



Kathrin Sears, Chair
County of Marin

Tom Butt, Vice Chair
City of Richmond

Bob McCaskill
City of Belvedere

Alan Schwartzman
City of Benicia

Sloan C. Bailey
Town of Corte Madera

Greg Lyman
City of El Cerrito

Barbara Coler
Town of Fairfax

Kevin Haroff
City of Larkspur

Garry Lion
City of Mill Valley

Brad Wagenknecht
County of Napa

Denise Athas
City of Novato

Carla Small
Town of Ross

Ford Greene
Town of San Anselmo

Genoveva Calloway
City of San Pablo

Andrew McCullough
City of San Rafael

Ray Withy
City of Sausalito

Emmett O'Donnell
Town of Tiburon

1125 Tamalpais Avenue
San Rafael, CA 94901

1 (888) 632-3674
mceCleanEnergy.org

**Marin Clean Energy
Board of Directors Meeting
Thursday, December 17, 2015
7:00 P.M.**

**The Charles F. McGlashan Board Room
1125 Tamalpais Avenue, San Rafael, CA 94901**

Agenda Page 1 of 2

1. Swearing In of New Board Member Jessica Jackson (Discussion/Action)
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
 - C.1 11.19.15 Meeting Minutes
 - C.2 Approved Contracts Update
 - C.3 Monthly Budget Report
 - C.4 Second Addendum to First Agreement with Davis Wright Tremaine, LLP
 - C.5 Fourth Agreement with Association for Energy Affordability
 - C.6 Fifth Agreement with Community Energy Services Corporation
 - C.7 Fourth Agreement with Marin City Community Development Corporation



Agenda material can be inspected 1125 Tamalpais Avenue, San Rafael, CA 94903 on the Mission Avenue side of the building. The meeting facilities are in accessible locations. If you are a person with a disability and require this document in an alternate format (example: Braille, Large Print, Audiotape, CD-ROM), you may request it by using the contact information below. If you require accommodation (example: ASL Interpreter, reader, note taker) to participate in any MCE program, service or activity, you may request an accommodation by calling (415) 464-6032 (voice) or 711 for the California Relay Service or by e-mail at djackson@mceCleanEnergy.org not less than four work days in advance of the event.



Kathrin Sears, Chair
County of Marin

Tom Butt, Vice Chair
City of Richmond

Bob McCaskill
City of Belvedere

Alan Schwartzman
City of Benicia

Sloan C. Bailey
Town of Corte Madera

Greg Lyman
City of El Cerrito

Barbara Coler
Town of Fairfax

Kevin Haroff
City of Larkspur

Garry Lion
City of Mill Valley

Brad Wagenknecht
County of Napa

Denise Athas
City of Novato

Carla Small
Town of Ross

Ford Greene
Town of San Anselmo

Genoveva Calloway
City of San Pablo

Andrew McCullough
City of San Rafael

Ray Withy
City of Sausalito

Emmett O'Donnell
Town of Tiburon

1125 Tamalpais Avenue
San Rafael, CA 94901

1 (888) 632-3674
mceCleanEnergy.org

**Marin Clean Energy
Board of Directors Meeting
Thursday, December 17, 2015
7:00 P.M.**

**The Charles F. McGlashan Board Room
1125 Tamalpais Avenue, San Rafael, CA 94901**

Agenda Page 2 of 2

C.8 Fourth Agreement with Planet Ecosystems, Inc.

6. Resolution 2015-07 Honoring Director Garry Lion
(Discussion/Action)
7. Change in Retirement Administration Plan (Discussion)
8. Regulatory and Legislative Updates (Discussion)
9. Board Member & Staff Matters (Discussion)
10. Adjourn



Agenda material can be inspected 1125 Tamalpais Avenue, San Rafael, CA 94903 on the Mission Avenue side of the building. The meeting facilities are in accessible locations. If you are a person with a disability and require this document in an alternate format (example: Braille, Large Print, Audiotape, CD-ROM), you may request it by using the contact information below. If you require accommodation (example: ASL Interpreter, reader, note taker) to participate in any MCE program, service or activity, you may request an accommodation by calling (415) 464-6032 (voice) or 711 for the California Relay Service or by e-mail at djackson@mceCleanEnergy.org not less than four work days in advance of the event.

OATH OF OFFICE

**STATE OF CALIFORNIA
COUNTY OF MARIN**

I, Jessica Jackson, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Jessica Jackson

subscribed and sworn to before me

this 17th day of December 2015

**DAWN WEISZ
CHIEF EXECUTIVE OFFICER, MARIN CLEAN ENERGY**

By _____,

Note: Language of Oath is prescribed to Article XX, Sect. 3 of the Constitution of the State of California and applicable case law as verified by Marin County Counsel, May, 1989.

MARIN CLEAN ENERGY

BOARD MEETING MINUTES

Thursday, November 19, 2015

7:00 P.M.

**THE CHARLES F. MCGLASHAN BOARD ROOM
1125 TAMALPAIS AVENUE, SAN RAFAEL, CA 94901**

Roll Call: Chairperson Kate Sears called the regular Board meeting to order at 7:08 p.m. An established quorum was met.

Present: Sloan Bailey, Town of Corte Madera
Tom Butt, City of Richmond
Barbara Coler, Town of Fairfax
Kevin Haroff, City of Larkspur
Rich Kinney (Alternate to Genoveva Calloway), City of San Pablo
Garry Lion, City of Mill Valley
Greg Lyman, City of El Cerrito
Bob McCaskill, City of Belvedere
Andrew McCullough, City of San Rafael
Emmett O'Donnell, Town of Tiburon
Alan Schwartzman, City of Benicia
Kate Sears, County of Marin
Carla Small, Town of Ross
Brad Wagenknecht, County of Napa
Ray Withy, City of Sausalito

Absent: Denise Athas, City of Novato
Ford Greene, Town of San Anselmo

Staff: Greg Brehm, Director of Power Resources
John Dalessi, Operations & Development
Kirby Dusel, Resource Planning & Renewable Energy Programs
Katie Gaier, Human Resources Manager
Brian Goldstein, Resource Planning & Implementation
LaWanda Hill, Administrative Assistant
Darlene Jackson, Board Clerk
Elizabeth Kelly, Legal Director
Michael Maher, Maher Accountancy
David McNeil, Finance and Project Manager
Beckie Menten, Director of Energy Efficiency
David Snow, Special Counsel
Shalini Swaroop, Regulatory & Legislative Counsel
Jamie Tuckey, Director of Public Affairs
Dawn Weisz, Chief Executive Officer

1. Board Announcements (Discussion)

Chairperson Sears congratulated those Board Members who won their elections on November 3, 2015.

2. Public Open Time (Discussion)

There were no public comments.

3. Report from Chief Executive Officer (Discussion)

Dawn Weisz, Executive Officer gave the following report:

- She recognized Board Member Lion, stating this was his last meeting. A resolution will be agendized at the next Board meeting recognizing his service.
- She announced that Shalini Swaroop, Regulatory & Legislative Counsel would provide an update on the PCIA information which was forwarded to the Board last week.

Ms. Swaroop referred to PG&E's original proposed 2016 PCIA increase of 72% and stated that the proposed new increase is now 95% and likely to increase again in the future. She explained that PG&E tried to "retire" an account which has approximately \$1 billion from over-payment of the PCIA, and MCE asked that some of those funds be dedicated to MCE customers. In its proposed decision, the CPUC denied MCE's request to use the \$1 billion for MCE customers, is proposing to deny PG&E's request to retire the account, and has indicated PG&E should determine a different proposal in next year's proceeding. She hopes to have some input to the CPUC from the Board's constituencies and agencies, as well as from organizational partners concerned about the increase.

Board Member Coler asked what the timing of the proceeding is, as the Fairfax City Council will be taking it up on December 2nd. Ms. Swaroop said comments on the proposed decision are due December 3rd and the Commission will vote on the item on December 17, 2015. If resolutions and letters cannot be sent in by then she asked Board Members to consider them in 2016, as the vintaging issue will be examined in 2016 and the resolution's wording is framed in a manner to address both issues.

Board Member Coler stated that agencies and organizations can also forward their resolutions and letters to the CPUC Public Adviser via email if timing is an issue. Ms. Swaroop asked that she be copied on the emails to be able to track responses.

- Ms. Weisz continued her report and said since the last Board meeting the cities of Calistoga and American Canyon have completed their membership request. The St. Helena City Council is scheduled to vote on their resolution and ordinance on November 24, 2015. She thanked Board Member Wagenknecht for his efforts to work to help the cities in Napa.
- EDF Renewable Energy has broken ground and she discussed their solar project at the Buck Institute. Cupertino Electric, an IBEW firm, has been hired and work is in its early stages of development. MCE staff will be taking more photos as development progresses.

Chairperson Sears confirmed that the solar project is located on the upper parking lot of the Buck Institute.

Board Member O'Donnell asked if this was part of MCE's Feed in Tariff program. Ms. Weisz said no; it is one of a few strategies to get local projects funded and she spoke briefly about MCE's solution to agree

to purchase power from Central Valley and require that they also develop 1 MW here. She noted the project's size will be similar to the San Rafael Airport project and it will retain the same price for that power supply as the larger, Cottonwood Solar project in the Central Valley.

- MCE is now underway with the strategic planning process. The Board of Directors will soon receive an email regarding an invitation to participate in a survey and, if interested, in a one-on-one interview.
- She reminded Board Members that she and Vice Chair Butt will be participating in the UN Climate Summit in Paris in just over a week. The convention sets out the framework for action in stabilizing CO2 levels to avoid interference with climate systems. MCE has been invited to present at 3 events which she briefly described and will be hosting an information table. They will discuss Community Choice and hope to raise their profile within the state. Vice Chair Butt added that he will also attend a Mayors' Reception with approximately 300 Mayors from around the world.
- Board Member Haroff asked about security issues at the Paris conference. Ms. Weisz said she expects very tight security at the conference and MCE staff has been advised that two demonstrations are being canceled. However, organizers are looking at a strategy to encourage cities around the globe to provide smaller demonstrations and they hope to have some success.
- Vice Chairperson Butt stated he received notice from the Office of the Mayor of Paris stating the conference will be held no matter what. Chairperson Sears spoke about a blog she read about the Climate Summit in Paris as a peace conference which she thought would serve as a great follow-up to the tragic events, and she is glad MCE will be in attendance.
- The holiday party is scheduled for Friday, December 11th at 6:30 p.m. at the Falkirk Mansion.

4. Consent Calendar (Discussion/Action)

- C.1 10.15.15 Board Meeting Minutes
- C.2 Approved Contracts Update
- C.3 Monthly Budget Report
- C.4 1st Addendum to 7th Agreement with Maher Accountancy
- C.5 1st Addendum to 4th Agreement with Ellison, Schneider & Harris, LLP
- C.6 4th Addendum to 3rd Agreement with Association for Energy Affordability
- C.7 2nd Addendum to 4th Agreement with Community Energy Services Corporation
- C.8 MCE Proclamation on Climate

ACTION: It was M/S/C (Butt/Lion) to approve Consent Calendar Items C.1 through C.8. Motion carried by unanimous roll call vote: (Abstain on Item C.1: Bailey, Coler, Lyman, Sears, Schwartzman and Withy; Absent: Athas, Greene and Wagenknecht).

5. Resolution 2015-06 of the Board of Directors of Marin Clean Energy Certifying the Final Environmental Impact Report for the MCE Richmond Solar PV Project, making environmental findings pursuant to the California Environmental Quality Act and adopting a mitigation

monitoring and reporting program, and consideration of direction to staff to proceed with project implementation (Discussion/Action)

Greg Brehm, Director of Power Resources stated that the final comments on the Draft EIR were responded to last Thursday and the FEIR for the MCE Richmond Solar PV Project is ready for certification. He then introduced Abe Leider, the EIR consultant.

Abe Leider, Rincon Consultants, said as background the three topics covered in the EIR letters received were biology, hazardous material and hydrology/water quality. All topics on the State's environmental checklist are covered in the EIR and other potential impacts were identified and outlined in the Initial Study. The three topics were considered to have potential significant impacts so they were brought forward into the body of the EIR.

Mr. Leider said the EIR was drafted, circulated for a 45-day comment period and MCE received five comment letters. Two of those letters were relevant to the analysis and conclusions; one from California Fish and Wildlife and one from an attorney representing several clients regarding the topics covered in the EIR regarding biology, hazardous materials and hydrology/water quality. Section 8.0 [of the Final EIR] is the Response to Comments section. He said the letters are marked with each comment delineated, and responses to individual comments are given which he briefly outlined.

When the pre-construction surveys are complete and the proposed Mitigation, Monitoring and Reporting program is in place, Rincon determined that the impacts and mitigations would remain less than significant as they were in the Draft EIR and no further changes were required. He reviewed certain specific comments which were evaluated and determined that the mitigation program in the EIR was sufficient. However, additional measures were added, although not required, to memorialize existing regulatory requirements and further ensure the impacts would remain less significant and to reinforce the existing mitigations identified.

Mr. Leider said a Board Member brought up a comment regarding potential impacts from PV photovoltaic arrays attracting birds and birds crashing into them causing mortality. This issue is addressed in Responses 5.26, 5.50 and 5.54 and it does occur occasionally depending on the location of the array and other factors.

Mr. Leider said there were two main comments regarding hazards and hazardous materials. He explained that one portion of the site is a capped landfill and one is a filled fertilizer pond. One concern was that the weight or distribution of the photovoltaic arrays on the landfill cap could compromise the integrity of the cap. Additional Geotechnical research was conducted on this issue to understand whether or not this could occur based on the capacity of the cap to take additional weight and differential settlement of the cap over time. He added that these sites are located within a remediation area at the refinery, and oversight and monitoring of the infrastructure is conducted by the refinery as well as by the Regional Water Quality Control Board.

Mr. Leider stated the other issue related to the pond site and whether pilings driven into the filled and compacted soil could potentially penetrate through the pond structure and be a conduit for any contaminants in the pond to move into native soil or groundwater below. He said they discussed this with the engineers on the project, reviewed profiles of the pilings and the profiles of the fill, and confirmed that the pilings would not extend below the liner. Therefore, it would not be a significant impact. Additional information was also added in this area to bolster those conclusions.

Board Member Coler referred to the findings of the EIR and said one page mentions that the bird nesting season is September 16th January 31st; however, the Department of Fish and Wildlife identifies the season as February 1st to August 15th. Mr. Leider explained that the period fluctuates a bit depending on the project and location and they could adjust this in the EIR.

Board Member Coler commented on her experience in cleanup of hazardous waste sites and dealing with landfills and old hazardous waste landfills which typically were poorly constructed. She asked if those contractors installing the solar installation will have 40 hours of health and safety training in the event of exposure. Mr. Brehm responded that one of the mitigations is that all workers on site must be hazardous materials-certified.

Board Member Coler asked and confirmed with Mr. Leider that the project was initially set up in three phases and the final two phases were combined into one. The 3.5 MWs are tracking arrays which are penetrating and they will not be on the landfill, with the piles driven into 9 feet of clean soils.

Board Member Lion asked Mr. Leider how often is it that a citizens group hires a lawyer and a couple of environmental law litigation specialists to go through the EIR in such detail. Mr. Leider stated this happens from time to time and it is not uncommon. Chairperson Sears and Board Member Haroff commented that this occurs frequently, and MCE should not be deterred from moving forward.

Board Member Lyman thanked the consultant for adding mitigation measures 2.D through 2.F which deal with pre-construction surveys and vehicle speeds, stating they are mitigations above and beyond impacts and address many of the comments included in correspondence.

Chairperson Sears opened the public comment period.

Rachael Koss, an attorney with Adams Broadwell Joseph & Cardozo, and representing Bay Area Citizens for Responsible Solar, said most issues identified in their comment letter on the DEIR remain unaddressed. She said CEQA does not authorize MCE to be the lead agency for this project. Therefore, MCE has no authority to certify the FEIR. CEQA has two ways to be a lead agency; if the agency carries out the project or the agency is the owner and approves the project, and MCE is not doing either of those. The City of Richmond is the applicant for the design review permit for the project and Stion Corporation is the owner of this project that will design, construct and operate it. She said MCE is merely the utility that is buying the electricity generated from Stion's project. She then submitted two hard copies of lengthy written comments to the Board Clerk. Ms. Koss was unable to provide an electronic copy.

Vice Chair Butt asked and confirmed that Ms. Koss represents Bay Area Citizens for Responsible Solar. He said the EIR has been in progress for several months and asked why the organization has waited until now to question the choice of the lead agency. Ms. Koss said they learned last Friday that MCE is not the owner of the project. They received documents last Tuesday from MCE and explained that they do not agree with the current process.

Mr. Brehm stated MCE staff had extensive consultation with the City of Richmond before taking on lead agency status and the City had no issues with it.

Chairperson Sears called for comment from Legal Counsel.

CEO Dawn Weisz asked and confirmed Ms. Koss's employer is Adams Broadwell Joseph & Cardozo of Santa Rosa, and suggested taking up the next item until counsel could review the documents submitted by Ms. Koss.

Chairperson Sears moved up Item 7 for discussion.

7. MCE Compensation Analysis (Discussion/Action)

Ms. Weisz stated as background, the item was discussed at the last Board meeting. Over the last 9 months MCE has grown. During recruitments conducted over this time staff has found there is a mismatch between the compensation ranges they were associating with various positions and has had difficulty attracting and retaining people to fill necessary positions. Staff conducted analyses on an ad-hoc basis, position-by-position instead of relying on the original benchmarks of long ago.

It was determined in the spring of last year to conduct an over-arching compensation analysis for all positions. This process was conducted over a 4-month period and reviewed by the Executive Committee. The recommendation was to make some adjustments to compensation ranges to bring them in line with where the market is for each position. They also brought in an external firm with expertise, and they identified some additional comparative agencies. Also what helped in this process was that there are other CCA programs with which to compare MCE staffing.

Ms. Weisz stated they also looked at whether they should make an adjustment to ranges to account for the cost of living and the cost of housing in San Rafael because they want to attract employees who live near or in the community. After much discussion with the Executive Committee, it was recommended that they adjust the newly identified compensation ranges by 15% on the top end of the range. This recommendation is before the Board of Directors tonight.

In focusing on the recommendations, Ms. Weisz said the first is to approve the adjusted compensation ranges to align with the current market study and set the top of each range at 15% above median, keeping the bottom end of the range where it is based on the new compensation study. The second recommendation is to direct staff to adjust existing compensation ranges if needed when new or updated comparators are identified to stay current with market conditions. This would allow MCE to stay current and show that they are able to adjust in a timely manner when needed. The last recommendation is to direct staff to prepare a FY 2015 budget adjustment for a future Board meeting comprised of unanticipated revenues brought in from payments on renewable projects and to use those revenues to off-set the staffing adjustment costs, which are included in the attachment.

Chairperson Sears referred to the second recommendation; to direct staff to adjust existing compensation ranges, if needed. She asked if the proposal is for staff to adjust the compensation range without bringing it back for Board approval and asked what this would be based on.

Ms. Weisz explained that if there are 9 comparable salaries for a specific position and if a change is brought to staff's attention, they would add this into the formula of calculating what the range should be with all territories for that specific position. If there is an adjustment in any direction they would seek to change the range on an as-needed basis.

Chairperson Sears asked if there is a cap that could be set by staff without Board approval. Ms. Weisz said this is not something in the recommendation, but it could be added.

Board Member Coler noted her experience having worked in the public sector for many years with a staff of more than 30. She believes the Board is supportive of the initially proposed adjustments but suggested that any new adjustments made under the second recommendation should be reviewed by the Executive Committee and thereafter recommended to the Board.

Chairperson Sears commented that there is no limit on how many times during the year an adjustment could be made. She stated that all Board Members are involved in their respective cities in negotiating employee compensation at different times of the year. She was supportive of the recommendations of wider ranges, taking into account higher housing and living expensive which is a challenge for recruitments but suggested putting some limit on this, as the Board meets frequently. She said an alternative could be that this be done once a year and state that the adjustment cannot be more than "x" percent.

Board Member Coler said many agencies may have different fiscal years and negotiations may occur at different times. She recommended that rather than putting a cap on it, when changes are seen, staff should put together a packet that comes to the Executive Committee. The Executive Committee could vet it and make a recommendation to the Board.

Board Member Small suggested it be part of the budget process and done annually, noting that each time a change is proposed it takes up extra staff time. Additionally, she recommended any adjustments come to the Board for approval as the agency is always under scrutiny and she believes this would be the best practice.

Vice Chairperson Butt said the recommendation by the Board was to adjust all MCE compensation ranges to align with the current market study. Chairperson Sears noted that the Board is questioning the second recommendation. Ms. Weisz stated that the second recommendation was not an item the Executive Committee spent a lot of time focusing on, and she thinks the intention of the item was for administrative simplicity.

Board Member Haroff agreed the Executive Committee held significant discussion, particularly about the first and third items, and had consensus on the second item. He personally reinforced Board Member Small's comments about keeping this within the framework of the budget given that it provides the Board with the larger picture of the impact of these decisions on MCE's overall cost structure and revenue stream. He indicated that the largest cost for MCE is the procurement of energy, and the impact of this item relative to that is small. He said as an agency comprised of governmental entities, MCE must be respectful of how they operate. They are also a competitive business enterprise in a market setting and must make sure management has the flexibility and discretion to make decisions within a reasonable framework to attract and retain capable people. He stated this was their overall goal from discussions in the Executive Committee.

Board Member Schwartzman agreed with comments regarding the need for the item to be part of the budget process, stating he knows it is not the intent for staff to have carte blanche to be able to do what they want. He supported review on an annual basis to stay current with market comparisons.

Board Member Lyman said El Cerrito at its last meeting took up a similar staffing change and it is not something the City Manager has authority to approve on his own and it must come forward to the Council to understand the changes proposed. He also supported the idea of it being part of the budget process and at a minimum, a Consent Calendar item.

Board Member O'Donnell agreed with comments voiced but returned to his comment made at the Retreat which is that MCE needs a CFO, given it has a budget of \$150 to \$175 million. He said when he read through the entire agenda he saw a need for it. A CFO is needed as someone who can bring business acumen and contacts to avoid having to use Letters of Credit to purchase power.

Board Member O'Donnell said he disagreed with the adjustment discussed earlier to utilize funds off-set from an extra contract not performing, referred to the Consent Calendar item for an Accountant position, and asked that the Board seriously consider a reconfiguration and bring on board a CFO or Finance Director.

Board Member Small stated salary ranges will be brought up if the Board approves Recommendation 1. She said if the Board reviews this on an annual basis she did not think interim time period adjustments would need to be made. She also said it is important that one-time funds be deposited into a facilities or capital improvement fund and not into regular operating expense funds, and would support a CFO or Finance Director position.

Ms. Weisz recognized the issue of the desire for a staff-based Finance position which had been discussed in previous meetings and suggested agendizing this for an Executive Committee meeting, and Chairperson Sears and the Board voiced support.

Board Member Lion stated not discussed is what is being done for existing employees in terms of phasing in the new ranges. Ms. Weisz said the way to implement the change proposed will be that those staff falling below the bottom of the range will be immediately brought up to the first level starting December 1st. At the annual evaluation process staff will look at the standard performance increase ranges of 0% to 5% and if they see that the employee is much lower in the range than they should be, given their performance, she would recommend the application of an additional 5% over the next 2 years and these numbers would be incorporated into the upcoming budget years.

Vice Chairperson Butt stated that this item has been to the Executive Committee and the Board of Directors twice and the Executive Committee voted unanimously to support Recommendations 1 and 3. To move this forward, the Board could remove Recommendation 2 and discuss it in the future or reword it to state that "when new or updated comparators are identified to stay current with market conditions that these be brought to the Board annually as part of the budget process." He was prepared to make a motion for the amended language and suggested addressing the CFO item as a separate item.

Board Member Schwartzman said he would lean toward eliminating Recommendation 2 completely which would require staff to return during the budget process.

Board Member Haroff supported the amended language to Recommendation 2 and asked to modify it to add, "....subject to Board oversight as part of the annual budgetary review process" which provides the Board with the opportunity to be responsive to some of the comments voiced about the need to include it within the framework of the budget, but not limiting staff on an on-going basis to make decisions knowing they will have that oversight on a case-by-case basis depending on market conditions.

Board Member Bailey stated that at the Executive Committee there were impassioned pleas made by current employees and he recognized that there is a breaking point even with very motivated employees. He suggested approving Recommendation 1 immediately if anything were to be done.

Board Member Withy asked Ms. Weisz to explain how performance reviews and salary adjustments are conducted. He asked if these are done at the same time for all employees or are they staggered based on the employee's hire date.

Ms. Weisz explained that when an individual is hired compensation is established based on experience and job description for the position. The employee is then given a 3-month review and there are some instances where adjustments are made based on performance. There is then an annual review process which involves written feedback and a performance evaluation meeting, but also review of compensation and a range of the performance increase of between 0% and 5%. Because employees are hired at different dates, this process is staggered.

Board Member Withy said many companies go to an annual review cycle so compensation can be reviewed at one time which is linked to the budget. As a prelude to this, a comparison study is done annually before compensation adjustments are made.

Chairperson Sears asked and confirmed that the Board is in favor of Recommendation 1. She suggested adding language that it is the expectation of the Board that on an annual basis as part of the budget process staff look at comparisons to ensure MCE is staying current with market conditions. The specific analysis could be done as part of the budget process and then the Board would leave Recommendation 3 as is.

Board Member Haroff suggested language is added to Recommendation 2 to add: "...subject to the Board's oversight as part of the annual budget review process."

Chairperson Sears recognized Board Member Withy's statements and asked whether to change all compensation adjustments to be on the same schedule rather than individual reviews. She said she would prefer not making a specific directive that everybody is going to be evaluated at the same time during the year, but that they will use the budget process as an opportunity to ensure MCE is current with the market, and did not necessarily believe that Board Member Haroff's suggested language exactly accomplishes that.

Board Member McCullough said he believes there are 4 recommendations: 1) approve as is; 2) allow for the immediate adjustment of any employee not within the range effective December 1, 2015; 3) as part of the annual budget process there will be a review of comparatives to ensure MCE is current with market conditions which would return to the Board; and 4) keep Recommendation 3 as is.

Chairperson Sears and Ms. Weisz then discussed the proposed language for the motion. Board Member Haroff asked Ms. Weisz to read out loud the language for Recommendation 2. Ms. Weisz stated as part of the annual budget setting process, direct staff to review existing compensation ranges if needed when new or updated comparators are identified to stay current with market conditions.

Chairperson Sears suggested removal of Recommendation 2 and instead state that, “as part of the annual budget process, the Board will review compensation ranges of comparators to ensure that the agency is staying current with market conditions.” Board Member Haroff supported this language.

Chairperson Sears opened the public comment period. There were no speakers.

ACTION: It was M/S/C (McCullough/Coler) that as part of the annual budget process, the Board will review compensation ranges of comparators to ensure that the agency is staying current with market conditions; and approve Recommendation 1 and 3 as is. Motion carried by unanimous vote: (Absent: Athas, Greene and Wagenknecht).

7. Energy Efficiency Update (Discussion)

Director of Energy Efficiency Beckie Menten provided a PowerPoint presentation of the results of savings to date on an MMBUT basis which means it is both electricity-related savings as well as the natural gas program-related savings. She has been pleased with the continued upward trajectory of savings of each of MCE’s programs as they have demonstrated the ability to ramp up effectively.

Ms. Menten stated for multi-family program updates, there tends to be a long, slow development process for projects but a huge increase when one project hits. They will see a dramatic two-fold increase or more in savings before the end of 2015. They are closing out final testing phases of two +300 unit projects in Marin and in Richmond. There are a number of smaller projects moving through the pipeline getting the direct-install process completed, boiler updates here and there, and they are on target to exceed their goals for the multi-family program.

MCE was able to receive a site visit from a CPUC staff member who serves as the liaison for CCA. This person particularly deals with the procurement related issues so it was beneficial to have a direct install scheduled so he could come on site.

Additionally, the multi-family program had an approved funding increase of \$400,000 as they had over-subscription in their program for the first time and because of this, they are exceeding their goal for this year.

She noted that MCE had not yet transitioned to full LED lighting in their direct install program, but recently transitioned fully to LED which has a much higher customer satisfaction and reduces concerns about mercury and other hazardous materials and waste.

Regarding the commercial program update, this program has a continual robust pipeline of small commercial projects and is also on target to exceed program goals. They have found it challenging to get comprehensive upgrades in small commercial settings, and lighting and refrigeration tend to be the primary two measures. Therefore, MCE is exceeding goals on the electric side but will not be exceeding goals on the therm side. This is something they are strategizing for 2016 to possibly bring on a better program implementer to do a better job with this.

For the single family program 241,000 home utility reports have been delivered to customers in their home that reminds them that MCE has energy efficiency programs and it reminds them about their consumption patterns and their monthly budget which can be a powerful tool for them.

MCE also has almost 200 action plans created on the web portal. Ms. Menten noted that some Board Members have gone online and gone through the process of auditing their home and developing action plans to save energy, and encouraged all Board Members to do this to provide feedback. Lastly, Ms. Menten reminded the Board that the program results information is posted on the website on a monthly basis, and she pointed to the results drop down from the energy efficiency bar of the MCE website where this information can be found.

Regarding 2016 application updates, Ms. Menten said staff officially filed the application with the CPUC in October. The final document includes the business plan and the program implementation plans which have strategies per sector. The actual application is 20 pages and it lays out some of the foundational arguments for why MCE wants the default administrator status and why they are looking at such an expansion of programs. She reiterated the single point of contact in the critical hub and said staff is presenting MCE's position as a local government agency which gives them a strategic advantage over other implementers in that they already have relationships with community organizations, contractors, water utilities, and other boards which the MCE Board Members serve on which help to facilitate connections to expand their programs. She said MCE's public affairs team held over 200 public events this year, which solidifies MCE's role in community activities.

Ms. Menten then referred to the GHG impacts in the business plan. She pointed out those associated with MCE's electricity purchases and said because MCE is cleaner than the default provider they are saving close to 59,000 tons of CO₂ in the years they have been operating between 2010 and 2013. In projecting GHG savings from the 2016 energy efficiency application, they find they are projected to achieve 30% of the GHG emissions of the organization in the same time and period. Just by doing energy conservation and demand reduction, significant impacts can be achieved.

Regarding next steps, Ms. Menten said now that MCE's application to the CPUC has been officially filed and accepted, protests will be due December 14th and she expects a fairly robust set of protests from the utilities. In early 2016, MCE will be hosting a workshop that parties can attend and hear more about their proposal and ask questions. MCE will hold hearings and provide further testimony as part of the proceeding schedule and then there will be a proposed decision. Staff does not anticipate a decision any sooner than April but as late as September so staff can get started on the programs.

Lastly, Ms. Menten displayed the many documents on MCE's website and pointed to the various links, noting that everything included in the full application is also posted.

Chairperson Sears said she was not at the last Board meeting because she was in Rojasthan, India where she was looking at extremely old cities and forts and palaces. She took a photo of wind energy generation turbines in the distance and said Rojasthan generates a tremendous amount of wind energy that it exports to other parts of India. This is a model of what the government is trying to get all of the different states to do to get heavily into wind power, and she forwarded a photo to Ms. Menten.

Board Member Haroff congratulated the Energy Efficiency team for their hard work this year, and for getting the application on file. He said the Board has been supportive of their efforts and he expressed his sincere appreciation of the team's accomplishments. Ms. Menten thanked him and said she will pass his comments on to her team.

Chairperson Sears returned to Item 5 and asked for input from legal counsel.

5. Resolution 2015-06 of the Board of Directors of Marin Clean Energy Certifying the Final Environmental Impact Report for the MCE Richmond Solar PV Project, making environmental findings pursuant to the California Environmental Quality Act and adopting a mitigation monitoring and reporting program, and consideration of direction to staff to proceed with project implementation (Discussion/Action)

David Snow, MCE's outside Counsel, stated that the commenter Ms. Koss asserted that MCE would not be the appropriate lead agency for this project. However, pursuant to the State CEQA guidelines there are various criteria for identifying what the proper lead agency would be. The first criterion is if a project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located in the jurisdiction of another public agency.

There are other criteria, one of which is where more than one public agency equally meets the criteria set forth in the guidelines, the agency which will act first on the project in question shall be the lead agency.

With that background, in September 2014 the MCE Board of Directors authorized the exploration of this site for a potential solar project and to look at undertaking the environmental analysis of a solar project on this site and explore leasing the subject property for that project. MCE is the lessee of the subject property at this time. The lessee under that lease has an obligation to comply with CEQA and to obtain all necessary permits for the development of the project, including those from the City of Richmond. There are provisions that allow the lessee MCE to sublet, which would be to Stion Corporation. The sublease cannot be any longer than needed to allow the developer to realize the tax credit benefits, which reflects the fact that the Stion sublease is basically a financing mechanism for this project. Ultimately, Mr. Snow said it is his understanding that this project will ultimately be owned by MCE.

With respect to the mitigation measures, MCE is the implementing entity for those measures and MCE will be overseeing Stion Corporation and directing to ensure those mitigation measures are being complied with. He also noted that the City of Richmond has participated in this process as a responsible agency and acknowledged MCE's role as the lead agency.

Lastly even if the City of Richmond was an appropriate lead agency along with MCE, which he does not believe it is, the agency which acts first is the lead agency and here MCE is acting first on this project and therefore would be the appropriate lead agency. He then turned over the matter to Mr. Brehm and Mr. Leider.

Mr. Brehm stated the commenter provided additional comments regarding other PPAs that MCE executed in other jurisdictions in the Central Valley, specifically in the City of Corcoran which is the Cottonwood Solar Project. That project was one of the first projects MCE signed but it was undertaken by the developer through the City of Corcoran long before MCE came into the process. Therefore, that agency, Corcoran, started the process and this is why the City of Corcoran was the lead agency for that CEQA document and not MCE. MCE generally requires that a project submitted through its Open Season RFO must have already have completed its CEQA process and posted a Notice of Determination before MCE will consider a project.

Abe Leider, Rincon Consultants, clarified that he and MCE's Environmental Coordinator Bruce Barnett read through the late letter from Ms. Koss and the comments appear to be the same comments generally as in the original letter and the same which they already responded to in the FEIR.

Chairperson Sears asked for questions or comments from the Board.

Board Member Haroff said he appreciates the original commenter's participation in tonight's hearing and thoughts provided and also appreciates the response on the legal issue, particularly with respect to the lead agency. In reflecting on his own person experience where he has seen ample precedent under CEQA for allowing flexibility in the choice of lead agencies for the performance of environmental review for projects and he sees nothing inconsistent with both the CEQA guidelines and that precedent in the role MCE is playing as lead agency for this project. Therefore, he thinks MCE is in the best position as an entity participating in the success of this project, appreciates the City of Richmond's role in its review process and suggested moving forward.

Board Member Coler added that having worked in a public sector agency for 22 years, a State agency and subsequently a regional government agency for 5 years, she has personally been involved in many CEQA projects and she reinforced Board Member Haroff's comments, and voiced appreciation for the legal opinion.

Board Member O'Donnell said it is a sad day that CEQA has really become less and less about the environment and more and more about power. Governor Brown has tried to address this with reform to CEQA and this item follows that direction.

Noted Present:

Board Member Wagenknecht arrived and was noted present at 8:00 p.m.

ACTION: It was M/S/C (Butt/Haroff) to adopt Resolution 2015-06 of the Board of Directors of Marin Clean Energy Certifying the Final Environmental Impact Report for the MCE Richmond Solar PV Project, making environmental findings pursuant to the California Environmental Quality Act and adopting a mitigation monitoring and reporting program, and direction to staff to proceed with project implementation. Motion carried by unanimous roll call vote: (Absent: Athas and Greene).

8. Communications Update (Discussion)

Communications Director Jamie Tuckey referred to MCE's customer participation and enrollments and said she continues to report that their Light Green customer base is growing. Since September MCE has had almost 400 Light Green customers sign up and these were people who previously had opted out. She also reported MCE is conducting a small enrollment of approximately 200 customers which is scheduled in December. These customers are from communities throughout MCE's service area and staff became aware of this group earlier in the year as never having been offered service. This was a PG&E error and staff is sending out enrollment notices now.

Ms. Tuckey reported on MCE's Deep Green participation, stating there were 114 signups since September throughout MCE's service area. This is attributable to MCE's advertising campaign, advocate work promoting the program, mail-out of the power content label and the new 100% renewable brochure advertising Deep Green and Local Sol. The other reason for the spike is because MCE is allowing people for the first time to be able to sign-up for Deep Green at events without their PG&E account number.

Board Member Lyman commented that the City of El Cerrito is the only Council that is still 100% Deep Green.

Ms. Tuckey said the Board may have heard about the Deep Green Selfie Social Media Campaign running the entire month of October where people were invited to take selfies with their Deep Green stickers. The campaign was for residential customers and commercial customers were also invited to promote the campaign, put up stickers at their businesses and tell their customers about the campaign. There were 40 submissions from residents and 10 businesses directly supported the programs. She displayed a sample of the selfies taken and presented contest winners and their prizes.

Ms. Tuckey presented MCE's first quarterly newsletter which was distributed to cities, towns and organizations. The newsletter seeks to keep people informed about national, state and local issues and stories that impact member communities and customers. She welcomed Board feedback and ideas for stories via email for future newsletters.

Ms. Tuckey stated MCE held an "Understanding Your Energy Bill Workshop" in the City of Benicia. People were invited to attend and understand how to read their energy bill and staff is looking at holding future workshops in MCE's service area.

In response to a Board Member, Ms. Tuckey confirmed that the newsletters could be produced in Spanish. She added that an interpreter is also invited to attend workshops and she introduced Alexandra who is fluent in Spanish and leading their Latino outreach.

Regarding turnout of the workshop in Benicia, Ms. Tuckey reported 12 attendees.

Ms. Tuckey reported on another workshop which was held and geared for solar industries. It was hosted at MCE offices and installers from solar companies all over the Bay Area were invited to learn about MCE's net metering program and Feed-In Tariff. A total of 15 participants representing 9 different solar companies attended and 86% stated they would alter their messaging explaining better how customers can benefit from MCE if they install solar on their roof. She explained that in response to discrepancies, MCE staff wanted to get the correct information across and help people learn of MCE's offerings, as well as to build relationships with solar installers.

Board Member Withy asked for their reaction to time of day rates being proposed. Ms. Tuckey said staff discussed this and there are many questions and concerns with some uncertainty and impact on solar customers, given that rate schedules are being eliminated.

Ms. Tuckey reported on the Advocacy Training Workshop held wherein 25 individuals participated. They created a new web page on MCE's website just for the advocates who she said are continuing to do amazing work. Lastly, Ms. Weisz participated in the Policy Makers' Summit in Napa. Ms. Tuckey participated in the CSAC (California State Association of Counties) meeting-the Bay Area Regional Energy meeting in San Jose. Upcoming meetings include the United Nations Framework Convention on Climate Change Conference, held in Paris wherein Ms. Weisz will present.

Vice Chairperson Butt referred to the list of rankings for green power use and he questioned why some cities were not listed. Ms. Tuckey replied that MCE must apply for this on behalf of member communities on an annual basis and because of the timeline, some communities were not eligible, and she expected Richmond to be on the top 20 list next year.

9. Regulatory and Legislative Updates (Information Only)

Chairperson Sears referred to information contained in the Board packet on regulatory and legislative updates.

10. Board Member & Staff Matters (Discussion)

Ms. Weisz introduced Alexandra McCroskey, Community Power Organizer. As background, MCE applied for a grant to the San Francisco Community Foundation to fund a position to do community outreach, and Ms. McCroskey was recruited and hired successfully to handle that role.

Ms. Weisz then introduced David McNeil, Finance and Project Manager who attended the last Board meeting. She welcomed him to the organization.

11. Adjournment

The Board of Directors adjourned the meeting at 9:00 p.m. to the next Regular Board Meeting on December 17, 2015.

Kate Sears, Chair

Attest:

Dawn Weisz, Secretary



December 17, 2015

TO: Marin Clean Energy Board

FROM: Sarah Estes-Smith, Director of Internal Operations

RE: Report on Approved Contracts (Agenda Item #05 – C.2)

Dear Board Members:

SUMMARY: This report summarizes agreements entered into by the Chief Executive Officer in the past month. This summary is provided to the Board for information purposes only.

Review of Procurement Authorities

In March 2013 your Board adopted Resolution 2013-04 as follows;

The Chief Executive Officer is hereby authorized to enter into and execute contracts for an amount not to exceed \$25,000 per contractor per fiscal year, consistent with the Board approved budget, the Joint Powers Agreement, and the Operating Rules and Regulations.

In November 2012 your Board approved the MCE Integrated Resource Plan stating;

Power purchase agreements (energy, capacity, RECs) with terms of 12 months or less may be entered into on MCE's behalf by the Chief Executive Officer.

Power purchase agreements (energy, capacity, RECs) with terms of greater than 12 months and less than or equal to 5 years and which are made pursuant to a Board approved resource plan may be entered into on MCE's behalf by the Chief Executive Officer in conjunction with the MCE Board Chair. An ad hoc committee of the MCE Board will be consulted prior to execution of any medium-term contracts.

Power purchase agreements (energy, capacity, RECs) with terms of greater than 5 years shall require Board approval prior to execution.

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

Summary of Agreements entered into by the Chief Executive Officer in the past month

Month	Purpose	Contractor	Maximum Annual Contract Amount	Term of Contract
November	RPS eligible Renewable Energy November –December 2015	3 Phases Renewables, Inc.	\$237,500	2 months

December	Addendum adding design services for Energy Efficiency Learning Center collateral	Moore Iacofano Goltsman, Inc.	\$23,200	7 months
December	Marketing, branding, graphic design, and communications services	Oberon Creative	\$20,000	4 months
December	Legal advisory and litigation services	Lewis Brisbois Bisgaard & Smith LLP	\$25,000	4 months
December	Legal services regarding MCE office lease	Morris Polich & Purdy LLP	\$10,000	5 months
December	RPS eligible Renewable Energy December 2015	3Degress Group, Inc.	\$17,100	1 month

Recommendation: Information only. No action required.



December 17, 2015

TO: Marin Clean Energy Board
FROM: David McNeil, Finance & Projects Manager
RE: Monthly FY 15/16 Budget Report (Agenda Item #05 – C.3)
ATTACHMENT: MCE Budget Reports 2015-16 (Unaudited)

Dear Board Members:

SUMMARY:

The attached budget update compares the FY 2015/16 budget and expected year to date revenues and expenses with actual, unaudited year to date revenue and expenses for period ending October 31, 2015.

OPERATING BUDGET:

Year-to-date revenues continue to be slightly over budget and the cost of energy at levels slightly under budget. Operating expenditures are generally below anticipated year-to-date levels, but much of this will be smoothed as the year continues.

Overall, MCE continues to spend near projections, as reflected in year-to-date figures.

ENERGY EFFICIENCY PROGRAM BUDGET:

The Energy Efficiency Program is entirely funded by the California Public Utilities Commission. For financial reporting purposes, MCE treats funds received from this program as a reimbursable grant. The result is that program expenses are offset by revenue. A deferred asset is recorded for funds received by the CPUC that have yet to be expended by MCE.

In 2015-16, \$52,784 of Energy Efficiency (EE) revenue is being recognized to offset \$52,784 of prior year EE "planning" expenses. These expenses were not originally intended to be offset by EE grant funds. The \$52,784 2015/16 "increase" in fund balance is equal to the prior year "decrease" in fund balance. This event has no cumulative effect on the EE Program Fund balance.

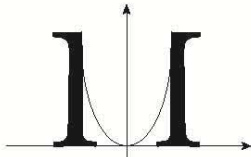
LOCAL DEVELOPMENT RENEWABLE ENERGY BUDGET:

This program is funded through a portion of the Deep Green service provided to customers. To date, expenses primarily relate to legal costs associated with establishing a local renewable energy project.

RENEWABLE ENERGY RESERVE BUDGET:

This fund is intended for the procurement or development of renewable energy not planned for in the operating funds. Resources may accumulate from year to year and be expended as management determines.

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 Clean Energy

We have compiled the accompanying budgetary comparison schedules of Marin Clean Energy (a California Joint Powers Authority) for the period ended October 31, 2015. 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.

The supplementary information contained on page 4 is presented for purposes of additional analysis. The supplementary information has been compiled from information that is the representation of management. We have not audited or reviewed the supplementary information and, accordingly, do not express an opinion or provide any assurance on such supplementary information.

Certain accounting functions provided by Maher Accountancy are considered management functions by the American Institute of Certified Public Accountants. Accordingly, we are not independent with respect to Marin Clean Energy.

Maher Accountancy

November 19, 2015

TEL 415.459.1249
FAX 415.459.5406
WEB www.mahercpa.com



MARIN CLEAN ENERGY
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2015 through October 31, 2015

	Actual from April 1, 2014 through October 31, 2014	2015/16 YTD Budget (Amended)	2015/16 YTD Actual	2015/16 YTD Budget Variance (Under) Over	2015/16 YTD Actual/Budget %	2015/16 Annual Budget (Amended)	2015/16 Budget Remaining
REVENUE AND OTHER SOURCES:							
Revenue - Electricity (net of allowance)	\$ 59,811,859	89,037,367	\$ 91,589,889	\$ 2,552,522	102.87%	\$ 145,933,098	\$ 54,343,209
Other revenues	129,792	-	419,994	419,994	-	-	-
Total sources	59,941,651	89,037,367	92,009,883	2,972,516	103.34%	145,933,098	54,343,209
EXPENDITURES AND OTHER USES:							
CURRENT EXPENDITURES							
Cost of energy	47,932,373	73,812,708	72,504,871	(1,307,837)	98.23%	129,522,715	57,017,844
Staffing	1,132,757	1,691,950	1,658,802	(33,148)	98.04%	2,964,000	1,305,198
Technical consultants	294,635	383,768	363,642	(20,126)	94.76%	629,000	265,358
Legal counsel	227,098	210,000	203,588	(6,412)	96.95%	360,000	156,412
Communications consultants and related expenses	322,169	438,083	452,651	14,568	103.33%	751,000	298,349
Data manager	1,545,830	1,669,500	1,659,408	(10,092)	99.40%	2,862,000	1,202,592
Service fees- PG&E	397,772	537,250	501,004	(36,246)	93.25%	921,000	419,996
Other services	193,150	243,833	251,559	7,726	103.17%	418,000	166,441
General and administration	229,790	191,917	151,741	(40,176)	79.07%	329,000	177,259
Occupancy	-	151,667	106,144	(45,523)	69.99%	260,000	153,856
Integrated Demand side pilot programs	-	29,167	21,340	(7,827)	73.17%	50,000	28,660
Marin County green business program	-	10,000	-	(10,000)	0.00%	10,000	10,000
Solar rebates	-	-	-	-	0.00%	35,000	35,000
Total current expenditures	52,275,574	79,369,843	77,874,750	(1,495,093)	98.12%	139,111,715	61,236,965
CAPITAL OUTLAY	11,241	127,500	139,910	12,410	109.73%	150,000	10,090
DEBT SERVICE *	696,429	2,080,000	2,147,718	67,718	103.26%	2,080,000	(67,718)
INTERFUND TRANSFER TO:							
Renewable Energy Reserve Fund	-	1,000,000	1,000,000	-	100.00%	1,000,000	-
Local Renewable Energy Development Fund	109,994	151,383	151,383	-	100.00%	151,383	-
Total expenditures	53,093,238	82,728,726	81,313,761	\$ (1,414,965)	98.29%	142,493,098	\$ 61,179,337
Net increase (decrease) in available fund balance	\$ 6,848,413	\$ 6,308,641	\$ 10,696,122	\$ 4,387,481		\$ 3,440,000	\$ (6,836,128)

* Debt Service includes fees related to a Line of Credit and a Letter of Credit issued during the 2015/16 year.

**MARIN CLEAN ENERGY
ENERGY EFFICIENCY PROGRAM FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2015 through October 31, 2015**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Public purpose energy efficiency program	\$ 1,505,702	\$ 662,268	\$ 843,434	43.98%
EXPENDITURES AND OTHER USES:				
CURRENT EXPENDITURES				
Public purpose energy efficiency program	<u>1,505,702</u>	<u>609,484</u>	<u>896,218</u>	<u>40.48%</u>
Net increase (decrease) in fund balance	<u>\$ -</u>	<u>\$ 52,784</u>		

**LOCAL RENEWABLE ENERGY DEVELOPMENT FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2015 through October 31, 2015**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Transfer from Operating Fund	\$ 151,383	\$ 151,383	\$ -	100.00%
EXPENDITURES AND OTHER USES:				
Capital Outlay	<u>151,383</u>	<u>119,775</u>	<u>31,608</u>	<u>79.12%</u>
Net increase (decrease) in fund balance	<u>\$ -</u>	<u>\$ 31,608</u>		

**RENEWABLE ENERGY RESERVE FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2015 through October 31, 2015**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Transfer from Operating Fund	\$ 1,000,000	\$ 1,000,000	\$ -	100.00%
EXPENDITURES AND OTHER USES:	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Net increase (decrease) in fund balance	<u>\$ 1,000,000</u>	<u>\$ 1,000,000</u>		

See accountants' compilation report.

MARIN CLEAN ENERGY
BUDGETARY SUPPLEMENTAL SCHEDULE
April 1, 2015 through October 31, 2015

	<u>Actual</u>
Other services	
Audit	\$ 35,500
Accounting	84,000
IT Consulting	43,323
Human resources & payroll fees	4,636
Legislative consulting	52,500
Miscellaneous professional fees	31,600
Other services	<u><u>\$ 251,559</u></u>
 General and administration	
Cell phones	\$ 476
Data and telephone service	18,952
Insurance	7,169
Office and meeting rentals	2,060
Office equipment lease	3,184
Dues and subscriptions	31,200
Conferences and professional education	17,162
Travel	13,337
Business meals	3,433
Office supplies and postage	54,768
General and administration	<u><u>\$ 151,741</u></u>

See accountants' compilation report.



December 17, 2015

TO: Marin Clean Energy Board of Directors

FROM: Beth Kelly, Legal Director

RE: Second Addendum to First Agreement with Davis Wright Tremaine, LLP
(Agenda Item #05 – C.4)

ATTACHMENTS:

- A. First Agreement with Davis Wright Tremaine, LLP
- B. First Addendum to First Agreement with Davis Wright Tremaine, LLP
- C. Draft Second Addendum to First Agreement with Davis Wright Tremaine, LLP

Dear Board Members:

SUMMARY:

On June 11, 2015, MCE entered into the First Agreement with Davis Wright Tremaine, LLP (“Agreement”) to provide a range legal and advisory services pertaining to contractual and regulatory matters at the direction of MCE. The Agreement stated that the maximum cost to MCE would be \$8,000.

On June 25, 2015, MCE executed the First Addendum to the Agreement, reflecting a contract maximum increase of \$17,000 for a total amount not to exceed \$25,000.

MCE staff requests approval of the draft Second Addendum, which would reflect a contract maximum increase of \$25,000 for a total amount not to exceed \$50,000.

Budget Impact: No impact. MCE is not expecting to exceed the FY 2015/16 Budget for Legal Expenses.

Recommendation: Approve Second Addendum to First Agreement with Davis Wright Tremaine, LLP.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**FIRST AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND DAVIS WRIGHT TREMAINE LLP**

THIS FIRST AGREEMENT ("Agreement") is made and entered into this day **June 11, 2015** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and DAVIS WRIGHT TREMAINE LLP, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: legal services pertaining to contractual and regulatory matters as directed by MCE;

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

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

1. SCOPE OF SERVICES:

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

2. FURNISHED SERVICES:

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

3. FEES AND PAYMENT SCHEDULE; INVOICING:

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

4. MAXIMUM COST TO MCE:

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$8,000**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **June 3, 2015**, and shall terminate on **March 31, 2016**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

6. INSURANCE AND SAFETY:

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

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

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

6.1 GENERAL LIABILITY

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

6.2 AUTO LIABILITY

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

6.3 WORKERS' COMPENSATION

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

6.4 PROFESSIONAL LIABILITY INSURANCE

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

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. CONFLICTS:

Contractor, by executing this Agreement, certifies that, at the time Contractor executes this Agreement and for the duration of this Agreement, Contractor does not have and will not perform services for any other clients which would create a conflict as between the interests of MCE hereunder and the interests of such other client, except as described in the attached Conflicts Waiver Letter included as **Exhibit C** or subject to written waiver by MCE. Contractor, by executing this Agreement, makes no such certification regarding potential and actual conflicts regarding MCE's constituent members in connection with this Agreement.

9. SUBCONTRACTING:

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

10. ASSIGNMENT:

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

11. RETENTION OF RECORDS AND AUDIT PROVISION:

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

12. WORK PRODUCT:

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

13. 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, MCE 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).

14. AMENDMENT:

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

15. 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 MCE, as is evidenced in writing.

16. JURISDICTION AND VENUE:

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

17. INDEMNIFICATION:

Contractor agrees to indemnify MCE, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement limited to the extent of Contractor's legal liability under the law; provided that Contractor shall not be obligated to indemnify MCE for any liability caused by MCE's negligence, recklessness or willful misconduct.

18. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

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

19. 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.

20. NOTICES

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

Contract Manager: Sarah Estes-Smith
 MCE Address: 1125 Tamalpais Avenue
 San Rafael, CA 94901
 Email Address: invoices@mcecleanenergy.org
 Telephone No.: (415) 464-6028

Notices shall be given to Contractor at the following address:

Contractor: Vidhya Prabhakaran
 Address: 505 Montgomery Street, Suite 800
 San Francisco, CA 94111
 Email Address: vidhyaprabhakaran@dw.com
 Telephone No.: (415) 276-6568

21. ACKNOWLEDGEMENT OF EXHIBITS

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

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

APPROVED BY
 Marin Clean Energy:

By: Don W. Dean
 CEO
 Date: 6-11-15

By: N/A
 Chairperson
 Date: _____

CONTRACTOR:

By: Vidhya Prabhakaran
 Name: Vidhya Prabhakaran, Davis Wright Tremaine LLP
 Date: 6/11/15

MCE 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 MCE Counsel at Marin Clean Energy's Request

MCE Counsel: Shalini Gurtug

Date: 6/15/15

EXHIBIT A
SCOPE OF SERVICES (required)

Contractor will provide legal services pertaining to contractual and regulatory matters, as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement.

EXHIBIT B
FEES AND PAYMENT SCHEDULE

For services provided under this agreement, MCE shall pay the Contractor at the following rates of Contractor's partners, associates, and paralegals:

Name	Title	2015 Rate
Vidhya Prabhakaran	Partner	\$525
Patrick Ferguson	Senior Associate	\$495
Andrew Patterson	Associate	\$355
Katie Jorrie	Associate	\$315
Emily Sangi	Associate	\$315
Judy Pau	Paralegal	\$275

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$8,000** for the term of the agreement.

EXHIBIT C
CONFLICTS WAIVER LETTER

Suite 800
505 Montgomery Street
San Francisco, CA 94111-6533

Vidhya Prabhakaran
(415) 276-6568 tel
(415) 489-9068 fax

vid@dwt.com

June 10, 2015

Sarah Estes-Smith
Contract Manager
1125 Tamalpais Avenue
San Rafael, California 94901

Re: Conflicts Waiver Letter Between Marin Clean Energy
and Davis Wright Tremaine LLP

Dear Sarah:

As you know, Davis Wright Tremaine is a large, full-service law firm and represents many clients with possible interests in Marin Clean Energy ("MCE"). It is possible that, from time to time during the time we represent the MCE, one of these clients might ask us to give them legal advice or represent it in a transaction, proceeding or dispute with, involving, or against the MCE as to legal matters that are not substantially related to the energy regulatory and contractual matters for on which we have been engaged to advise MCE. The categories of clients or the potential subject matter of such potential conflicts which are most likely to arise are:

Communications and Media Clients. We serve as outside counsel for many news media organizations and represent or have represented various Southern California, Bay Area and national newspapers and magazines, newspaper publisher associations, and various local and national broadcast media in connection with, among other matters, news gathering and reporting activities, their right to access to public records and/or meetings, and newsrack ordinance matters. Any of these media or newspaper organizations may seek our assistance in obtaining access to MCE's records and/or meetings and in publishing or broadcasting stories about the MCE at any time, which could lead to disputes between MCE and the media involved, including litigation. These entities may similarly appear as amicus curiae in media and access matters directly adverse to the position of MCE.

Energy Clients. We also have a very active energy law and transactional practice within California and throughout the United States. In particular, we have represented and continue to represent parties who develop, purchase, own and operate power plants; marketers who engage in wholesale and retail energy and natural gas transactions; large consumers and resellers of energy and natural gas, including direct access customers; municipal and other governmental utilities; and transit districts (collectively "Energy Clients"). We also represent parties making

EXHIBIT C
CONFLICTS WAIVER LETTER

Sarah Estes-Smith
June 10, 2015
Page 2

debt or equity investments ("Financing Clients") in energy infrastructure projects (a "Financing Transaction").

In many instances, one or more of our Energy Clients appear in multi-party regulatory proceedings before state or federal energy/environmental authorities in which MCE may also be a participant ("Regulatory Proceedings"). It is possible that the interests that we are advancing in one or more of these Regulatory Proceedings is sufficiently different from the interest that the MCE may be advancing such that our representation of such Energy Client would be considered "adverse" to MCE. In addition, one or more of our Energy Clients or Financing Clients may be engaged in a commercial transaction ("Commercial Transaction") with MCE or in a Financing Transaction in which MCE is a participant.

MCE accordingly waives any possible conflict between Davis Wright Tremaine's current representations of Energy Clients in such Regulatory Proceedings and Commercial Transactions, and of Financing Clients in Financing Transactions; *provided* that such representation in such proceedings or transactions is not directly related to the specific energy regulatory and contractual matters, which is the subject of the representation by Davis Wright Tremaine encompassed by this Agreement.

Davis Wright Tremaine will not disclose MCE-specific information received from MCE in the course of business to use in the provision of service to another client. Davis Wright Tremaine will create staff separation in representation if it is determined that any potential conflict may arise in the services provided to MCE with respect to other clients. It must be understood that Davis Wright Tremaine cannot undertake to represent MCE without assurance that MCE will not seek, on the basis of this engagement or any future engagement, to disqualify us from representing other clients, including those identified above, in any other matter, now or in the future, that is not substantially related to this engagement or any future engagement for MCE, including or with respect to the areas of potential disputes identified above, in any legal advice that might be adverse to the interests of MCE, any transactions, any alternative dispute resolution, administrative litigation, regulatory proceedings, and related appeals, or judicial proceeding, as long as a new engagement is not substantially related to work we are then doing or have done for MCE.

EXHIBIT C
CONFLICTS WAIVER LETTER

Sarah Estes-Smith
June 10, 2015
Page 3

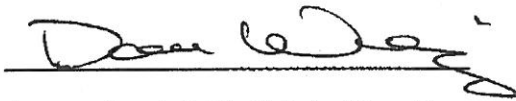
Accordingly, by countersigning this letter, MCE waives all present and future conflicts of interest concerning matters outside the scope of representation that is the subject of this engagement or any future engagement, including conflicts in transactional, regulatory, and litigation and other dispute resolution matters, and specifically including Davis Wright Tremaine's present and future representation of the clients identified above on all current or future matters unrelated to the engagement or any future engagement for MCE. MCE further agrees not to seek to disqualify DWT in, or assert a conflict with respect to, any such engagement, including in any potential alternative dispute resolution, administrative litigation, regulatory or other related judicial proceeding involving any such engagement that is not substantially related to this engagement or any future engagement for MCE.

Very Truly Yours,

Davis Wright Tremaine LLP



Vidhya Prabhakaran
Attorney



Approved on behalf of Marin Clean Energy

**FIRST ADDENDUM TO FIRST AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND DAVIS WRIGHT TREMAINE LLP**

This FIRST ADDENDUM is made and entered into on June 25, 2015, by and between MARIN CLEAN ENERGY, (hereinafter referred to as "MCE") and DAVIS WRIGHT TREMAINE LLP (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and the Contractor entered into an agreement to provide legal services pertaining to contractual and regulatory matters as directed by MCE staff dated June 11, 2015 ("Agreement"); and

WHEREAS, Section 4 and Exhibit B to the agreement obligated Contractor to be compensated an amount not to exceed \$8,000 for the legal services described within the scope therein; and

WHEREAS the parties desire to amend the agreement to increase the contract amount by \$17,000 for a total not to exceed \$25,000.

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

AGREEMENT

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

MAXIMUM COST TO MCE:

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

2. Exhibit B is hereby replaced in its entirety to read as follows:

**EXHIBIT B
FEES AND PAYMENT SCHEDULE**

For services provided under this agreement, MCE shall pay the Contractor at the following rates of Contractor's partners, associates, and paralegals:

Name	Title	2015 Rate
Vidhya Prabhakaran	Partner	\$500
Patrick Ferguson	Senior Associate	\$470
Andrew Patterson	Associate	\$340
Katie Jorrie	Associate	\$300
Emily Sangi	Associate	\$300
Judy Pau	Paralegal	\$260

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$25,000** for the term of the agreement.


If the Agreement is subsequently amended to increase the total dollar amount under the Agreement, Contractor and MCE have agreed to the following discounts based on percentage off of Contractor's Public Agency rate (e.g. a Partner rate of \$525) and rounded to the nearest \$5:

- 8% additional discount off the current "public agency" rate for annual work Contractor performs above \$50k (e.g. a Partner rate of \$485),
- 10% additional discount for annual work Contractor performs above \$100k (e.g. a Partner rate of \$475),
- 12% additional discount for annual work Contractor performs above \$250k (e.g. a Partner rate of \$465), and
- 15% additional discount for annual work Contractor performs above \$500k (e.g. a Partner rate of \$450).

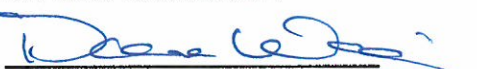
3. Except as otherwise provided herein all terms and conditions of the agreement shall remain in full force and effect.

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

CONTRACTOR:

By: 
 Date: 6/25/15
 David Wright, Treasurer

MARIN CLEAN ENERGY:

By: 
 Date: 6-25-15

**SECOND ADDENDUM TO FIRST AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND DAVIS WRIGHT TREMAINE LLP**

This SECOND ADDENDUM is made and entered into on December 17, 2015, by and between MARIN CLEAN ENERGY, (hereinafter referred to as "MCE") and DAVIS WRIGHT TREMAINE LLP (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and the Contractor entered into an agreement to provide legal services pertaining to contractual and regulatory matters as directed by MCE staff dated June 11, 2015 ("Agreement"); and

WHEREAS, Section 4 and Exhibit B to the agreement obligated Contractor to be compensated an amount not to exceed \$25,000 for the legal services described within the scope therein; and

WHEREAS the parties desire to amend the agreement to increase the contract amount by \$25,000 for a total not to exceed \$50,000 and to amend the scope of services.

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

AGREEMENT

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

MAXIMUM COST TO MCE:

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$50,000**.

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

Contractor will provide services pertaining to contractual, regulatory and legal matters, as requested and directed by MCE staff, up to the maximum time/fees allowed under this agreement.

3. Exhibit B is hereby replaced in its entirety to read as follows:

**EXHIBIT B
FEES AND PAYMENT SCHEDULE**

For services provided under this agreement, MCE shall pay the Contractor at the following rates of Contractor's partners, associates, and paralegals:

Name	Title	2015 Rate
Vidhya Prabhakaran	Partner	\$500
Patrick Ferguson	Senior Associate	\$470
Andrew Patterson	Associate	\$340
Katie Jorrie	Associate	\$300
Emily Sangi	Associate	\$300
Judy Pau	Paralegal	\$260

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$50,000** for the term of the agreement.

If the Agreement is subsequently amended to increase the total dollar amount under the Agreement, Contractor and MCE have agreed to the following discounts based on percentage off of Contractor's Public Agency rate (e.g. a Partner rate of \$525):

- 8% additional discount off the current "public agency" rate for annual work Contractor performs above \$50k (e.g. a Partner rate of \$485),
- 10% additional discount for annual work Contractor performs above \$100k (e.g. a Partner rate of \$475),
- 12% additional discount for annual work Contractor performs above \$250k (e.g. a Partner rate of \$465), and
- 15% additional discount for annual work Contractor performs above \$500k (e.g. a Partner rate of \$450).

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

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

CONTRACTOR:

By: _____

Date: _____

MARIN CLEAN ENERGY:

By: _____

Date: _____

MARIN CLEAN ENERGY:

By: _____

Date: _____



December 17, 2015

TO: Marin Clean Energy Board

FROM: Beckie Menten, Energy Efficiency Director

RE: Fourth Agreement with Association for Energy Affordability
(Agenda Item #05 - C.5)

ATTACHMENT: Draft Fourth Agreement with Association for Energy Affordability

Dear Board Members:

SUMMARY:

The proposed Fourth Agreement with Association for Energy Affordability (AEA) would allow for AEA to continue serving as the primary technical assistance consultant to MCE in support of the MCE multifamily energy efficiency program.

Background

Energy efficiency has always been an integral component of the MCE vision. In July of 2012, MCE 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. Multifamily
2. Single family utility demand reduction pilot program
3. Small commercial
4. Four financing pilot programs: On Bill Repayment for single family¹, multifamily, small commercial and a standard offer pilot.

This application was approved on November 9, 2012, allocating over \$4 million to MCE for the implementation of energy efficiency programs. In November of 2014, the California Public Utilities Commission voted to extend the funding at annual levels through 2025, or until the CPUC moves otherwise.

¹ The on-bill repayment pilot for single family customers was subsequently closed in fall of 2015 after the financial institution withdrew. Funds have since been re-directed to the multifamily energy efficiency program.

The multifamily energy efficiency program is one of four program elements approved by the CPUC, and is funded at a total of \$430,486. The program is designed to serve hard to reach multifamily properties and encourage property owners to invest in both common areas and tenant units.

AEA is uniquely experienced and well suited to provide high quality services in the multifamily sector in our region. AEA is a non-profit organization dedicated to improving the efficiency of new and existing multifamily buildings. In addition to having decades of experience working in multifamily buildings, AEA played an instrumental role in the development of the Building Performance Institute (BPI) standards for multifamily energy efficiency improvements. The BPI standards for multifamily buildings are the pre-eminent standards for building performance in multifamily buildings, and are likely to be relied upon in the statewide investor owned utility whole building multifamily program.

On October 4, 2012 your Board approved the First Agreement with AEA to provide services to the multifamily sector. On February 7, 2013 your Board approved a Second Agreement with AEA to provide multifamily program services. On November 7, 2013, your Board approved a Third Agreement with AEA. On December 4, 2014 your Board approved the First Addendum to the Third Agreement with AEA to extend the contract end date from December 31, 2014 to December 31, 2015. AEA has supported MCE by serving as technical consultants and program implementers to the multifamily program. Their assistance has been instrumental in developing program guidelines, including audit procedures, report templates, quality assurance and quality control policies. AEA has assisted MCE staff in developing incentive structures that will support the greatest success in achieving the specific desired outcomes of the program. Additionally, AEA has represented MCE well in the field through conducting the audits on multifamily properties. They have proven themselves as effective and professional program partners. In the time AEA has been supporting the MCE program, the program has accomplished energy assessments in 586 multifamily buildings, provided direct install services to 1,201 units, and saved 109,594 kWh and 26,803 therms.

The proposed Fourth Agreement would allow AEA to continue in their role as technical consultant for the program. AEA would continue to provide energy audits on behalf of the program, and would interface with property owners and managers to explain the opportunities represented in the audit report. AEA has also been working closely with the Marin City Community Development Corporation (MCCDC) to identify workforce development opportunities in this program and to utilize locally trained workers where possible. Finally, AEA would provide the oversight for the installation of energy efficiency measures to ensure property owners, managers, and the MCE program are getting the highest quality work products that will deliver the estimated energy savings.

MCE staff requests approval of the draft Fourth Agreement with AEA, which requests a contract maximum of \$150,000 and a contract end date of December 31, 2016.

Budget Impacts: The requested amount of \$150,000 will be funded completely from CPUC energy efficiency funds and will have no impact on MCE's operating budget.

Recommendation: Approve the Fourth Agreement with Association for Energy Affordability.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

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

THIS FOURTH AGREEMENT ("Agreement") is made and entered into this day **December 17, 2015** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and ASSOCIATION FOR ENERGY AFFORDABILITY (AEA), hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: technical consulting services for MCE's Multifamily Energy Efficiency 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 MCE, the parties agree to the following:

1. SCOPE OF SERVICES:

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

2. FURNISHED SERVICES:

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

3. FEES AND PAYMENT SCHEDULE; INVOICING:

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

4. MAXIMUM COST TO MCE:

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$150,000**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **January 1, 2016**, and shall terminate on **December 31, 2016**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

6. INSURANCE AND SAFETY:

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

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

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

6.1 GENERAL LIABILITY

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

6.2 AUTO LIABILITY

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

6.3 WORKERS' COMPENSATION

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

6.4 PROFESSIONAL LIABILITY INSURANCE

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

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

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

9. ASSIGNMENT:

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

10. RETENTION OF RECORDS AND AUDIT PROVISION:

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

11. WORK PRODUCT:

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

12. 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, MCE 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).

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 specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

15. JURISDICTION AND VENUE:

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

16. INDEMNIFICATION:

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

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

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

18. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all 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.

19. NOTICES

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

Contract Manager:	Sarah Estes-Smith
MCE Address:	1125 Tamalpais Avenue
	San Rafael, CA 94901
Email Address:	invoices@mcecleanenergy.org
Telephone No.:	(415) 464-6028

Notices shall be given to Contractor at the following address:

Contractor:	Andrew Brooks
Address:	5900 Hollis St, Suite R2
	Emeryville, CA 94608
Email Address:	abrooks@aea.us.org
Telephone No.:	(510) 431-1791

20. 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 Agreement on the date first above written.

APPROVED BY

Marin Clean Energy:

By: _____
CEO

Date: _____

By: _____
Chairperson

Date: _____

CONTRACTOR:

By: _____

Name: _____

Date: _____

MCE 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 MCE Counsel at Marin Clean Energy's Request

MCE Counsel: _____

Date: _____

EXHIBIT A
SCOPE OF SERVICES (required)

Contractor will provide the following technical consulting services for MCE's Multifamily Energy Efficiency Program, as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

#1: BUILDING INFORMATION & UTILITY DATA ANALYSIS

Contractor will work with MCE and its program partners to develop a list of candidate buildings to retrofit. Contractor will analyze the building characteristics, systems and energy usage data of those buildings to identify those with the highest potential for deep energy savings.

#2: BUILDING LEVEL ENERGY AUDITS:

Contractor will determine which buildings in MCE's pipeline are best served by ASHRAE Level I Energy Audits and which are better served by ASHRAE Level II Energy Audits. Contractor will begin to perform audits on buildings coming into the program as the budget allows.

#3: ENERGY EFFICIENCY MEASURE (EEM) IMPLEMENTATION:

Contractor will facilitate the implementation of the energy efficiency measures. For any complex measures that warrant it, such as boiler or HVAC replacements or retrofits, Contractor will develop design specifications to be used in the bid process. The design specifications may include equipment sizing, equipment selection, piping diagrams, controls sequences and other detailed engineering components. For measures that require more basic performance based specifications, such as wall or attic insulation, Contractor will develop specifications that will enable the project to achieve the pre-determined performance goals set by the program. Contractor will also perform post installation Quality Assurance and Verification inspections to ensure that the measures were installed in such a manner that they will achieve the projected energy savings.

#4: DATA MANAGEMENT FOR EM&V PROCESS:

Contractor will work with MCE to help identify which data points should be collected and tracked for every project. Contractor can help develop the tools necessary for collected, tracking and analyzing the data that will be required for the EM&V process.

#5: WORKFORCE DEVELOPMENT:

Contractor will help MCE to identify and train candidates for the Direct Install team. Contractor will assist with training of contractors and building operators as needed and when requested by MCE.

EXHIBIT B
FEES AND PAYMENT SCHEDULE

For services provided under this agreement, Contractor shall bill in .25-hour increments. MCE shall pay the Contractor in accordance with the following fees/payment schedule:

2016 Billing Rates	Hourly Rate
Director	\$165.00
Senior Analyst	\$150.00
Analyst	\$130.00

2016 Budget Categories	Total
Administration	\$8,133
Direct Implementation Non-Incentives	\$130,083
Incentives	\$8,034
Marketing, Education & Outreach	\$3,750
Total Not-to-Exceed (NTE):	\$150,000

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$150,000** for the term of the agreement.



December 17, 2015

TO: Marin Clean Energy Board

FROM: Beckie Menten, Energy Efficiency Director

RE: Fifth Agreement with Community Energy Services Corporation
(Agenda Item #05 - C.6)

ATTACHMENT: Draft Fifth Agreement with Community Energy Services
Corporation

Dear Board Members:

SUMMARY:

The proposed Fifth Agreement with Community Energy Services Corporation (CESC) would provide continuation of services to MCE for implementation of the small commercial energy efficiency program.

Background

Energy efficiency has always been an integral component of the MCE vision. In July of 2012, MCE 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. Multifamily
2. Single family utility demand reduction pilot program
3. Small commercial
4. Four financing pilot programs: On Bill Repayment for single family¹, multifamily, small commercial and a standard offer pilot.

This application was approved on the 9th of November, 2012, allocating over \$4 million to MCE for the implementation of energy efficiency programs. In November of 2014, the California Public Utilities Commission voted to extend the funding at annual levels through 2025, or until the CPUC moves otherwise.

¹ The on-bill repayment pilot for single family customers was subsequently closed in fall of 2015 after the financial institution withdrew. Funds have since been re-directed to the multifamily energy efficiency program.

The small commercial program is one of four program elements approved by the CPUC, and is funded at a total of \$432,379. The program is designed to serve hard to reach small commercial properties by making energy efficiency opportunities easy to capture.

On November 1, 2012 your Board approved the First Agreement with CESC for energy efficiency services for the multifamily and small commercial sector. On December 1, 2012, your Board approved the First Addendum to the First Agreement with CESC to extend the contract end date from December 31, 2012 to March 31, 2013. On March 7, 2013 your Board approved the Second Agreement with CESC for energy efficiency program services for the multifamily and small commercial sector for the 2013-2014 program. On November 7, 2013, your Board approved the Third Agreement with CESC for calendar year 2014. On December 4, 2014, your Board approved the Fourth Agreement with CESC, continuing their role in providing technical services for MCE's small commercial energy efficiency program for calendar year 2015.

Under the proposed Fifth Agreement, CESC would continue to be the lead program implementer for the MCE small commercial energy efficiency 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.

This Agreement continues the performance incentive, a fee structure introduced in the Fourth Agreement. The performance incentive is available to CESC when projects are successfully completed. Under this fee structure last year, CESC exceeded goals while meeting cost-effectiveness targets of the CPUC.

MCE staff requests approval of the draft Fifth Agreement with CESC, which requests a contract maximum of \$153,800 and a contract end date of December 31, 2016.

Budget Impacts: The requested contract amount of \$153,800 would be funded completely from the energy efficiency program funds allocated by the CPUC.

Recommendation: Approve the Fifth Agreement with Community Energy Services Corporation.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**FIFTH AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND COMMUNITY ENERGY SERVICES CORPORATION (CESC)**

THIS FIFTH AGREEMENT ("Agreement") is made and entered into this day **December 17, 2015** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and COMMUNITY ENERGY SERVICES CORPORATION (CESC), hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: technical services to support MCE's Small Commercial Energy Efficiency 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 MCE, the parties agree to the following:

1. SCOPE OF SERVICES:

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

2. FURNISHED SERVICES:

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

3. FEES AND PAYMENT SCHEDULE; INVOICING:

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

4. MAXIMUM COST TO MCE:

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$153,800**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **January 1, 2016**, and shall terminate on **December 31, 2016**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

6. INSURANCE AND SAFETY:

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

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

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

6.1 GENERAL LIABILITY

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

6.2 AUTO LIABILITY

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

6.3 WORKERS' COMPENSATION

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

6.4 PROFESSIONAL LIABILITY INSURANCE

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

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

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

9. ASSIGNMENT:

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

10. RETENTION OF RECORDS AND AUDIT PROVISION:

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

11. WORK PRODUCT:

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

12. 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, MCE 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).

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 specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

15. JURISDICTION AND VENUE:

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

16. INDEMNIFICATION:

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

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

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

18. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all 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.

19. NOTICES

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

Contract Manager:	Sarah Estes-Smith
MCE Address:	1125 Tamalpais Avenue
	San Rafael, CA 94901
Email Address:	invoices@mcecleanenergy.org
Telephone No.:	(415) 464-6028

Notices shall be given to Contractor at the following address:

Contractor:	Martin Bond
Address:	1013 Pardee Street
	Berkeley, CA 94710
Email Address:	martin@ebenergy.org
Telephone No.:	(510) 981-7757

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	

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

APPROVED BY

Marin Clean Energy:

By: _____
CEO

Date: _____

By: _____
Chairperson

Date: _____

CONTRACTOR:

By: _____

Name: _____

Date: _____

MCE 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 MCE Counsel at Marin Clean Energy's Request

MCE Counsel: _____

Date: _____

EXHIBIT A
SCOPE OF SERVICES (required)

Contractor will provide the following technical services to support MCE's Small Commercial Energy Efficiency Program, as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

1	Administrative
a	Maintain data management, tracking and accounting protocols to comply with MCE and CPUC program reporting requirements
b	Update forms as needed, such as integrating customer-facing reports with financing options
c	Identify and implement process improvements
d	Assistance replying to data requests, CPUC financial audits and regulatory filings
2	Marketing and Outreach
a	Develop, modify, and distribute marketing materials (flyers, applications, website, customer report)
b	Create case studies
c	Design outreach campaigns
3	Implementation
a	Provide project management assistance from project inception to completion, including but not limited to scheduling site visits, conducting assessments, creating savings and rebate estimates and finals, responding to customer inquiries, coordinating contractors and equipment installation, and conducting final M&V
b	Recruit, educate, and train contractors and suppliers
c	Identify and Implement any changes to program installation labor and material pricing
d	Provide technical assistance services, including setting and documenting customer eligibility criteria, audit criteria, incentive levels, and overall project documentation
e	Program planning, development and design – as needed
f	IT development for project management tasks
4	Quality Assurance/Quality Control
a	Conduct QA/QC to ensure tracking and reporting documents are in sync and accurate
b	Periodically review contractor requirements and M&V protocols (% pre and post inspection) are sufficient to ensure reasonable savings claims
5	Coordinate with PG&E on programs to avoid duplication/competition
a	Hold meetings with complimentary and non-competitive EE & DR Programs operating in MCE territory
b	Be available to provide services in new communities as appropriate

EXHIBIT B
FEES AND PAYMENT SCHEDULE

Services will be billed as a time and material contract. For services provided under this agreement, MCE shall pay the Contractor in accordance with the following payment fees/schedule:

Community Energy Services Corporation		2016 Rates
Hourly Rates (unless otherwise noted)		
Admin		
	Program Manager	\$ 75.00
	Division Director	\$ 85.00
Marketing	Manager	\$ 65.00
	Coordinator	\$ 55.00
Direct Implementation		
	Program Manager	\$ 75.00
	Sr. Project Manager	\$ 70.00
	Project Managers	\$ 65.00
	Operations Coordinator	\$ 55.00
	Project Coordinator	\$ 55.00
	Intern	\$ 30.00
Mileage	Per Mile at current IRS rate	
Materials	At cost	

Budget	
Administrative Costs	\$13,800
Marketing and Outreach	\$13,000
Program Performance Incentive ¹ (Target of 850,000 kWh)	\$0.05 / kWh
Technical Assistance Direct Implementation (Small Commercial)	\$84,500
Contract Total(NTE)	\$153,800
¹ The program performance incentive may be invoiced by CESC on a kWh / project completed basis. This incentive is to be invoiced monthly, and the invoice must include sufficient background documentation to calculate the incentive amount based on kWh savings in completed projects. MCE reserves the right to reduce payment of the incentive if more than 60% of kWh savings result from free LED measures.	

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$153,800** for the term of the agreement.



December 17, 2015

TO: Marin Clean Energy Board

FROM: Beckie Menten, Energy Efficiency Director

RE: Fourth Agreement with Marin City Community Development Corporation (Agenda Item #05 - C.7)

ATTACHMENT: Draft Fourth Agreement with Marin City Community Development Corporation

Dear Board Members:

SUMMARY:

The proposed Fourth Agreement with Marin City Community Development Corporation (MCCDC) would continue the strong role that MCCDC has played in providing MCE with a team of local workers to complete direct installation of energy and water conservation measures in multifamily tenant units.

Background

Energy efficiency has always been an integral component of the MCE vision. In July of 2012, MCE 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. Multifamily
2. Single family utility demand reduction pilot program
3. Small commercial
4. Four financing pilot programs: On Bill Repayment for single family¹, multifamily, small commercial and a standard offer pilot.

This application was approved on the 9th of November, 2012, allocating over \$4 million to MCE for the implementation of energy efficiency programs. In November of 2014, the California Public Utilities Commission voted to extend the funding at annual levels through 2025, or until the CPUC moves otherwise.

¹ The on-bill repayment pilot for single family customers was subsequently closed in fall of 2015 after the financial institution withdrew. Funds have since been re-directed to the multifamily energy efficiency program.

The multifamily energy efficiency program is one of four program elements approved by the CPUC, and is funded at a total of \$430,486. The program is designed to serve hard to reach multifamily properties and encourage property owners to invest in both common areas and tenant units.

MCCDC has been empowering Marin communities for more than thirty years. With a diverse mix of proven asset development programs, MCCDC has been helping job seekers find and retain employment and build their lives and communities with the savings they earn. MCE and MCCDC have partnered on successful projects in the past, including the San Rafael airport solar photovoltaic project, which employed local workers trained through MCCDC programs.

On October 4, 2012 your Board approved the First Agreement with MCCDC to provide energy efficiency program services. On February 7, 2013 your Board approved the Second Agreement with MCCDC to provide energy efficiency program services, expanding the scope to include a direct installation component. On November 7, 2013 your Board approved the Third Agreement with MCCDC for services to be delivered during calendar year 2014. On December 4, 2014, your Board approved the First Addendum to the Third Agreement with MCCDC, which extended the contract end date from December 31, 2014 to December 31, 2015. MCCDC has been supporting the MCE multifamily program for the past three years. MCCDC has demonstrated the ability to deliver a well-trained team of employees to accomplish the direct install work, conduct tenant outreach, and manage material inventory. The crew at MCCDC has offered high quality services to 1,201 units, collecting the data necessary to support reporting to the CPUC and interacting with tenants to improve opportunities for long term energy savings. This agreement would continue to support MCCDC in providing crews, including identifying and implementing any training necessary to fulfill this role.

MCE staff requests approval of the draft Fourth Agreement with MCCDC, which requests a contract maximum of \$50,000 and a contract end date of December 31, 2016. This would continue to provide an opportunity for local training program graduates to gain valuable on-the-job training on energy upgrade projects.

Budget Impacts: The proposed budget of \$50,000 would be covered entirely from CPUC energy efficiency funds and has no impact on MCE's operating budget.

Recommendation: Approve the Fourth Agreement with Marin City Community Development Corporation.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**FOURTH AGREEMENT
BY AND BETWEEN**

MARIN CLEAN ENERGY AND MARIN CITY COMMUNITY DEVELOPMENT CORPORATION (MCCDC)

THIS FOURTH AGREEMENT ("Agreement") is made and entered into this day **December 17, 2015** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and MARIN CITY COMMUNITY DEVELOPMENT CORPORATION (MCCDC), hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: direct installation services for MCE's Multifamily Energy Efficiency 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 MCE, the parties agree to the following:

1. SCOPE OF SERVICES:

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

2. FURNISHED SERVICES:

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

3. FEES AND PAYMENT SCHEDULE; INVOICING:

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

4. MAXIMUM COST TO MCE:

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$50,000**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **January 1, 2016**, and shall terminate on **December 31, 2016**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

6. INSURANCE AND SAFETY:

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

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

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

6.1 GENERAL LIABILITY

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

6.2 AUTO LIABILITY

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

6.3 WORKERS' COMPENSATION

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

6.4 PROFESSIONAL LIABILITY INSURANCE

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

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

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

9. ASSIGNMENT:

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

10. RETENTION OF RECORDS AND AUDIT PROVISION:

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

11. WORK PRODUCT:

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

12. 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, MCE 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).

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 specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

15. JURISDICTION AND VENUE:

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

16. INDEMNIFICATION:

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

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

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

18. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all 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.

19. NOTICES

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

Contract Manager:	Sarah Estes-Smith
MCE Address:	1125 Tamalpais Avenue
	San Rafael, CA 94901
Email Address:	invoices@mcecleanenergy.org
Telephone No.:	(415) 464-6028

Notices shall be given to Contractor at the following address:

Contractor:	Dr. Melissa Cadet
Address:	441 Drake Avenue
	Marin City, CA 94965
Email Address:	mcadet@marincitycdc.org
Telephone No.:	(415) 339-2837 x19

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	

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

APPROVED BY

Marin Clean Energy:

By: _____
CEO

Date: _____

By: _____
Chairperson

Date: _____

CONTRACTOR:

By: _____

Name: _____

Date: _____

MCE 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 MCE Counsel at Marin Clean Energy's Request

MCE Counsel: _____

Date: _____

EXHIBIT A
SCOPE OF SERVICES (required)

Contractor will provide the following direct installation services for MCE's Multifamily Energy Efficiency Program, as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

A. Develop Direct Install Crew

Contractor shall select, train, and oversee staff for installation of the direct install component of the MCE Multifamily Energy Efficiency Program. The staff will have basic familiarity with energy efficiency and have training in the installation of basic efficiency measures, including but not limited to: light bulb replacement, pipe insulation, shower and faucet head replacements, and weather stripping.

Deliverables:

1. Contractor will recruit and screen Direct Install Crew members, including performing background checks.
2. Contractor will identify additional training necessary and work with MCE to develop curriculum and deliver training.

B. Complete Direct Installation of Energy Efficiency Measures

Contractor shall provide on the ground crews per Task A above to complete direct installation of light energy efficiency measures as identified in the audit report and as desired by the multifamily property owner. Contractor will coordinate scheduling of direct install team with MCE staff and other MCE Multifamily Energy Efficiency Program contractors. Contractor will review and comply with the quality assurance and quality control provisions of the MCE Multifamily Energy Efficiency Program. MCE will provide DI materials for installs unless otherwise noted.

Deliverables:

1. Contractor will provide a Direct Install crew consisting of a Crew Leader and EE Specialists.
2. Contractor will meet QC standards of the project, and MCE will provide feedback as needed.
3. Contractor will handle storage and transport of direct install materials to the worksite, and will provide monthly inventories of materials on hand for MCE. Contractor will communicate ordering needs.

EXHIBIT B
FEES AND PAYMENT SCHEDULE

For services provided under this agreement, MCE shall pay the Contractor in accordance with the following payment fees/schedule:

1. Project allocated work will be billed monthly. All invoices must include sufficient documentation to verify the hours spent and the work completed during the invoice period. For 2016-17, backup documentation will include hours billed. Time allocations for MCCDC staff will indicate the following fields showing daily hours worked in the following areas:
 - a) Direct Installation – including installation crew time, as well as coordination and/or supervision
 - b) Administration
2. Mileage and expenses (such as specific materials costs) submitted will show clear and direct relation to the MCE project. MCE must have on file proof of valid auto insurance before mileage expenses can be paid. Mileage expenses must comply with federal per diem mileage reimbursement rates. These rates can be found at: http://www.gsa.gov/portal/content/100715?utm_source=OGP&utm_medium=print-radio&utm_term=mileage&utm_campaign=shortcut. Equipment purchases totaling greater than \$20 per individual unit must be cleared with MCE staff in advance. All equipment purchases must be supported with documentation including a receipt at a minimum.
3. Parties acknowledge that at no point will services under Exhibit A be provided if there is not sufficient remaining budget available to cover such services.

MCCDC Efficiency Program Budget	2016
Administrative	\$3,000
Direct Implementation	\$42,000
Direct Install Team Training	\$5,000
Total Not-to-Exceed (NTE)	\$50,000

2016 Billing Rates	Hourly Rate
Director	\$49.61
Manager/Crew Lead	\$25.52
Installer I	\$22.05
Installer II	\$23.63

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$50,000** for the term of the agreement.



December 17, 2015

TO: Marin Clean Energy Board

FROM: Beckie Menten, Energy Efficiency Director

RE: Fourth Agreement with Planet Ecosystems, Inc. (Agenda Item #05 - C.8)

ATTACHMENT: Draft Fourth Agreement with Planet Ecosystems, Inc.

Dear Board Members:

SUMMARY:

The proposed Fourth Agreement with Planet Ecosystems, Inc. (PEI) would continue support of the MyEnergyTool web portal for six months and would end the Home Utility Report Program.

Background

Energy efficiency has always been an integral component of the MCE vision. In July of 2012, MCE 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. Multifamily
2. Single family utility demand reduction pilot program
3. Small commercial
4. Four financing pilot programs: On Bill Repayment for single family¹, multifamily, small commercial and a standard offer pilot.

This application was approved on the 9th of November, 2012, allocating over \$4 million to MCE for the implementation of energy efficiency programs. In November of 2014, the California Public Utilities Commission voted to extend the funding at annual levels through 2025, or until the CPUC moves otherwise.

¹ The on-bill repayment pilot for single family customers was subsequently closed in fall of 2015 after the financial institution withdrew. Funds have since been re-directed to the multifamily energy efficiency program.

The single family utility demand reduction program is one of four program elements approved by the CPUC, and is funded at a total of \$264,402. The program was developed to comply with CPUC guidance that MCE 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 education and inspiration to take actions to reduce their energy usage, and to connect interested customers with existing resources needed to implement energy improvements in their homes.

On January 9, 2013 your Board approved the First Agreement with PEI to explore development of a web based energy efficiency tool for single family residential customers in Marin and the City of Richmond. On February 8, 2013 your Board approved the Second Agreement with PEI to customize their web tool to MCE's program needs and license this tool on a software-as-a-service basis. The contract also included funding for outreach efforts necessary to drive participation to the web tool. On December 5, 2013, your Board approved the First Addendum to the Second Agreement with PEI, extending the contract end date from December 31, 2013 to March 31, 2014. On March 6, 2014, your Board approved the Second Addendum to the Second Agreement with PEI to extend the contract end date from March 31, 2014 to April 30, 2014 to allow for results from the Home Utility Report outreach campaign to inform future contract decisions. On April 3, 2014, your Board approved the Third Addendum to the Second Agreement with PEI to continue expansion of the Home Utility Report campaign and to maintain support of the existing MyEnergyTool website. On April 29, 2014, your Board approved the Fourth Addendum to the Third Agreement with PEI, extending the contract end date from April 30, 2014 to December 31, 2014. Finally, on December 4, 2014, your Board approved the Third Agreement with PEI to continue providing Home Utility Reports and to continue support of the existing MyEnergyTool website for calendar year 2015.

Since its launch in 2012, the MyEnergyTool has over 2,382 users that have completed Action Plans. In October of 2015, MyEnergyTool was incorporated into a statewide energy efficiency competition, Cool California Challenge, as the primary interface for participants in MCE's service territory. This competition runs through the end of March, 2016.

In the response to ongoing challenges with the Energy Tool including poor ease of use and technical problems with the software, the proposed Fourth Agreement with PEI would extend service for the webtool for only the first six months of 2016. This schedule would allow MCE to continue to support the Cool California Challenge through the end of the competition, but would create an opportunity to seek out a new program implementer at the end of the six month period if there is not improvement in the existing webtool.

The contract also introduces several fee structures intended to improve performance. The contract restructures the licensing fee, carving out \$1,000 per month as a performance incentive, available to PEI if project deadlines are consistently met on a monthly basis. The contract also introduces a penalty for public release of information or web features without prior MCE review. Finally, project management billing hours will be carefully tracked to ensure that MCE is not being double billed for work that should be included as part of the software license.

In November 2015, DNV-GL, under contract to the CPUC, conducted an impact evaluation of MCE's Home Utility Report Program. The draft report found no measurable savings. In light of these findings, we are not seeking to continue the Home Utility Report Program in 2016. It is important to note that the evaluation is still in draft form. We may seek to resume the program if the findings change in the final version.

MCE staff requests approval of the draft Fourth Agreement with PEI, which requests a contract maximum of \$61,350 and a contract end date of June 30, 2016.

Budget Impacts: The proposed funding amount of \$61,350 would be funded completely from the CPUC Energy Efficiency funds and has no impact on MCE's operating budget.

Recommendation: Approve the Fourth Agreement with Planet Ecosystems, Inc.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**FOURTH AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND PLANET ECOSYSTEMS, INC. (PEI)**

THIS FOURTH AGREEMENT ("Agreement") is made and entered into this day **December 17, 2015** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and PLANET ECOSYSTEMS, INC. (PEI), hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: program management and technology services pertaining to MCE's Single-Family Demand Reduction sub-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 MCE, the parties agree to the following:

1. SCOPE OF SERVICES:

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

Subject to the terms and conditions of this Agreement, Contractor grants MCE 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 MCE'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. MCE 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 MCE regarding the Software, the Service or any part thereof.

2. FURNISHED SERVICES:

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

3. FEES AND PAYMENT SCHEDULE; INVOICING:

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

4. MAXIMUM COST TO MCE:

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$61,350**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **January 1, 2016**, and shall terminate on **June 30, 2016**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

6. INSURANCE AND SAFETY:

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any

cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

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

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

6.1 GENERAL LIABILITY

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

6.2 AUTO LIABILITY

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

6.3 WORKERS' COMPENSATION

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

6.4 PROFESSIONAL LIABILITY INSURANCE

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

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

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

9. ASSIGNMENT:

The rights, responsibilities and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE, except pursuant to a transfer of all or substantially all of the 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 Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged.

11. WORK PRODUCT:

MCE 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. MCE shall own that software developed for MCE by Contractor to specifications provided by MCE 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. MCE acknowledges that Contractor exclusively owns all rights, title and interest in and to the Software and its derivatives. MCE 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 MCE, its users or other users relating to the Software.

12. CONFIDENTIALITY:

Contractor acknowledges that MCE is a public agency subject to the California Public records Act (California Government Code section 6250, *et seq.*). MCE 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. MCE 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 MCE or made available to MCE 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 Agreement or (ii) violates any ordinance, regulation or other law which applies to its performance herein, MCE 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).

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 MCE 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, MCE 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 MCE'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 MCE. ANY USE OF THE SAMPLES IS AT MCE'S OWN RISK. CONTRACTOR DISCLAIMS ALL LIABILITY OR LOSS IN CONNECTION WITH MCE'S USE OF THE SAMPLES. MCE 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 MCE. 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 Agreement 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 MCE, as is evidenced in writing.

18. 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.

19. INDEMNIFICATION:

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

20. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

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

21. ENERGY SAVINGS:

MCE 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 Agreement. Copies of any of the above-referenced local laws and resolutions may be secured from MCE's contact person referenced in paragraph 23. NOTICES below.

23. NOTICES

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

Contract Manager:	Sarah Estes-Smith
MCE Address:	1125 Tamalpais Avenue
	San Rafael, CA 94901
Email Address:	invoices@mcecleanenergy.org
Telephone No.:	(415) 464-6028

Notices shall be given to Contractor at the following address:

Contractor:	Rory Jones
Address:	2480 Poppy Drive
	Burlingame, CA 94010
Email Address:	roryjones@planetecosystems.com
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	
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment	

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

APPROVED BY

Marin Clean Energy:

By: _____
CEO
Date: _____

By: _____
Chairperson
Date: _____

CONTRACTOR:

By: _____
Name: _____
Date: _____

MCE 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 MCE Counsel at Marin Clean Energy's Request

MCE Counsel: _____

Date: _____

EXHIBIT A
SCOPE OF SERVICES (required)

Contractor will provide the following program management and technology services pertaining to MCE's Single-Family Demand Reduction sub-program, as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

Task One: Program Management

Contractor will manage all activities necessary to fulfill MCE's Single-Family Demand Reduction sub-program. This includes engagement and management of outreach and technology platform vendors; education/training for MCE 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.

Deliverables: Partner coordination, stakeholder training, technical assistance, reporting

Task Two: Technology Services

The Single-Family Demand Reduction sub-program will utilize the services of the web portal.

Deliverables: Software-as-a-service, technology hosting and configuration, web design and integration, partner coordination, stakeholder training, technical assistance, and reporting.

Performance Kicker Deliverables: Contractor will provide MCE with a twice monthly list of pending updates to site along with anticipated completion dates for each task. If updates will not be completed by original deadline Contractor will inform MCE in writing three (3) days in advance of original deadline.

Information Disclosure Penalty: For each instance that information is made public before MCE's review and approval, MCE will receive a credit on that month's invoice of \$500 per occurrence, offsetting current invoiced amount.

EXHIBIT B
FEES AND PAYMENT SCHEDULE

For services provided under this agreement, MCE shall pay the Contractor in accordance with the following payment fees/schedule:

Task One: Program Management

Contractor will be paid at a rate of \$150/hour. Contractor will bill monthly and provide a breakdown of billable hours by task. Program Management services will not exceed \$19,950.

Task Two: Technology Services

Web Portal License: Contractor will bill MCE at a rate of \$5,900/month for the licensing of the technology services listed in Task Two of Exhibit A. Licensing fees will not exceed \$35,400.

Performance Kicker: Contractor will bill MCE \$1,000 for each month that Contractor completes the Performance Kicker Deliverables. Performance Kickers will not exceed \$6,000.

Information Disclosure Penalty: Contractor will incorporate into each monthly invoice a credit for each instance that information is made public before MCE's review and approval. The penalty will be \$500 per occurrence and will offset the current invoiced amount.

Budget	
Administrative Costs	
• Program Management	\$5,000
Technical Assistance Direct Implementation	
• Program Management	\$14,950
• Web Portal License	\$35,400
• Performance Kicker	\$6,000
Contract Total (NTE)	\$61,350

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$61,350** for the term of the agreement.

RESOLUTION NO. 2015-07

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY HONORING BOARD MEMBER GARRY LION

WHEREAS, Marin Clean Energy 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 Clean Energy members include the following communities: the County of Marin, the City of Belvedere, the City of Benicia, the Town of Corte Madera, the City of El Cerrito, the Town of Fairfax, the City of Larkspur, the City of Mill Valley, the County of Napa, the City of Novato, the Town of San Anselmo, the City of San Pablo, 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 City of Mill Valley executed the Joint Powers Agreement establishing membership in Marin Clean Energy on December 2, 2008; and

WHEREAS, Garry Lion was elected to the Mill Valley City Council for the second time in November 2007 where he enthusiastically served. He has been a dedicated public servant with a focused business sense, and an advocate for the betterment of the City of Mill Valley; and

WHEREAS, Director Lion served as Vice Mayor of the City of Mill Valley from 2007-2011, served as Mayor from 2011-2012 and then as Vice Mayor from 2012-2015. His service also included serving as Mill Valley's representative to the Association of Bay Area Governments (ABAG), and the Council's liaison to the Mill Valley Chamber of Commerce. He also served by appointment of the Marin Board of Supervisors on Marin Flood Control District #3 (greater Mill Valley) and by appointment of the Marin Economic Forum on the Marin County Disaster Council; and

WHEREAS, on February 6, 2014 Director Lion was appointed to represent the City of Mill Valley on the Marin Clean Energy Board of Directors where he served until November 19, 2015; and

WHEREAS, Director Lion has shown his dedication and commitment to Marin Clean Energy through his leadership, his conscientious and thoughtful service on the Board of Directors and its Ad Hoc Contracts Committee for the 2014 Open Season; and

WHEREAS, the Marin Clean Energy Board of Directors and staff thank Director Lion for his support and interest in the agency, its goals and purpose.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of Marin Clean Energy that the Marin Clean Energy Board and staff do hereby extend to Garry

Lion 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 Clean Energy Board of Directors on this 17th day of December 2015, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
City of Belvedere				
City of Benicia				
Town of Corte Madera				
City of El Cerrito				
Town of Fairfax				
City of Larkspur				
County of Marin				
City of Mill Valley				
County of Napa				
City of Novato				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
Town of Tiburon				

CHAIR, MARIN CLEAN ENERGY BOARD

Attest:

SECRETARY, MARIN CLEAN ENERGY BOARD



December 17, 2015

TO: Marin Clean Energy Board of Directors

FROM: Katie Gaier, Human Resources Manager
David McNeil, Finance and Project Manager

RE: Change in Retirement Administration Plan (Agenda Item #07)

SUMMARY:

At its June 18, 2015 meeting, the MCE Board of Directors directed the Chief Executive Officer to negotiate retaining two firms to provide plan administration and fiduciary services to MCE's retirement plans. The CEO and other MCE staff and consultants negotiated contracts with PenServe Plan Services for plan administration services and with Genovese Burford and Brothers Wealth Management for fiduciary services.

Staff has worked with both firms over the past few months to transition the retirement plans from Nationwide Retirement Solutions to the new firms. During this time, Genovese Burford and Brothers provided high-quality assistance to staff in mapping investments and setting time for meetings with employees. At the same time, there were problems with PenServe in its performance of agreed-upon tasks. When it was determined that the plan could not transition any earlier than February 1, 2016, staff determined the best course of action would be to sever the agreement with PenServe and continue, at least in the short term, with Nationwide. The contract with Genovese Burford and Brothers remains in place for investment advice and fiduciary services. At its December 2, 2015 meeting, this item was discussed with the Executive Committee and staff is currently reviewing options for plan administration over the medium term and will report back to the board in the coming months.

BUDGET IMPACT: No Impact. There is no increase in costs associated with this item.

RECOMMENDATION: Discussion item only.



December 17, 2015

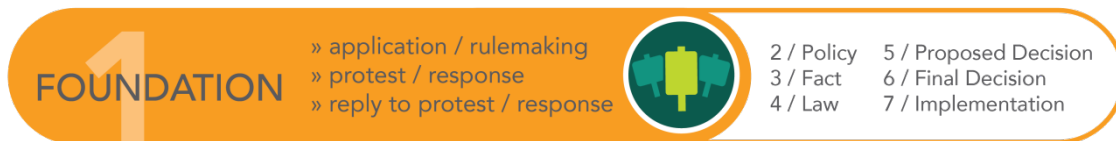
TO: Marin Clean Energy Board
FROM: Jeremy Waen, Senior Regulatory Analyst
RE: Regulatory Update for December 2015 (Agenda Item #08)

Dear Board Members:

Executive Summary of Regulatory Affairs for December 2015

Below is a summary of the key activities at the California Public Utilities Commission (CPUC) for December 2015 impacting community choice aggregation and MCE.

1. MCE Applies for \$88 Million in Funding to Run Energy Efficiency Programs in 2016 and Beyond (A.15-10-014)



On November 12, 2015 the Commission formally noticed MCE's Business Plan and Application for \$88 million in funding over a 10-year period to run a comprehensive Energy Efficiency (EE) program. The notice marks the first formal step in reviewing the application, provides a formal Application number (A.15-10-014), and triggers a 30-day period for other parties to respond to or protest the application proposal. MCE is continuing to engage with Commission staff and concerned parties to educate them on the contents and intent of this ambitious proposal.

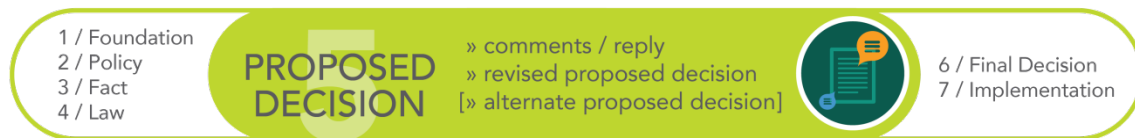
2. MCE Finalizes Changes to 2015 Energy Efficiency Programs and Identifies Unspent Funds from 2015 Available for the 2016 Budget (R.13-11-005)



On November 19, 2015 MCE filed a Program Implementation Plan (PIP) Addendum with Commission staff to conclude the process of closing the Single-Family On-Bill

Repayment program and shifting funds into the Multifamily Program to meet unexpectedly high program participation in 2015. On December 1, 2015 MCE filed an Advice Letter (MCE AL 11-E) with Commission staff identifying the total unspent funds from the 2015 budget. These unspent funds are carried forward to offset the 2016 budget transfers to MCE. MCE has subsequently identified approximately \$100,000 in funds that were reported as unspent but were actually spent developing MCE's 2016 programs and will supplement the Advice Letter filing accordingly.

3. MCE Challenges the Proposal for Significant Increases to the Power Charge Indifference Adjustment (PCIA) in PG&E 2016 ERRR (A.15-06-001)

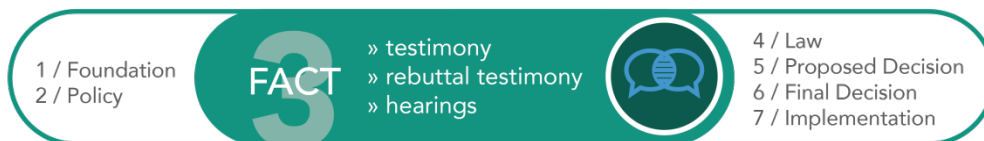


On November 13, 2015 the Commission issued its Proposed Decision (PD) on the PG&E 2016 ERRR. As drafted the PD would approve PG&E's requested PCIA rate increase in full, effective January 1, 2016. The PD also proposed to hold a workshop in the first half of 2016 to discuss the potential need for PCIA reform. Unfortunately, the present language within the PD makes it quite clear that this workshop *would not* be tied to an official proceeding. MCE staff has concerns with both of these elements of the PD and is taking steps to address them through future revisions to the PD.

On November 25, 2015 MCE staff and outside counsel, along with Board Chair Katherin Sears and Board Vice Chair Tom Butt, held an in-person *ex parte* meeting with Ehren Seybert, energy advisor to Commissioner Carla J. Peterman. On December 1, 2015 MCE staff and outside counsel convened a teleconference-based *ex parte* meeting with Matthew Tisdale, energy advisor to Commissioner Mike Florio. During both of these meetings MCE representatives presented arguments for both (i) why 85% of the PCIA rate increase should be held in a balancing account, rather than being immediately applied to rates, to then be applied to future PCIA rates once the need for PCIA reform has been addressed by the Commission in 2016, and (ii) why the workshop that the PD proposes must be tied to an official proceeding so that it can readily inform Commission policy and decision making on potential PCIA reform in 2016.

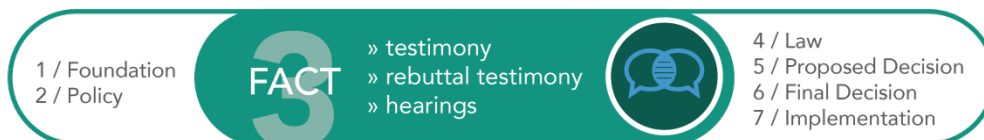
On December 3, 2015 MCE with the support of external counsel filed its formal Comments on the PD asking for the same changes that were presented during the *ex parte* meetings. MCE staff continues to coordinate its efforts with other concern parties and is watching the Commission website closely for future revisions to the PD. The Commission is set to vote on the PG&E 2016 ERRR PD on December 17, 2015 during the Commission's last voting meeting of the 2015 calendar year.

4. MCE Engages on Electric Vehicle Servicing Equipment (EVSE) Deployment within PG&E's Territory to Preserve Competitive Neutrality (A.15-02-009)



On November 30, 2015 MCE staff presented intervenor testimony on both PG&E's revised and "enhanced" EVSE deployment proposals in accordance with the Commission's revised Scoping Memo issued on September 4, 2015. On December 4, 2015 MCE staff also filed supportive comments to the Joint Motion filed by Green Power Institute and Joint Minority Parties requesting the Commission address potential Marketing, Education and Outreach (ME&O) relating to EVSE deployment within all three major IOUs' service territories in a consolidated manner with the Electric Vehicle Rulemaking. MCE staff supports this motion because they believe any EVSE-related marketing should be handled in a competitively neutral manner through the State's Energy Upgrade California (EUC) brand.

5. MCE Defends the Need for Competitively Neutral Administration of the State's Energy Upgrade California (EUC) Marketing Brand (A.12-08-007 et al.)



On November 20, 2015 MCE staff filed formal Comments responding to the Commission's October 26, 2015 Ruling that created a new procedural phase to consider the future administration and usage of the State's EUC brand. MCE staff advocated in these comments for the continued use of a third-party administrator, who is neutral to the competitive interests and influences of different Load-Serving Entities' interests. MCE staff believes the role of EUC to provide objective educational information to California ratepayers will only expand in importance as the State moves from primarily promoting EE to promoting all forms of Demand-Side resources and services, such as Demand Response, Energy Storage, and Electric Vehicle charging.

6. MCE Advocates for Presentation of CCA Contributions in the California Energy Commission (CEC)'s Integrated Energy Policy Report (IEPR) 2015 Process (15-IEPR-01)

On November 10, 2015 MCE staff provided comments to the CEC on its Draft 2015 IEPR document. In these comments MCE staff advocates for clearer presentment of MCE's supply and load data within the report. MCE staff also argue that the "Decarbonize the Electricity Sector" chapter within the report be amended to include acknowledgements for contributions of CCAs towards the State's low-carbon goals. The CEC is set to approve the final version of its 2015 IEPR during the Business Meeting occurring on February 10, 2016.