set forth below, describes the standards we adhere to in handling information about you, your property, and your use of any of the Service. Capitalized terms not defined herein have the meaning ascribed to such term in the Terms of Service.

1. Information Collected

Personal Information

This website may prompt a user of the Service, depending on the user's actions and requests, for personal or secure login information. For example, when a user attempts to store updates to their property characteristics or to save their on-line project files for later retrieval, the necessary information to create or access a password-protected account for that user may be requested. Additionally, when such an active account user requests and authorizes project files or other information to be released to one or more third-party vendors, the user may be prompted to provide more personal information for the purpose of facilitating such contact with those vendors.

Examples of the types of personal and property-related information that our website may collect include:

1. Email Address(es)
2. Account User Name(s)
3. Personal Password(s)
4. Names
5. Site or Property Address(es)
6. Contact Phone Number(s)
7. Type and Physical Characteristics of Buildings on Site or Property
8. Tax Lot or Other Property Identifying Information
9. Property Use Characteristics
10. Size of Site or Property

Technical information

We collect and track certain technical information to promote a beneficial experience. We may also use technical information to store your preferences and make future visits to this website quicker for you.

1. Cookies – a cookie is a small file stored on a user's computer that contains information about the user. We use either session ID cookies (which terminate once a browser is closed) or persistent cookies (which are small text files stored on a user's hard drive for an extended period of time). Cookies allow us to understand how and when you use our website, but they cannot be used to track personal information such as email address or phone number. Cookies also allow us to store the personal preferences that you set during each visit to our sites which can speed up your future visits.

2. Log files – This website uses log files to track how it is being accessed and used. Log files track anonymous user information such as IP addresses, browser types, Internet service providers, referring and exit pages, platform type, date and time stamps, and number of clicks to, from, and within our sites. Web logs are tracked only on Provider servers and those of our service providers and do not place anything on your computer.

2. How Your Information is Used

We may share your information with our service providers. You expressly consent to the sharing of your information with our service providers for the sole purpose of providing services to you.

How we share some information with contractors

When you submit your information to this website and you authorize and request that it is shared with contractors and/or vendors, your information is used to match you with, and is transmitted to, contractors and/or vendors who you specifically select who can best serve your needs to facilitate their direct contact with you.

How we internally use technical information to improve performance

This website uses technical information such as cookies and web logs to understand how our websites are being used and their effectiveness in promoting energy demand reduction and water efficiency. We can also use cookies to retain your preferences so that when you return to this website, you can navigate more easily without having to re-enter certain information. Additionally, by analyzing the data that cookies and web logs provide, we can determine how to improve our web sites and outreach campaigns to better serve those using this website.

Vendor Communications

By submitting information to this website and by expressly selecting specific contractors and/or vendors through this website, you consent to those contractors and/or vendors contacting you using the contact information you may have provided. In order to stop such communications, you must contact those contractors and/or vendors directly and request that they stop communicating with you.

If you decide to communicate with, and/or purchase products and/or services from any contractor and/or vendor selected by you and who contacted you as a result of an introduction by this website, all further communications with those contractors and/or vendors are not covered under this policy. You should thoroughly read the Privacy Policy of each contractor and/or vendor you select for an introduction in order to make sure that you are comfortable with their policies.

3. Privacy Rules

Provider and its service providers will comply with the requirements of California Public Utilities Commission Decision 12-08-045.



December 5, 2013

TO: Marin Energy Authority Board

FROM: Dawn Weisz, Executive Officer

RE: Agreement with Pacific Energy Advisors, Inc. for Technical and Advisory Services (Agenda Item #4 - C.8)

ATTACHMENT: First Agreement with Pacific Energy Advisors, Inc.

Dear Board Members:

SUMMARY:

On October 7, 2010, your Board approved an Agreement for technical services and operational support from John Dalessi and Kirby Dusel through contracts with their respective companies: Dalessi Management Consulting, LLC and Paradigm Energy Consulting. The services provided to MEA under these two contracts have included specialized technical and operational support, as well as advisory services in a wide range of MEA functions. The services provided through these agreements have been central to the agency's functions, and there is an ongoing need for the provision of many of these services.

As the technical support needs of MEA have transitioned from the past focus on research, planning, program development and implementation activities to the now current needs of operational support and ongoing business maintenance, MEA's technical support needs have also shifted to require a more specialized and focused scope of work. John Dalessi and Kirby Dusel are now offering services jointly through Pacific Energy Advisors, Inc., and are available to continue providing the technical, operational and advisory services that align with MEA's current needs.

A draft Agreement with Pacific Energy Advisors, Inc. has been prepared to provide continuation of technical and advisory services to MEA, based on current needs of the agency. The proposed scope of services includes the core functions summarized below, along with other functions detailed in the attached draft Agreement:

(a) Maintain Annual and Long Term Sales Forecast:

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

- (b) Maintain Financial Model:
- Maintain pro forma financial model of income/expense projections, cash flow and cash balances.
 - Update biannually and more frequently as necessary; monitor accuracy of financial projections on monthly basis; assist in reconciling budget variances.
 - Prepare forecast of power supply and other expenses for annual budget.
- (c) Ratesetting:
- Annually, develop proposed MCE rate schedules; Cost of service modeling; utility benchmarking; billing determinant (e.g., TOU energy) forecast; Present and proposed rate revenue forecast.
 - Collaborate with staff and MEA Board regarding rate changes and need for new rate designs or options.
 - Monitor realized rate revenue vs. projections to identify need for rate changes.
- (d) Electric Supply Management:
- Annually, prepare/update resource plans, including ten year load and resource projections.
 - Monitor supply/demand balance; Identify incremental electric procurement needs.
 - Support solicitation of required energy products and energy contract negotiations.
 - Assist in preparing reports related to electric supply, including compliance reports.
- (e) Manage Renewable Portfolio (RPS) compliance program: Manage renewable energy portfolio per state/program standards; process renewable energy credit transfers; prepare RPS compliance filings.
- (f) Manage Resource Adequacy (RA) compliance program: Manage RA portfolio per state/program standards; prepare year ahead/month-ahead peak demand forecast and RA compliance demonstration filings.
- (g) Regulatory support: Provide technical expertise, analysis and advice on pertinent regulatory proceedings; update Implementation Plan as necessary to address changes to MEA membership.

In addition to the core functions listed above, supplemental services would be available upon request through the Agreement on an hourly basis for services including:

- (a) Complementary MCE Programs: Support for development or modifications to MCE customer programs such as new demand response programs, changes to feed-in tariff program/contract, or changes to net energy metering program.
- (b) Expert Witness Services: Preparing testimony and related expert witness services; representation in hearings and workshops; and lead/primary drafting responsibilities with regard to comments and briefs.
- (c) MCE Program Expansion: Includes analysis of new member applications with respect to criteria established under MEA Policy 006: New Customer Communities.

(d) Generation Project Development: Includes assistance in siting, project selection, permitting and support for project finance and/or bond issuance.

(e) Other implementation support/staff augmentation as needed.

Key Contract Provisions:

- All core services provided by Pacific Energy Advisors, Inc. would be charged at the rate of \$0.40/MWh of MCE usage. Supplemental services will be charged on a time and materials basis as directed by staff.
- Throughout the Term, Contractor's total billings for Supplemental Services would not exceed \$50,000 in any calendar year without MEA's prior written approval.
- MEA would be authorized to terminate this contract with 5 calendar days written notice for failure to perform contracted tasks. Either party would be authorized to terminate this contract with 180 days written notice.
- Because the ongoing services being proposed are of a highly specialized and technical nature requiring detailed knowledge of MEA's operations the term of the proposed contract would be five years. This contract term would also allow MEA to demonstrate to potential financial partners that MEA's technical team is fully engaged and committed for a substantial period of time.

The transition to this Agreement with Pacific Energy Advisors will result in a proportionate savings on technical and advisory services to MEA of approximately \$8,400 monthly and \$101,000 annually for core services. This reflects an 18% reduction in cost compared to the current Agreements for the core services being offered. Supplemental Services will be available on an as needed basis, but use of such services will be capped at \$50,000 per year without prior written approval.

Recommendation: Authorize approval of First Agreement with Pacific Energy Advisors, Inc. for technical support and advisory services.

**MARIN ENERGY AUTHORITY
STANDARD SHORT FORM CONTRACT**

**FIRST AGREEMENT
BY AND BETWEEN
MARIN ENERGY AUTHORITY AND PACIFIC ENERGY ADVISORS, INC.**

THIS FIRST AGREEMENT ("Agreement") is made and entered into this day, **December 6, 2013**, by and between the MARIN ENERGY AUTHORITY, hereinafter referred to as "MEA" and "PACIFIC ENERGY ADVISORS, INC.", hereinafter referred to as "Contractor."

RECITALS:

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

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

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

1. SCOPE OF SERVICES:

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

2. FURNISHED SERVICES:

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

3. FEES AND PAYMENT SCHEDULE:

The fees and payment schedule for furnishing services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement. Contractor shall provide MEA with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor shall invoice MEA within 90 days of any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable.

4. MAXIMUM COST TO MEA:

Pursuant to Exhibit B, Contractor's total billings for Supplemental Services shall not exceed \$50,000 in any calendar year without MEA's prior written approval.

5. TIME OF AGREEMENT:

This Agreement shall commence on **January 1, 2014**, and shall terminate on **December 31, 2018**. Certificate(s) of Insurance must be current on day Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor. The final invoice must be submitted within 30 days of completion of the stated scope of services.

6. INSURANCE:

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

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

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

6.1 GENERAL LIABILITY

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

6.2 AUTO LIABILITY

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

6.3 WORKERS' COMPENSATION

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

6.4 PROFESSIONAL LIABILITY INSURANCE

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of the MEA except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to the MEA evidence of same.

9. ASSIGNMENT:

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

10. RETENTION OF RECORDS AND AUDIT PROVISION:

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MEA shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Time of Agreement and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MEA's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MEA. Contractor shall refund any monies erroneously charged.

11. WORK PRODUCT:

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of the MEA upon payment to Contractor for such work. The MEA shall have the exclusive right to use such materials in its sole discretion without further compensation to

Contractor or to any other party. Contractor shall, at the MEA's expense, provide such reports, plans, studies, documents and writings to the MEA or any party the MEA may designate, upon written request. Contractor may keep file reference copies of all documents prepared for the MEA. Notwithstanding the foregoing, MEA shall not obtain or retain any rights in or ownership to any of Contractor's systems, documents, and/or intellectual property developed, produced, discovered, or created by Contractor before the execution of this Agreement or in connection with services performed outside of this Agreement.

12. TERMINATION:

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

13. AMENDMENT:

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

14. ASSIGNMENT OF PERSONNEL:

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

15. JURISDICTION AND VENUE:

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

16. INDEMNIFICATION AND LIMIT ON LIABILITY:

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

Other than as provided herein, responsibility for any and all regulatory compliance lies solely with the MEA, and Contractor shall bear no liability for any failures by the MEA to fulfill applicable reporting requirements or otherwise comply with applicable regulations. MEA specifically agrees to indemnify, defend, and hold harmless the Contractor and its officers, agents and employees from any and all liability, claims, penalties, damages, (including, but not limited to, litigation costs and attorney's fees) which arise out of or are connected to the compliance or the failure to comply with applicable regulations.

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MEA:

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

18. COMPLIANCE WITH APPLICABLE LAWS:

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

19. DEFINITIONS:

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

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

"MCE" means the Marin Clean Energy program.

"RA" means Resource Adequacy.

"RE" means renewable energy.

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

"RPS" means the California Renewable Portfolio Standards program.

20. NOTICES:

This Agreement shall be managed and administered on MEA's behalf by the Contract Manager named below. All invoices shall be submitted and approved by this Contract Manager and all notices shall be given to MEA at the following location:

Contract Manager:	Sarah Gardner
<hr/>	
MEA Address:	781 Lincoln Ave., Suite 320 San Rafael, CA 94901
<hr/>	
Telephone No.:	(415) 464-6028
<hr/>	

Notices shall be given to Contractor at the following address:

Contractor:	Pacific Energy Advisors, Inc.
<hr/>	
Address:	3941 Park Drive, Suite 20-201 El Dorado Hills, California 95762
<hr/>	
Telephone No.:	(916) 293-9730
<hr/>	

21. ACKNOWLEDGEMENT OF EXHIBITS:

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

22. ENTIRE AGREEMENT:

This Agreement, including its Exhibits, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations of warranties, expressed or implied, not specified in this Agreement. This Agreement may be modified or amended only by a subsequent written Agreement signed by both parties.

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

**APPROVED BY
Marin Energy Authority:**

CONTRACTOR:

By: _____
Executive Officer

By: _____
Name: _____

By: _____
Chairman

MEA COUNSEL REVIEW AND APPROVAL (Only required if any of the noted reason(s) applies)

REASON(S) REVIEW:

- Standard Short Form Content Has Been Modified
- Optional Review by MEA Counsel at Marin Energy Authority's Request

MEA Counsel: _____

Date: _____

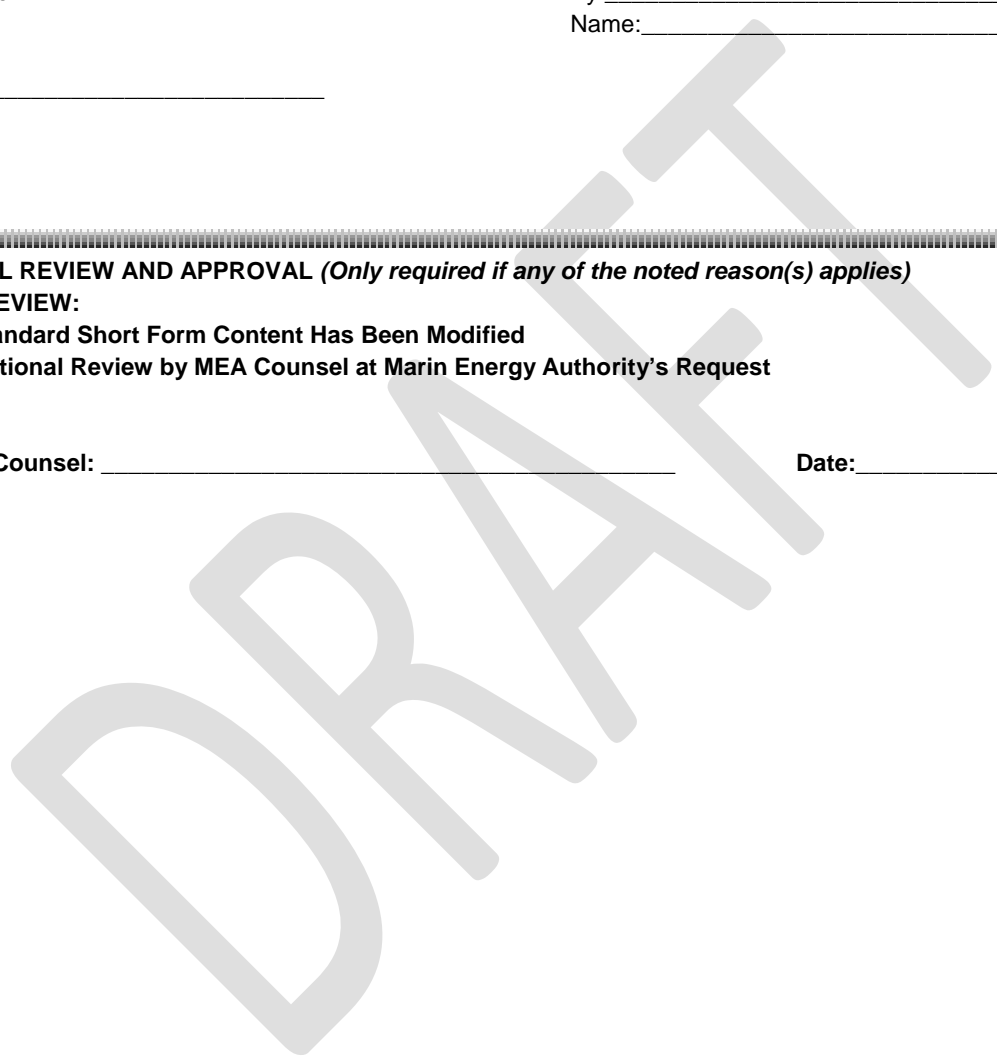


EXHIBIT A
SCOPE OF SERVICES (required)

I. Core Services

(a) Maintain Annual and Long Term Sales Forecast:

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

(b) Maintain Financial Model (pro forma)

- Maintain pro forma financial model of monthly income/expense projections, cash flow and cash balances.
- Update biannually and more frequently as necessary; monitor accuracy of financial projections on monthly basis; assist in reconciling budget variances.
- Prepare forecast of power supply and other expenses for annual budget.
- Prepare draft annual budget for MCE program in cooperation with MEA management and accountants.
- Coordinate with MEA and its financial advisors with regard to matters that may impact MEA’s financial standing, debt levels, electric rates, annual budget, resource planning and other key concerns.

(c) Ratesetting

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

(d) Electric Supply Management:

- Annually, prepare/update resource plans, including ten year load and resource projections.
- Monitor supply/demand balance; Identify incremental electric procurement needs.
- Support solicitation of required energy products – assist in preparing and reviewing requisite solicitation documents, participate in supplier/developer communications, provide analytical support during proposal/bid evaluation, and other related, as-needed activities. Such support will include activities associated with MEA’s annual Open Season process as well as certain as-needed solicitation processes that may be required to address specific resource needs.
- Support energy contract negotiations, including: 1) contracts that may be necessary to supply existing MCE customers with requisite energy products; and 2) contracts that may be necessary to supply additional customers within new member jurisdictions (due to MEA membership expansion) during the Time of Agreement.
- Assist in preparing reports related to electric supply (e.g., data management and reporting activities required under California’s Power Source Disclosure Program, including Power Content Label development and review); such support may also entail regulatory liaison activities required to successfully complete applicable reports.
- Assist in administering MEA’s ongoing Feed-In Tariff program, including invoice

validation and renewable energy certificate processing.

- Assist in validating periodic invoices received by MEA's scheduling coordinator/primary electric service provider.
- Monitor energy market activities, including pricing trends related to market energy, renewable energy and capacity.
- Maintain/manage relationships with qualified suppliers of requisite energy products: participate in periodic calls, email exchanges and other communications on behalf of MEA.

(e) Manage RPS compliance program:

- Manage RE portfolio per state/program standards; prepare RPS compliance filings and serve as MEA's liaison with pertinent regulatory agencies for matters related to RPS compliance; maintain working knowledge of currently applicable RPS guidelines, including pertinent reporting requirements.
- Manage MEA's WREGIS account and various subaccounts, including report preparation, certificate transfer review and retirement (to facilitate mandatory and regulatory compliance), generator registration (for Feed-In Tariff projects under contract with MEA) and other account management activities. Provide support during Green-e certified product (MCE's Deep Green product, for example) audits, including data gathering and analysis, reporting and liaison activities with MEA's selected auditor and Green-e Energy staff.

(f) Manage Resource Adequacy compliance program:

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

(g) Regulatory Support:

- Provide technical expertise, analysis and advice in relation to pertinent regulatory proceedings. Such services shall entail periodic reviews and editorial support during comment/brief drafting as well as coordination with MEA staff/advisors on such matters.
- Provide support for Emissions Performance Standard compliance filings
- Update Implementation Plan as necessary to address changes to MEA membership.

II. Supplemental Services

(a) Develop Complementary MCE Programs as May be Requested by MEA

- Includes support for development or modifications to MCE customer programs.
- Examples include new demand response programs, changes to feed-in tariff program/contract, changes to the net energy metering program.

(b) Expert Witness Services

- Includes preparing testimony and related expert witness services; representation in hearings and workshops; and lead/primary drafting responsibilities with regard to comments and briefs.

(c) MCE Program Expansion

- Includes analysis of new member application with respect to criteria established under MEA Policy 006: New Customer Communities.

(d) Generation Project Development

- Includes assistance in siting, project selection, permitting.
- Support for project finance and/or bond issuance.

(e) Other Implementation Support/Staff Augmentation

- As needed.

EXHIBIT B
FEES AND PAYMENT SCHEDULE (required)

During the Term, the following fees shall apply:

- I. Core Services shall be billed to MEA by Contractor on a monthly basis at a rate of \$0.40 per megawatt hour of MCE electricity usage, as determined by MCE's Data Management Services provider and reflected in MCE's monthly T+12 CAISO settlement statements.

- II. Supplemental Services shall be charged on a time and materials basis at the following hourly rates:
 - John Dalessi or similarly qualified consultant acceptable to MEA: \$225 per hour
 - Kirby Dusel or similarly qualified consultant acceptable to MEA: \$180 per hour
 - Other consultants: \$125 per hour

Throughout the Term, Contractor's total billings for Supplemental Services shall not exceed \$50,000 in any calendar year without MEA's prior written approval.

- III. Pricing Assumptions: The fees for Core Services defined in Section I are based on the assumption that annual customer electric loads will approximate 1.2 million megawatt hours. If annual MCE electricity usage is projected to deviate from this assumption by more than 20%, MEA and Contractor will work in good faith to adjust the aforementioned rate for Core Services in consideration of related impacts to Contractor's cost of service.

EXHIBIT "C"
INSURANCE REDUCTION/WAIVER

CONTRACTOR: Pacific Energy Advisors, Inc.

CONTRACT TITLE: First Agreement by and between Marin Energy Authority and Pacific Energy Advisors, Inc.

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

	<i>Check Where Applicable</i>	<i>Requested Limit Amount</i>	<i>MEA Use Only</i>
General Liability Insurance	<input type="checkbox"/>	\$	
Automobile Liability Insurance	<input type="checkbox"/>	\$	
Workers' Compensation Insurance	<input checked="" type="checkbox"/>		
Professional Liability Deductible	<input type="checkbox"/>	\$	

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

Workers' compensation insurance requirements are not applicable because the Contractor is not currently using employees in the provision of services. If workers' compensation insurance requirements become applicable during the term of the Agreement, the Contractor will comply with standard requirements at that time.

Contract Manager Signature: _____

Date: _____

Telephone: _____

Approved by: _____

Date: _____



December 5, 2013

TO: Marin Energy Authority Board

FROM: Greg Brehm, Resource Coordinator

RE: First Amendment to Power Purchase Agreement with EDF Renewable Development, Inc. (Agenda Item #4 – C.9)

ATTACHMENTS: A. First Amendment to Power Purchase Agreement with EDF Renewable Development, Inc.
B. Original Power Purchase Agreement with EDF Renewable Development, Inc.

Dear Board Members:

Background:

In December 2010 your Board approved a Request for Proposals for Renewable Energy Projects (RFP). Based on MEA's evaluative process and discussions with the Ad Hoc Contracts Committee, three respondents were selected for MEA's short-list, enXco Development Corporation (enXco), now EDF Renewable Energy, distinguished itself based on its ability to successfully address the RFP specifications including, but not limited to, credit, certainty of energy delivery and sponsorship of local project development. Ultimately MEA executed a Power Purchase Agreement (PPA) with EDF for a 30 MW Solar project, and a 1 MW Marin county "local" project, together under the name "Cottonwood Solar, LLC." The original PPA required an expected energy production estimate to be provided no later than 30 days prior to the commercial operations date. The Cottonwood project was originally planned as a fixed photovoltaic array using thin film modules, the technology type was not specified in the contract. The original project design was expected to produce 60,000 MWh/ year.

Subsequent to the approval of the attached executed original (PPA) power purchase agreement with EDF, equipment prices dropped and system efficiencies improved significantly. As a result of these changes in the market, EDF was able to modify the selected technology to utilize a tracking array and crystalline photovoltaic modules at a lower system cost than their original system design. This technology change will result in significant production increases per MW of capacity.

To accommodate the new technology now available while ensuring production is in alignment with original projections and MEA's related planning activities, an amendment to the PPA is needed. MEA and EDF worked collaboratively to prepare the attached Amendment to the Power Purchase Agreement. The primary changes to the Agreement are as follows:

1. The Amendment reduces the project's total capacity to 24 MWs to accommodate the increase in deliveries caused by technology improvements. Expected deliveries will initially be higher than the 60,000 MWh originally proposed (64,809 MWh are expected in year one) but over time are expected to be very similar to MEA's original expectations.
2. The Amendment limits the full Contract Price to energy made available up to one-hundred and ten percent (110%) of the Expected Solar Energy from the Solar Facilities (excluding generation from the solar carport facility or facilities in Marin County). For all energy made available in excess of one-hundred and ten percent (110%) of the Expected Solar Energy from the Solar Facilities, the price will be reduced to fifty percent (50%) of the contract price. This limits price exposure to MEA from any potential over-production.

Key elements of the project include:

- Project: 24 MW (AC, total aggregate capacity) comprised of multiple photovoltaic solar generators
 - Seller's has identified 2 project locations totaling 23 MW
 - Seller remains committed to developing a 1 MW solar project in Marin with added design flexibility to include a portion of ground mount PV
- Project locations: Primary projects located in Kern and Kings Counties
- Project will utilize proven generating technologies: Crystalline PV Modules, Tracking PV solar
- Planned commercial operation date: first quarter, 2015
- Contract term: 25 years
- Expected annual energy production capped at 64,809 MWh, including all environmental attributes and Full deliverability of Resource Adequacy Capacity
- Energy price at original PPA execution was considered at or below market with low escalator (1.5% annually)
- MEA retains project buyout options at years 10, 15 and 20 of the contract term

The First Amendment to the PPA allows for the volume of energy purchased from this PV solar project to more closely align with the original planning assumptions and provides for a discounted price for any excess production above the estimated volumes.

The project is a good fit for the MEA portfolio based on the following considerations:

- The project size supports MEA's portfolio diversity and future renewable energy and capacity requirements
- The project is being developed by an experienced team
- The terms of the contract are structured to address MEA's goals including:
 - a. Known renewable energy production to facilitate resource planning
 - b. Neutral impact to MEA rate structure
 - c. Promotes local solar installation
 - d. Favorable buyout/ownership opportunity

Recommendation: Authorize execution of the First Amendment to Power Purchase Agreement with EDF Renewable Energy for renewable energy supply.

FIRST AMENDMENT TO POWER PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO THE POWER PURCHASE AGREEMENT (the “*First Amendment*”), is made, entered into and is effective as of December 5, 2013 (the “*Effective Date*”), by and between Cottonwood Solar, LLC (“*Seller*”) and Marin Energy Authority (“*Buyer*”). Seller and Buyer are each a “*Party*” and are jointly referred to as “*Parties*.”

RECITALS:

WHEREAS, Seller and Buyer are parties to that certain Solar Power Purchase and Sale Agreement dated July 8, 2011 (the “*Agreement*”);

WHEREAS, Seller and Buyer desire to clarify and revise information related to the size and output of the Solar Facilities, and agree to discounted pricing for excess output from certain Solar Facilities;

WHEREAS, Seller notified Buyer of the Solar Facilities to be built pursuant to that certain Designation of Solar Facilities dated May 15, 2013 (“*Solar Facility Designation*”), which is being revised hereunder;

WHEREAS, Seller and Buyer desire to clarify the inapplicability of certain provisions of the Agreement to the solar carport facility or facilities to be located in Marin County;

WHEREAS, Seller and Buyer agreed pursuant to that certain Notice of Interconnection Facility Delay and Extension of Guaranteed Dates, dated February 26, 2013 (“*Extension Letter*”) to extend the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date of the Solar Facilities due to circumstances beyond the control of Seller; and

WHEREAS, Seller and Buyer agree to further extend the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date of the Solar Facilities beyond those dates agreed to in the Extension Letter as set forth herein.

NOW THEREFORE, in consideration of the promises set forth above, the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree to this First Amendment as follows:

1. **Capitalized Terms**. All capitalized terms used herein, which are not defined herein, shall have the meanings ascribed thereto in the Agreement, as amended hereby.

2. **Revision to Guaranteed Capacity; Revised Solar Facility Designation**.

2.1 The first recital is hereby amended by deleting the number “31” and replacing it with “24”.

2.2 The definition of “**Contract Price**” in Section 1.1 is replaced with the following definition:

“**Contract Price**” shall mean Base Contract Price and/or Excess Contract Price, as applicable.

2.3 The definition of “**Guaranteed Capacity**” in Section 1.1 is amended by deleting the number “thirty-one (31)” and replacing it with “twenty-four (24)”.

2.4 The following definitions are hereby added to Section 1.1:

“**Base Contract Price**” shall have the meaning set forth in Exhibit C.

“**Excess Contract Price**” shall have the meaning set forth in Exhibit C.

2.5 The Parties agree to revise the Solar Facility Designation to include solely those Solar Facilities listed below:

Site Name	APN	County	Acres	MW AC	P-node/Delivery Point
Corcoran - City of Corcoran	034-012-015	Kings		11/12	34420_CORCORAN_115_B1 or 34528_CORCORAN_70.0_B1
Gooselake - Esnoz	069-162-12	Kern		11/12	34702_GOSE LKE_115_B2
Marin Carport(s)*	To be determined	Marin		1	To be determined

One of the two listed sites shall be eleven (11) MW, and the other shall be twelve (12) MW, determined in Seller’s sole discretion.

3. Discounted Contract Price for Extra Product (Excluding Solar Carport Facilities).

3.1 Section 3.3 is deleted in its entirety and replaced with the following:

3.3 Contract Price.

(a) Buyer shall pay Seller the Base Contract Price for all Product made available at the Delivery Points up to one-hundred and ten percent (110%) of the Expected Solar Energy from the Solar Facilities (except for any solar carport facility or facilities in Marin County) in accordance with Exhibit C.

(b) If, in any Contract Year, Seller makes Product available at the Delivery Points in excess of one-hundred and ten percent (110%) of the Expected Solar Energy from the Solar Facilities (except for any solar carport facility or facilities in Marin County), Buyer shall pay Seller the Excess Contract Price designated in Exhibit C applicable

only to Product in excess of 110% of Expected Solar Energy for the remainder of such Contract Year.

- (c) Buyer shall pay Seller the Base Contract Price for all Product made available at the Delivery Points from the solar carport facility or facilities in Marin County in accordance with Exhibit C. The solar carport facility or facilities in Marin County and the Product generated therefrom shall be excluded from all calculations of Expected Solar Energy for the purposes of this Section 3.3.

3.2 Exhibit C is hereby deleted in its entirety and replaced with a new Exhibit C, included as Exhibit A to this First Amendment.

3.3 The first sentence of Section 9.5 is hereby amended by deleting the word “entire” and replacing it with “undisputed”.

4. Clarifications Related to Solar Carport Facility or Facilities.

4.1 Section 3.7(a) is deleted in its entirety and replaced with the following:

- (a) By no later than July 1, 2013, Seller shall have performed all necessary CAISO studies (except for any solar carport facility or facilities in Marin County). Seller agrees to request Full Capacity Deliverability Status in the CAISO generator interconnection process for the Solar Facilities (except for any solar carport facility or facilities in Marin County). Seller shall be responsible for the cost and installation of any network upgrades associated with such Full Capacity Deliverability Status, provided that (i) such network upgrade costs are refunded in full to Seller by CAISO or the PTO, and (ii) such costs do not exceed Two Hundred and Fifty Thousand Dollars (\$250,000) per MW, measured on an aggregate basis for the Guaranteed Capacity, but excluding any solar carport facility or facilities in Marin County (collectively, the “**Full Capacity Requirements**”).

4.2 The first sentence of the first paragraph in Exhibit A is hereby amended by deleting “1 MW” and inserting “approximately 1 MW of Inverter Capacity, as agreed by the Parties”. The fourth sentence in the same paragraph is amended by deleting “1 MW” and inserting “Inverter Capacity as agreed by the Parties hereunder”.

4.3 The definition of “Expected Solar Energy” in Exhibit H is hereby amended by inserting the proviso “(excluding any solar carport facility or facilities in Marin County)” after the phrase “Solar Facilities”.

5. Expected Solar Energy. Schedule H-1 is provided as Exhibit B to this First Amendment.

6. . Extension of the Guaranteed Dates. Exhibit B is hereby amended as follows:

- 6.1 Revised Guaranteed Construction Start Date** Section 2(a), of Exhibit B is hereby amended by deleting the date “September 1, 2013” and replacing it with “August 1, 2014”.
- 6.2 Revised Guaranteed Commercial Operation Date**. Section 3(a) of Exhibit B is hereby amended by deleting the date “March 31, 2014” and replacing it with “February 28, 2015”.
- 6.3 Extension of the Guaranteed Dates**. Section 5 of Exhibit B, “Extension of the Guaranteed Dates”, is hereby deleted in its entirety and replaced with the following: “Extension of the Guaranteed Dates” Under no circumstances shall the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date be extended.

7. Miscellaneous.

7.1 No Other Amendments. Except as specifically set forth above, the Agreement shall remain unchanged and in full force and effect.

7.2 Effective Date. This First Amendment shall be effective as of the Effective Date defined above.

7.3 Representations and Warranties. Each of the Parties agrees, represents and warrants in favor of the other that (a) it has the full power and authority to execute and deliver this First Amendment and to perform its obligations hereunder; (b) it has taken all action necessary for the execution and delivery of this First Amendment and the performance by it of its obligations hereunder, (c) that the First Amendment has been executed and delivered by a duly authorized representative, and (d) the Agreement, as modified and amended by this First Amendment, constitutes a legal, valid and binding obligation of each such Party and is enforceable against each such Party in accordance with its terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws or (ii) general principles of equity.

7.4 Effect on the Agreement. Upon the execution of this First Amendment, the Agreement shall be, and be deemed to be, modified and amended only to the extent set forth herewith and the respective rights, limitations, obligations, duties and liabilities of the Parties hereto shall hereafter be determined, exercised and enforced subject in all respects to such modifications and amendments, and all the terms and conditions of this First Amendment shall be deemed to be part of the terms and conditions of the Agreement, as applicable, for any and all purposes. Except as specifically provided herein, the Agreement shall remain in full force and effect, and is hereby ratified, reaffirmed and confirmed.

7.5 Counterparts. This First Amendment may be executed in any number of separate counterparts, each of which shall be deemed an original and all of which, taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart

of this First Amendment by facsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this First Amendment.

7.6 Governing Law. This First Amendment shall be governed by and shall be interpreted in accordance with the laws of the State of California, without regard to principles of conflicts of law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this First Amendment has been duly executed as of the Effective Date.

COTTONWOOD SOLAR, LLC

**By: EDF RENEWABLE
DEVELOPMENT, INC.**

Its: Manager

Signature: _____

Name: John Marchand

Title: VP, Market Development,
Valuation/Transaction

MARIN ENERGY AUTHORITY

Signature: _____

Name: _____

Title: Chairperson

Signature: _____

Name: _____

Title: Executive Officer

Approved as to form:

Signature: _____

Name: _____

Title: Legal Director

Exhibit B

SCHEDULE H-1

EXPECTED SOLAR ENERGY

Contract Year	MWh
1	64,809*
2	64,388
3	63,969
4	63,553
5	63,140
6	62,730
7	62,322
8	61,917
9	61,515
10	61,115
11	60,718
12	60,323
13	59,931
14	59,541
15	59,154
16	58,770
17	58,388
18	58,008
19	57,631
20	57,257
21	56,884
22	56,515
23	56,147
24	55,782
25	55,420
26	55,059*

*Amounts to be revised and prorated based on monthly expected production based on Commercial Operation Date.

SOLAR POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: Cottonwood Solar, LLC, a Delaware limited liability corporation

Buyer: Marin Energy Authority, a California joint powers authority

Effective Date: July 8, 2011

Description of Solar Facilities: As set forth in Exhibit A hereto.

Contract Term: Commencing on the Effective Date and ending on the twenty-fifth (25th) anniversary of the Commercial Operation Date.

Contract Price: As set forth in Exhibit C hereto.

Assets Sold:

Energy, sold on an as-available, as-generated basis Yes No

Green Attributes Yes No

Limitation on Damages:

Construction and Capacity Damages Cap: \$1,000,000

Governing Law: California

Notice Addresses:

Seller:

Cottonwood Solar, LLC
15445 Innovation Drive
San Diego, CA 92128
Attention: Asset Management
Fax No.: (760) 740-7030
Phone No.: (760) 740-7022

With a copy to:

enXco Development Corporation
15445 Innovation Drive
San Diego, CA 92128
Attention: General Counsel
Fax No.: (760) 740-7030
Phone No.: (760) 740-7022

Scheduling:

Lyrae Stage (lyrae.stage@enxco.com)

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Fax No.: (507) 677-2560

Buyer:

Marin Energy Authority

781 Lincoln Avenue, Suite 320

San Rafael, CA 94901

Attention: Dawn Weisz, Executive Officer

Fax No.: (415) 459-8095

Phone No.: (415) 464-6020

Email: dweisz@marinenergyauthority.org

With a copy to:

Richards, Watson & Gershon

44 Montgomery Street, Suite 3800

San Francisco, California 94104-4811

Attention: Greg Stepanicich

Fax No.: (415) 421-8486

Phone No.: (415) 421-8484

Email: gstepanicich@rwglaw.com

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

SELLER:


Cottonwood Solar, LLC
By: enXco Development Corporation
Its: Sole Member and Manager

By: 
Name: Tristan Grimbert
Title: President & CEO

BUYER:

Marin Energy Authority

Approved as to form:

By: 
MEA Attorney

By: 
MEA Chairman

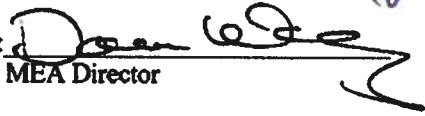
By: 
MEA Director

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SOLAR POWER PURCHASE AND SALE AGREEMENT

This Solar Power Purchase and Sale Agreement (“**Agreement**”) is entered into as of the Effective Date, between Seller and Buyer (each also referred to as a “**Party**” and collectively as the “**Parties**”).

RECITALS

WHEREAS, Seller intends to develop, design, construct, and operate solar photovoltaic systems to be located in California in those locations identified in Exhibit A and designated as a Solar Facility pursuant to Exhibit B, and having a Guaranteed Capacity of 31 MW (each, a “**Solar Facility**,” and collectively, “**Solar Facilities**”); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms set forth in this Agreement, all Energy generated by the Solar Facilities, any Green Attributes related to the generation of such Energy, and all Capacity Attributes;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1 DEFINITIONS

1.1 **Definitions.** Terms used in this Agreement not otherwise defined on the Cover Sheet, in the Preamble or herein shall have the meaning set forth below:

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**After-Tax Basis**” means, with respect to any payment received or deemed to have been received by any Party, the amount of such payment (the “**Base Payment**”) supplemented by a further payment (the “**Additional Payment**”) to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount otherwise required to be paid under this Agreement. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, and state and local Taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment, that are in effect for

the relevant Party's tax year in which the liability for such compensation amounts are incurred and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes.

"Agreement" shall have the meaning set forth in the Preamble.

"Available Capacity" means the capacity from each Solar Facility, expressed in whole MWs, that is available to generate Energy.

"Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a notice, or payment, or performing a specified action.

"Buyer" shall have the meaning set forth on the Cover Sheet.

"Buyer Default" shall have the meaning set forth in Section 12.2.

"Buyout Payment" shall have the meaning set forth in Exhibit I.

"Buyer's Full Capacity Payment" shall have the meaning set forth in Section 3.7(c).

"CAISO" means the California Independent System Operator Corporation or any successor entity performing similar functions.

"California Renewables Portfolio Standard" or **"RPS"** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), and X-1 2 (2011), codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

"Carport Damages" shall have the meaning set forth in Exhibit A.

"Capacity Attribute" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Solar Facilities can generate at a particular moment and that can be purchased and sold under market rules adopted in the region where the Solar Facilities are located, including Resource Adequacy Benefits.

"Capacity Damages" shall have the meaning set forth in Exhibit B.

"CEC" means the California Energy Commission or its successor agency.

"CEC Certification and Verification" means that the CEC has certified (or, with respect to periods before the Solar Facilities have been constructed, that the CEC has pre-certified) that each Solar Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Energy qualifies as generation from an Eligible Renewable Energy Resource for purposes of each Solar Facility.

“Change in Compliance Costs” means the adoption, promulgation, modification, or re-interpretation after the Effective Date or the taking of any other action by any Governmental Authority of any Law that materially affects the obligations and requirements under this Agreement related to the Solar Facilities’ compliance, reporting and eligibility requirements, including but not limited to certification as a Participating Intermittent Resource, an Eligible Renewable Energy Resource, WREGIS compliance, Green Attributes, the provision of Capacity Attributes and Resource Adequacy Benefits.

“Commercial Operation” shall have the meaning set forth in Exhibit B.

“Commercial Operation Date” shall have the meaning set forth in Exhibit B.

“Commercial Operation Delay Damages” shall have the meaning set forth in Exhibit B.

“Construction and Capacity Damages” shall mean, collectively, Construction Delay Damages, Commercial Operation Delay Damages, Carport Damages, and Capacity Damages.

“Construction and Capacity Damages Cap” shall have the meaning set forth on the Cover Sheet.

“Construction Delay Damages” shall have the meaning set forth in Exhibit B.

“Confidential Information” shall have the meaning set forth in Section 20.1.

“Contract Price” shall have the meaning set forth in Exhibit C.

“Contract Term” shall have the meaning set forth on the Cover Sheet, unless terminated earlier or extended in accordance with the terms of this Agreement, in which case the Contract Term shall be the period commencing on the Effective Date and ending on such earlier or later date.

“Contract Year” means each calendar year during the Contract Term, commencing on the Commercial Operation Date, *provided* that if the first (1st) and last Contract Years are not full calendar years, the first Contract Year shall mean the period from the Commercial Operation Date to December 31 of such calendar year, and the last Contract Year shall mean the period from January 1 of the last Contract Year through the last day of the Contract Term.

“Costs” means, with respect to the non-defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by that Party in entering into any new arrangement which replaces this Agreement.

“CPUC” means the California Public Utilities Commission, or successor entity.

“Curtailment Period” means any of the following:

- a) the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including, but not limited to, (i) any System Emergency, or (ii) any

warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO's electric system integrity or the integrity of other systems to which the CAISO is connected;

b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

c) the CAISO orders, directs, alerts or provides notice to a Party to reduce Energy production from a Solar Facility to a level lower than the amount of Energy forecasted to be produced by the Solar Facility for the same period of time as determined reasonably by Seller pursuant to this Agreement;

d) a curtailment ordered by the CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy to the Delivery Point; or

e) a curtailment in accordance with Seller's obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

“Deemed Energy Generation” means the quantity of electric energy, expressed in MWh, reasonably estimated to have been produced by the Solar Facility or Solar Facilities, as applicable, and made available at the Delivery Point during a relevant measurement period using relevant availability of the Solar Facility or Solar Facilities, weather, and historical data, which information shall be provided to Buyer.

“Delivery Point” means the 12 kV bus at the CAISO pnode associated with each Solar Facility as described in Exhibit A, and, as applicable to the solar carport facility or facilities only, the point or points where the solar carport facility or facilities interconnect with the 12 kV PTO distribution system.

“Development Security” means (i) cash, or (ii) an irrevocable, non-transferable standby letter of credit issued by a U.S. commercial bank, or a U.S. branch or subsidiary of a foreign commercial bank with a Credit Rating of at least A- from S&P or A3 from Moody's, in the amount of One Million Dollars (\$1,000,000).

“Effective Date” shall have the meaning set forth on the Cover Sheet.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741, as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy, measured in MWh that is produced by each Solar Facility.

“Event of Default” means either a Seller Default or Buyer Default as specified in Article 8.

“Expected Solar Energy” shall have the meaning set forth in Exhibit H.

“Fair Market Value” shall have the meaning set forth in Exhibit I.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Force Majeure Event” shall have the meaning set forth in Section 11.1.

“Forced Facility Outage” means an unexpected failure of one or more components of a Solar Facility or any outage on the Transmission System that prevents Seller from making power available at the Delivery Point and that is not the result of a Force Majeure Event.

“Forward Settlement Amount” means the non-defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the non-defaulting Party’s Costs and Losses exceed its Gains, then the Forward Settlement Amount shall be an amount owing to the non-defaulting Party. If the non-defaulting Party’s Gains exceed its Costs and Losses, then the Forward Settlement Amount shall be zero dollars (\$0). The Forward Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Full Capacity Deliverability Status” has the meaning set forth in the CAISO tariff.

“Full Capacity Requirements” shall have the meaning set forth in Section 3.7(a).

“Future Environmental Attributes” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under applicable state RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Solar Facilities.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this

Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the non-defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Solar Facilities, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Solar Facilities, (ii) production tax credits associated with the construction or operation of the Solar Facilities and other financial incentives in the form of credits, reductions, or allowances associated with the Solar Facilities that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Solar Facilities for compliance with local, state, or federal operating and/or air quality permits.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy

Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS operating rules.

“Guaranteed Capacity” means thirty one (31) MW, measured as the sum of the Inverter Capacity of all the inverter units of the Solar Facilities.

“Guaranteed Commercial Operation Date” means the date specified in Exhibit B.

“Guaranteed Construction Start Date” means the date specified in Exhibit B.

“Indemnified Party” shall have the meaning set forth in Section 18.1.

“Indemnifying Party” shall have the meaning set forth in Section 18.1.

“Installed Capacity” means the sum of the Inverter Capacity of all the installed inverter units at the Solar Facilities, expressed in MW.

“Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which each Solar Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect each Solar Facility with the Transmission System in order to meet the terms and conditions of this Agreement.

“Interest Rate” has the meaning set forth in Section 9.2.

“Inverter Capacity” means the manufacturer’s output rating of the electrical current inverter consistent with Prudent Operating Practice and accepted industry standards, as indicated on the nameplate physically attached to such inverter.

“Law” means any applicable law, statute, regulation, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of each Solar Facility, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity investor directly or indirectly providing financing or refinancing for the Solar Facilities or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to each Solar Facility.

“**Lien**” means any mortgage, pledge, lien (including mechanics’, labor or materialmen’s liens), charge, security interest, encumbrance or claim of any nature.

“**Losses**” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the non-defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

“**Moody’s**” means Moody’s Investors Service, Inc., or its successor.

“**MW**” means megawatts measured in alternating current.

“**MWh**” means megawatt-hour.

“**Party**” shall have the meaning set forth in the Preamble.

“**Person**” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“**Participating Intermittent Resource**” or “**PIRP**” has the meaning set forth in the CAISO tariff or a successor CAISO program for intermittent resources.

“**Participating Transmission Owner**” or “**PTO**” means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where each Solar Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is Pacific Gas and Electric Company.

“**Potential Solar Facility**” means, individually any solar generating facility, and collectively, all of the solar generating facilities, described more fully in Exhibit A attached hereto.

“**Product**” means Energy, Green Attributes and Capacity Attributes.

“**PPT**” means Pacific Prevailing Time, meaning prevailing Standard Time or Daylight Savings Time in the Pacific Time Zone.

“**Prudent Operating Practice**” means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the

electric power industry for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

“Qualified Assignee” means any Person that has (or will contract with a Person that has) competent experience in the operation and maintenance of solar photovoltaic systems and is financially capable of performing Seller’s obligations (considering such Person’s own financial wherewithal and that of such Person’s guarantor or other credit support) under this Agreement.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Solar Facilities (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Solar Facilities, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Solar Facilities that are not an Green Attribute or a Future Environmental Attribute.

“Resource Adequacy Benefits” means the rights and privileges attached to the Solar Facilities that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision and shall include any local, zonal or otherwise locational attributes associated with the Solar Facility.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

“Scheduling Coordinator” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO tariff, as amended from time to time.

“Seller” shall have the meaning set forth on the Cover Sheet.

“Seller Default” shall have the meaning set forth in Section 12.1.

“Solar Facility” means, individually any Potential Solar Facility, and collectively, all of the Potential Solar Facilities, described more fully in Exhibit A attached hereto which have been designated as a “Solar Facility” pursuant to Exhibit B.

“System Emergency” means any condition that: (a) requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Delivery Point, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/ export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Termination Payment” means the sum of all amounts owed by the defaulting Party to the non-defaulting Party under this Agreement, less any amounts owed by the non-defaulting Party to the defaulting Party determined as of the date of termination.

“Test Energy” means the Energy delivered commencing on the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Solar Facilities to the CAISO and ending when Seller advises Buyer of the occurrence of the Commercial Operation Date.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified, and in the event of a conflict, the provisions of the main body of this Agreement shall prevail over the provisions of any attachment or annex;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to,

or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression "and/or" when used as a conjunction shall connote "any or all of";

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the last day of the Contract Term, subject to any early termination provisions set forth herein.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the

duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 20 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

(c) Buyer may elect to purchase the Solar Facilities during the Contract Term in accordance with Exhibit I.

2.2 **Seller Conditions Precedent.** The obligation of Seller to make available Product pursuant to this Agreement shall be subject to:

(a) Seller obtaining, in its sole discretion, satisfactory, third-party, long-term financing for the Solar Facilities;

(b) Seller obtaining, in its sole discretion, satisfactory, third-party, credit products (or similar support, including, but not limited to insurance) related to credit risks under this Agreement; and

(c) Seller's receipt of certified financial information from Buyer indicating that Buyer maintained actual gross revenues for the period from April 1, 2012 through September 30, 2012 in excess of Ten Million Dollars (\$10,000,000).

2.3 **Failure to Satisfy Conditions Precedent.** This Agreement may be terminated prior to the expiration of the Contract Term, upon thirty (30) days notice of termination by Seller, if Seller does not satisfy or waive, in its sole discretion, each of the conditions set forth in Section 2.2 on or before November 1, 2012; *provided*, that if no such notice of termination is delivered by Seller on or before the applicable date set forth herein, such conditions precedent shall be deemed satisfied; *provided further* that, upon termination of this Agreement pursuant to this Section 2.3, neither Party shall have any obligation or financial liability whatsoever to the other Party as a result of such termination.

2.4 **Progress Reports.**

(a) Seller shall report to Buyer quarterly on progress for significant permitting, interconnection, financing and construction milestones, from the Effective Date until the start of construction, at which point Seller shall report to Buyer monthly, until the Commercial Operation Date.

(b) Buyer shall report to Seller quarterly from the Effective Date on progress on the number of customers; expected and actual revenue; changes in the membership, operations or structure of the joint powers authority; any planned or actual bond issuances or other financing; additional contract obligations undertaken; and, any actual material regulatory, legal or contractual change that may affect Buyer's obligations under this Agreement.

ARTICLE 3 PURCHASE AND SALE

3.1 **Sale of Product.** In accordance with and subject to the terms and conditions of this Agreement, commencing on the Commercial Operation Date and continuing through the end of the Contract Term, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all of the Product produced by the Solar Facilities, as and when the same is produced, at the Contract Price in effect at the time of delivery.

3.2 **Sale of Green Attributes.** In accordance with and subject to the terms and conditions of this Agreement, commencing on the Commercial Operation Date and continuing through the end of the Contract Term, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all of the Green Attributes, attributable to the Energy produced by the Solar Facilities. Subject to Section 3.5, At Seller's request and sole cost (which shall only include documented third party costs), Buyer shall use commercially reasonable efforts to assist Seller and cooperate with Seller, as necessary, in connection with the creation and verification of Green Attributes.

3.3 **Contract Price.** Buyer shall pay Seller the Contract Price for all Product made available at the Delivery Point.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives, and other items of whatever nature relating to the foregoing that are available with respect to the Solar Facilities or as a result of Energy being produced from the Solar Facilities. Buyer acknowledges that any Renewable Energy Incentives and other items of whatever nature relating to Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer agrees to indemnify, defend, hold harmless and compensate Seller for any losses, claims, liabilities, or expenses arising out of or resulting from Buyer claiming any right with respect to the Renewable Energy Incentives not expressly granted under this Agreement. Buyer shall cooperate with Seller in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. In such event, Buyer shall notify Seller of its intent to claim such Future Environmental Attributes within thirty (30) days of the date on which such Law becomes effective. Buyer shall bear all costs associated with the sale, purchase, transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated such Future Environmental Attributes, and Buyer shall notify Seller of its election to purchase such Future Environmental

Attributes within forty-five (45) days after such actions and costs are determined by the Parties; *provided*, that if Buyer does not notify Seller of its election to purchase within such forty-five (45) day period, Seller shall retain all right, title and interest in and to such Future Environmental Attributes. Seller shall have no obligation to alter the Solar Facilities unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(b) If Buyer elects to purchase Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the sale and purchase of such Future Environmental Attributes prior to any such sale or purchase, including agreement with respect to (i) appropriate sale, purchase, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.** If and to the extent the Solar Facilities generate Test Energy, Seller shall make available to Buyer and Buyer shall take all Test Energy made available. Buyer shall be obligated to purchase all such Test Energy from Seller at an amount equal to sixty-five percent (65%) of the Contract Price.

3.7 **Capacity Attributes.**

- (a) By no later than July 1, 2013, Seller shall have performed all necessary CAISO studies. Seller agrees to request Full Capacity Deliverability Status in the CAISO generator interconnection process. Seller shall be responsible for the cost and installation of any network upgrades associated with such Full Capacity Deliverability Status, provided that (i) such network upgrade costs are refunded in full to Seller by CAISO or the PTO, and (ii) such costs do not exceed Two Hundred and Fifty Thousand Dollars (\$250,000) per MW, measured on an aggregate basis for the Guaranteed Capacity (collectively, the “**Full Capacity Requirements**”).
- (b) If the Full Capacity Requirements are not met, then Seller shall propose additional locations for consideration by Buyer. Upon Buyer’s consent, not to be unreasonably withheld, such additional locations shall be added to a revised Appendix A, which shall be incorporated into this Agreement. Seller may use the additional locations in the revised Appendix A for Solar Facilities.
- (c) If Full Capacity Requirements are not met, and the additional locations proposed pursuant to Section 3.7(b) are unsatisfactory to Buyer, Buyer may, at Buyer’s option and in Buyer’s sole discretion, pay network upgrade costs in addition to those to be paid by Seller pursuant to Section 3.7(a)(ii), in an amount not to exceed an additional Two Hundred Thousand Dollars (\$200,000) per MW (such payments, “**Buyer’s Full Capacity Payment**”). If Buyer elects to make Buyer’s Full Capacity Payment, Seller shall reimburse

Buyer for the Full Capacity Payment in accordance with the Interconnection Agreement.

- (d) If Full Capacity Requirements are not met, the additional locations proposed pursuant to Section 3.7(b) are unsatisfactory to Buyer, and Buyer chooses not to make Buyer's Full Capacity Payment, or the addition of Buyer's Full Capacity Payment would not be sufficient to cover the entirety of the additional network upgrade costs, then Seller may, in its sole discretion, (i) pay any additional amounts for network upgrades to receive Full Capacity Deliverability Status; (ii) proceed without Full Capacity Deliverability Status, and Seller's failure to make Capacity Attributes available to Buyer or Buyer's inability to claim such Capacity Attributes shall not give Buyer the right to any damages; or (iii) terminate this Agreement with respect to the affected Solar Facilities only.
- (e) In the event of a partial termination pursuant to Section 3.7(d)(iii), this Agreement shall be amended to reflect the reduced Guaranteed Capacity.
- (f) Subject to this Section 3.7, commencing on the Commercial Operation Date and continuing through the end of the Contract Term or earlier termination of this Agreement, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Solar Facilities.

3.8 **CEC Certification and Verification.** Seller will apply for CEC Certification and Verification by the Commercial Operation Date and pursue until certification is obtained. In accordance with and subject to the terms and conditions of this Agreement, the Solar Facilities shall obtain the requisite CEC Certification and Verification for the Solar Facility and maintain them throughout the Contract Term.

3.9 **Participation in PIRP.** Seller shall comply with all rules and regulations regarding PIRP if Buyer elects to have the Solar Facilities participate in PIRP, subject to Section 3.10. If the rules and regulations regarding PIRP or any successor program are changed such that Seller's obligations are materially increased, Seller shall have the right to terminate any obligations of Seller under this Agreement to assist Buyer in its participation in PIRP or any successor program. For the purpose of this section, the determination of what changes constitute a "material increase" is within the sole discretion of Seller.

3.10 **Change in Compliance Costs.** Seller shall deliver written notice to Buyer sixty (60) days after each Contract Year of the occurrence of any Change in Compliance Costs, which notice shall describe in reasonable detail the Change in Compliance Costs, its effects on Seller or the Solar Facilities, and the additional costs associated with remedial measures or other expenses to be undertaken with respect to Seller or the Solar Facilities. Seller shall pay all such costs up to a maximum of \$95,000/Contract Year. Seller shall provide all information reasonably requested by Buyer to verify any Change in Compliance Costs. In the event such costs exceed the maximum, Seller shall submit an invoice to Buyer for such costs in accordance with Section 9.1. Buyer shall have sixty (60) days to evaluate such notice, and shall, by the end of such period, either (i) agree to reimburse Seller for all or some of the costs that exceed the maximum

established herein, or (ii) waive Seller's obligation to take such actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

ARTICLE 4 DELIVERY; TITLE; RISK OF LOSS

4.1 Delivery.

(a) Energy. Seller shall make available and Buyer shall accept delivery at the Delivery Point of all Energy produced by the Solar Facilities on an as-generated, instantaneous basis. Notwithstanding anything to the contrary in this Agreement (including with respect to any Force Majeure Event), Buyer shall be responsible for all charges, penalties, ratcheted demand or similar charges, and any transmission related charges, including imbalance penalties or congestion charges associated with Energy made available by Seller at and after the Delivery Point, and Buyer shall also be responsible for any other charges, costs or penalties assessed by CAISO; *provided* that Seller shall be responsible for penalties directly attributable to Seller's violation of applicable regulatory requirements. Buyer or Buyer's agent shall notify, request and confirm the quantity of Energy to be made available on any given day or days (or in any given hour or hours) during the Contract Term at the Delivery Point with the CAISO in accordance with all CAISO rules applicable thereto. The Parties agree to use commercially reasonable efforts to comply with all applicable policies of the CAISO in connection with the scheduling and delivery of Energy hereunder.

(b) Green Attributes. For each month during the Contract Term, all Green Attributes associated with the Energy made available by Seller during such month shall be transferred in accordance with WREGIS, and Seller and Buyer shall take all action necessary to ensure the proper transfer of the Green Attributes from Seller to Buyer. In the event that Green Attributes are not fully accounted for by WREGIS, Buyer and Seller shall take all necessary action to ensure the proper transfer of such Green Attributes from Seller to Buyer. Buyer and Seller each shall bear the costs associated with maintaining their respective WREGIS accounts. Green Attributes shall be deemed made available to Buyer for invoicing purposes in the month in which such Green Attributes are transferred pursuant to this Section 4.1.

4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 Scheduling Coordinator.

(a) Throughout the Contract Term, Buyer shall schedule or arrange for Scheduling Coordinator services with the PTO to receive the Product at and after the Delivery Point. At least 90 days prior to Commercial Operation, Seller shall take all actions necessary to execute and deliver to Buyer all documents necessary to authorize Buyer or Buyer's designee as

Seller's Scheduling Coordinator, and Buyer shall take all actions necessary to execute and deliver to Seller and/or CAISO all documents necessary to become and act as Seller's Scheduling Coordinator. Buyer shall be responsible for all CAISO costs and charges, electric transmission losses and congestion at and from the Delivery Point.

(b) If Buyer designates a third party to act as its Scheduling Coordinator, Buyer shall provide Seller ten (10) Business Days advance notice of such designation.

(c) Buyer shall be solely responsible for all acts and omissions of Buyer or its designee for all costs, charges and liabilities incurred by Buyer or its designee under this section.

(d) Buyer or its designee shall comply with all applicable obligations as Scheduling Coordinator under the CAISO tariff and shall conduct all scheduling in full compliance with the terms and conditions of this Agreement and the CAISO's protocols and scheduling practices and all requirements of PIRP (if Buyer has requested that the Solar Facilities participate in PIRP)

4.4 **Forecasting.** Seller shall provide the Available Capacity forecasts described below. Seller's availability forecasts below shall include availability and updated status of inverters, and any other equipment that may impact availability, for each Solar Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Solar Facilities accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) **Annual Forecast of Available Capacity.** By December 1 for each Contract Year, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Available Capacity for an average day in each month of the following calendar year in a form reasonably acceptable to Buyer.

(b) **Monthly Forecast of Available Capacity.** Ten (10) Business Days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

(c) **Daily Forecast of Available Capacity.** During the Delivery Term, if the Available Capacity has changed from the monthly forecast of available capacity described in subsection (b), above, Seller or Seller's agent shall provide a non-binding day ahead forecast of Available Capacity to Buyer or Buyer's designee (as applicable).

(d) During the Contract Term, Seller shall notify Buyer (or Buyer's designee) of any changes in Available Capacity of one (1) MW or more as compared to the daily forecast of Available Capacity, as soon as reasonably possible. Such notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Buyer.

4.5 **Events Downstream of the Delivery Point.** Seller shall be responsible for all interconnection, electric losses and transmission arrangements and costs required to make available Energy and Test Energy from the Solar Facilities to the Delivery Point. Buyer shall be responsible for all CAISO costs and charges, electric transmission losses and congestion at and from the Delivery Point to points beyond.

ARTICLE 5 REDUCTIONS IN DELIVERY; TEMPORARY SHUTDOWN

5.1 **Delivery Obligation.** The obligation of Seller to make available to Buyer the Product to this Agreement is on an as-generated, instantaneous basis and is contingent on the availability of the solar panels and inverters. Seller's failure to make available to Buyer Product shall not give the Buyer the right to any damages, other than as set forth in Exhibit H.

5.2 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 5.1 or Exhibit H:

(a) **Solar Facility Maintenance.** Seller shall be permitted to reduce deliveries of Product during any period of required maintenance on a Solar Facility.

(b) **Forced Facility Outage.** Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with notice and expected duration (if known) of any Forced Facility Outage.

(c) **System Emergencies and other Interconnection Events.** Seller shall be permitted to reduce deliveries of Product during any period of System Emergency or upon notice of a Curtailment Period pursuant to the terms of the Interconnection Agreement or applicable tariff.

(d) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 7.2.

5.3 Buyer's Failure to Take Energy.

(a) **Compensation for Unexcused Failure to Take or Buyer Default.** If (i) Buyer fails or is unable to take Product made available at the Delivery Point during any period and such failure to take is not excused by a Seller Default or a Force Majeure Event, or (ii) Seller is not able to make available Product due to a Buyer Default, Buyer shall pay Seller an amount equal to the product of (1) the Deemed Energy Generation for such period and (2) the Contract Price applicable during such period.

(b) **Compensation for Buyer Curtailment.** If (i) Buyer did not submit a Self-Schedule (as defined in the CAISO tariff) or Energy Supply Bid (as defined in the CAISO tariff) for the Energy subject to the reduction, or (ii) Buyer submitted an Energy Supply Bid and such Energy Supply Bid resulted in a schedule that was less than the amount of Energy forecasted to be produced by any Solar Facility for the same period of time as determined reasonably by Buyer pursuant to this Agreement, Buyer shall pay Seller an amount equal to the product of (1) the

Deemed Energy Generation for such period and (2) the Contract Price applicable during such period.

(c) Limit on Compensation during Curtailment Periods. In the event of a Curtailment Period, Buyer shall pay Seller an amount equal to the product of (1) the Deemed Energy Generation for such period and (2) the Contract Price applicable during such period; *provided*, however that any payment pursuant to this Section 5.3(c) shall be subject to a maximum of 30 MWh per MW per Contract Year. Seller shall receive no compensation from Buyer for any Curtailment Period in excess of 30 MWh per MW per Contract Year.

(d) Information Sharing for Deemed Energy Generation. Seller shall provide Buyer with a calculation of the amounts due under this Section 5.3, and shall provide all relevant data used for the Deemed Energy Calculation at Seller's request. Any amounts due for Deemed Energy Generation shall be included on the monthly invoice, and disputes thereof shall be handled in accordance with Article 9.

ARTICLE 6 TAXES

6.1 Allocation of Taxes and Charges. Seller shall pay or cause to be paid all Taxes on or with respect to the Solar Facilities or on or with respect to the sale and making available Energy to Buyer, that are imposed on Energy prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Energy that are imposed on Energy at and from the Delivery Point. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Energy hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

6.2 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefore from the other Party. All Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

6.3 After-Tax Basis. All amounts due and payable hereunder attributable to indemnification, fees and damages shall be calculated and paid by Seller or Buyer, as the case may be, to the other Party on an After-Tax Basis.

**ARTICLE 7
MAINTENANCE OF THE SOLAR FACILITIES**

7.1 **Maintenance of the Solar Facilities.** Seller shall comply with applicable Law and Prudent Operating Practice relating to the operation and maintenance of the Solar Facilities and the generation and sale of Product.

7.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Solar Facilities. If Seller becomes aware of any circumstances relating to the Solar Facilities that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit F notice of such condition. Such action may include disconnecting and removing all or a portion of the Solar Facility, or suspending the supply of Energy to Buyer.

**ARTICLE 8
METERING**

8.1 **Metering.** Seller shall measure the amount of Energy delivered to Buyer at the Delivery Point using a commercially available, CAISO revenue-grade metering system. Such meter shall be installed and maintained at Seller's cost. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to each Solar Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Solar Facilities.

8.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request (limited to once every six (6) months), Seller shall test the meter. The tests shall be conducted by independent third-parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

**ARTICLE 9
INVOICING AND PAYMENT; CREDIT**

9.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product within ten (10) Business Days after the end of the prior monthly billing period. Each

invoice shall detail the amount of Product in MWh delivered during the prior billing period as read by the revenue-grade meter, the Contract Price then applicable, and the amount due, including any taxes assessed on the delivery and sale of Product to Buyer pursuant to Section 4.1. The Contract Price then applicable shall be the Contract Price specified in Exhibit C for each Contract Year.

9.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Such payment shall occur within twenty (20) days following the date Seller sent the invoice to Buyer. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus three percent (3%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

9.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by applicable Law. No more than once per Contract Year, and upon fifteen (15) days written notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement, at address for Seller set forth on the Cover Sheet. If Buyer chooses to exercise its audit rights under this Section 9.3, any third party costs, incidental expenses (including travel), and related charges associated with Buyer’s exercise of this provision shall be the responsibility of the Buyer.

9.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 9.5, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer’s monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 9.2, accruing from the date on which the non-erring Party received notice thereof.

9.5 **Billing Disputes.** Either Party may dispute invoiced amounts, but shall pay to the other Party the entire invoiced amounts (other than amounts that are obvious clerical errors) on or before the invoice due date. To resolve any billing dispute, the Parties shall use the procedures set forth in Article 17. When the billing dispute is resolved, the Party owing shall pay the amount owed within five (5) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed in accordance with Section 9.2, accruing from the date on which such payment was due. Either Party at any time may offset

against any and all amounts that may be due and owed to Seller under this Agreement, any and all undisputed amounts, including damages and other payments, that are owed by Seller to Buyer pursuant to this Agreement.

9.6 **Payments Due Buyer.** Buyer shall invoice Seller for any Construction and Capacity Damages owed pursuant to Exhibit B in accordance with the process set forth in Section 9.1. Seller shall deduct any payments due to Buyer in accordance with Exhibit H from the invoice for the month in which such amount becomes due to Buyer. In the event that, for any month, amounts due to Buyer exceed amounts due to Seller for such month, Seller shall deduct any such excess from the invoice for the following month(s); *provided, however*, that if Seller has not paid all amounts due Buyer within six (6) months from the month in which such amounts became due, Seller shall remit payment to Buyer for any remaining amount within ten (10) days after delivery of the invoice in the seventh (7th) month

9.7 **Buyer's Revenue Maintenance.** During the time periods set forth below, Buyer shall:

(a) have anticipated and actual gross revenues for the period from October 1, 2012 through March 31, 2013 in excess of Thirty Million Dollars (\$30,000,000); and

(b) have anticipated and actual gross revenues at all times after April 1, 2013 and throughout the remainder of the Contract Term for each fiscal year in excess of Sixty Million Dollars (\$60,000,000).

9.8 **Buyer's Credit Rating.** The conditions in Section 9.7 shall not apply if Buyer maintains a Credit Rating of at least an Aa3 by Moody's and at least an AA- by S&P during the specified time period.

9.9 **Seller's Development Security.** On or before November 1, 2012, Seller shall deliver Development Security to Buyer to secure its obligations under this Agreement pursuant to Exhibit B, which Seller shall maintain in full force and effect until the earlier of (i) the installation of the Guaranteed Capacity, (ii) payment of any Capacity Damages pursuant to Exhibit B, if applicable, or (iii) forty (40) days after termination of this Agreement. Within thirty (30) days of the expiration of Seller's obligation hereunder, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with Exhibit B.

ARTICLE 10 NOTICES

10.1 **Addresses for the Delivery of Notices.** Any notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on the Cover Sheet or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder.

10.2 **Acceptable Means of Delivering Notice.** Each notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such notice was

deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 11 FORCE MAJEURE

11.1 Definition.

(a) “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; strikes or other labor difficulties caused or suffered by a Party or any third party; site conditions (including subsurface conditions, environmental contamination, archaeological or other protected cultural resources, and endangered species or protected habitats); or any temporary restraint or restriction imposed by applicable Law or any directive from a Governmental Authority.

(c) Notwithstanding the foregoing, the term “Force Majeure Event” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy at a higher price, than the Contract Price); (ii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iii) a Curtailment Period; (iv) a lack of insolation; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Solar Facilities, except to the extent Seller’s inability to obtain sufficient labor, equipment, materials, or other resources is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or

any other third party employed by Seller to work on the Solar Facilities; or (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

11.2 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

11.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party's failure to give timely notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving notice materially prejudices the other Party.

11.4 **Partial or Full Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a period of a consecutive period of one (1) calendar year, then either Party may terminate this Agreement upon thirty (30) days written notice to the other Party with respect to the Solar Facility experiencing the Force Majeure Event. If at the end of such thirty (30) day period after notice, such Force Majeure Event is still in effect, this Agreement will automatically terminate in whole or in part. Upon termination in whole, neither Party shall have any liability to the other, save and except for those obligations specified in Section 2.1. Upon termination in part, neither Party shall have any liability to the other as it relates to the Solar Facility affected by the Force Majeure Event, save for that specified in Section 2.1, and all other terms and conditions shall remain in effect for the remaining Solar Facilities. Notwithstanding the foregoing, if a Solar Facility is damaged or destroyed by a Force Majeure Event, Seller may, but shall have no obligation to, rebuild such Solar Facility and recommence delivery of Product to Buyer. If Seller (a) notifies Buyer within sixty (60) days of the Force Majeure Event that Seller intends to rebuild the Solar Facility and recommence delivery of Energy to Buyer and (b) makes good faith efforts to order replacement solar panels and related equipment within ninety (90) days of the occurrence of a Force Majeure Event, then, upon delivery of Product to Buyer, all terms and conditions of this Agreement will and shall be deemed to be in full force and effect upon the date of commercial operation of the rebuilt Solar Facility as they pertain to such Solar Facility.

ARTICLE 12
DEFAULTS; REMEDIES; TERMINATION

12.1 **Seller Defaults.** The occurrence of any of the following events or circumstances shall constitute an “Event of Default” upon its occurrence but shall be subject to cure within the applicable cure periods set forth below after the date of written notice from Buyer to Seller and Lender, if any, as provided for in Section 16.3: (each, a “**Seller Default**”):

(a) Seller fails to pay any amounts due Buyer pursuant to this Agreement and such breach remains uncured for thirty (30) days following notice of such breach to Seller;

(b) Seller breaches any material term of this Agreement, including any representation or warranty, and (i) Seller has failed to cure the breach within forty-five (45) days of Buyer’s notice of such breach, or (ii) if Seller has diligently commenced work to cure such breach during such forty-five (45) day period but additional time is needed to cure the breach, not to exceed a total of ninety (90) days from the date of Buyer’s notice, Seller has failed to cure the breach within such ninety (90) day period;

(c) Seller commences a voluntary case under any bankruptcy Law;

(d) a petition is filed against Seller in an involuntary case under any bankruptcy Law, and such petition remains undismissed or undischarged for a period of one-hundred eighty (180) days after the date of the filing of such proceeding or Seller acquiesces; or

(e) Seller’s actual fraud or willful misconduct in connection with this Agreement.

12.2 **Buyer Defaults.** The occurrence of any of the following events or circumstances shall constitute an “Event of Default” upon its occurrence but shall be subject to cure within the applicable cure periods set forth below after the date of written notice from Seller to Buyer (each, a “**Buyer Default**”):

(a) Buyer fails to pay any amounts due Seller pursuant to this Agreement and such breach remains uncured for thirty (30) days following notice of such breach to Buyer;

(b) Buyer breaches any material term of this Agreement, including any representation or warranty, and (i) Buyer has failed to cure the breach within forty-five (45) days after Seller’s notice of such breach, or (ii) if Buyer has diligently commenced work to cure such breach during such forty-five (45) day period but additional time is needed to cure the breach, not to exceed a total of ninety (90) days from the date of Seller’s notice, Buyer has failed to cure the breach within such ninety (90) day period;

(c) Buyer commences a voluntary case under any bankruptcy Law;

(d) a petition is filed against Buyer in an involuntary case under any bankruptcy Law, and such petition remains undismissed or undischarged for a period of one hundred eighty (180) days after the date of the filing of such proceeding or Buyer acquiesces;

(e) Buyer fails to maintain its revenue requirements in accordance with Section 9.7;

(f) Buyer's actual fraud or willful misconduct in connection with this Agreement; or

(g) the commencement of any legal or regulatory proceeding for the dissolution or termination of Buyer.

12.3 **Buyer's Remedies.** Subject to Article 13, upon the occurrence and notice to Seller of a Seller Default, Buyer shall have the right (but not the obligation) to:

(a) suspend performance of its obligations under this Agreement; and/or

(b) receive from Seller direct damages incurred by Buyer in connection with such Seller Default (including during any applicable cure period, whether or not Buyer has elected to suspend performance during such cure period); provided, however that Buyer shall use commercially reasonable efforts to mitigate any damages it may incur as a result of such Seller Default.

12.4 **Seller's Remedies.** Subject to Article 13, upon the occurrence and notice to Buyer of a Buyer Default, Seller shall have the right (but not the obligation) to:

(a) suspend performance of its obligations under this Agreement;

(b) sell to a third Person, free and clear of any claims by Buyer, all Product for such period during which Seller suspends performance hereunder; and/or

(c) receive from Buyer direct damages incurred by Seller in connection with such Buyer Default (including during any applicable cure period, whether or not Seller has elected to suspend performance during such cure period); provided, however that Seller shall use commercially reasonable efforts to mitigate any damages it may incur as a result of such Buyer Default.

12.5 **Termination for an Event of Default.**

(a) In addition to those remedies in Sections 12.3 and 12.4, if a Seller Default or a Buyer Default, as applicable, remains uncured by the expiration of the applicable cure period, the non-defaulting Party may terminate this Agreement within thirty (30) days after the expiration of such cure period upon notice to the defaulting Party; provided, that if the non-defaulting Party does not terminate this Agreement within such thirty (30) day period, the Seller Default or Buyer Default, as the case may be, shall be deemed to have been waived by the non-defaulting Party.

(b) Notwithstanding Section 12.5(a), the non-defaulting Party shall not be entitled to terminate this Agreement if the Seller Default or Buyer Default, as the case may be, is reasonably capable of being cured within the applicable cure period, but only if the defaulting Party (i) has commenced to cure the default within such applicable cure period, (ii) is diligently

pursuing such cure, (iii) such default is capable of being cured by the defaulting Party within ninety (90) days after the expiration of such cure period, and (iv) such default is in fact cured within such ninety (90) day period.

(c) As soon as practicable after notice of termination, the non-defaulting Party shall provide notice to the defaulting Party of the Termination Payment. The notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment including the Forward Settlement Amount, together with appropriate supporting documentation.

(d) If the Termination Payment is positive, the defaulting Party shall pay such amount to the non-defaulting Party within ten (10) Business Days after the notice is provided. If the Termination Payment is negative (i.e., the non-defaulting Party owes the defaulting Party more than the defaulting Party owes the non-defaulting Party), then the non-defaulting Party shall pay such amount to the defaulting Party within thirty (30) days after the notice is provided.

(e) The Parties shall negotiate in good faith to resolve any disputes regarding the calculation of the Termination Payment. Any disputes which the Parties are unable to resolve through negotiation may be submitted for dispute resolution as provided in Article 17.

ARTICLE 13 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES

13.1 Limitation of Liability.

(a) Construction and Capacity Damages. Notwithstanding anything to the contrary in this Agreement, Seller's aggregate liability for a failure of (i) Seller to construct the Solar Facilities, (ii) Seller to obtain site control and construct carport(s) pursuant to Exhibit A, (iii) the Solar Facilities to achieve Commercial Operation by the Guaranteed Commercial Operation Date, or (iv) the Solar Facilities to achieve Commercial Operation at any specific capacity by the applicable dates set forth in Exhibit B, shall not exceed the Construction and Capacity Damages Cap.

13.2 NO CONSEQUENTIAL DAMAGES. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER SELLER, NOR BUYER SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

13.3 WAIVER AND EXCLUSION OF OTHER DAMAGES

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN

THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER’S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTION 12.5, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT H, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEXT SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 14
REPRESENTATIONS AND WARRANTIES; AUTHORITY

14.1 **Seller’s Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any applicable Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) SELLER MAKES NO WRITTEN OR ORAL REPRESENTATION, WARRANTY, OR COVENANT EITHER EXPRESS OR IMPLIED, REGARDING THE CURRENT OR FUTURE EXISTENCE OR USE OF ANY GREEN ATTRIBUTES OR CAPACITY ATTRIBUTES OR ANY LAW GOVERNING THE EXISTENCE OR USE OF ANY GREEN ATTRIBUTES OR CAPACITY ATTRIBUTES UNDER THIS AGREEMENT OR OTHERWISE OR THEIR CHARACTERIZATION OR TREATMENT UNDER APPLICABLE LAW OR OTHERWISE. NO RESTRICTION, ELIMINATION OR OTHER ADVERSE EFFECT ON THE EXISTENCE OR USE OF ANY GREEN ATTRIBUTE OR CAPACITY ATTRIBUTE SHALL RELIEVE BUYER OF ITS OBLIGATION TO PAY THE CONTRACT PRICE FOR THE DELIVERY OF ENERGY HEREUNDER.

(f) OTHER THAN THOSE WARRANTIES AND GUARANTIES EXPRESSLY SET FORTH IN THE TERMS OF THIS AGREEMENT, SELLER MAKES NO WARRANTIES AND GUARANTIES OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED, ORAL, WRITTEN OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING BY CUSTOM, TRADE USAGE, PROMISE, EXAMPLE OR DESCRIPTION, ALL OF WHICH WARRANTIES AND GUARANTIES ARE EXPRESSLY DISCLAIMED BY SELLER AND WAIVED BY BUYER.

14.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of

California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other applicable laws.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any applicable Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

14.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any applicable Law.

14.4 **Buyer's Authority.** As a condition to the obligations of Seller under this Agreement, Buyer shall provide to Seller:

(a) within thirty (30) days of the Effective Date, opinions of legal counsel for Buyer, in form and substance reasonably satisfactory to Seller, with appropriate qualifications, assumptions and limitations, regarding the following matters: (A) Buyer is a validly existing community choice aggregator, (B) Buyer has the power and authority to execute, deliver and perform the Agreement, (C) the execution, delivery and performance by Buyer of the Agreement does not contravene: (x) Law, or (y) the Joint Powers Agreement of Buyer, and (D) the Agreement has been executed and delivered and is enforceable against Buyer in accordance with its terms; and

(b) within one hundred and twenty (120) days of the Effective Date, (i) certified copies of the Joint Powers Agreement and such relevant ordinances, resolutions, public notices and other public documents issued by Buyer evidencing the necessary authorizations with respect to the execution, delivery and performance by Buyer of this Agreement, and (ii) a certified incumbency setting forth the name and signatures of employees of Buyer with authority to act on behalf of Buyer.

ARTICLE 15 ASSIGNMENT

15.1 **General Prohibition on Assignments.** Except as provided below and in Article 11, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment that is allowed by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

15.2 **Permitted Assignment; Change of Control of Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); (c) a Lender, or (d) a Qualified Assignee; *provided, however*, that in each such case, Seller shall give notice to Buyer no fewer than fifteen (15) Business Days before such assignment that (i) notifies Buyer of such assignment and (ii) provides to Buyer a written agreement signed by the Person to which Seller wishes to assign its interests which (y) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (z) certifies that such Person shall meet the definition of a Qualified Assignee. Any assignment by Seller, its successors or assigns under this Section 15.2 shall be of no force and effect unless and until such notice and agreement by the assignee have been received by Buyer.

15.3 **Change of Control of Buyer.** Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, *provided* that no fewer than fifteen (15) Business Days before such assignment Buyer (a) notifies Seller of such assignment and (b) provides to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests stating that (i) such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and (ii) such Person has the financial capability to perform all of Buyer's obligations under this Agreement. In the event that Seller does not agree that Buyer's assignee has the financial capability to perform all of Buyer's obligations under this Agreement, then either Buyer must agree to remain financially responsible under this Agreement, or Buyer's assignee must provide payment security in an amount and form reasonably acceptable to Seller. Any assignment by Buyer, its successors or assigns under this Section 15.3 shall be of no force and effect unless and until such notice and agreement by the assignee have been received by Seller.

ARTICLE 16 LENDER ACCOMMODATIONS

16.1 **Granting of Lender Interest.** Notwithstanding Section 15.2, Seller may, without the consent of Buyer, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Seller's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which Seller's interest under this Agreement has been assigned. Such notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

16.2 **Rights of Lender.** If Seller grants an interest under this Agreement as permitted by Section 16.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by Seller in accordance with Section 12.1, and such act performed by Lender shall be as effective to prevent or cure a default as if done by Seller.

(b) Buyer shall cooperate with Seller or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments and other documents reasonably requested by Seller or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that Buyer recognizes the rights of such Lender upon foreclosure of Lender's security interest and such other provisions as may be requested by Seller or any such Lender.

(c) Buyer agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Seller or shall have any obligation or liability to Buyer with respect to this Agreement except to the

extent any Lender has expressly assumed the obligations of Seller hereunder; *provided* that Buyer shall nevertheless be entitled to exercise all of its rights hereunder in the event that Seller or Lender fails to perform Seller's obligations under this Agreement.

16.3 **Cure Rights of Lender.** Buyer shall provide notice of the occurrence of any Event of Default described in Section 12.1 or 12.2 hereof to any Lender, and Buyer shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any Seller Event of Default hereunder. Buyer shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between Buyer and any Lender. Notwithstanding any such action by any Lender, Seller shall not be released and discharged from and shall remain liable for any and all obligations to Buyer arising or accruing hereunder.

ARTICLE 17 DISPUTE RESOLUTION

17.1 **Governing Law.** This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California, without regard to principles of conflicts of law. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE NORTHERN DISTRICT OF THE UNITED STATES DISTRICT COURT IN ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH DISPUTE MAY BE HEARD AND DETERMINED IN SUCH FEDERAL COURT. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH PROCEEDING.

17.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days of initiating such discussions, or within forty (40) days after notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

17.3 **Attorneys' Fees.** If any legal action is brought for the enforcement of this Agreement or because of an alleged dispute, default, misrepresentation, or breach in connection with any of the provisions of this Agreement, each Party shall be responsible for its own attorneys' fees and costs.

ARTICLE 18 INDEMNIFICATION

18.1 **Indemnification.**

(a) Each Party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (and in the case of Seller, its contractors constructing or providing services to the Solar Facilities (including suppliers) and its Lenders) (collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents. The indemnification of third party claims provided under this Section 18.1 is limited by the limitation on damages set forth in Section 13.1.

(b) Nothing in this Section 18.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. This indemnification obligation shall apply notwithstanding the willful misconduct of the Indemnified Party, but the Indemnifying Party’s liability to pay damages to the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party’s willful misconduct contributed to the claim giving rise to, or increased the level of, the damages. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

18.2 **Claims.** Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 18 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs.

(a) If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement.

(b) Except as otherwise provided in this Article 18, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 18, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 19 INSURANCE

19.1 **Seller's Insurance**. *General Liability.* Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the aggregate, endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of five million dollars (\$5,000,000).

(b) *Workers Compensation Insurance.* Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(c) *Business Auto Insurance.* Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence and in the aggregate.

(d) *Construction All-Risk Insurance.* Seller shall maintain or cause to be maintained during the construction of the Solar Facilities prior to the Commercial Operation Date, construction all-risk form property insurance covering the Solar Facilities during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(e) *Subcontractor Insurance.* Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than one million dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence and in the aggregate. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clause (i), clause (ii) (for the employers' liability portion only), and clause (iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 19.1(e).

(f) *Evidence of Insurance.* Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior written notice by the insurer in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any solar or other incentive program administrator or any other applicable authority.

19.2 **Buyer's Insurance**.

(a) *General Liability.* Buyer shall maintain, at its sole expense, (i) commercial general liability insurance, including products and completed operations and

personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the aggregate, endorsed to provide contractual liability in said amount, specifically covering Buyer's obligations under this Agreement and naming Seller as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of two million dollars (\$2,000,000).

(b) *Workers Compensation Insurance.* Buyer, if it has employees, shall also maintain at all times during the Contract Term workers' compensation insurance coverage in accordance with applicable requirements of Law to include employers' liability coverage as required by law.

(c) *Evidence of Insurance.* Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Buyer shall deliver to Seller certificates of insurance evidencing such coverage. These certificates shall specify that Seller shall be given at least thirty (30) days prior written notice by the insurer in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Seller. Any other insurance maintained by Buyer is for the exclusive benefit of Buyer and shall not in any manner inure to the benefit of Seller.

ARTICLE 20 CONFIDENTIAL INFORMATION

20.1 **Definition of Confidential Information.** The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) proposals and negotiations before the Commercial Operation Date concerning this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

20.2 **Duty to Maintain Confidentiality.** Buyer and Seller agree not to disclose Confidential Information received from the other to anyone (other than Buyer's and Seller's Affiliates, counsel, consultants, lenders, prospective lenders, purchasers, prospective purchasers, investors, prospective investors, contractors constructing or providing services to the Solar Facilities (including suppliers), employees, officers and directors who agree to be bound by the provisions of this Article), without the deliverer's prior written consent. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion. In the event a recipient is required by Law or by a court or regulatory agency to disclose Confidential

Information, the recipient shall, to the extent possible, give the disclosing Party prompt notice of such request so that the disclosing Party may seek an appropriate protective order. If, in the absence of a protective order, the receiving Party is nonetheless advised by counsel that disclosure of the Confidential Information is finally required (after, if advance notice to the disclosing Party is permitted by applicable Law, exhausting any appeal requested by the disclosing Party at the disclosing Party's expense), the receiving Party may disclose such Confidential Information.

20.3 **Irreparable Injury; Remedies.** Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief and/or notwithstanding Section 13.2, consequential damages.

20.4 **Disclosure to Lender.** Notwithstanding anything to the contrary in this Article 20, Confidential Information may be disclosed by Seller to any potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 20 to the same extent as if it were a Party.

20.5 **Public Statements.** Neither Party may issue or make any formal public announcement, press release or statement regarding this Agreement unless such formal public announcement, press release or statement is issued jointly by the Parties; or, prior to the release of the formal public announcement, press release or statement, any such Party wishing to make any such formal public statement furnishes the other Party with a copy of such formal announcement, press release or statement, and obtains the approval of the other Party, such approval not to be unreasonably withheld, conditioned or delayed; *provided* that, notwithstanding any failure to obtain such approval, no Party shall be prohibited from issuing or making any such formal public announcement, press release or statement if it is necessary to do so in order to comply with applicable Law, legal proceedings or the rules and regulations of any stock exchange having jurisdiction over such Party.

ARTICLE 21 MISCELLANEOUS

21.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly.

21.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer;

provided, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

21.3 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy service provider and energy service recipient, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Solar Facilities or any business related to the Solar Facilities. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

21.4 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

21.5 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

21.6 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

21.7 **Facsimile or Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

21.8 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

21.9 **No Recourse to Members of Buyer.** Buyer 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 its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members in connection with this Agreement.

EXHIBIT A**DESCRIPTION OF POTENTIAL SOLAR FACILITIES**

Site Name	APN	County	Acres	MW AC	P-node/Delivery Point
Corcoran - CID	034-013-002	Kings		12	34420_CORCORAN_115_B1 or 34528_CORCORAN_70.0_B1
Corcoran - City of Corcoran	034-012-015	Kings		12	34420_CORCORAN_115_B1 or 34528_CORCORAN_70.0_B1
Gooselake - Esnoz	069-162-12	Kern		12	34702_GOSE LKE_115_B2
Elk Hills - Evans	298-170-27	Kern		6	30948_ELKHIL_G_230_B2 or 34920_ELK HLLS_70.0_B1
Smyrna T	046-280-13	Kern		6	34700_SMYRNA 2_115_B1
Stone Corral - R7	053-020-013, 014	Tulare		7	34498_STONCRRL_70.0_B1
Marin Carport(s)*	To be determined	Marin		1	To be determined

*Seller shall use commercially reasonable efforts to locate sites in Marin County for construction of solar carport facilities totaling 1 MW. Seller shall notify Buyer upon site identification, and Seller's desire to enter into lease negotiations for the site or sites. The terms of any lease or leases must be satisfactory to Seller, in its sole discretion. In the event that Seller, after commercially reasonable efforts, is unable to achieve Commercial Operation for the solar carport facilities in Marin County totaling 1 MW by March 31, 2014, Seller shall pay "**Carport Damages**" to Buyer in the amount of Two Hundred Fifty Thousand Dollars (\$250,000), pro-rated and payable for that portion of the 1 MW for which Commercial Operation has not been achieved. Upon the payment of Carport Damages, Seller shall have no further obligation to construct the corresponding solar carport facility or facilities in Marin County for the applicable portion, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT B

SOLAR FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Designation of Solar Facilities.** Seller may build Solar Facilities on any of the Potential Solar Facility sites listed in Exhibit A to satisfy Seller's obligations under this Agreement. Seller shall provide written notice to Buyer designating the Solar Facilities Seller intends to construct by May 15, 2013, and the size, in MW, of each Solar Facility, up to the Guaranteed Capacity.
2. **Construction of the Solar Facilities.**
 - a. Seller shall cause construction to begin on the Solar Facilities designated by September 1, 2013 (the "**Guaranteed Construction Start Date**"), as may be extended pursuant to this Exhibit B. The beginning of construction shall be the mobilization to site by Seller and/or its designees, and includes the physical movement of soil at the Solar Facilities.
 - b. If construction does not begin on the Solar Facilities designated by the Guaranteed Construction Start Date, Seller shall pay "**Construction Delay Damages**" to Buyer on account of such delay. Construction Delay Damages shall be payable in the amount of Two Hundred Fifty Dollars (\$250.00) per day for each MW of the Guaranteed Capacity for which construction has not begun by the Guaranteed Construction Start Date. Construction Delay Damages shall be payable to Buyer by Seller until the earlier of: (a) the beginning of construction for the affected Solar Facilities; or (b) the day on which Seller would owe Buyer a cumulative amount of Construction and Capacity Damages equal to the Construction and Capacity Damages Cap. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month. Construction Delay Damages shall be refundable to Seller pursuant to Section 3(b) of this Exhibit B.
3. **Commercial Operation of the Solar Facilities.** "**Commercial Operation**" means the condition existing when (i) all necessary permits have been obtained to operate the Solar Facilities and to produce, sell and transmit Energy, and (ii) ninety percent (90%) of the Guaranteed Capacity has been completed and is ready to produce and deliver Energy to Buyer. The "**Commercial Operation Date**" shall be the date on which Commercial Operation is achieved.
 - a. Seller shall cause Commercial Operation for the Solar Facilities by March 31, 2014, (the "**Guaranteed Commercial Operation Date**"), as may be extended pursuant to this Exhibit B. Seller shall notify Buyer not less than five (5) Business Days in advance of the Commercial Operation Date and shall confirm to Buyer in writing when Commercial Operation has been achieved. Seller shall provide Buyer with Schedule H-1 containing the Expected Solar Energy for the Solar Facilities within thirty (30) days of the Commercial Operation Date.

- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.
 - c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay “**Commercial Operation Delay Damages**” to Buyer on account of such delay in the amount of Two Hundred Fifty Dollars (\$250.00) per day for each MW of the Guaranteed Capacity which has not been completed and is not ready to produce and deliver Energy to Buyer as of the Guaranteed Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller for each MW of the affected Solar Facilities until the earlier of: (a) such MW of the affected Solar Facilities is completed and ready to produce and deliver Energy to Buyer; (b) the Commercial Operation Date; (c) the day on which Seller would owe Buyer a cumulative amount of Construction and Capacity Damages equal to the Construction and Capacity Damages Cap; or (d) termination of this Agreement. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.
4. **Termination for Failure to Achieve Commercial Operation.** If the Solar Facility has not achieved Commercial Operation within one hundred twenty (120) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement, which termination shall be effective thirty (30) days after written notice to Seller. Upon such termination, neither Party shall have further liability or obligation to the other Party, other than Construction and Capacity Damages accrued prior to the date of notice of termination.
5. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operate Date shall be extended, by a number of days equal to the period of such delay, if:
- a. despite the exercise of diligent and commercially reasonable efforts by Seller, all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority, required for Seller to own, construct, operate or maintain the applicable Solar Facility and to permit the Seller and Solar Facility to make available and sell Product are not received by July 31, 2013;
 - b. a Force Majeure Event occurs;
 - c. despite the exercise of diligent and commercially reasonable efforts by Seller, the Interconnection Facilities are not complete and ready for the Solar Facility to connect and sell Energy at the Delivery Point by December 31, 2013; or
 - d. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operations Date;

provided, however, that any extension pursuant to this section shall not exceed one (1) calendar year.

6. **Failure to Reach Guaranteed Capacity.** If, thirty (30) days after Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have until one (1) year after the Commercial Operations Date to install additional capacity such that the Installed Capacity is equal to the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to Thirty Thousand Dollars (\$30,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.
7. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Construction and Capacity Damages due hereunder, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation.
8. **Construction and Capacity Damages As Liquidated Damages and Sole Remedy.** Construction and Capacity Damages shall be payable as liquidated damages and in lieu of actual damages accrued for any period during which Construction and Capacity Damages are assessed. Buyer’s sole remedy and Seller’s sole liability for the failure of (i) Seller to construct the Solar Facilities, (ii) the Solar Facilities to achieve Commercial Operation by the Guaranteed Commercial Operation Date; or (iii) the Solar Facilities to achieve Commercial Operation at any specific Capacity shall be the payment by Seller of Construction and Capacity Damages as specified in Section 2, 3, and 6 above, and termination rights as specified in Section 4 above.

EXHIBIT D

[RESERVED]

EXHIBIT E

[RESERVED]

EXHIBIT F

EMERGENCY CONTACT INFORMATION

BUYER:

Dawn Weisz, Executive Officer
Marin Energy Authority
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Fax No.: (415) 459-8095
Phone No.: (415) 464-6020
Email: dweisz@marinenergyauthority.org

SELLER:

Janet Richardson
Risk Manager:
119 Bett Mar Lane
Saint Clairsville, OH 43950
Phone: (740) 526-0574
Cell: (740) 296-4887

Robert Miller
General Counsel
15445 Innovation Drive
San Diego, CA 92128
Phone: (760) 740-7888

EXHIBIT G
BUYOUT PRICE

Contract Year	Solar Carport(s) Only (1 MW capacity)	All Solar Facilities
10	\$2,005,493	\$62,170,283
15	\$1,579,916	\$48,977,409
20	\$922,360	\$28,593,163

EXHIBIT H

OUTPUT OF THE SOLAR FACILITIES

SECTION 1 - DEFINITIONS

“**Guaranteed Output**” means seventy percent (70%) of the Expected Solar Energy.

“**Expected Solar Energy**” means, for the relevant Contract Year, the estimated Energy to be delivered from the Solar Facilities as set forth on Schedule H-1 for such period, which shall be (i) based on the Installed Capacity of the Solar Facilities and (ii) for each Contract Year beginning with the second (2nd) Contract Year, consistent with the Guaranteed Capacity and a capacity factor of no less than twenty percent (20%).

SECTION 2 - PAYMENTS IN LIEU OF PERFORMANCE

For each Contract Year beginning with the second (2nd) Contract Year, Seller shall make payments to Buyer in lieu of performance for decreases in performance below the Guaranteed Output (“**Payments in Lieu of Performance**”).

(a) Payments in Lieu of Performance shall be calculated pursuant to the following formula:

$$(Bp - Cp) * (G - A1)$$

where:

Bp = the average hourly rate per MWh (excluding fixed costs) paid by Buyer during the relevant time period for equivalent energy and Green Attributes;

Cp = the Contract Price (measured as the hourly rate per MWh) under this Agreement for the relevant time period;

G = the Guaranteed Output, equal to seventy percent (70%) of the Expected Solar Energy for the relevant period;

A1 = the actual amount of Energy produced by the Solar Facility during the relevant Contract Year, as adjusted pursuant to Section 3, below;

No payment shall be due if the calculation of $(Bp - Cp)$ or $(G - A1)$ yields a negative number.

(b) For the purposes of this calculation, $(Bp - Cp)$ shall not exceed fifty dollars (\$50), and any higher result shall equal fifty dollars (\$50).

(c) For each Contract Year beginning with the second (2nd) Contract Year, Seller shall send Buyer an audit within sixty (60) days of the anniversary of such date summarizing the output of the Solar Facility during the preceding twelve (12) month period. Buyer shall have

thirty (30) days following receipt of such audit to dispute the conclusions therein, after which time the audit shall be binding on the Parties. Any payments due to Buyer shall be remitted to Buyer within twenty (20) days of the binding audit.

SECTION 3 – ADJUSTED ANNUAL PRODUCTION

(a) For purposes of this calculation, the actual amount of Energy produced by the Solar Facilities during the Contract Year shall be increased to account for:

- (i) any period during which a Force Majeure Event has occurred and is continuing;
- (ii) any period during which a Buyer Default has occurred;
- (iii) any deviation of annual insolation greater than eighty percent (80%) from historical weather patterns shown by a weather data collection system that measures and logs solar irradiance (in W/m²) on a fifteen (15) minute average basis within a five (5) mile radius of the Solar Facilities; and
- (iv) any Curtailment Period.

(b) The additions contemplated in paragraph (a) shall be calculated by assuming that the Solar Facilities would have produced an amount of electricity equal to the average production during the month of such non-production in the preceding two (2) Contract Years, if available, divided by the total number of days in all such months.

SECTION 4 – SOLE AND EXCLUSIVE REMEDY

(a) The Payments in Lieu of Performance shall be payable as liquidated damages and in lieu of actual damages. The Parties agree that the extent and amount of actual damages that would be suffered by Buyer as a result of Seller's failure to achieve the performance standards set forth in this Exhibit H is impractical and extremely difficult to determine or estimate. Therefore, Payments in Lieu of Performance set forth in this Exhibit H represent the Parties' best estimate of the sums that would be fair, average compensation for all losses that may be sustained as a consequence of the Solar Facilities' failure to achieve performance standards set forth in this Exhibit H.

(b) Notwithstanding anything to the contrary herein, Buyer and Seller agree that where there are any decreases in performance requiring Payments in Lieu of Performance, Buyer's sole and exclusive damage remedy for Seller's failure to achieve the performance standards in this Exhibit H or for any output related defaults for any such Contract Year shall be the liquidated damages provided for in Section 2 of this Exhibit H.

SCHEDULE H-1

EXPECTED SOLAR ENERGY

**[Expected Solar Energy for each Contract Year to be provided within 30 days of
Commercial Operation Date]**

Exhibit H

Schedule 1

EXHIBIT I

BUYOUT OPTION

(1) Buyout Option. No later than ninety (90) days prior to the last day of each of (i) the tenth (10th) Contract Year of the Contract Term, (ii) the fifteenth (15th) Contract Year of the Contract Term and (iii) the twentieth (20th) Contract Year of the Contract Term, Buyer may deliver notice to Seller indicating whether it elects to purchase the Solar Facilities. Buyer may make such election for all Solar Facilities making sales pursuant to this Agreement (including the solar carport facility or facilities in Marin County), or for the solar carport facility or facilities in Marin County only. Other than the option to purchase the solar carport facility or facilities, the purchase of some but not all Solar Facilities is not provided hereunder. If Buyer elects to make a purchase, Buyer shall pay to Seller a “**Buyout Payment**” within thirty (30) days prior to the last day of such Contract Year equal to the greater of (a) the Fair Market Value of the Solar Facilities as of such date, as determined pursuant to clause (2) below, or (b) as specified for such Contract Year in Exhibit G.

(2) Calculation of Fair Market Value. If Buyer provides notice to Seller that it is contemplating exercising its rights under this Exhibit I, the Parties shall mutually agree upon an independent appraiser on or before the date that is sixty (60) days prior to the last day of (i) the tenth (10th) Contract Year of the Contract Term, (ii) the fifteenth (15th) Contract Year of the Contract Term, or (iii) the twentieth (20th) Contract Year of the Contract Term, if applicable. Such appraiser shall determine, at equally shared expense of Buyer and Seller, the fair market value of the Solar Facilities as of the date on which the Buyout Payment is to be paid, taking into account such items as deemed appropriate by the appraiser, which may include the resale value of the Solar Facilities, and the price of the Product (the “**Fair Market Value**”). On or prior to the date that is thirty (30) days prior to the last day of such Contract Year, the appraiser shall deliver its determination of Fair Market Value to each of Buyer and Seller. In the event that Buyer and Seller cannot agree upon a single independent appraiser, each Party shall contract for an independent appraiser at its own expense, and the Fair Market Value shall be the simple average of the determinations of the two independent appraisers.

(3) Passage of Title. Upon receipt of the Buyout Payment, the Parties shall execute all documents necessary to cause title to the Solar Facilities to pass to Buyer on an as-is, where-is, with-all-faults basis; *provided, however*, that Seller shall remove any encumbrances held by Seller with respect to the Solar Facilities.



December 5, 2013

TO: Marin Energy Authority Board

FROM: Ashley Aberi, Communications Associate
Dawn Weisz, Executive Officer
Katie Gaier, Human Resources Consultant

RE: Job Descriptions and Compensation Studies for MCE Positions
(Agenda Item #4 – C.10)

ATTACHMENT: A. Job Description for Energy Efficiency Program Specialist
B. Job Description for Business Analyst
C. Job Description for Program Specialist

Dear Board Members:

SUMMARY:

As MCE has grown from a new program concept into an operational business serving a large customer base the job classifications and staffing needs have grown and adapted as well. On July 7, 2011, your Board approved a set of job descriptions for the agency that reflected agency needs at that time. Since that time there has been a need to adjust the job descriptions and compensation levels of several positions to conform to new requirements and responsibilities needed by the agency.

In November 2013 MCE reviewed job descriptions for three MCE positions : Energy Efficiency Program Specialist, Business Analyst, and Program Specialist. Job descriptions and titles were adjusted where needed. In addition, a compensation comparison study was conducted for these positions to evaluate the current appropriate compensation levels for each position.

The methodology used to conduct the compensation comparison study involved matching job descriptions from a variety of public agencies to the three identified MCE positions. In conducting the analysis there was a primary focus on the duties and responsibilities performed, as well a review of the education, experience, and skills required for each position.

The compensation study used public agencies from around California that provide similar services. Because MCE is a public agency that operates like a private electric company, only public agencies that were also revenue generating agencies were included in the study. Public agencies with corresponding positions were included in the benchmarking process that resulted in an average minimum and maximum annual salary for each position. Private agencies were excluded from this study.

In the compensation study there are two variables that did not remain constant: 1. cost of living in the employer community, and, 2. inclusion of a 'deferred compensation' pension as part of the benefits package for the employee. All of the public agencies studies provided health and welfare benefits, similar to MCE, but most also provided deferred pension benefits to employees. In contrast, MCE does not offer a deferred benefits pension to employees, but instead contributes 10% of annual salary to a defined contribution 401(a) plan for employees. This approach avoids future liability for the agency, but should be noted when identifying appropriate compensation levels.

The attached job descriptions have been standardized to provide basic documented information for compliance with the Americans with Disabilities Act and appropriate qualifications, knowledge, skills and other requirements that are job-related and meet legal guidelines as well as indicate exempt and non-exempt status as determined by the Fair Labor Standards Act.

The Board-approved budget for FY14 would not need any adjustment to account for the recommended compensation levels for each position. Adequate budget was projected for an increase in staff costs during this fiscal year while hiring delays and conservative hiring practices have resulted in continued savings on staffing costs. The compensation range proposed below for each position includes the current compensation being provided currently to the employee, but allows for adjustments within the range based relative experience and market benchmarks.

The Executive Committee discussed the proposed job descriptions and compensation ranges at the regular November Board meeting, and recommended consideration by the full Borad at the December Board meeting.

Energy Efficiency Program Specialist

Under supervision of the Energy Efficiency Program Coordinator, the Energy Efficiency Program Specialist assists in the development and implementation of multiple energy efficiency activities for MEA. The Energy Efficiency Specialist will support the Energy Efficiency Program Coordinator and will work alongside other program staff in implementation of energy efficiency programs tailored to residential, commercial and

municipal electricity customers. The Energy Efficiency Program Specialist may interface with other partner agencies and stakeholder groups, coordinate activities of sub-contractors, and interact with a wide range of customers groups, and other related tasks as assigned. The position requires knowledge of energy efficiency technologies, data collection and management, and basic understanding of the construction trade and green building techniques, and the ability to use metrics to validate energy efficiency impacts. Technical experience in the commercial utility industry is preferred.

Recommendation: Approve Job Description for Energy Efficiency Program Specialist and set salary range for this position at \$52,000 - \$68,000 with exact compensation to be determined by Executive Officer within existing Board approved budget.

Business Analyst

Under immediate supervision of the Internal Operations Coordinator the Business Analyst has responsibility within a wide range of Marin Energy Authority (MEA) functions, including monitoring data reports and financial benchmarks, identifying and reporting irregularities in data reports and financial benchmarks, invoice validation and reconciliation, performance monitoring for resources under contract, energy efficiency program performance tracking and customer rate analysis and comparison. The Business Analyst is also responsible for tracking metrics related to MEA's power supply load for reporting purposes. Additionally, support for financial planning, internal accounting, ratesetting, and monthly revenue reconciliation will be provided by the Business Analyst. The position requires analytical skills, the ability to select data inputs and interpret data outputs, knowledge of electronic data manipulation tools, and experience applying formulas, extracting data and running data reports. Technical experience in the commercial utility industry is preferred. The position will require performing related work and tasks for MEA as required.

Recommendation: Approve Job Description and title for Business Analyst and set salary range for this position at \$52,000 - \$68,000 with exact compensation to be determined by Executive Officer within existing Board approved budget.

Program Specialist

The Program Specialist has a wide range of responsibilities related to the design and implementation of local programs and resource procurement. The Program Specialist interfaces with other partner agencies and stakeholder groups, coordinating activities of sub-contractors, and interacting with a wide range of customers groups. The Program specialist also provides support to the Resource Coordinator, particularly with regard to local renewable energy development projects. The position requires knowledge of

energy efficiency technologies, renewable and conventional energy technologies, marketing and community engagement.

Recommendation: Approve revised Job Description and title change and set salary range for this position at \$52,000 - \$68,000 with exact compensation to be determined by Executive Officer within existing Board approved budget.

Recommendation:

Approve the proposed job descriptions as attached. Approve compensation ranges for each position with exact compensation to be determined by Executive Officer within existing Board-approved budget and commensurate with experience and performance.



Job Description

Energy Efficiency Program Specialist

Summary

Under supervision of the Energy Efficiency Program Coordinator, the Energy Efficiency Program Specialist assists in the development and implementation of multiple energy efficiency activities for MEA. The Energy Efficiency Specialist will support the Energy Efficiency Program Coordinator and will work alongside other program staff in implementation of energy efficiency programs tailored to residential, commercial and municipal electricity customers. The Energy Efficiency Program Specialist may interface with other partner agencies and stakeholder groups, coordinate activities of sub-contractors, and interact with a wide range of customers groups, and other related tasks as assigned.

The position requires knowledge of energy efficiency technologies, data collection and management, and basic understanding of the construction trade and green building techniques, and the ability to use metrics to validate energy efficiency impacts. Technical experience in the commercial utility industry is preferred.

Class Characteristics

The Energy Efficiency Program Specialist performs assignments under the general supervision of the Energy Efficiency Program Coordinator but works in close contact with the Program Coordinator, Data Analyst and the Director of Communications for specific tasks. The Energy Efficiency Program Specialist interfaces with customer groups including building owners and managers on MEA's behalf to implement energy savings projects that conform to the requirements of the Energy Efficiency Program Plan and related benchmarks. The Energy Efficiency Program Specialist may interface with sub-contractors to track successful program delivery and identify areas for improvement. Responsibilities may include oversight for on the ground energy efficiency improvement work, including coordination of direct install programs, acting as a 'single point of contact' for customers involved in the program, providing technical assistance for customers, and coordinating data collection and management to meet regulatory guidelines. The Energy Efficiency Program Specialist may also be asked to work on specific marketing and outreach campaigns in close coordination with the Energy Efficiency Program Coordinator, Director of Communications, and the Program Coordinator.

Supervisory Responsibilities

There are no supervisory responsibilities for this position at this time.

Essential Duties and Responsibilities (Illustrative Only)

- Assist Staff, Technical Team and MEA Board with implementation of an Energy Efficiency Program.
- Assist in monitoring success of Energy Efficiency Program and make recommendations to adjust if needed to insure benchmarks are achieved or exceeded.
- Assist in management of RFP processes and identification of sub-contractors.
- Draft proposals for grant funding and other program revenue opportunities.
- Interface with building owners, managers, and professional organizations on MEA's behalf.
- Perform data analysis, training and outreach, to customers, building owners and managers, and other stakeholder groups as needed to implement program.
- Maintain databases for various areas of energy resource technology.
- Utilize a variety of computer software programs to prepare reports, maps, diagrams, graphs and other material related to energy resources.
- Assist in data collection and organization to track impact of energy efficiency programs for reporting to MEA Board and regulatory bodies.

Break-down of Time spent on various work areas

- | | |
|--|-----|
| • EE program communications | 35% |
| • EE program technical assistance | 30% |
| • EE program administrative assistance | 30% |
| • Miscellaneous | 5% |

Language and Reasoning Skills

- Exercise sound judgment, creative problem solving, and commercial awareness.
- Develop high-quality writing, research and communication work products.
- Deliver clear oral communication.
- Interact professionally and effectively with customers, commercial partners, MEA staff team and Board of Directors.
- Apply strong analytical and problem-solving skills.
- Manage projects and time efficiently.

Experience/Education

Any combination of education and experience that would provide the knowledge and skills listed. Typically, a Bachelor's Degree in engineering, environmental science, planning, or a closely related field, and two (2) years of progressively responsible experience at an electric utility, local government agency or private company providing energy efficiency services. A Master's Degree in a related field is desirable.

Knowledge

- Goals and mission of Marin Energy Authority and Community Choice Aggregate programs
- Energy conservation strategies, energy efficient building construction and demand response applications.
- Metrics and analytical tools to collect, tabulate and analyze data related to energy efficiency and technologies including E3 calculation and the DEER Database.
- Excel, Word and PowerPoint programs
- Intermediate mathematical principles
- The construction trade, local government permitting process, and regulatory bodies in California.
- Principles of grant funding and RFP requests
- Basic understanding of utility or municipal energy efficiency programs
- Technical understanding of industry best practices

Ability to

- Apply energy conservation principles and practices within an energy program.
- Critically evaluate proposals, programs and policies.
- Use metrics to validate energy efficiency impacts including E3 calculations, DEER, and other standard industry tools
- Develop and implement trainings and workshops.
- Provide technical assistance on energy efficiency to customers and to government affiliates.
- Draft proposals for grant funding and other program revenue opportunities.
- Make presentations as required at public meetings.
- Communicate effectively both verbally and in written form
- Establish and maintain effective working relationships with persons encountered in the performance of duties.

- Manage multiple priorities and quickly adapt to changing priorities in a fast paced dynamic environment.
- Take responsibility and work independently, as well as participate in team efforts.
- Be thorough and detail-oriented.
- Work accurately and swiftly under pressure.
- Demonstrate patience, tact, and courtesy.
- Interface with customers, subcontractors, as well as MEA Staff and Board Members to produce measurable energy efficiency results.

Mathematical Skills

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to compute rate, ratio, and percent and to draw and interpret bar graphs.

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently required to use hands to finger, handle, or feel and reach with hands and arms. The employee is occasionally required to stand.

The employee must occasionally lift and/or move up to 25 pounds.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The noise level in the work environment is usually moderate.

ADA Compliance

MEA will make reasonable accommodation of the known physical or mental limitations of a qualified applicant with a disability upon request.



Job Description Business Analyst

Summary

Under immediate supervision of the Internal Operations Coordinator the Technical Specialist has responsibility within a wide range of Marin Energy Authority (MEA) functions, including monitoring data reports and financial benchmarks, identifying and reporting irregularities in data reports and financial benchmarks, invoice validation and reconciliation, performance monitoring for resources under contract, energy efficiency program performance tracking and customer rate analysis and comparison. The Technical Specialist is also responsible for tracking metrics related to MEA's power supply load for reporting purposes. Additionally, support for financial planning, internal accounting, ratesetting, and monthly revenue reconciliation will be provided by the Technical Specialist.

The position requires analytical skills, the ability to select data inputs and interpret data outputs, knowledge of electronic data manipulation tools, and experience applying formulas, extracting data and running data reports. Technical experience in the commercial utility industry is preferred. The position will require performing related work and tasks for MEA as required.

Class Characteristics

The Technical Specialist performs assignments under the general supervision of the Internal Operations Coordinator but also work directly with other agency divisions to support energy efficiency, procurement and customer-facing agency functions. The Technical Specialist also interfaces directly with MEA's data management team under contract, MEA's Accountancy team under contract, and MEA's billing agent to integrate and insure information flow.

Supervisory Responsibilities

This job has no supervisory responsibilities.

Essential Duties and Responsibilities (Illustrative Only)

- Critically evaluate data provided to MEA
- Identify irregularities in data reports and identify and implement solutions.
- Utilize a variety of computer software programs to prepare reports, graphs and other material related to energy resources, finance models and customer statistics.
- Identify opportunities to streamline processes where possible.
- Assist with invoice reconciliation for power supply contracts.

- Provide technical analysis requested by management, Accountants and/or staff. Assist with performance monitoring for resources under contract.
- Provide quality control on reports from energy efficiency vendors.
- Assist with tracking metrics related to MEA's power supply load for reporting purposes.
- Track reporting for MEA Renewable Energy supply using WREGIS.
- Assist with preparation of compliance reports related to MEA power supply as needed for regulatory bodies, counterparties and partner agencies.
- Provide support for pro forma updates and other financial planning activities
- On a regular basis report internally on financial metrics and insure irregularities are communicated to appropriate parties.

Break-down of Time spent on various work areas

- Finance Planning and Tracking 25%
- Accounting Analysis and Reconciliation 20%
- Procurement Support 20%
- Customer Accounts Support 20%
- Energy Efficiency Tracking Support 15%

Language and Reasoning Skills

- Exercise sound judgment, creative problem solving, and commercial awareness.
- Develop high-quality work products with consistent attention to detail.
- Communicate in written and verbal form clearly and succinctly.
- Interact professionally and effectively with customers, commercial partners, consultants, MEA staff team and Board of Directors.
- Apply strong analytical and problem-solving skills.
- Manage multiple projects with diverse and variable timelines efficiently.

Experience/Education

Any combination of education and experience that would provide the knowledge and skills listed. Typically, Bachelor's or Master's degree in economics, business administration, mathematics, or closely related field and two (2) years of progressively responsible experience at an electric utility or in a closely related field. Understanding of a Community Choice Aggregation (CCA) structure is a plus.

Knowledge

- Knowledge of analytical methods to collect, tabulate and analyze data related to budgets, customers, rates and power supply.
- Knowledge of Excel, Word, PowerPoint and Access.
- Intermediate mathematical proficiency.
- Familiarity with the electric utility rate structure and components.
- Familiarity with Renewable Energy Credits trading process.
- Familiarity with WREGIS trading and verification process.

Ability to

- Provide technical assistance to staff, vendors, customers and government affiliates.
- Critically evaluate data provided and streamline processes where possible.
- Identify areas of concern and involve other team members in problem-solving as needed.
- Develop useful and consistent strategies for responding to requests for information.
- Maintain sound time management to meet requests and expectations from multiple internal teams and inform appropriate parties when priorities change or work products may be delayed.
- Manage multiple priorities and quickly adapt to changing priorities in a fast paced dynamic environment.
- Take responsibility and work independently, as well as coordinate team efforts.
- Communicate effectively both verbally and in written form.
- Be thorough and detail-oriented.
- Work accurately and swiftly under pressure.
- Demonstrate patience, tact, and courtesy.

Mathematical Skills

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to compute rate, ratio, and percent and to create and interpret bar graphs.

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently required to use hands to finger, handle, or feel and reach with hands and arms. The employee is occasionally required to stand.

The employee must occasionally lift and/or move up to 25 pounds.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The noise level in the work environment is usually moderate.

ADA Compliance

MEA will make reasonable accommodation of the known physical or mental limitations of a qualified applicant with a disability upon request.



Job Description Program Specialist

Summary

The Program Specialist has a wide range of responsibilities related to the design and implementation of local programs and resource procurement. The Program Specialist interfaces with other partner agencies and stakeholder groups, coordinating activities of sub-contractors, and interacting with a wide range of customer groups. The position requires knowledge of energy efficiency technologies, renewable and conventional energy technologies, marketing and community engagement.

Class Characteristics

The Program Specialist performs assignments under the general supervision of the Resource Coordinator and the Communications Director. The Program Specialist also works collaboratively with external vendors and provides support to internal staff. Responsibilities may also include identifying partner agencies and sub-contractors to support MEA programs and activities, as well as reviewing and analyzing materials submitted to MEA from partner agencies and sub-contractors.

Supervisory Responsibilities

There are no supervisory responsibilities for this position.

Essential Duties and Responsibilities (Illustrative Only)

- Assist Resource Coordinator in procurement efforts and local renewable energy development
- Provide support to maintain effectiveness of MEA existing programs including the Feed-in Tariff Program, Solar Rebate Program and Energy Efficiency Program
- Plan and administer rebate programs
- Maintain and update related webpages
- Provide strategic planning and development support for emerging MEA local programs
- Prepare proposals which result in grants and other resources to help MEA accelerate progress towards its mission and goals
- Conduct research and data analysis
- Develop outreach, press and marketing collateral
- Prepare oral and written reports (for multiple departments and MEA Board of Directors)
- Negotiate contracts and manage external vendors

- Represent MCE to community groups, stakeholders, and political bodies
- Facilitate stakeholder & advocacy groups to solicit input

Break-down of Time spent on various work areas

- Resource and Procurement Support 40%
- Program Development/Implementation 40%
- Public Affairs and Communication Support 20%

Language and Reasoning Skills

- Exercise sound judgment, creative problem solving, and commercial awareness.
- Manage multiple priorities and quickly adapt to changing priorities in a fast paced dynamic environment while being thorough and detail oriented.
- Develop high-quality writing, research and communication work products.
- Deliver clear and persuasive oral communication.
- Apply strong problem-solving skills.
- Focus, direct and manage the work of external vendors.

Experience/Education

Education and experience equivalent to a Bachelor's degree in a related field and three years of experience in program management, environmental science, planning, energy efficiency or a similar field, and preferably with a public or private utility company or agency. A Master's degree in a related field is desirable.

Knowledge

- Expertise in MS Office Suite, Adobe Illustrator, Adobe InDesign, Adobe Photoshop, and Adobe Acrobat
- Project management including how to direct, control, and manage projects through completion.
- Principles of negotiation, generally, and contract negotiation specifically.
- Group facilitation skills.
- Effective written and verbal communication.
- Demonstrates highest level of accountability, integrity, judgment and confidentiality.
- Customer service and the impact of relationships on successful programs.

Ability to

- Critically evaluate proposals, programs and policies.
- Draft proposals for grant funding and other program revenue opportunities.
- Take responsibility and work independently, as well as coordinate team efforts.
- Work accurately and efficiently under pressure.
- Handle multiple ongoing projects in a team-oriented environment.
- Demonstrate patience, tact, and courtesy.
- Make presentations as required at public meetings.
- Communicate effectively both verbally and in written form.
- Establish and maintain effective working relationships with persons encountered in the performance of duties.
- Manage multiple priorities and quickly adapt to changing priorities in a fast paced dynamic environment.

Mathematical Skills

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to compute rate, ratio, and percent and to draw and interpret bar graphs.

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently required to use hands to finger, handle, or feel and reach with hands and arms. The employee is occasionally required to stand.

The employee must occasionally lift and/or move up to 25 pounds.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The noise level in the work environment is usually moderate.

ADA Compliance

MEA will make reasonable accommodation of the known physical or mental limitations of a qualified applicant with a disability upon request.

RESOLUTION NO. 2013-10

**A RESOLUTION OF THE BOARD OF DIRECTORS OF
THE MARIN ENERGY AUTHORITY HONORING BOARD MEMBER
LEN RIFKIND**

WHEREAS, the Marin Energy Authority 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, Marin Energy Authority members include the following Marin communities: the County of Marin, the City of Belvedere, the Town of Corte Madera, the Town of Fairfax, the City of Larkspur, the City of Mill Valley, the City of Novato, the Town of San Anselmo, the City of San Rafael, the City of Sausalito, the City of Richmond, the Town of Ross, and the Town of Tiburon; and

WHEREAS, the Town of Corte Madera executed the Joint Powers Agreement establishing membership in the Marin Energy Authority on December 6, 2011; and

WHEREAS, Len Rifkind was appointed to the Larkspur City Council in January 2009 and served enthusiastically until December 2013. He has been a dedicated public servant, a strong environmental leader with a focused business sense, and an advocate for the betterment of the City of Larkspur; and

WHEREAS, Len Rifkind was elected Mayor of the City of Larkspur and served from 2011 to 2012; and

WHEREAS, on January 5, 2012 Len Rifkind was appointed to represent the City of Larkspur on the Marin Energy Authority Board of Directors; and

WHEREAS, Director Rifkind has shown his dedication and commitment to the Marin Energy Authority through his conscientious and thoughtful service on the Board of Directors its Executive Committee; and

WHEREAS, Director Rifkind has always been a reliable team member, offering a steady presence on the Board with his objective analysis of issues and thought-provoking questions which will be missed by his Board colleagues; and

WHEREAS, the Marin Energy Authority Board of Directors and staff thank Director Rifkind for his passion and commitment to the agency, its goals and purpose.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Marin Energy Authority that the Marin Energy Authority Board and staff do hereby extend to Len Rifkind our appreciation for his dedicated service, our congratulations on his future

endeavors, and our best wishes for his continued success, happiness, and good health in the years to come.

PASSED AND ADOPTED at a regular meeting of the Marin Energy Authority Board of Directors on this 5th day of December 2013, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
City of Belvedere				
Town of Corte Madera				
Town of Fairfax				
City of Larkspur				
County of Marin				
City of Mill Valley				
City of Novato				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Rafael				
City of Sausalito				
Town of Tiburon				

 CHAIR, MARIN ENERGY AUTHORITY BOARD

Attest:

 SECRETARY, MARIN ENERGY AUTHORITY BOARD

Overview of MEA Board Offices and Committees December 1, 2013

Board Offices

Damon Connolly, Chair

Kate Sears, Vice Chair

Denise Athas, Auditor/Treasurer

Dawn Weisz, Secretary

Executive Committee

1. Damon Connolly, Chair
2. Denise Athas
3. Tom Butt
4. *Leonard Rifkind (rotating off)*
5. Kate Sears
6. *Ken Wachtel (rotating off)*

Interest Expressed:

1. Bob McCaskill
2. Sloan Bailey

Technical Committee

1. Kate Sears, Chair
2. *Larry Bragman (rotating off)*
3. Ford Greene
4. Emmett O'Donnell
5. Carla Small
6. Ray Withy

Proposed Ad Hoc Ratesetting Committee for January, 2013

1. Damon Connolly, Chair
2. Denise Athas
3. Sloan Bailey
4. Emmett O'Donnell
5. Bob McCaskill



December 5, 2013

TO: Marin Energy Authority Board

FROM: Jamie Tuckey, Communications Director

RE: Resolution 2013-11 Adopting Amendment No. 7 to the JPA Changing the Name Marin Energy Authority to Marin Clean Energy (Agenda Item #8)

ATTACHMENT: A. Amendment No. 7 to the MEA JPA Agreement
B. Resolution No. 2013-11

Dear Board Members:

SUMMARY:

The Marin Energy Authority Joint Powers Authority (JPA) oversees and administers the Marin Clean Energy program. Communicating two names has led to some confusion amongst customers, media, elected officials, and policymakers.

Staff recommends changing the name of the JPA from Marin Energy Authority to Marin Clean Energy. Eliminating the discrepancy between the name of the governing body and the name of the program would promote simplicity and understanding, thereby strengthening our brand.

The name change would have a minimal fiscal impact with only marginal action items because the program has been referred to as 'Marin Clean Energy' or 'MCE' since 2008.

The name change would allow staff to continue to brand the program as 'MCE' or 'MCE Clean Energy' to customers, which eliminates any geographic limitations associated with the word 'Marin'. Staff began transitioning customer messaging to 'MCE' and 'MCE Clean Energy' in January 2013 when the community outreach campaign was launched in Richmond.

Two internet addresses are currently used to provide program information about Marin Clean Energy. The customer facing site where people can learn about power sources, rates, opt out procedures, or Deep Green enrollments is www.mceCleanEnergy.com and it would not be impacted by the name change. The government-facing site where people can find meeting archive materials, videos, and key documents approved by the Board is www.marinenergyauthroity.org. If the JPA name is changed to Marin Clean Energy the website address would simply be changed to www.marincleanenergy.com, which is already owned by the Agency.

At the November 20, 2013 Executive Committee meeting, the committee discussed the proposed name change and recommended approval by the full Board.

Recommendation: Approve Resolution 2013 – 11 adopting Amendment No. 7 to the Joint Powers Agreement changing the name of the Marin Energy Authority to Marin Clean Energy.

**AMENDMENT NO. 7 TO MARIN ENERGY AUTHORITY
JOINT POWERS AGREEMENT**

1. The name of the Marin Energy Authority is hereby changed to Marin Clean Energy. All references to the Marin Energy Authority or the Authority in the Marin Energy Authority Joint Powers Agreement, as amended by Amendment Nos. 1 through 7, shall mean Marin Clean Energy.

This Amendment No. 7 to the Marin Energy Authority Joint Powers Authority Agreement was duly adopted by the Board of Directors in accordance with Article 8.4 of this Agreement on December 5, 2013.

RESOLUTION NO. 2013-11

**A RESOLUTION OF THE BOARD OF DIRECTORS OF
THE MARIN ENERGY AUTHORITY ADOPTING AMENDMENT 7 TO THE
MARIN ENERGY AUTHORITY JOINT POWERS AGREEMENT.**

WHEREAS, the Marin Energy Authority (“MEA”) 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, MEA members include the following MEA communities: the County of Marin, the City of Belvedere, the Town of Corte Madera, the Town of Fairfax, the City of Larkspur, the City of Mill Valley, the City of Novato, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Rafael, the City of Sausalito and the Town of Tiburon; and

WHEREAS, Amendment 7 to the Joint Powers Agreement will change the name of the Marin Energy Authority to Marin Clean Energy and all references to the Marin Energy Authority or the Authority in the Marin Energy Authority Joint Powers Agreement, as amended by Amendment Nos. 1 through 7, shall mean Marin Clean Energy; and

WHEREAS, the MEA Board of Directors reviewed the proposed Amendment 7 at the regular meeting of the Board on December 5, 2013; and

WHEREAS, Amendment 7 was circulated to the MEA member jurisdictions for review.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Marin Energy Authority that the name of the Marin Energy Authority is hereby changed to Marin Clean Energy and all references to the Marin Energy Authority or the Authority in the Marin Energy Authority Joint Powers Agreement, as amended by Amendment Nos. 1 through 7, shall mean Marin Clean Energy according to Amendment 7.

PASSED AND ADOPTED at a regular meeting of the Marin Energy Authority Board of Directors on this 5th day of December 2013, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
City of Belvedere				
Town of Corte Madera				
Town of Fairfax				
City of Larkspur				
County of Marin				
City of Mill Valley				
City of Novato				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Rafael				
City of Sausalito				
Town of Tiburon				

CHAIR, MARIN ENERGY AUTHORITY BOARD

ATTEST:

SECRETARY, MARIN ENERGY AUTHORITY BOARD



December 5, 2013

TO: Marin Energy Authority Board

FROM: Justin Kudo, Manager of Account Services
Dawn Weisz, Executive Officer

RE: Resolution 2013-12 Approving Revisions to Net Energy Metering Tariff
(Agenda Item #9)

ATTACHMENTS: A. Revised NEM Tariff (12/5/13)
B. Resolution 2013-12

Dear Board Members:

SUMMARY:

Net Energy Metering (NEM) is a program that PG&E and MCE offers to customers who have solar or other qualifying renewable generation systems. Solar installers and other industry groups often refer to NEM as “spinning the meter backwards”, a helpful analogy for the billing process. Customers utilizing NEM are metered based on the net of their on-site electricity production and their electricity consumption during each billing period. When customers generate more electricity than they use, they’re credited for that excess electricity towards later electric consumption. Many customers utilize certain solar-friendly time-of-use schedules to receive greater credit for generation when grid demand is high, and then utilize those credits at reduced rates during low-demand periods.

MCE’s NEM Tariff was first approved by the MEA Board of Directors on June 3, 2010. The NEM Tariff allows participation by customers with grid-connected renewable energy systems such as solar, small wind and biogas of up to 1,000 kilowatts. The Tariff was established with a monthly billing mechanism along with an opportunity to annually “cash-out” credits over \$100 each April.

Revisions to the MCE NEM Tariff were made on October 7, 2010 and January 5, 2012, modifying the applicability of the cash-out provision in the event that customers opt-out or move out of the MCE service area prior to their April cash-out.

Through a combination of unique incentives and customer-oriented considerations, MCE’s NEM Tariff is aimed at providing premium benefits to incentivize solar installations. MCE’s NEM Tariff plays a key role for MCE in ensuring that customers with solar or other renewable energy installations are able to achieve compensation for their on-site generation. The following table compares MCE’s NEM program offerings to PG&E’s:

MCE NEM Program	PG&E NEM Program
Generation credits are accrued at the Deep	Generation credits are accrued at the PG&E

Green rate (retail rate plus \$0.01/kWh)	retail rate
Monthly billing of generation charges reduces large bills at true-up; PG&E delivery charges are still settled annually	Annual billing of all electric charges
Perpetual rollover of any excess generation credits	Any excess credits are forfeited annually
Annual opportunity to cash out generation credit balances over \$100 at the full retail rate	Net surplus compensation, typically results in zero or minimal payment

As MCE has matured from a small organization serving less than one hundred NEM customers at the beginning of service, to a large organization serving over 2,500 NEM customers currently, the policies which relate to NEM have changed and MCE's NEM Tariff is in need of adjustment to best serve its customers. In addition, certain limitations of PG&E's billing system have made it difficult to provide customers with their NEM credits without having these credits applied to other PG&E charges.

At this time revisions are being proposed for the NEM tariff to update outdated language, change certain processes, and add new provisions that improve customer choices. The goal of these revisions is to establish a NEM tariff which is clearer to customers and more accurately describes how NEM accounts are billed and serviced. Proposed revisions are described in detail below and include:

- Program eligibility clarifications
- Clarifying applicability of new NEM programs
- Removal of interconnection and application references
- Defining customers and generators
- MCE credits applied to charges monthly
- Redirecting net generator credits
- Clarifying annual cash-out process
- Directing customers to PG&E NEM services

Changes to Program Applicability

Previous language used for the "Applicability" section -- describing which NEM customers are served and how to apply for service -- was based upon PG&E's NEM tariff from 2010. This language has been revised to keep options for applicability as broad as possible for customers, to affirm service availability for alternative NEM programs, and to remove outdated references to interconnection with MCE.

Program Eligibility Clarifications

Initial NEM tariff language was aimed at providing service for a limited number of renewable resource types, as dictated by PG&E's 2010 NEM tariff. The proposed revisions to the NEM Tariff specify only that the customer must have an "eligible Renewable Electrical Generation Facility, as defined in PG&E's Electric Schedule NEM". The proposed revisions also replaced the previous capacity limit of 1,000 kilowatts with language specifying "within capacity limits described in PG&E's Electric Schedule NEM" because MCE does not have a way of monitoring compliance directly. These revisions should reduce customer and solar industry confusion about any inconsistency between MCE and PG&E program requirements.

Clarifying Applicability of New NEM Programs

Language has been added that specifies that the NEM tariff is available for customers utilizing new alternative NEM programs, such as Virtual Net Energy Metering (NEMV), Virtual Net Energy Metering for Multifamily Affordable Housing (NEMVMASH) and NEM Aggregation (NEMA). Certain tariffs introduced by PG&E require that third-party providers of electricity support use of these schedules – these updates codify that MCE allows for these alternative NEM services.

Removal of Interconnection and Application References

The original Tariff language in this section was related to interconnection and NEM application requirements with MCE, however all MCE NEM customers use PG&E as their point of interconnection. Therefore, this language has been removed in its entirety, simplifying the application process for customers.

Changes to Special Conditions

Certain limitations of PG&E's billing system have prompted proposed revisions to billing methods to ensure that customers are able to retain generation credits from MCE. Additionally, proposed revisions have been incorporated which will be clearer for customers and better meet MCE program goals.

Defining of Consumers and Generators

Original language explaining the accrual of MCE generation credits was taken out of PG&E's NEM tariff directly and was unclear. Proposed revisions clarify exactly what a "Net Consumer" and "Net Generator" are, and clarify when customers receive credit for their generated electricity at the Deep Green rate.

MCE Credits Applied to MCE Charges Monthly

As per the existing MCE NEM Tariff, it has been the intent of MCE to provide customers with credits on their monthly bills which could be used to offset further MCE charges, however limitations with PG&E billing have resulted in MCE credits offsetting PG&E charges. While charges and credits are being accurately accrued, this a problem for all parties – MCE is not able to accurately tell customers how much MCE credit is available, PG&E's gas and delivery charges are offset (and thus unpaid), and customers may receive past due notices and other inconveniences.

MCE and PG&E have worked together over the last year on a billing solution that addresses this problem, by no longer passing through MCE credits to the PG&E bill. MCE will instead internally track accumulation of customer generation credits and notate them on customer bills. These credits, if available, will be applied to future MCE charges due and be available for cash-out, but will no longer offset current PG&E charges for gas or delivery services. The proposed revisions to the MCE NEM Tariff reflect this change.

Redirecting Net Generator Credit

As part of MCE's initial NEM Tariff implementation, MCE included a flat \$4 monthly "net generator credit" incentive for NEM customers who generate more energy than they use in a billing period. This customer payment resulted in an approximate cost to MCE of \$22,000 annually. This amount was intended to compensate customers for certain "minimum bill charges" imposed by PG&E. However, this credit applied irrespective of time-of-use rates and resulting monetary value. As a result, this credit has been ill-understood by MCE customers and is difficult for solar installers to use when modeling benefits for customers.

In addition to the concern about the efficacy of this program in supporting solar, this credit is not expected to function as originally intended. With the proposed billing changes described above, this credit would no longer apply against PG&E's minimum bill charges. Furthermore, PG&E is planning to remove and replace minimum bill charges for NEM customers in its 2014 General Rate Case – such changes are already included in their proposed rate design.

As an alternative, staff recommends revisions to the Tariff to remove the \$4 monthly credit. Staff also recommends the consideration of additional funds for solar installation rebates in the FY 2015 budget, to more directly support the development of new solar installations.

Clarifying Annual Cash-Out Process

Revisions to the cash-out language in the Tariff have been proposed to help customers understand exactly how a cash-out occurs and how it will be accounted for.

In addition, proposed revisions to the Tariff allow customers who return to bundled service (opt out) to receive a cash-out for their NEM balance. PG&E's limitations on return to service options and a forced true-up can be difficult for NEM customers, and increasing MCE's flexibility for these customers will help us better serve them.

Directing Customers to PG&E NEM Services

Lastly, proposed revisions to the Tariff advise customers that they are still subject to the conditions and billing procedures set forth by PG&E, in addition to those specified by MCE's tariff. Customers are directed to review PG&E's current NEM tariff for up-to-date information.

Recommendation: Adopt Resolution 2013-12 Approving the Revised Net Energy Metering Tariff.



ELECTRIC SCHEDULE NEM - NET ENERGY METERING SERVICE

APPLICABILITY: This net energy metering (NEM) schedule is applicable to a customer who uses an eligible Renewable Electrical Generation Facility, as defined in PG&E’s Electric Schedule NEM (<http://www.pge.com/tariffs/ERS.SHTML#ERS>), within the capacity limits described in PG&E’s Electric Schedule NEM that is located on the customer’s owned, leased, or rented premises, is interconnected and operates in parallel with PG&E’s transmission and distribution systems, and is intended primarily to offset part or all of the customer’s own electrical requirements (hereinafter “eligible customer-generator” or “customer”).

This rate schedule is available on a first-come, first-served basis to customers that provide PG&E with a completed PG&E NEM Application and comply with all PG&E NEM requirements as described in PG&E Electric Schedule NEM. This includes customers served by NEMV (Virtual Net Energy Metering), NEMVMASH (Virtual Net Energy Metering for Multifamily Affordable Housing), NEMA (NEM Aggregation) and Multiple Tariff facilities as described by PG&E Electric Schedule NEM.

TERRITORY: The entire MCE service area.

RATES: All rates charged under this schedule will be in accordance with the eligible customer-generator’s otherwise-applicable MCE rate schedule (OAS). An eligible customer-generator served under this schedule is responsible for all charges from its OAS including monthly minimum charges, customer charges, meter charges, facilities charges, demand charges and surcharges, and all other charges owed to MCE or PG&E. Charges for energy (kWh) supplied by MCE, will be based on the net metered usage in accordance with this tariff.

BILLING: Customers with NEM service will be billed as follows:

a) For a customer with Non-Time of Use (TOU) Rates:

Any net consumption or production shall be valued monthly as follows:

If the eligible customer-generator is a “Net Consumer,” having overall positive usage over a billing cycle, the eligible customer-generator will be billed in accordance with the eligible customer-generator’s OAS.

If the eligible customer-generator is a “Net Generator,” having overall negative usage over a billing cycle, any net energy production shall be valued at the OAS plus the currently applicable Deep Green Option Energy Charge for the appropriate tier level in which the equivalent kWh of usage would fall. The calculated value of any net energy production shall be credited to MCE customers as described in Section (c).

b) For a customer with TOU Rates:

If the eligible customer-generator is a Net Consumer (as defined above) during any discrete TOU period, the net kWh consumed during such period shall be billed in accordance with applicable TOU period-specific rates/charges, as described in the eligible customer-generator's OAS.

If the eligible customer-generator is a Net Generator (as defined above) during any discrete TOU period, the net kWh produced during such period shall be valued in consideration of the applicable TOU period-specific rates/charges, as described in the eligible customer-generator's OAS, plus the Deep Green Option Energy Charge. The calculated value of any net energy production during a specific TOU period shall be credited to MCE customers as described in Section (c).

c) Monthly Settlement of MCE Charges/Credits:

NEM customers will receive a statement in their monthly PG&E bills indicating any accrued charges for their usage during the current billing cycle. Customers who have accrued credits during previous billing cycles will see these credits applied against current charges. Any remaining balance is due and must be paid during each monthly billing cycle.

When a customer's net energy production results in a net bill credit over a billing cycle, the value of any net energy production during the billing cycle shall be noted on the customer's bill and carried over as a bill credit for use in subsequent billing period(s).

d) MCE Annual Cash-Out:

During the April billing cycle of each year, all current MCE NEM customers with a credit balance of more than \$100 will be offered a direct payment by check for this balance; any credit balance will be determined as of the final date of the customer's March billing cycle. Customers who participate in the MCE Cash-Out process will have an equivalent credit removed from their NEM account balance at the time of check issuance. In the event that customers do not elect to receive a check for accrued NEM credits, such credits will continue to be tracked by MCE and will remain on the customer's account for future use (i.e., reduction of future MCE charges).

Customers who close their electric account through PG&E or move outside of the MCE service area prior to the April billing cycle of each year are also eligible for the annual MCE Cash-Out process.

e) Return to PG&E Bundled Service:

MCE customers with NEM service may opt out and return to PG&E bundled service at any time. Customers should be advised that PG&E will perform a true-up of their account at the time of return to PG&E bundled service, and that PG&E's standard terms for transitional rates apply to customer returns with less than a six-month advance notice if they have been an MCE customer for 60 days or more.

If a MCE NEM customer opts-out of the MCE program and returns to bundled service, that customer may request to cash-out any remaining generation credits on the account, provided that the request is received within 90 calendar days of the return to PG&E service.

f) PG&E NEM Services:

MCE NEM customers are subject to the conditions and billing procedures of PG&E for their non-generation services, as described in PG&E's Electric Schedule NEM and related PG&E tariff options addressing NEM service. Customers should be advised that while MCE settles out balances for generation on a monthly basis, PG&E will continue to assess charges for delivery, transmission and other services. Most NEM customers will receive an annual true-up from PG&E for these non-generation services.

Customers are encouraged to review PG&E's most up-to-date NEM tariffs, which are available from PG&E.

DRAFT

RESOLUTION NO. 2013-12

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MARIN ENERGY AUTHORITY APPROVING THE REVISED NET ENERGY METERING TARIFF

WHEREAS, the Marin Energy Authority ("MEA") 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, MEA members include the following Marin communities: the County of Marin, the City of Belvedere, the Town of Corte Madera, the Town of Fairfax, the City of Larkspur, the City of Mill Valley, the City of Novato, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Rafael, the City of Sausalito and the Town of Tiburon; and

WHEREAS, the MEA Board of Directors approved the Marin Energy Authority Net Energy Metering Tariff on June 3, 2010; and

WHEREAS, the MEA Board of Directors approved the first revision to the Marin Energy Authority Net Energy Metering Tariff on October 7, 2010; and

WHEREAS, the MEA Board of Directors approved the second revision to the Marin Energy Authority Net Energy Metering Tariff on January 5th, 2012; and

WHEREAS, MEA has proposed revisions to the Net Energy Metering Tariff to address changes to Net Energy Metering options, clarify billing practices for NEM customers, revise the net generator credit, and further expand the ability to cash-out generation credits, among other changes.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Marin Energy Authority that the third revision to the Net Energy Metering Tariff is approved.

PASSED AND ADOPTED at a regular meeting of the Marin Energy Authority Board of Directors on this 5th day of December 2013, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
City of Belvedere				
Town of Corte Madera				
Town of Fairfax				
City of Larkspur				
County of Marin				
City of Mill Valley				
City of Novato				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Rafael				
City of Sausalito				
Town of Tiburon				

CHAIR, MARIN ENERGY AUTHORITY BOARD

ATTEST:

SECRETARY, MARIN ENERGY AUTHORITY BOARD



December 5, 2013

TO: Marin Energy Authority Board
FROM: Greg Morse, Business Analyst
RE: Budget Adjustment for Fiscal Year 2014 (Agenda Item #10)
ATTACHMENT: Proposed Budget Adjustment for Fiscal Year 2013-14

Dear Board Members:

SUMMARY:

On March 7, 2013, your Board approved the Fiscal Year 2013-14 Budget. Based on operational activity to-date and additional program needs, several line items of the approved budget will need to be revised. The proposed changes would not increase or decrease the overall Fiscal Year 2013-14 Budget, but would adjust several categories within the overall Budget.

The attached Proposed Budget Adjustment to the Fiscal Year 2013-14 Budget reflects current information MEA has for actual expenses and revenues to date, and sets forth the following revisions:

- Legal Counsel: MEA has been under budget in Legal Counsel for the current fiscal year, and recommends a shift of \$75,000 to Communications Consultants and Related Expenses.
- Communications Consultants and Related Expenses: Increased costs in Communications Consultants and Related Expenses include ongoing customer retention outreach, enhanced Deep Green and Energy Efficiency related campaigns, joint cost comparison mailers, as well as the costs allocated to outreach for the successful Richmond launch. An increase of \$100,000 is recommended for this line item.
- Total Staff Compensation: MEA has been under budget in Total Staff Compensation in the current fiscal year, and requests a shift of \$25,000 into Communications Consultants and Related Expenses.

Recommendation: Approve Budget Adjustment for the Fiscal Year 2013-14 Budget.

**MARIN ENERGY AUTHORITY
OPERATING FUND
BUDGETARY ADJUSTMENT SCHEDULE
Fiscal Year 2013-14**

	<u>Budget at 10/31/13</u>	<u>Proposed Amendments</u>	<u>Amended Budget</u>
REVENUE AND OTHER SOURCES:			
Revenue - Electricity (net of allowance)	\$ 86,865,000		\$ 86,865,000
Total sources	<u>86,865,000</u>	<u>-</u>	<u>86,865,000</u>
EXPENDITURES AND OTHER USES:			
CURRENT EXPENDITURES			
Cost of energy	76,427,000		76,427,000
Staffing	1,562,000	(25,000)	1,537,000
Technical consultants	594,000		594,000
Legal counsel	335,000	(75,000)	260,000
Communications consultants and related expenses	650,000	100,000	750,000
Data manager	2,534,000		2,534,000
Service fees- PG&E	603,000		603,000
Other services	333,000		333,000
General and administration	297,000		297,000
Marin County green business program	15,000		15,000
Solar rebates	10,000		10,000
Total current expenditures	<u>83,360,000</u>	<u>-</u>	<u>83,360,000</u>
CAPITAL OUTLAY	20,000		20,000
DEBT SERVICE	1,195,000		1,195,000
INTERFUND TRANSFER TO:			
Local Renewable Energy Development Fund	51,536		51,536
Total expenditures	<u>84,626,536</u>	<u>-</u>	<u>84,626,536</u>
Net increase (decrease) in available fund balance	<u>\$ 2,238,464</u>	<u>\$ -</u>	<u>\$ 2,238,464</u>



December 5, 2013

TO: Marin Energy Authority Board

FROM: Dawn Weisz, Executive Officer

RE: Request from the County of Napa and the City of Albany for Membership Analysis and Consideration as a Member of MCE (Agenda Item #11)

ATTACHMENT: A. Policy 007: New Customer Communities
B. MCE Affiliate Membership Process
C. Membership Request from the County of Napa
D. Membership Request from the City of Albany

Dear Board Members:

SUMMARY:

The MCE mission is to address climate change by using a wide range of renewable energy sources, reducing energy related greenhouse gas emissions and promoting the development of energy efficiency programs. On September 25, 2013 your Board adopted Policy 007: New Customer Communities, which describes MEA's policy to explore and support electric service in new communities to further agency goals. Policy 007 allows for new communities to be offered MCE service through two channels, affiliate membership or special-consideration membership as described in Attachment A. On September 25, 2013 your Board also approved the MCE Affiliate Membership Process described in Attachment B.

Step 1 of the Affiliate Membership process requires the governing body of an interested community to submit a letter to MEA, requesting consideration as a member. Since approval of Policy 007 MEA has received a request from two interested communities: the County of Napa and the City of Albany.

- The County of Napa spans 788 miles and the unincorporated population is approximately 28,000, which accounts for 20% of the total Napa County population. It is located north-east of, and in close proximity to MCE's existing jurisdiction. The County of Napa has in place a "Climate Action Plan" and an "Environmental Purchasing Policy," as well as other sustainability initiatives.
- The City of Albany is 22 square miles in size and its population is approximately 18,500. It is located south-east of, and in close proximity to MCE's existing jurisdiction. The City of Albany established a Sustainability Committee in 2012 to provide leadership, technical assistance, education and outreach to members of the public, schools, local businesses, and city agencies on innovative programs to promote environmental sustainability through energy conservation, solid waste

reduction and recycling, water conservation, pollution prevention, and transportation efficiency. The City has also enacted a green building ordinance to foster use of energy efficiency and environmentally friendly building technologies.

Representatives from the County of Napa and the City of Albany desire participation in MCE to provide choices for more renewable energy in their jurisdiction, and to reduce greenhouse gas emissions.

Step 2 of the Affiliate Membership process requires that staff evaluate the request from any community that has completed Step 1 to determine if internal resources are available to consider the request, and to ensure that the performance of a quantitative membership analysis would not create negative impacts to core agency functions. Staff has completed this evaluative process, and determined that at this time, a quantitative membership analysis for the two communities which have submitted requests to-date, could be conducted without negative impacts to core agency functions.

Step 3 requires that the request from interested communities be presented to the MEA Board to consider adherence to criteria D, E, F and G below, and to authorize consideration as a member, subject to the performance of a quantitative membership analysis by staff.

Affiliate Membership Criteria:

- A. Allowing for MCE service in new community will result in a projected net rate reduction for existing customer base.
- B. Offering service in new community will enhance the strength of local programs, including an increase in distributed generation, and will accelerate greenhouse gas reductions on a larger scale.
- C. Including new community in MCE service will increase the amount of renewable energy being used in California's energy market.
- D. There will be an increase in opportunities to launch and operate MCE energy efficiency programs to reduce energy consumption and reliance on fossil fuels.
- E. New opportunities are available to deploy local solar and other distributed renewable generation through the MCE Net Energy Metering Tariff and Feed in Tariff.
- F. Greater demand for jobs and economic activity is likely to result from service in new community.
- G. The addition of the new community is likely to create a stronger voice for MCE at the State and regulatory level.

Step 4 requires that if the membership request is approved by your Board, staff will enter into a contract with the governing body of new jurisdiction to fund costs of the quantitative membership analysis and to cover any other MCE staff costs such as responses to questions and participation in appropriate community meetings. After contract finalization, staff would then undertake and complete the membership analysis, with primary focus on quantitative criteria A, and also with an assessment of items B and C above.

Recommendation: Approve the membership request of the County of Napa and the City of Albany.



POLICY NO. 007 – NEW CUSTOMER COMMUNITIES

Whereas MEA's founding mission is to address climate change by using a wide range of renewable energy sources, reducing energy related greenhouse gas emissions and promoting the development of energy efficiency programs; and

Whereas creating opportunities for customer electric service in new communities may allow MEA to further progress towards its founding mission; and

Whereas MEA currently provides a minimum 50% renewable energy supply to all MCE customers (through its default Light Green retail service option), which substantially exceeds similar renewable energy supply percentages provided by California's investor-owned utilities (IOUs); and

Whereas the addition of new communities to MEA's membership will inevitably increase state-wide renewable energy percentages due to MCE's specified minimum renewable energy supply percentage of 50%; and

Whereas the addition of new communities to MEA's membership will also decrease greenhouse gas emissions within the Western United States as a result of minimum renewable energy supply percentages exceeding such percentages provided by California's IOUs.

Therefore, it is MEA's policy to explore and support customer electric service in new communities to further agency goals.

In consideration of the above, MEA will allow access to service in new communities through two channels, affiliate membership or special-consideration membership, as applicable:

Affiliate membership considered if:

1. All applicable membership criteria are satisfied,
2. New community is located in a county that is not more than 30 miles from MCE existing jurisdiction, and
3. Customer base in new community is 40,000 or less.

Special-consideration membership considered if:

1. All applicable membership criteria are satisfied,
2. New community is located in a county that is more than 30 miles from MCE existing jurisdiction and/or the customer-base in the new community is greater than 40,000.



MCE Affiliate Membership Process

Step 1: Governing body submits letter to MEA from new community jurisdiction, requesting consideration as a member.

Step 2: Staff evaluates request timing to determine if internal resources are available to consider request, and to ensure no impact to core agency functions.

Step 3: Request submitted to MEA Board to consider adherence to criteria D, E, F and G below, and to authorize initiation of membership analysis.

Step 4: Following MEA Board approval, staff executes contract with governing body of new jurisdiction to fund costs of membership analysis. Staff undertakes and completes analysis, with primary focus on quantitative criteria A, B and C below.

Step 5: Results of membership analysis presented to governing body of new community and to MEA Board. 1). If quantitative affiliate membership criteria are met, community is automatically authorized to complete affiliate membership process. 2). If qualitative criteria are not met but other compelling criteria are present, Board may consider approval of affiliate membership.

Step 6: Governing body of new jurisdiction approves resolution requesting membership, ordinance authorizing community choice aggregation service through MCE and signs JPA Agreement as a Party.

Step 7: MEA Board adopts resolution authorizing membership of the additional incorporated municipality and submits updated Implementation Plan to CPUC.

Affiliate Membership Criteria:

- A. Allowing for MCE service in new community will result in a projected net rate reduction for existing customer base.
- B. Offering service in new community will enhance the strength of local programs, including an increase in distributed generation, and will accelerate greenhouse gas reductions on a larger scale.
- C. Including new community in MCE service will increase the amount of renewable energy being used in California's energy market.
- D. There will be an increase in opportunities to launch and operate MCE energy efficiency programs to reduce energy consumption and reliance on fossil fuels.
- E. New opportunities are available to deploy local solar and other distributed renewable generation through the MCE Net Energy Metering Tariff and Feed in Tariff.
- F. Greater demand for jobs and economic activity is likely to result from service in new community.
- G. The addition of the new community is likely to create a stronger voice for MCE at the State and regulatory level.



A Tradition of Stewardship
A Commitment to Service

Board of Supervisors

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Brad Wagenknecht
Chairman

Dawn Weisz
Executive Officer, Marin Clean Energy
781 Lincoln Ave., Suite 320
San Rafael, CA 94901

September 17, 2013

Dear Ms. Weisz:

The Board of Supervisors of Napa County thanks you for the presentation of your Marin Clean Energy (MCE) program, during our June 4, 2013 joint meeting with the Marin, Solano, and Sonoma Boards of Supervisors. Our Board found your presentation fascinating, and directed staff to investigate the possibility of bringing a similar Community Choice Aggregation (CCA) program to Napa County.

Staff has concluded, and this Board agrees, that one of our best options, both in terms of timeliness and cost, is to explore the possibility of joining an existing CCA program. We believe that an arrangement with MCE, whereby unincorporated Napa County would be able to join your program (similar to what you recently accomplished by accepting the City of Richmond), may have benefits for both of us. While we speak only for the County, it is likely that some or all of our five municipalities may also have an interest in joining. We would bring many new customers to your service base, and have several renewable energy projects, in the early stages of development, which may be in a position to supply power to MCE. We also hope to explore maximizing the energy efficiency programs MCE provides in combination with existing Napa County programs.

The Napa County Board of Supervisors cordially requests that you authorize your staff to conduct exploratory negotiations with our County, to determine the practicality of such an arrangement, and propose a framework whereby we could work together to develop a plan of action for moving forward, should our discussions prove fruitful. We are flexible in regards to the terms of any agreement and governance structure, only wanting what is best for both our organizations, and our citizens.

We look forward to hearing from you. Please feel free to contact Steve Lederer, our Public Works Director, at 707-259-8228, or me, Brad Wagenknecht, at 707-253-4828, if you would like to discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Wagenknecht".

Brad Wagenknecht, Chairman, Napa County Board of Supervisors

cc: Steve Lederer, Napa County Director of Public Works

Brad Wagenknecht
District 1

Mark Luce
District 2

Diane Dillon
District 3

Bill Dodd
District 4

Keith Caldwell
District 5

Urban Village by the Bay

ALBANY CALIFORNIA



CITY OF ALBANY
1000 SAN PABLO AVENUE
ALBANY, CA 94706
www.AlbanyCA.org

November 18, 2013

Dawn Weisz
Executive Officer, MCE
781 Lincoln Avenue, St. 320
San Rafael, CA 94901

Dear Ms. Weisz:

The City of Albany is pleased to provide this letter requesting consideration to join as a member of the Marin Energy Authority.

In 2010, the City adopted a Climate Action Plan (CAP), with an aggressive greenhouse gas reduction goal of 25% below 2004 levels by the year 2020. Energy consumption in Albany's residential, commercial, and industrial buildings generates almost two-thirds of the City's GHG emissions. Purchasing a higher percentage of clean energy through a CCA would better enable Albany to achieve its GHG reduction goals.

The City's Sustainability Committee, tasked with CAP implementation, has been researching the feasibility of CCA for the acquisition of alternative energy. The Albany City Council's Strategic Vision, adopted in the spring of 2013, identifies investigating a CCA as a strategic priority of the City. On March 20th, the Sustainability Committee received a presentation from Marin Clean Energy. Upon approval of the expansion policy by the MEA Board of Directors, the Sustainability Committee made a recommendation to the City Council on October 16, 2013 to consider next steps to move toward applying to join the Marin Energy Authority.

Furthering MEA's mission, Albany can provide overall greater greenhouse gas reductions through an expanded customer base, more opportunities for Deep Green enrollment, and further opportunities for energy efficiency and solar incentive programs. Albany also offers new opportunities for renewable energy development, and can provide more local renewable energy to the system, as there are many existing residential PV panels in the City.

The City of Albany City Council requests that you authorize your staff to conduct exploratory negotiations with our City to determine the feasibility of incorporating the City of Albany into your JPA.

We look forward to hearing from you. Please feel free to contact Sustainability & Transportation Coordinator Claire Griffing at cgriffing@albanyca.org or (510) 528-5754 if you would like to discuss this further.

Sincerely,


Peggy Thomsen
Mayor

cc: Claire Griffing, Sustainability & Transportation Coordinator



December 5, 2013

TO: Marin Energy Authority Board

FROM: Emily Goodwin, Internal Operations Coordinator

RE: Policy 009 - Information Technology Security (Agenda Item #12)

ATTACHMENT: Draft Information Technology Security Policy

Dear Board Members:

SUMMARY:

MEA recruited key staff during FY 2013/14 to provide programs to a growing customer base and expand services. In addition, MEA has increased the number of working contractors to facilitate a larger scope of services to an increased customer base. Based on that added complexity MEA has undergone expert and customized information technology (IT) security consultation, an IT and internal controls assessment, and relevant staff training to manage security functions effectively. In an ongoing effort to further strengthen the organization based on our growth both internally and externally, MEA seeks to incorporate customized IT Security measures into a formalized policy.

As an organization MEA values an enhanced secure work environment that recognizes the importance of protecting customer data, financial information, access to online accounts and proprietary information. The draft Policy applies to all staff and operational systems and includes direction on topics including:

- Physical Security
- Access Request and Authorization
- Authentication Mechanism and Controls
- Remote Access
- Third Party Connectively

To implement this proposed Policy staff will make available a set of operational guidelines for use by the IT Security Team (comprised of Internal Operations staff and MEA's lead IT consultant) covering topics that include:

- Secure Configuration Standards
- Firewall Configuration

- Malware
- Encryption
- Patch Management
- Wireless Networking
- Event Monitoring
- Incident Response
- Vendor Management
- Media Destruction, Storage and Re-use

The proposed Policy reflects MEA's goals and practices regarding strong IT security and internal controls. By approving this Policy, your Board will support the organization's tradition of creating customized, best practice approaches that uniquely fit MEA's needs. This draft Information Technology Security Policy will support MEA's growth in the future as we prepare to use SmartMeter data, create new programs in demand response, energy storage or other fields, all while considering an even broader customer base both geographically and demographically.

At the November meeting of the MEA Executive Committee this draft Policy was discussed and recommended for approval by the full Board.

Recommendation: Approve the proposed MEA Information Technology Security Policy.



POLICY 009: INFORMATION TECHNOLOGY SECURITY

Information technology (“IT” or “Information”) is a critical Marin Energy Authority (MEA) asset and will be managed to ensure that it remains complete, accurate, confidential, and available for authorized business activities. Proper management of information technology is required to support regulatory compliance, minimize legal liability, reduce the risk of criminal activity, and to sustain stakeholder and customer satisfaction.

MEA is dependent on information technology to conduct business operations. Members of the Internal Operations Team in collaboration with the IT Consultant have been designated as the IT Security Team and are responsible for communicating IT policies and standards, helping all personnel achieve compliance with policies and standards, and reporting to management on any non-compliance or areas of risk.

MEA will make information technology accessible only to authorized employees or designated vendors as needed and such information shall only be used for authorized agency purposes. To ensure protection of information technology, operational guidelines will be in place for employees and designated vendors to follow which adhere to the principles below:

- Access to specific information technology is to be assigned to MEA employees or designated vendors with the minimum level of access necessary to perform respective responsibilities.
- Access to information technology will be made available only to the extent necessary to support authorized business functions.
- Security systems are to be structured with multiple layers of security, including physical, network, host, and personnel security measures.
- The degree of information security protection is to be commensurate with the impact of inadvertent or intentional misuse, improper disclosure, damage or loss.
- Adequate controls will divide sensitive duties among more than one individual to provide checks and balances that help insure operational guidelines are followed.
- Security is not an optional component of operations. All MEA staff and designated vendors are required to protect information. All staff and designated vendors that use or have access to MEA information technology are personally responsible for exercising the proper control over information according to the operational guidelines provided to them.

- Operational guidelines for treatment of information technology are subject to change as needed to protect MEA based on any changes in systems, threats, and practices.

DRAFT



December 5, 2013

TO: Marin Energy Authority Board
FROM: Emily Goodwin, Internal Operations Coordinator
RE: Policy 010 - Infants in the Workplace (Agenda Item #13)
ATTACHMENT: Draft Policy 010 – Infants in the Workplace

Dear Board Members:

SUMMARY:

MEA recruited key staff during FY 2013/14 to provide programs to a growing customer base and expand services. In an ongoing effort to further strengthen the organization and bolster employee retention strategies, MEA seeks to enhance core values and goals by implementing an Infants in the Workplace Policy.

As an organization MEA is looking to provide a positive work environment that recognizes parents' responsibilities to their jobs and to their infants by acknowledging that, when an infant is able to stay with a parent, this benefits the family, the employer, and society. The MEA Infants in the Workplace Policy encourages new mothers or fathers to return to work sooner by allowing new parents to bring their infant to work with them until the child is 6 months old or begins to crawl, whichever comes first.

More than 185 organizations nationally successfully allow infants in the workplace. Allowing infants in the workplace costs an organization almost nothing and provides extensive business benefits, such as employees voluntarily returning to work early after the birth of their child. It creates an increase in morale, employee retention, and increases overall productivity by limiting long-term absence from the work environment.

To implement the Policy, guidelines would be established to first assess employee eligibility based on job requirements. Employee participation would be subject to supervisory approval. Therefore, employees would need to consult with their supervisor, based on respective job responsibilities, to determine if this program is a good fit for their position. The guidelines would require a liability

waiver to be signed by the parent and require written acknowledgement by the parent that MEA has the right to have the parent remove a disruptive infant. The guidelines would also require that the parent create a safe and appropriate environment for their infant.

As an innovative agency, it is important to adopt proactive policies and programs that allow MEA to enhance the work environment, support our employees, and bolster our success. At the November meeting, your Executive Committee discussed this proposed Policy and recommended approval by the full Board.

Recommendation: Approve Policy 010 - Infants in the Workplace.



POLICY 010: INFANTS IN THE WORKPLACE

It is the policy of the Marin Energy Authority (MEA) to provide a positive work environment that recognizes parents' responsibilities to their jobs and to their infants by acknowledging that, when an infant is able to stay with a parent, this benefits the family, the employer, and society. The MEA Infants in the Workplace Policy can allow for new mothers or fathers to return to work sooner after the birth of an infant by permitting the new parent to bring their infant to work with them until the infant is 6 months old, or begins to crawl, whichever comes first.

Full-time and part-time MEA employees given approval by their direct supervisor may be eligible to participate in the program, subject to the specific job responsibilities of the employee and subject to completion of a Participation Agreement with MEA. MEA will attempt to accommodate requests for participation based on business and staffing needs at the time of the request, but MEA is not required to meet any employee requests. Operational guidelines will be made available to employees for Infants in the Workplace that adhere to the following principles:

- A participating employee must maintain acceptable work performance and ensure that the presence of the infant does not create any office disturbances. To participate, the employee must first acknowledge in the Participation Agreement that if problems arise which cannot be resolved the Participation Agreement may be terminated at any time by MEA.
- A participating employee will accept complete responsibility for the safety of the infant.
- A participating employee must provide all supplies and equipment needed to care for the infant at the work site and ensure that the area is kept in a clean and sanitary condition. All supplies utilized by the participating employee must be maintained in a manner that is not disruptive to the work of other employees.
- A participating employee must have off-site child-care arrangements in place by the time their infant reaches 6 months of age or begins to crawl, whichever comes first.
- Participating employees have the right to terminate their participation at any time.



**REGULATORY UPDATE
SUMMARY OF PROCEEDINGS**

MEA BOARD MEETING – DECEMBER 5, 2013

CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)

Cost Allocation and Procurement Affecting CCA

1) PG&E Energy Resource Recovery Account (ERRA) 2014..... A.13-05-015

<u>MEA’s Interest:</u>	To address PG&E’s proposed revenue requirements from both bundled and unbundled customers during 2014 and factors in revised PCIA calculations.	
<u>Actions Taken:</u>	<u>ERRA</u>	
	- PG&E Update	November 5
	- Additional Briefing	November 15
	- Proposed Decision Issued	November 25
<u>Next Steps:</u>	<u>ERRA</u>	
	- Final Decision	December 2013
	<u>Annual Electric True-Up (AET)</u>	
	- PG&E Advice Letter 4278-E to become effective	January 1

2) PG&E 2014 General Rate Case – Phase 2..... A.13-04-012

<u>MEA’s Interest:</u>	To address rate design and other issues applicable to CCA and MEA.	
<u>Actions Taken:</u>	- DRA Serves Testimony	November 15
<u>Next Steps:</u>	- Intervenors Serve Testimony	December 13
	- All-party Rebuttal Testimony	February 7
	- Evidentiary Hearings	February 24 – March 7
	- Opening Briefs	April 4
	- Reply Briefs	April 18
	- Request for Final Oral Argument and Submission	May 2

3) Petition for Rulemaking on Cost Allocation Issues P.12-12-010

<u>MEA’s Interest:</u>	MEA has petitioned the CPUC to start a proceeding in which cost allocation, cross-subsidization and non-bypassable charge issues will be addressed.	
<u>Actions Taken:</u>	-	

<u>Next Steps:</u>	- Workshop to be scheduled
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4) PG&E 2014 General Rate Case – Phase 1A.12-11-009, I.13-03-007

<u>MEA’s Interest:</u>	To address cost functionalization and other issues applicable to CCA and MEA.	
<u>Actions Taken:</u>	-	
<u>Next Steps:</u>	- Proposed Decision Expected	[November 19]
	- Decision	December 19
	- Request for Oral Argument	10 days after PD

5) EPIC Implementation ApplicationsA.12-11-001, et al.

<u>MEA’s Interest:</u>	To insure that the program administrators (PG&E, SCE, and SDG&E) are applying these funds to programs in a competitively neutral fashion.	
<u>Actions Taken:</u>	- Comments on Revised Proposed Decision	November 4
	- Reply Comments on Revised Proposed Decision	November 11
	- Decision Approved by Commission	November 14
<u>Next Steps:</u>	-	

6) 2012 Long Term Procurement Plan (LTPP)R.12-03-014

<u>MEA’s Interest:</u>	Involvement regarding the cost allocation mechanism (CAM) and other matters.	
<u>Actions Taken:</u>	<u>Track 4 – San Onofre Nuclear Power (SONGS):</u> - Opening Briefs	November 25
<u>Next Steps:</u>	<u>Track 3 – Procurement Rules:</u> - Proposed Decision on Procurement Rules	Summer 2013
	<u>Track 3 – Bundled Procurement:</u> - Awaiting Scoping Memo and Schedule regarding Bundled Procurement	Timing Unclear
	<u>Track 4 – San Onofre Nuclear Power (SONGS):</u> - Reply Briefs	December 16
	- Last Date to request Final Oral Argument	December or Q1 2014, depending on hearings
	- Proposed Decision	

7) PG&E Economic Development Rate.....A.12-03-001

<u>MEA’s Interest:</u>	This rate subsidy is intended to prevent companies from departing from California due to high energy costs; the rate is applied inequitably to CCA customers.	
<u>Actions Taken:</u>	<u>Advice Letter 4308-E</u>	
	- PG&E Advice Letter 4308-E	November 4
	- Protest to PG&E Advice Letter 4308-E Due	November 25
	<u>TURN Application for Rehearing</u>	
	- TURN Motion to Stay	November 15
	- Response to TURN Motion to Stay	November 22
	- Response to TURN Application for Rehearing	November 25
<u>Next Steps:</u>	-	

8) Green Tariffs (SDG&E SunRate and PG&E Green Option)A.12-01-008, A.12-04-020

<u>MEA’s Interest:</u>	Ensure appropriate cost allocation of SDG&E’s “SunRate” and PG&E’s “Green Option Tariff.”	
<u>Actions Taken:</u>	- PG&E and SDG&E Opening Comments	November 15
<u>Next Steps:</u>	- PG&E and SDG&E Revised Testimony	December 6
	- ORA and Intervenor Reply Comments	December 20
	- SCE to file parallel Green Tariff Application	January 10
	- Intervenor Testimony	January 10
	- Rebuttal Testimony	January 20
	- Evidentiary Hearings	January 28-30
	- Opening Briefs	February 21
	- Reply Briefs; Request for Oral Arguments	March 7
	- Proposed Decision	Q2 2014
	- Commission Decision deadline	June 30, 2014

9) CHP Settlement.....A.08-11-001, et al.

<u>MEA’s Interest:</u>	Address issues raised by the combined heat and power (CHP) settlement approved in December 2011.	
<u>Actions Taken:</u>	-	
<u>Next Steps:</u>	<u>CHP Pilot Project</u>	
	- Awaiting Commission Disposition of AL 4253-E	

Rulemakings on Standards

10) Electric Vehicle Rulemaking.....R.13-11-007

<u>MEA’s Interest:</u>	MEA will be participating in the EV rulemaking to determine the role of CCAs in providing EV rates and services and evaluating the benefits and costs of EVs.	
<u>Actions Taken</u>	- New Order Instituting Rulemaking on Electric Vehicles Voted Out	November 14
<u>Next Steps:</u>	- VGI and Financing Workshop 1: Energy Division White Paper (Comments/ Replies Deadlines to be Determined)	December 4
	- Comments on OIR Due	[December 6]
	- Reply Comments Due	[December 13]

11) New General Rate Case RulemakingR.13-11-006

<u>MEA’s Interest:</u>	MEA will be involved to help determine the processes for General Rate Case filings.	
<u>Actions Taken</u>	- New Order Instituting Rulemaking on General Rate Case Filings approved	November 14
<u>Next Steps:</u>	- Opening Comments	January 15
	- Reply Comments	January 30

12) Demand Response RulemakingR.13-09-011

<u>MEA’s Interest:</u>	MEA will be participating in demand response policy discussions and will advocate for an analysis of proper cost allocation for demand response programs and projects.	
<u>Actions Taken:</u>	- PG&E Advice Letter 4306-E: Joint Utility Automated Demand Response Program Design Proposal	October 31
	- Scoping Memo Issued	November 14
<u>Next Steps:</u>	<u>Phase 1: Bridge Funding</u>	
	- Proposed Decision Expected (on one year v. two year bridge funding)	December 13
	- If two-year bridge funding approved, Ruling Issued Asking for Recommended Program Improvements	January 31
	- If two-year bridge funding approved, Responses to Ruling re: Recommended Program Improvements	March 1
	- If two-year bridge funding is approved, anticipated	April 15

date for issuance of Proposed Decision	
<u>Phase 2: Foundational Questions</u>	
- Responses to Phase 2 Foundational Questions	December 13
- Replies to Responses to Phase 2 Foundational Questions	December 31
- First Proposed Decision Expected for Foundational Issues (Bifurcation)	February 11
- Ruling Issued providing guidance for Testimony and Hearings on Additional Issues	March 14
- Testimony Due	April 15
- Rebuttal Testimony Due	April 30
- Evidentiary Hearings	May 13-15
- Opening Briefs	June 15
- Reply Briefs	June 30

13) Distributed Generation Rulemaking..... R.12-11-005

<u>MEA's Interest:</u>	MEA will be participating to evaluate changes to the California Solar Initiative (CSI), the Self-Generation Incentive Program (SGIP) and other Distributed Generation (DG) issues.	
<u>Actions Taken:</u>	PG&E Advice Letter 4305-E Suspended (regarding NEM Aggregation)	November 20
<u>Next Steps:</u>	<u>Energy Storage Systems Paired with NEM</u> - Awaiting Proposed Decision	

14) Residential Rate Rulemaking..... R.12-06-013

<u>MEA's Interest:</u>	MEA will be participating to ensure that residential rate design elements facilitate customer choice.	
<u>Actions Taken:</u>	<u>Phase 2 – Interim Residential Rate Changes</u> - Comments on procedural schedule and need for evidentiary hearings - IOU Applications and Testimony	November 8 November 22
<u>Next Steps:</u>	<u>Phase 1 – Optimal Residential Rate Designs</u> - Awaiting Proposed Decision <u>Phase 2 – Interim Residential Rate Changes</u> - Protests filed - Replies filed - Motions for Evidentiary Hearings - Prehearing Conference - Phase 2 Scoping Memo - Reply Testimony	December 23 January 7 January 10 January 14 January 21 February 3

<ul style="list-style-type: none"> - Rebuttal Testimony - Proposed Decision 	February 10 March 2014
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15) Resource Adequacy.....R.11-10-023

<u>MEA's Interest:</u>	Track revisions to resource adequacy rules as they apply to CCA.	
<u>Actions Taken:</u>	<u>Capacity Market – CPUC/CAISO Joint Action</u> - Joint Reliability Framework Released	November 8
<u>Next Steps:</u>	<u>Capacity Market – CPUC/CAISO Joint Action</u> - Order Instituting Rulemaking Expected <u>Track 3 (Flexible and Local Capacity Requirements)</u> - Workshop(s) on flexible capacity issues - Last Day to File Motion to Request Evidentiary Hearings - Energy Division proposal on Refinements to RA - Workshop(s) on Energy Division Proposals - Local Capacity Requirement (LCR) Base Cases submitted to CAISO by PTOs - Comments on December and January Workshops and Energy Division Proposals - Reply Comments on December and January Workshops and Energy Division Proposals - CAISO publishes draft LCR report - CAISO publishes final Flexible Capacity Requirement (FCR) report - Comments on Final FCR Report - Reply Comments on Final FCR Report - CAISO publishes draft LCR Report - CAISO publishes final LCR report - Comments on Final LCR Report - Reply Comments on Final LCR Report - Proposed Decision on Track 3LCR/FCR - Final Decision on Track 3 LCR/FCR * Subject to change by CAISO	January 2014 [October] December 2 December January January* February 17 March 3 March 2014* April 1* April 15 April 22 April* May 1* May 8 May 15 May 2014 June 2014

16) Renewables Portfolio Standard (RPS) R.11-05-005

<u>MEA’s Interest:</u>	Ensure appropriate implementation of RPS for purposes of CCA procurement.	
<u>Actions Taken:</u>	<u>Procurement Expenditure Limitations</u> - Energy Division Workshop	Nov. 20-21
	<u>RPS Compliance and Enforcement</u> - Reply Comments on Ruling	November 12
<u>Next Steps:</u>	<u>Procurement Expenditure Limitations</u> - Revised Staff Proposal and Post-Workshop Ruling - Revised Alternate Proposals - Comments on all Proposals - Reply Comments on all Proposals	January 14 January 17 February 7 February 25
	<u>RPS Compliance and Enforcement</u> - Awaiting next steps on compliance and enforcement	
	<u>RPS Confidentiality</u> - Awaiting next steps on RPS Confidentiality	

17) Energy Storage R.10-12-007

<u>MEA’s Interest:</u>	This Phase 2 would “develop the costs and benefits for [energy storage systems] and establish how they should be allocated.”	
<u>Actions Taken:</u>	-	
<u>Next Steps:</u>	- Commission Consideration of continuing proceeding or opening subsequent Energy Storage Rulemaking	By Dec. 31
	- IOUs file Tier 3 Advice Letter with Proposed Energy Storage Auction Protocol	January 1
	- Commission consideration of Advice Letter	Q2 2014
	- First Energy Storage Auction	June 30
	- IOUs present results of Storage Auction to PRG and request approval of winning contracts	Q3-4 2014
	- Workshop evaluating data from first energy storage auction	Q4 2014
	- IOUs file Tier 3 Advice Letter with Proposed Second Energy Storage Auction Protocol	Q3 2015
	- Commission consideration of Advice Letter	Q1 2016
	- IOUs hold second energy storage auction	June 30, 2016

18) Demand Response Rulemaking R.07-01-041

<u>MEA’s Interest:</u>	MEA is involved in determining the framework for Demand Response	
<u>Actions Taken:</u>	- Proposed Decision re: Petition to Modify D.12-11-	October 25

	025	
	- Comments on Proposed Decision	November 14
	- Reply Comments on Proposed Decision	November 19
<u>Next Steps:</u>	- Final Decision Expected	December 5

Greenhouse Gas Proceedings and Cap and Trade

19) Cap and Trade 2014 Outreach Application A.13-08-026, et al.

<u>MEA’s Interest:</u>	Ensure fair outreach for CCA customers regarding Cap and Trade.	
<u>Actions Taken:</u>	- MEA Protest to Application	October 11
	- Prehearing Conference	October 28
<u>Next Steps:</u>	<u>Phase 1: Determine whether IOUs or Third Party should be responsible for Outreach and Education</u>	
	- Opening Briefs	December 6
	- Reply Briefs	December 17
	- Proposed Decision	[Early 2014]
	<u>Phase 2: Evaluate Proposed O&E Plans or set Third Party Plan</u>	
	- Awaiting Second Scoping Ruling	

20) Cap and Trade Cost and Revenue Allocation A.13-08-002, et al.

<u>MEA’s Interest:</u>	Ensure fair allocation of costs and revenues to MEA customers for 2014.	
<u>Actions Taken:</u>	- Scoping Memo Issued	October 4
	<u>Phase 1: Existing Methodology Implementation</u>	
	- Reply Briefs	November 6
	- Proposed Decision Issued	November 19
<u>Next Steps:</u>	<u>Phase 1: Existing Methodology Implementation</u>	
	- Comments on Proposed Decision	December 9
	- Reply Comments on Proposed Decision	December 16
	- Decision expected to be voted on	December 19
	<u>Phase 2: New Methodologies</u>	
	- Schedule TBD, per 10/04/13 Scoping Memo	

21) GHG Costs (AB 32 Implementation) R.11-03-012

<u>MEA’s Interest:</u>	MEA will monitor this new Commission rulemaking which will address potential utility cost and revenue issues associated with greenhouse gas (GHG) emissions.	
<u>Actions Taken:</u>	<u>Track 1: GHG Revenue – Implementation Plans</u>	

	- Reply Comments on PD on IOU Implementation Plans	November 12
	<u>Track 1: GHG Revenue – Finalization of EITE and small business revenue allocation formulae</u>	
	- Reply Comments on Proposed Decision	November 4
	- Decision Approved by Commission	November 14
	<u>Track 1: GHG Revenue – Outreach and Education</u>	
	- Clarification Ruling on Resolution E-4611	November 15
	<u>Track 2: Low Carbon Fuel Standard (LCFS) Credit Revenue Allocation</u>	
	- Assigned Commissioner Ruling	November 25
<u>Next Steps:</u>	<u>Track 1: GHG Revenue – Implementation Plans</u>	
	- Proposed Decision on Utility Implementation Plans Expected on Commission Agenda	December 5
	<u>Track 2: Low Carbon Fuel Standard (LCFS) Credit Revenue Allocation</u>	
	- Comments on Authority to Sell LCFS Credits	December 18
	- Reply Comments on Authority to Sell LCFS Credits	January 6
	- Revised LCFS Proposals	January 8
	- Opening Comments on Revised LCFS Proposals	January 22
	- Reply Comments on Revised LCFS Proposals	January 29
	- Proposed Decision on LCFS	Q2 2014

Energy Efficiency

22) Energy Efficiency RulemakingR.13-11-005

<u>MEA’s Interest:</u>	Address EE program issues as they arise, including questions around the rolling portfolio cycle.	
<u>Actions Taken</u>	- New Order Instituting Rulemaking on Energy Efficiency approved	November 14
<u>Next Steps:</u>	-	

23) Energy Efficiency and EM&VR.09-11-014

<u>MEA’s Interest:</u>	Address EE program issues as they arise; EE Funds for CCAs	
<u>Actions Taken</u>	<u>CCA Energy Efficiency – 2015 and Beyond</u> - Proposed Decision Expected on Agenda	December 5
<u>Next Steps:</u>	-	

Data and Smart Grid Proceedings

24) Customer Data Access Proceeding A.12-03-002, et al.

<u>MEA’s Interest:</u>	Ensure fair access of CCAs to data, including data backhaul mechanisms.
<u>Actions Taken:</u>	-
<u>Next Steps:</u>	- Next steps regarding D.13-09-025

25) Smart Grid Privacy Policies..... R.08-12-009

<u>MEA’s Interest:</u>	Determination of what privacy and security rules for energy usage data should be applicable to CCAs.
<u>Actions Taken:</u>	-
<u>Next Steps:</u>	<p><u>Phase 2 – CCA and Privacy:</u></p> <ul style="list-style-type: none"> - Awaiting Next Steps on MEA Petition for Modification <p><u>Phase 3 – Energy Data Center:</u></p> <ul style="list-style-type: none"> - Proposed Decision Anticipated [August] - Commission Decision Anticipated [September]

CALIFORNIA AIR RESOURCES BOARD (CARB)

26) AB 32 Scoping Plan Update

<u>MEA’s Interest:</u>	Include CCAs as an effective local government strategy to fulfill AB 32 GHG emissions goals.
<u>Actions Taken:</u>	-
<u>Next Steps:</u>	<ul style="list-style-type: none"> - CARB Board Meeting with Stakeholder Feedback and Public Comment October? - Final CARB Board Meeting to Vote on Update December

CALIFORNIA ENERGY COMMISSION (CEC)

27) 2013 Integrated Energy Policy Report (IEPR) 13-IEP-1D

<u>MEA’s Interest:</u>	Participate in the CEC’s load and energy planning process resulting in the Integrated Energy Policy Report (IPER).
<u>Actions Taken:</u>	-
<u>Next Steps:</u>	- Business Meeting Adoption of Electricity and Natural Gas Demand Forecasts 2014-2024 December 11

- Business Meeting Adoption of 2013 IEPR	January 15
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CALIFORNIA INDEPENDENT SYSTEM OPERATOR (CAISO)

28) Multi-year Forward Framework

Proceeding to be promulgated at the Commission to evaluate a multi-year forward resource adequacy framework, which would be applicable to CCAs. *See R.11-10-023.*

29) Load Granularity

<u>MEA's Interest:</u>	MEA to evaluate the impact of the proposal to disaggregate load by nodes as proposed by CAISO.	
<u>Actions Taken:</u>	-	
<u>Next Steps:</u>	- FERC Proceeding Launches: ISO will make a filing reflecting that ISO preliminary analysis does not show enough benefits to justify the costs of disaggregating the existing default load aggregation points	Q1 2014

30) Energy Imbalance Market

<u>MEA's Interest:</u>	MEA to evaluate the impact of CAISO's proposed Energy Imbalance Market Revised Governance Proposal and Draft Charter	
<u>Actions Taken:</u>	- CAISO to publish draft final proposal and charter - Stakeholder conference call - Stakeholder Comments	November 7 November 14 November 25
<u>Next Steps:</u>	- ISO Board Approval of Committee and Charter	December 18