



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

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

1 (888) 632-3674
mceCleanEnergy.org
781 Lincoln Ave., #320
San Rafael, CA 94901

**Marin Clean Energy
Board of Directors Meeting
Thursday, March 5, 2015
7:00 P.M.**

**San Rafael Corporate Center, Tamalpais Room
750 Lindero Street, San Rafael, CA 94901**

Agenda Page 1 of 2

1. Swearing In of New Board Member
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
 - C.1 2.5.15 Meeting Minutes
 - C.2 Approved Contracts Update
 - C.3 First Amendment to Lease Agreement with 700 Fifth Avenue, LLC
 - C.4 Seventh Agreement with Maher Accountancy
 - C.5 Fourth Agreement with Jay Marshall
 - C.6 Third Agreement with Braun Blaising McLaughlin & Smith
 - C.7 Fifth Agreement with Niemela Pappas & Associates (formerly Lehman, Levi, Pappas & Sadler)
 - C.8 Sixth Agreement with Richards Watson & Gershon
 - C.9 Third Agreement with Troutman Sanders
 - C.10 Sixth Agreement with Green Ideals
 - C.11 Second Amendment to Power Purchase Agreement with Cottonwood Solar, LLC



Agenda material can be inspected in the Marin County Sheriff's lobby, located at 3501 Civic Center Drive, San Rafael, CA 94903. 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.



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**C.12 Second Amended and Restated Attorney-Client Fee
Agreement with Morris Polich & Purdy LLP**

- 6. Monthly Budget Report (Discussion)**
- 7. MCE Rates for FY 2015/2016 (Discussion/Action)**
- 8. MCE Board Committee Membership (Discussion/Action)**
- 9. Power Purchase Agreement with Stion Corporation
(Discussion/Action)**
- 10. New MCE Staff Positions (Discussion/Action)**
- 11. MCE New Board Meeting Time and Location
(Discussion/Action)**
- 12. Energy Efficiency Update (Discussion)**
- 13. Regulatory and Legislative Update (Discussion)**
- 14. Board Member & Staff Matters (Discussion)**
- 15. Adjourn**



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MARIN CLEAN ENERGY

BOARD MEETING MINUTES

THURSDAY, February 5, 2015

7:00 P.M.

SAN RAFAEL CORPORATE CENTER, TAMALPAIS ROOM
750 LINDARO STREET, SAN RAFAEL, CA 94901

Roll Call: Chair Sears called the regular Board meeting to order at 7:06 p.m. An established quorum was met.

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

Also Present: Christina Strawbridge, Alternate to Alan Schwartzman, City of Benicia

Absent: Ford Greene, Town of San Anselmo

Staff: Dawn Weisz, Executive Officer
Jamie Tuckey, Communications Director
Greg Brehm, Director of Power Resources
Michael Maher, Maher Accountancy
Kirby Dusel, Technical Consultant
Brian Goldstein, Technical Consultant
Jennifer Dowdell, Interim Deputy Director
Emily Goodwin, Director of Internal Operations
Darlene Jackson, Clerk

1. Swearing in of New MCE Board Members

Ms. Weisz gave the Oath of Office to new MCE Board Members Barbara Coler, Town of Fairfax; Andrew McCullough, City of San Rafael; and Alan Schwartzman, City of Benicia, and introductions followed.

2. Board Announcements (Discussion):

There were no Board member announcements.

3. Public Open Time (Discussion):

There were no public speakers.

4. Report from Executive Officer (Discussion)

Dawn Weisz, Executive Officer, gave the following report:

- A slight adjustment has been made based on feedback from the Executive Committee. Staff is moving some updates from the policy agenda to the Executive Officer's Report which allows for streamlining of the meeting.
- MCE has received CPUC certification to approve the addition of the City of El Cerrito in MCE's Implementation Plan. Designation of El Cerrito's Board Member should occur within the next week and the chosen representative will be sworn in at the March Board Meeting.
- MCE has received the Better Business Bureau's certificate, affirming MCE as a 2015 Accredited Business.
- MCE is preparing to move to a new location in early March and the building is undergoing substantial renovations. She introduced Emily Goodwin, Director of Internal Operations who provided a brief PowerPoint presentation and update regarding the new office space at 700 Fifth Avenue, San Rafael.
- She welcomed and introduced Jennifer Dowdell, Interim Deputy Director who joined the MCE team last month, and briefly described Ms. Dowdell's professional background.

5. Consent Calendar (Discussion/Action):

C.1 12.4.14 Board Minutes

C.2 Approved Contracts Update

C.3 2nd Addendum to 3rd Agreement with Ellison Schneider & Harris

C.4 1st Agreement with Corporate Media Systems, Inc.

C.5 2nd Addendum to 2nd Agreement with Troutman Sanders

Board Members Athas, Small, Wagenknecht and Withy indicated their abstentions on Item C.1; the 12.4.14 Board Minutes.

ACTION: It was M/S/C (Wagenknecht/Lion) to approve the Consent Calendar consisting of Items C.1 through C.5. Motion carried by the following roll call votes: (14-0-1) Ayes: Athas (abstain on C.1) Bailey, Butt, Calloway, Haroff, Lion, McCaskill, McCullough, O'Donnell, and Small (abstain on C.1), Schwartzman, Wagenknecht (abstain on C.1), Withy (abstain on C.1), and Sears; Noes: None; Absent: Greene.

6. Resolution 2014-09 Honoring Board Member Lawrence W. Bragman (Discussion/Action)

ACTION: It was M/S/C (Coler/McCaskill) to adopt Resolution 2015-01 Honoring Board Member Lawrence W. Bragman. Motion carried by the following roll call votes: (14-0-1) Ayes: Athas, Bailey, Butt, Calloway, Haroff, Lion, McCaskill, McCullough, O'Donnell, Small, Schwartzman, Wagenknecht, Withy, and Sears; Noes: None; Absent: Greene.

7. Budget

Executive Officer Dawn Weisz provided introductory comments for the benefit of new Board Members regarding the three sub-sections of the Budget item. She said for Item A, staff includes a monthly budget update in the packet which represents unaudited financials for the last complete month. Item B is the proposed budget adjustment for the current fiscal year. Item C is the proposed budget for the new fiscal year beginning April 1, 2015. She introduced Mr. Maher to begin discussion of Item B.

- a. Monthly Budget Update (Included in Board packet)
- b. Budget Adjustment for FY 2014/15 (Discussion/Action)

Michael Maher, Maher Accountancy, noted that the end of the fiscal year is March 31, 2015 and staff makes appropriate budget adjustments from what was planned in the beginning of the year. He provided an explanation and addressed brief questions of Board Members regarding proposed adjustments in electricity sales, the consideration from the lease termination, costs of energy, personnel, technical consultants, legal counsel, data management, PG&E service fees, other services, general and administration and capital outlay.

ACTION: It was M/S/C (Athas/Haroff) to approve the proposed budget amendment for FY 2014/15 ending March 31, 2015. Motion carried by the following roll call votes: (14-0-1) Ayes: Athas, Bailey, Butt, Calloway, Haroff, Lion, McCaskill, McCullough, O'Donnell, Small, Schwartzman, Wagenknecht, Withy, and Sears; Noes: None; Absent: Greene.

- c. Proposed Budget for FY 2015/16 (Discussion/Action)

Mr. Maher provided an overview of MCE's proposed Budget for FY 2015/16, noting that the same accounts and line items remain with greater volumes in dollars. He discussed major items contained in the budget which reveals a 47% increase in revenue, which is mostly due to the expansion into Napa, El Cerrito, San Pablo and Benicia, as well as proposed rate changes. Associated with this is the cost of energy, personnel, technical consultants, data management, other services and PG&E service fees. The budget calls for decreases in legal counsel, and commented that MCE will separate occupancy costs which include lease payments, utilities and maintenance costs.

He referred to inter-fund transfers and noted that MCE is creating a new fund to set aside renewable energy reserve monies to be used for unplanned and attractive renewable purchases and construction items which may arise in the future. He provided an overview of three new funds; the Energy Efficiency Program Fund, the Local Renewable Energy Development Fund and the Renewable Energy Fund and commented that the Local Renewable Energy Development Fund is financed by 50% of the premium from the deep green customer sales which funds their current solar development project, at the Chevron site.

Board Member Withy asked for discussion on MCE's total reserves. Mr. Maher explained that from an accounting standpoint, MCE has no restricted funds except reserves for the Energy Efficiency Program and debt service. He said reserve funds total approximately \$9 to \$10 million. Board Member Withy asked and confirmed with Mr. Maher that MCE targets approximately 3% a year as their reserve level which partly serves as a rate stability fund. Funds can be used to address cash flow when there is a need to purchase energy, given receivables may take longer.

Board Member Withy asked if a reserve level should be set. Ms. Weisz said the Board discussed this when MCE first formed. A recommendation of 3% was made which staff believed would maintain a conservative accrual of revenue. Chairs Sears pointed to the fact that MCE also has a line of credit in addition to reserves.

In response to questions regarding how reserves are invested, Board Members briefly discussed investment of reserves. Ms. Weisz commented that during this year MCE would need some liquidity because we are covering working capital needs for enrollment of communities. In the past, MCE has taken out loans to cover this. MCE wants to be sure the dollars are not tied up during expansion; however, the Finance Committee will be looking at opportunities to invest in the future.

Board Members confirmed that the cost of living increase is calculated per federal and regional index levels, and is budgeted at approximately 2.8%.

Board Member Withy suggested having the reserve levels broken out as to what they are used for and identify those restricted versus unrestricted. He also suggested development of an investment policy to address excess funds to be invested. Ms. Weisz said staff is happy to provide more information as requested and make adjustments. She noted that the Monthly Budget Update includes a breakdown of the subset of each line item detail on current reserves, debt service, and all expenditures in the budget. A Board Member questioned funds for internships, and confirmed with Ms. Weisz that staff funds are available for a Summer Youth Internship which can extend to member cities to assist in advancing MCE's cause.

<p>ACTION: It was M/S/C (Lion/Coler) to approve the Proposed Budget for FY 2015/16. Motion carried by the following roll call votes: (14-0-1) Ayes: Athas, Bailey, Butt, Calloway, Haroff, Lion,</p>

McCaskill, McCullough, O'Donnell, Small, Schwartzman, Wagenknecht, Withy, and Sears; Noes: None; Absent: Greene.

8. Proposed Rates for FY 2015/16 (Discussion/Action)

Kirby Dusel, Technical Consultant, presenting on behalf of John Dalessi, gave an overview of the staff report. He said rate setting is carried out on an annual basis. In January, MCE reviews rates and related sales forecasts to determine whether rate changes are needed in consideration of the upcoming revenue requirement. There is a 30-day public review period which kicks off with initial distribution of the Board packet. Board approval is requested in March and rates would be put into effect on April 1st.

As background, Mr. Dusel said PG&E typically changes its rates on January 1st and the recent rate change resulted in a 3.1% overall increase. Depending on the type of customer, the rate change ranges from 2% to 3% just on the generation component. In addition, there have also been various increases in PG&E rates since April 2014 in excess of 12%.

Mr. Dusel discussed key line items in the monthly cost billing for the customer as generation representing the electrical energy commodity delivered to the customer, the Power Charge Indifference Adjustment (PCIA), and franchise fees. When adding all costs, a monthly total is produced for an average residential customer (which is about 500 KWH a month) and there is roughly a 3% savings. Monthly activities show the progression of working through the budgeting process and through prospective rate changes and the initial proposal discussed with staff and the Executive Committee.

Board Members discussed with Mr. Dusel increases in the PCIA which are affected by a low price regime and greater above market costs. Mr. Dusel described the work of MCE's regulatory team to address the issue and represent MCE's interests. He noted changes in overall PCIA methodology resulted in a positive impact dropping the PCIA in 2012.

Board Member Coler asked that deep green options be shown in the future similar to the chart showing the light green options. She also confirmed with Mr. Dusel that 1 cent is added to every KWH purchase by the customer under their rate schedule, or \$5 for every 500 KWH.

Mr. Dusel briefly discussed rate-setting policy considerations which are affected by revenues, competition, stability in rates, ensuring the customers' understanding of rates, and efficiencies in use of energy. He discussed key tasks completed in working through the rate setting cycle, presented MCE's customer composition, considerations driving necessary changes, and stated despite the rate increase, customers will still be better off taking service from MCE than from PG&E in terms of cost comparisons. Mr. Dusel indicated there are rate savings across all customer groups within the MCE service territory, and staff will continue to work on the PCIA which could provide further savings.

Mr. Dusel concluded with a slide of the new agricultural rate schedules which have been developed to accommodate customers within Napa County, and asked that the Board additionally consider approving these.

Board Member O'Donnell asked for comment about why larger commercial customers are receiving a greater amount of savings with PG&E versus residential customers. Mr. Dusel said this has to do with falling costs of service and these customers actually help other customer groups on the residential side. Ms. Weisz added that because there are many residential customers and any small download adjustment would have a significant impact on revenues, but would not create enough of a significant savings for the customer.

Board Member Lion asked how the demand charge works for commercial and agricultural customers. Mr. Dusel said the charge is meant to offset the cost of providing standby generation for customers. It is one instance of a high point during the billing period.

A Board Member said given PG&E's recent disclosure where they will most likely offer deep green, he asked if this has factored into strategic thinking on rate setting now, and he asked what that competitive rate will be moving forward. Mr. Dusel said the initial information is targeting a 2-3 cent premium for a solar project built somewhere within PG&E's service territory. A difference is that MCE's Local Sol Program is committing to a fixed rate for an extended period of time (20 years) and also the customer is paying for power in their own community.

Chair Sears suggested a motion and Ms. Weisz pointed out that staff's recommendation also includes approval of Napa agricultural rates in the supplemental schedule.

ACTION: It was M/S/C (Wagenknecht/McCaskill) to approve the proposed rates for FY 2015/16 in Attachment A, subject to final approval to the rates in March, as well as the 5 agricultural rate schedules for Napa County, effective immediately. Motion carried by the following roll call votes: (14-0-1) Ayes: Athas, Bailey, Butt, Calloway, Haroff, Lion, McCaskill, McCullough, O'Donnell, Small, Schwartzman, Wagenknecht, Withy, and Sears; Noes: None; Absent: Greene.

9. Communications Update (Discussion)

Communications Director Jamie Tuckey provided the following update:

- Regarding the process for rate notification:
 - Proposed rates will be communicated to the general public in MCE service areas.
 - In addition to newspaper noticing, MCE will also inform customers of the proposed rate increase through direct messaging. Richmond and Marin customers will receive a message on the MCE portion of their PG&E bill about the proposed rates.
 - Unincorporated Napa County customers will not be getting the notice on their bills because of the timeline for enrollment in Napa. Instead, a message about

the proposed rates will be included on the fourth enrollment notice being mailed out in February.

- Highlights regarding community outreach:
 - MCE staff is focusing outreach efforts in new MCE service areas including Napa County, Benicia, El Cerrito and San Pablo.
 - Staff has been busy reaching out to all community organizations and is in the process of sending letters, making phone calls and sending emails to every organization in the community outreach plans.
 - Staff have participated in dozens of meetings and had their first MCE-hosted general community meeting in the City of Napa.
 - Also included in the staff report are the outreach plans for Benicia, El Cerrito and San Pablo.
 - The enrollment for Benicia, San Pablo and El Cerrito is scheduled for this May and they are also sending out enrollment notices to those customers.
 - At least one enrollment notice is mailed out every week between February and March.
 - Staff is also soliciting feedback from the new member community Councilmembers and staff on outreach plans.
 - Staff will be creating community leader advisory groups for each community to assist with community outreach.
 - MCE staff will be working in City offices in the three communities on the dates of the first mailing of notices to support customer inquiries.
 - Advertising campaigns have begun in San Pablo and they will begin in El Cerrito and Benicia over the next couple of weeks.

Board Member Coler commented that BAAQMD augmented staff with www.language.com which can provide an inexpensive option to provide up to 180 different languages to support the call center.

10. Board Member & Staff Matters (Discussion)

Director McCaskill confirmed that MCE does not yet have a written investment policy and the Board suggested the Finance Committee consider its development.

11. Adjournment:

The Board of Directors adjourned the meeting at 9:02 p.m. to the next regular Board meeting on March 5, 2015.

Kate Sears, Chair

Attest:

Dawn Weisz, Secretary



March 5, 2015

TO: Marin Clean Energy Board

FROM: Sarah Estes-Smith, Administrative Associate

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

Dear Board Members:

SUMMARY:

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

In November 2012 your Board approved the MCE Integrated Resource Plan authorizing the Chief Executive Officer to enter into and execute short term power purchase agreements for energy, capacity and renewable energy for less than or equal to 12 months, as well as medium-term contracts for energy, capacity and renewable energy for terms of greater than 12 months and less than or equal to 5 years in conjunction with the MCE Board Chair. Short and medium term power purchase agreements must be pursuant to a MCE Board approved Integrated Resource Plan. A committee of the MCE Board is consulted prior to execution of any medium-term contract by the Chief Executive Officer and MCE Board Chair.

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

Month	Purpose	Contractor	Maximum Annual Contract Amount	Term of Contract
February	Addendum extending contract end date to 12/31/15	Bevilacqua-Knight, Inc.	\$42,333	14 months
February	Intellectual Property legal services (Renewal)	Bryan Cave LLP	\$10,000	12 months
February	Regulatory services at the CPUC (Renewal)	Douglass & Liddell	\$5,000	12 months
February	Addendum increasing not-to-exceed amount for construction consulting services	Precision GCC	\$8,000	6 months
February	Communications cabling installation at new MCE office	Beck Communications	\$20,000	4 months

Recommendation: Information only. No action required.



March 5, 2015

TO: Marin Clean Energy Executive Committee

FROM: Emily Goodwin, Director of Internal Operations
Jennifer Dowdell, Interim Deputy Director

RE: First Amendment to Lease Agreement with 700 Fifth Avenue, LLC
(Agenda Item #05 - C.3)

ATTACHMENTS:

- A. Fully Executed 9.08.14 AIR Lease Agreement with 700 Fifth Avenue, LLC
- B. Draft First Amendment to Lease Agreement with 700 Fifth Avenue, LLC
- C. Comparative Cost Analysis of Potential Building Space, Conducted September, 2014

Dear Board Members:

SUMMARY:

Background:

On September 4, 2014 your Board entered into the AIR Lease Agreement with 700 Fifth Avenue, LLC. This Lease Agreement was for a ten year lease for a 10,710 square foot commercial space in downtown San Rafael located at 700 Fifth Avenue. Your Board's approval of the Lease Agreement included a budget allocation of \$165,570.19 to fund identified tenant improvements. The lease pricing also anticipated significant building upgrades by the Lessor as detailed in Exhibit B and C of the attached Lease Agreement.

Description of Lessor upgrades included in Lease Agreement:

- 1. Structural building upgrades for code and safety compliance
- 2. New carpet, paint, and cabinets
- 3. New windows throughout the building
- 4. New fire sprinkler system
- 5. American's with Disability Act-compliant (ADA) accessibility throughout the building including a new elevator
- 6. New asphalt paved parking lot with perimeter fencing and lot security
- 7. Landscaping upgrades

The Board approved budget allocation of \$165,570.19 for MCE to fund tenant improvements is detailed below:

Itemized Tenant Budget	Cost
Project supervision and management costs	\$ 30,238.19
Interior demolition	\$ 4,500.00
Building improvement to support ADA access at the main building entrance	\$ 20,000.00
Doors, frames, hardware, countertops	\$ 15,400.00
Expansion of Board meeting room	\$ 16,000.00
Restroom expansion and upgrades (plumbing, stall adjustments, etc.)	\$ 57,100.00
Main staircase reconfiguration (from solid to wire rail)	\$ 12,000.00
Contingency	\$ 9,190.00
Insurance	\$ 1,142.00
Approved Budget Total	\$ 165,570.19

MCE proposes to fund additional costs of approximately \$73,551.07, via a draft Amendment to AIR Lease Agreement, which are necessary to complete the build-out while leveraging the renovation process to adapt the building for MCE needs. These costs include both additional scope and items where the initially approved budgetary estimate was insufficient to meet MCE's needs. The scope of work and associated costs are also shown in the attached draft Amendment to AIR Lease Agreement.

The proposed additional tenant improvements would allow MCE to follow through on several needed components of the building plan before occupancy, including sufficient space to support expected growth of the agency and associated accommodations needed for public meeting space. The tenant improvements will also reflect MCE's core values at its new headquarters by ensuring a professional, secure, energy efficient, working environment which incorporates the use of sustainable and environmentally friendly building materials. The improvements will remain in place to benefit both staff and visitors throughout the ten year lease term, and the meeting space has the potential to benefit other community organizations when not in use by MCE.

Your Executive Committee approved funding additional costs of approximately \$73,551.07 for tenant improvements at the February 18, 2015 meeting.

Fee and Payment Schedule

Invoicing and payments will be based on milestones completed. The proposed fee schedule covers all key aspects (design, materials and installation costs included) of the proposed additional scope of work.

#	Item	Amount	Conditions Precedent
1	Bathrooms (including ADA compatible, private stalls, tile, recycled counter tops, flooring and shower for bike commuters)	\$8,653.39	Upon presentation and validation of invoices against work completed by and payments made to Bryson Burns
2	Solar and IT Data Room HVAC and Infrastructure	\$9,253.80	Upon presentation and validation of invoices against work completed by and payments made to Bryson Burns
3	Glass stair enclosure and door/2nd Floor Agency Office Access (including switchback stringer stairs with concrete treads and glass enclosed from the main lobby for 2 nd floor access but exclusive of security key card access system) and Temporary Certificate of Occupancy	\$25,405.64	Upon presentation and validation of invoices against work completed by and payments made to Bryson Burns and presentation of temporary certificate of occupancy and full access by Lessee
4	Doors, Skylights , Hardware and Finishes	\$ 5,882.80	Upon presentation and validation of invoices against work completed by and payments made to Bryson Burns
5	Contractor Management and Overhead	\$ 5,685.26	
6	Final Certificate of Occupancy and Final Punch List Items <ul style="list-style-type: none">• Completion of quality assurance checklist for all tenant improvements aforementioned• New bathroom plumbing flowing and enclosure hardware locking properly• New tile, counter tops and flooring, paint finishes sealed and complete• New HVAC output flow checked and running properly• New finishes on stringer stairs and concrete treads complete• New glass stair enclosure sealed and security key card access door secure• Roof penetrations caulked and sealed properly• Eight (8) new doors with spring hinges and keypad locking checked and complete• All new nickel-finish door hardware and finishes complete	\$18,670.18	Presentation of Final Certificate of Occupancy and punch list walk-through and final documentation of all invoices for Lessee by Lessor
Total Unapproved Proposed Build-out Costs			\$73,551.07

Recommendation: Recommend approval of the First Amendment Lease Agreement with 700 Fifth Avenue, LLC



AIR COMMERCIAL REAL ESTATE ASSOCIATION

STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE – GROSS

(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. Basic Provisions ("Basic Provisions").

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only September 8, 2014, is made by and between 700 FIFTH AVENUE, LLC, a California limited liability company ("Lessor") and MARIN CLEAN ENERGY, a not for profit governmental agency/joint powers authority ("Lessee"), (collectively the "Parties," or individually a "Party").

1.2 **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 700 Fifth Avenue, San Rafael located in the County of Marin, State of California and generally described as (describe briefly the nature of the property and, if applicable, the "Project", if the property is located within a Project) a two-story building consisting of approximately 10,710 rentable square feet and adjoining parking lot currently containing approximately 35 parking spaces ("Premises"). (See also Paragraph 2)

1.3 **Term:** ten (10) years and no months ("Original Term") commencing March 9, 2015 ("Commencement Date") and ending March 8, 2025 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing n/a ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$19,890.00 per month ("Base Rent"), payable on the first day of each month commencing fourth month after the Commencement Date (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 50.

1.6 Base Rent and Other Monies Paid Upon Execution:

(a) **Base Rent:** \$19,890.00 for the period fourth month of the Original Term

(b) **Security Deposit:** \$44,877.00 ("Security Deposit"). (See also Paragraph 5)

(c) **Association Fees:** \$ _____ for the period _____

(d) **Other:** \$ _____ for _____

(e) **Total Due Upon Execution of this Lease:** \$64,767.00

1.7 **Agreed Use:** General office for the conduct of Lessee's business, including public assembly for meetings and storage (See also Paragraph 6)

1.8 **Insuring Party:** Lessor is the "Insuring Party". The annual estimated "Base Premium" is \$19,500.00 (See also Paragraph 8) and 54.

1.9 Real Estate Brokers: (See also Paragraph 15 and 25)

(a) **Representation:** The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

☒ Cassidy Turley Commercial

represents Lessor exclusively ("Lessor's Broker");

TBS

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INITIALS

DJC
INITIALS

☒ Cornish & Carey Commercial

represents Lessee exclusively ("Lessee's Broker"); or

☐ represents both Lessor and Lessee ("Dual Agency").

(b) ~~Payment to Brokers: Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers for the brokerage services rendered by the Brokers the fee agreed to in the attached separate written agreement or if no such agreement is attached, the sum of _____ or _____% of the total Base Rent payable for the Original Term, the sum of _____ or _____ of the total Base Rent payable during any period of time that the Lessee occupies the Premises subsequent to the Original Term, and/or the sum of _____ or _____% of the purchase price in the event that the Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises.~~
See Paragraph 60.

1.10 Guarantor. The obligations of the Lessee under this Lease are to be guaranteed by none

("Guarantor"). (See also Paragraph 37)

1.11 Attachments. Attached hereto are the following, all of which constitute a part of this Lease:

- ☒ an Addendum consisting of Paragraphs 50 through 62 ;
- ☒ a plot plan depicting the Premises (Exhibit A and A-1);
- ☐ a current set of the Rules and Regulations;
- ☒ a Work Letter (Exhibits B, B-1 and C);
- ☐ other (specify): _____

2. Premises.

2.1 Letting. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. Note: Lessee is advised to verify the actual size prior to executing this Lease.

2.2 Condition. Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date and that the surface and structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the "Building") shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with said warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Building. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense, except for the roof, foundations, and bearing walls which are handled as provided in paragraph 7.

2.3 Compliance. Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and an amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay

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its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not, however, have any right to terminate this Lease.

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Real Property Taxes and Insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 Delay In Possession. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the originally scheduled Commencement Date of March 9, 2015. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the originally scheduled Commencement Date of March 9, 2015, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the originally scheduled Commencement Date of March 9, 2015, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 Lessee Compliance. Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. Rent.

4.1 Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future payments to be made by Lessee to be by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent, Insurance and Real Property Taxes, and any remaining amount to any other outstanding charges or costs.

4.3 Association Fees. In addition to the Base Rent, Lessee shall pay to Lessor each month an amount equal to any owner's association or condominium fees levied or assessed against the Premises. Said monies shall be paid at the same time and in the same manner as the Base Rent.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security

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Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the Initial Security Deposit bore to the Initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. Use.

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, ~~or any other legal use which is reasonably comparable thereto~~, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable

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Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 Lessee's Compliance with Applicable Requirements. Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the such Requirements, without regard to whether such Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 Inspection; Compliance. Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of a written request therefor.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

7.1 Lessee's Obligations.

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee is also responsible for keeping the roof and roof drainage clean and free of debris. Lessor shall keep the surface and structural elements of the roof, foundations, and bearing walls in good repair (see paragraph 7.2). Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

~~(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, and (v) elevators. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof. See Paragraph 53.~~

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's Indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee, except for the surface and structural elements of the roof, foundations and bearing walls, the repair of which shall be the responsibility of Lessor upon receipt of written notice that such a repair is necessary. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels,

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electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 Payment of Premium Increases.

(a) Lessee shall pay to Lessor any insurance cost increase ("Insurance Cost Increase") occurring during the term of this Lease. Insurance Cost Increase is defined as any increase in the actual cost of the insurance required under Paragraph 8.2(b), 8.3(a) and 8.3(b) ("Required Insurance"), over and above the Base Premium as hereinafter defined calculated on an annual basis. Insurance Cost Increase shall include but not be limited to increases resulting from the nature of Lessee's occupancy, any act or omission of Lessee, requirements of the holder of mortgage or deed of trust covering the Premises, increased valuation of the Premises and/or a premium rate increase. The parties are encouraged to fill in the Base Premium in paragraph 1.8 with a reasonable premium for the Required Insurance based on the Agreed Use of the Premises. If the parties fail to insert a dollar amount in Paragraph 1.8, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the commencement of the Original Term for the Agreed Use of the Premises. In no event, however, shall Lessee be responsible for any portion of the increase in the premium cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b) in excess of \$2,000,000 per occurrence.

(b) Lessee shall pay any such Insurance Cost Increase to Lessor within 30 days after receipt by Lessee of a copy of the premium statement or other reasonable evidence of the amount due. If the Insurance policies maintained hereunder cover other property besides the Premises, Lessor shall also deliver to Lessee a statement of the amount of such Insurance Cost Increase attributable only to the Premises showing in reasonable detail the manner in which such amount was computed. Premiums for policy periods commencing prior to, or extending beyond the term of this Lease, shall be prorated to correspond to the term of this Lease.

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as

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an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender or included in the Base Premium), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an Insured Loss.

(b) **Rental Value.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value Insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period. Lessee shall be liable for any deductible amount in the event of such loss.

(c) **Adjacent Premises.** If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 Insurance Policies. Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 Indemnity. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 Exemption of Lessor and its Agents from Liability. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain

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pursuant to the provisions of paragraph 8.

8.9 Failure to Provide Insurance. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/ costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. Damage or Destruction.

9.1 Definitions.

(a) "**Premises Partial Damage**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total. Notwithstanding the foregoing, Premises Partial Damage shall not include damage to windows, doors, and/or other similar items which Lessee has the responsibility to repair or replace pursuant to the provisions of Paragraph 7.1.

(b) "**Premises Total Destruction**" shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "**Insured Loss**" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) "**Replacement Cost**" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) "**Hazardous Substance Condition**" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage - Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for

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which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. **Real Property Taxes.**

10.1 **Definition.** As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises or the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises are located. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

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(a) **Payment of Taxes.** Lessor shall pay the Real Property Taxes applicable to the Premises provided, however, that Lessee shall pay to Lessor the amount, if any, by which Real Property Taxes applicable to the Premises increase over the fiscal tax year during which the Commencement Date Occurs (2014-2015) ("Tax Increase"). Payment of any such Tax Increase shall be made by Lessee to Lessor within 30 days after receipt of Lessor's written statement setting forth the amount due and computation thereof. If any such taxes shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such taxes shall be prorated to cover only that portion of the tax bill applicable to the period that this Lease is in effect. In the event Lessee incurs a late charge on any Rent payment, Lessor may estimate the current Real Property Taxes, and require that the Tax Increase be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payment shall be an amount equal to the amount of the estimated installment of the Tax Increase divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable Tax Increase is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable Tax Increase. If the amount collected by Lessor is insufficient to pay the Tax Increase when due, Lessee shall pay Lessor, upon demand, such additional sums as are necessary to pay such obligations. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.

(b) **Additional Improvements.** Notwithstanding anything to the contrary in this Paragraph 10.2, Lessee shall pay to Lessor upon demand therefor the entirety of any increase in Real Property Taxes assessed by reason of Alterations or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.3 **Joint Assessment.** If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Tax Increase for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

10.4 **Personal Property Taxes.** Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered or billed. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a

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noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default; Breach; Remedies.

13.1 Default; Breach. A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

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(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

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13.6 Breach by Lessor.

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees.

15.1 **Additional Commission.** ~~If a separate brokerage fee agreement is attached then in addition to the payments owed pursuant to Paragraph 1.0 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires any rights to the Premises or other premises owned by Lessor and located within the same Project, if any, within which the Premises is located, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule attached to such brokerage fee agreement.~~

~~15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.0, 15.1, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. Estoppel Certificates.

(a) Each Party (as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability

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of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. Waivers.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

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26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.
27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.
29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.
30. **Subordination; Attornment; Non-Disturbance.**
- 30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.
- 30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.
- 30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.
- 30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.
31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).
32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect to Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.
33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.
34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "for sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent. All signs must comply with all Applicable Requirements.
35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.
36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an

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acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor.

37.1 Execution. The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

37.2 Default. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options. If Lessee is granted an Option, as defined below, then the following provisions shall apply:

39.1 Definition. "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 Options Personal To Original Lessee. Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 Multiple Options. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. Multiple Buildings. If the Premises are a part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by and conform to all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessee also agrees to pay its fair share of common expenses incurred in connection with such rules and regulations.

41. Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. Reservations. Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

44. Authority; Multiple Parties; Execution.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

45. Conflict. Any conflict between the printed provisions of this Lease and typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. Offer. Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

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48. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

49. **Arbitration of Disputes.** An Addendum requiring the Arbitration of disputes between the Parties and/or Brokers arising out of this Lease ☐ is ☒ is not attached to this Lease.

50. **Americans with Disabilities Act.** Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: Franklin, IN
 On: September 11, 2014
 By LESSOR:
700 FIFTH AVENUE, LLC.

Executed at: 781 Lincoln Avenue, Suite 320, San Rafael CA 94901
 On: September 10, 2014
 By LESSEE:
MARIN CLEAN ENERGY

By: Ted B. Shuel
 Name Printed: Ted B. Shuel
 Title: Manager

By: Dawn Weisz
 Name Printed: Dawn Weisz
 Title: Executive Officer

By: _____
 Name Printed: _____
 Title: _____
 Address: PO Box 593
FRANKLIN, IN 46131
 Telephone: (415) 516-0926
 Facsimile: () _____
 Email: TED.SHUEL@GMAIL.COM
 Email: TSHUEL1@COMCAST.NET
 Federal ID No. 20-1147806

By: Damon Connolly
 Name Printed: Damon Connolly
 Title: Chairman of the Board
 Address: 781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
 Telephone: (415) 464-6010
 Facsimile: (415) 459-8095
 Email: dweisz@mccleanenergy.org
 Email: damon@damonconnollylaw.com
 Federal ID No. 26-4300997

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BROKER:

Cassidy Turley Commercial

BROKER:

Cornish & Carey Commercial

Att: STEVE LEONARD
Title: VICE PRESIDENT
Address: 181 LINCOLN AVE SUITE 100
SAN RAFAEL, CA 94901
Telephone: (415) 922-1080
Facsimile: (415) 925-2128
Email: SLEONARD@CBT.COM
Federal ID No. _____
Broker/Agent DRE License #: 00909604

Att: Kevin Delehanty
Title: Senior Vice President
Address: One Bush Street
San Francisco, CA 94104
Telephone: (415) 445-5132
Facsimile: (415) 445-8886
Email: kdelehanty@newmarkccarey.com
Federal ID No. _____
Broker/Agent DRE License #: 00843404

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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Kevin Delehanty
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ADDENDUM TO LEASE

The following paragraphs shall constitute a part of the Standard Industrial/Commercial Single-Tenant Lease – Gross dated as of September 8, 2014, being entered into concurrently between 700 FIFTH AVENUE, LLC, a California limited liability company, as Lessor, and MARIN CLEAN ENERGY, a not for profit governmental agency, joint powers authority, as Lessee, covering certain premises located at 700 Fifth Avenue, San Rafael, California. The provisions of this Addendum shall modify any inconsistent provisions in the Lease.

50. **Base Rent.** The monthly Base Rent payable by Lessee to Lessor shall be as follows:

Months 1 through 3	\$0
Months 4 through 12	\$19,890
Months 13 through 24	\$26,790
Months 25 through 36	\$34,768
Months 37 through 48	\$35,812
Months 49 through 60	\$36,886
Months 61 through 72	\$38,361
Months 73 through 84	\$39,896
Months 85 through 96	\$41,492
Months 97 through 108	\$43,151
Months 109 through 120	\$44,877

51. **Commencement Date Adjustment.** The Commencement Date shall be (and Lessee agrees to occupy the Premises) on the date that Lessor substantially completes the Tenant Improvements and Additional Tenant Improvements (collectively, "Lessor's Work") and delivers the Premises to Lessee. In the event Lessor is unable to substantially complete Lessor's Work and the Additional Tenant Improvements and deliver the Premises to Lessee by the scheduled Commencement Date of March 9, 2015, the following provisions shall apply, notwithstanding anything to the contrary in the Lease:

(a) Lessee agrees to take occupancy of the Premises prior to completion of the following improvements:

(i) the Marin Municipal Water District main being installed and operational in order to connect to the fire sprinklers;

(ii) the new exterior Building elevator to be installed under Section 9.a. of the Work Letter Agreement being installed and operational; and

(iii) the new fence, parking lot repairs and landscaping as permitted by paragraph 9 of the Work Letter Agreement to accommodate installation of the Building elevator or connection to the new water main for the sprinklers.

(b) Subject to Paragraph 51 (a) above, should Lessor not deliver possession of the Premises to Lessee by March 9, 2015, Lessor shall pay to Lessee the sum of \$775 per calendar day for each day after March 9, 2015 until possession of the Premises is delivered to Lessee. Lessee's failure to timely approve the preliminary Construction Drawings in accordance with paragraph 2 of the Work Letter Agreement or Lessee's failure to approve the final Construction Drawings by the fifty-second (52nd) day after execution of this Lease shall be added on a day for day basis to the March 9, 2015 delivery date and shall not be subject to a late delivery charge.

(c) Should Lessor not deliver possession of the Premises to Lessee by March 9, 2015 due to unavoidable delays in obtaining permits for Lessor's Work (a "Permit Delay"), Lessor shall pay Lessee the sum of \$387.50 per calendar day for each day after March 9, 2015 until possession of the Premises is delivered to Lessee. For purposes of this Paragraph 51 (c) a "Permit Delay" can only occur if it is solely due to an unreasonable delay despite Lessor's diligent prosecution of best commercially reasonable efforts in attaining the permits required to perform Lessor's Work. The permits Lessor will be required to apply for are: (i) basic building permit for Lessor's Work, (ii) fire department permit, (iii) State of California permit to operate the new exterior elevator, (iv) Planning Department approval for exterior work on the Building, and (v) application to the Marin Municipal Water District to install a dedicated fire sprinkler service to connect to the fire sprinklers in the Premises. The actions or conduct of the Lessor or its contractors and/or a lack of timely response to requests from a public agency by the Lessor or its contractors shall not constitute a Permit Delay. To qualify as a Permit Delay, evidence of the reason for the Permit Delay must be provided in writing or by email by Lessor to Lessee within two (2) business days after Lessor becomes aware of a circumstance which Lessor reasonably and in good faith believes constitutes a Permit Delay.

(d) The amounts to be paid by Lessor to Lessee under this Paragraph 51, are in the opinions of Lessor and Lessee reasonable sums considering all of the circumstances existing on the Effective Date, including the relationships of the respective sums to the harm that Lessee could reasonably anticipate if possession of the Premises is not delivered to Lessee by March 9, 2015 and the anticipation that proof of actual damages would be costly or inconvenient. By placing their initials below, Lessor and Lessee specifically confirm the accuracy of the statements made in this subparagraph 51(d) and the fact that Lessor and Lessee were each represented by counsel who explained the consequences of this liquidated damages provision at the time this Lease was made.

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(e) In the event that the Building or Premises are damaged by a "major casualty" prior to the Commencement Date, which would require longer than sixty (60) days to repair, either Landlord or Tenant may terminate this Lease by notice to the other within ten (10) days from the date Landlord notifies Tenant (which notice shall be given within ten (10) business days from the date of the "major casualty") of the estimated time to repair the damage from the "major casualty" and both parties shall be released from any further liability hereunder..

In the event the Commencement Date is delayed, the Expiration Date shall be adjusted accordingly. Promptly after the Original Term commences, Lessor and Lessee shall execute a further addendum to this Lease setting forth the actual Commencement Date and Expiration Date.

52. Option to Extend.

(a) Lessor hereby grants to Lessee one (1) option (the "Extension Option") to extend the Original Term of the Lease for an additional period of five (5) years each (the "Option Term") on the same terms, covenants and conditions as provided for in the Lease during the Original Term, except for Base Rent which shall be the greater of (i) 104% of the Base Rent payable by Lessee during the last year of the then current Term, or (b) the "fair market rental rate" for the Premises at the commencement of the Option Term as defined and determined in accordance with the provisions of subparagraphs (d) and (e), below, except that Lessor shall not be required to make any tenant improvements in connection with the Option Term.

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(b) The Extension Option must be exercised, if at all, by written notice ("Extension Notice") delivered by Lessee to Lessor no earlier than nine (9) months, and no later than six (6) months, prior to expiration of Original Term of the Lease. The Extension Option shall, at Lessor's sole option, not be deemed to be properly exercised if, at the time such Extension Option is exercised or on the scheduled commencement date for the Option Term, Lessee has (i) committed a Breach of the Lease which has not been cured, (ii) assigned all or any portion of the Lease or its interest therein, or (iii) sublet more than 4,200 square feet of the Premises. Provided that Lessee has properly and timely exercised the Extension Option, the Term of the Lease shall be extended by the Option Term and all terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect, except that the Base Rent shall be as set forth herein.

(c) Lessee's Extension Option is personal to the original Lessee executing this Lease and may not be exercised or assigned, voluntarily or involuntarily, by or to any person or entity other than the original Lessee.

(d) Within sixty (60) days after receipt of Lessee's Extension Notice, Lessor shall notify Lessee of its determination of the Base Rent for the Option Term ("Lessor's Notice"). If Lessor determines that the Base Rent for the Option Term shall be the 104% of the Base Rent payable by Lessee during the last year of the then current Term, such determination shall be conclusive on the parties and the market rental rate shall not apply. If, however, Lessor determines that the Base Rent for the applicable Option Term shall be the fair market rental rate, then the parties shall endeavor by good faith negotiations to agree upon the Base Rent for the Option Term within thirty (30) days after Lessor's Notice. In the event the parties cannot agree on the Base Rent in the thirty-day period, the Base Rent shall be determined as follows:

(i) Within fifteen (15) days after expiration of the thirty-day negotiation period, each party, at its own cost and by giving notice to the other party, shall appoint a real estate appraiser, with a membership in the American Institute of Estate Appraisers or the Society of Real Estate Appraisers and at least five (5) years full-time commercial appraisal experience in the San Francisco Bay Area, to appraise and determine the Base Rent. If in the time provided only one party shall give notice of appointment of an appraiser, the single appraiser appointed shall determine the Base Rent. If two (2) appraisers are appointed by the parties, the two (2) appraisers shall independently, and without consultation prepare an appraisal of the Base Rent within 15 days. Each appraiser shall seal its respective appraisal after completion. After both appraisals are completed, the resulting estimates of the Base Rent shall be opened and compared. If the values of the appraisals differ by no more than ten percent (10%) of the value of the higher appraisal, then the Base Rent shall be the average of the two (2) appraisals.

(ii) If the values of the appraisals differ by more than ten percent (10%) of the value of the higher appraisal, the two (2) appraisers shall designate a third appraiser meeting the qualifications set forth in subparagraph (i), above. If the two (2) appraisers have not agreed on a third appraiser after ten (10) days, either Lessee or Lessor, by giving ten (10) days notice to the other party, may apply to the then Presiding Judge of the Superior Court for the county in which the Premises are located for the selection of a third appraiser who meets the qualifications set forth in subparagraph (i), above. The third appraiser, however, selected, shall be a person who has not previously acted in any capacity for either party. The third appraiser shall make an appraisal of the Base Rent within fifteen (15) days after selection and without consultation with the first two (2) appraisers. The three (3) appraisals shall then be added together and their total divided by three (3), and the resulting quotient shall be the Base Rent. If, however, the low appraisal and/or the high appraisal are/is more than 15% lower and/or higher than the middle appraisal, the low appraisal and/or the high appraisal shall be disregarded. If one (1) appraisal is disregarded, the remaining two (2) appraisals shall be added together and their

total divided by two (2), and the resulting quotient shall be the Base Rent. If both the low appraisal and the high appraisal are disregarded as provided in this subparagraph, the middle appraisal shall be the Base Rent.

If the determination of the Base Rent is delayed beyond the commencement of the applicable Option Term, Lessee shall continue to pay the Base Rent due during the last month of Original Term. On the first day of the month following the determination of the Base Rent, there shall be an adjustment made to the Base Rent payment then due for the difference between the amount of Base Rent Lessee has paid to Lessor since the applicable Option Term commencement and the amount that Lessee would have paid if the Base Rent as adjusted pursuant to this subparagraph had been in effect as of the applicable Option Term commencement.

Each party shall pay the fees and expenses of their own appraiser, and 50% of the fees and expenses of the third appraiser.

(e) The appraisers shall determine the fair market rental rate using the "market comparison approach" with the relevant market being that for Class "A" office buildings in the downtown San Rafael area as of the Option Term commencement, taking into consideration location, condition and improvements to the space, and assuming that the relevant comparison office building leases are so-called "full-service" leases, including janitorial services. Once the fair market rental rate is determined, there shall be deducted from the rate so determined the sum of \$0.20 times 10,710 (which the parties agree is the square footage of the Premises) to allow for the fact that Lessee is providing some of its own services. For example, if the appraisal process determines that the monthly fair market rental rate for full-service, Class "A" office buildings in the downtown San Rafael Area is \$3.00 per square foot (or \$32,130 per month for the Premises), then the monthly Base Rent for the first year of the Option Term would be \$29,988 (\$32,130 less \$2,142 (\$0.20 times 10,710 square feet).

(f) On the first anniversary of the Option Term, and annually thereafter, the Base Rent shall be increased by one hundred four percent (104%) of the previous year's Base Rent.

53. Repairs and Maintenance. Sections 7.1 and 7.2 of the Lease are modified in the following respects only: Unless the need for maintenance or repair is caused by the negligence or willful act of Lessee, its agents or contractors, Lessor shall perform the following maintenance and repair obligations (in addition to maintaining the surface and structural elements of the roof, foundations and bearing walls):

(i) Lessor shall maintain the Building's skylights and exterior windows in watertight condition (Lessee shall remain responsible for cleaning the exterior windows and skylights);

(ii) Lessor shall maintain the exterior of the Building, including painting when necessary;

(iii) Lessor shall be responsible for resurfacing the parking lot when necessary (Lessee shall remain responsible for keeping the parking lot in a clean condition and shall be responsible for restriping the parking lot as needed); and

(iv) Lessor shall maintain in good condition and repair the electrical, gas and plumbing systems installed by Lessor in the Building (Lessee shall maintain all such systems installed by Lessee).

Lessee at its sole cost and expense shall provide for janitorial services and supplies (including light bulbs) to the Premises and shall pay for all utilities supplied to the Premises, including water, electricity, gas, telephone, trash removal, and security maintenance and services, and will reimburse Lessor quarterly for maintenance service contracts obtained by Lessor on the HVAC systems in

the Building. Lessee will maintain service contracts covering (a) the landscaping and irrigation systems, (b) the fire extinguishing systems and fire sprinklers (if installed), and (c) the security and fire alarm system. Lessor shall have the right to approve Lessee's service contracts, which approval will not be unreasonably withheld or delayed.

54. **Increased Insurance Premium Expenses.** As provided in Section 8.1 of the Lease, Lessee shall pay to Lessor any Insurance Cost Increase over the Base Premium. Insurance Premium Expenses shall include the premiums for Lessor's fire, casualty, liability and earthquake insurance on the Premises. The current annual premiums for the foregoing insurance are \$17,385 and Lessor estimates that the annual estimated Base Premium will be approximately \$19,500.

55. **Increased Building Expenses.** In addition to paying any Insurance Cost Increase (Section 8.1) and Tax Increase (Section 10.2), Lessee shall pay to Lessor all increased costs incurred by Lessor in connection with its maintenance and repair of the roof, foundations, bearing walls, skylights, exterior window, parking lot and those service and maintenance items provided by Lessor under Paragraph 53, above, to the extent those costs exceed the sums expended for those items during the first year of the Original Term. Lessee shall pay any such increased costs within thirty (30) days after receipt by Lessee of reasonably detailed statement prepared by Lessor showing the amount of the increase. During the first year of the Original Term, Lessor shall perform all required maintenance and repairs and not defer required maintenance and repairs.

Lessor shall keep accurate books and records in accordance with generally-accepted accounting principles applied on a basis consistent with prior years reflecting Building Expenses, Real Property Taxes and Insurance Cost Increase. Lessee shall have the right, at any time by written notice to Lessor within six (6) months after Lessee's receipt of the applicable bill from Lessor, during normal business hours upon reasonable advance notice to Lessor, to use a certified public accountant selected by Lessee and subject to Lessor's reasonable right of approval to inspect and copy such books and records and/or to audit Lessor's charges for Building Expenses, Real Property Taxes and Insurance Cost Increase, and other similar charges for which Lessor has billed Lessee during the preceding year. Lessee agrees that Lessee will not employ, in connection with any dispute under this Lease, any person or entity who is to be compensated, in whole or in part, on a contingent fee basis. If such audit discloses any overcharge to Lessee, it shall be credited against the next payment of rent due from Lessee to Lessor or refunded to Lessee within twenty (20) days if at the end of the term. Unless Lessee gives the foregoing notice to Lessor within the six-month period after Lessee's receipt of the applicable bill from Lessor, the bill shall be considered as final and accepted by Lessee.

56. **Parking.** Reference is made to the Agreement regarding parking dated as of January 22, 2003, between Lessor and the owner of the real property located at 704 Mission Street in San Rafael, California. During the term of this Lease, Lessor shall be deemed to have assigned to Lessee all of its parking rights under the Agreement relating to parking and Lessee agrees to abide by all of the terms and conditions of said Agreement, including the obligation to permit the other party to the Agreement to use the parking lot on the Premises for parking by its customers. The termination of the Agreement shall not affect this Lease or Lessee's obligations hereunder.

57. **Assignment and Subletting.** In connection with any assignment of this Lease or subletting of the Premises, Lessee shall abide by the requirements of Paragraph 12 of the Lease and Lessor agrees that it will not unreasonably withhold, condition or delay its approval of any assignment or subletting. Any assignment or subletting shall be deemed approved if Lessor fails to respond within fourteen (14) days to a written request (and email sent to Lessor's email address) from Lessee to approve an assignment or subletting provided such request is accompanied by financial and other information regarding the assignee or subtenant as Lessor may reasonably request.

Any rent or other consideration realized by Lessee in excess of the Base Rent payable hereunder in connection with any sublease, license or similar arrangement collectively covering less than

4,200 square feet of the Premises, after amortization of Lessee's reasonable subletting and assignment costs, shall be divided and paid fifty percent (50%) to Lessor and fifty percent (50%) to Lessee. Any rent or other consideration realized by Lessee in excess of the Base Rent payable hereunder in connection with any assignment of this Lease or any sublease, license or similar arrangement covering 4,200 square feet or more of the Premises, after amortization of Lessee's reasonable costs of assignment, subletting, licensing or similar arrangement, shall be paid one-hundred percent (100%) to Lessor.

58. Signage. Lessee shall have the right to place its name (signage) on the front door of the Building and on the exterior of the Building and at both exterior street-fronting corners of the Premises (Mission Avenue and Fifth Avenue). All signage is subject to Lessor's prior written approval, which shall not be unreasonably withheld, conditioned or delayed, and to the review and approval of all governmental requirements and restrictions of the City of San Rafael. All signage shall be at Tenant's sole cost and expense. Upon lease termination Lessee shall remove its signage and restore the building and all exterior monuments to their condition prior to commencement of the Original Term.

59. Disability Access Requirements.

(a) Pursuant to California Civil Code Section 1938, Lessor has advised Lessee that neither the Premises nor the Building have been inspected by a Certified Access Specialist.

(b) Except as otherwise provided in (c), below, Lessor shall be responsible for making and paying for all required disability access improvements on the exterior and in the common areas of the Building.

(c) Lessee shall be responsible for making and paying for all required disability access improvements within the Premises and for all required disability access improvements on the exterior and in the common areas of the Building that are triggered by Lessee's Alterations.

60. Brokers' Commission. Lessor agrees to pay to the Brokers the following fees upon occurrence of the following events: (i) The sum of \$50,735 to Lessee's Broker and \$22,700.50 to Lessor's Broker upon full execution of this Lease, and (ii) The sum of \$50,735 to Lessee's Broker and \$22,700.50 to Lessor's Broker upon Lessor's receipt of the first payment of Base Rent (scheduled for June 9, 2015).

61. Condition of Premises. Lessor represents and warrants to Lessee that Lessor has not received any notice of any violation of building codes or the Americans with Disabilities Act with respect to the Premises.

62. No Recourse Against Constituent Members of Lessee. Lessee 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. Lessee shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Lease. No contractor shall have any rights and shall not make any claims, take any actions or assert any remedies against any of Lessee's constituent members in connection with this Lease.

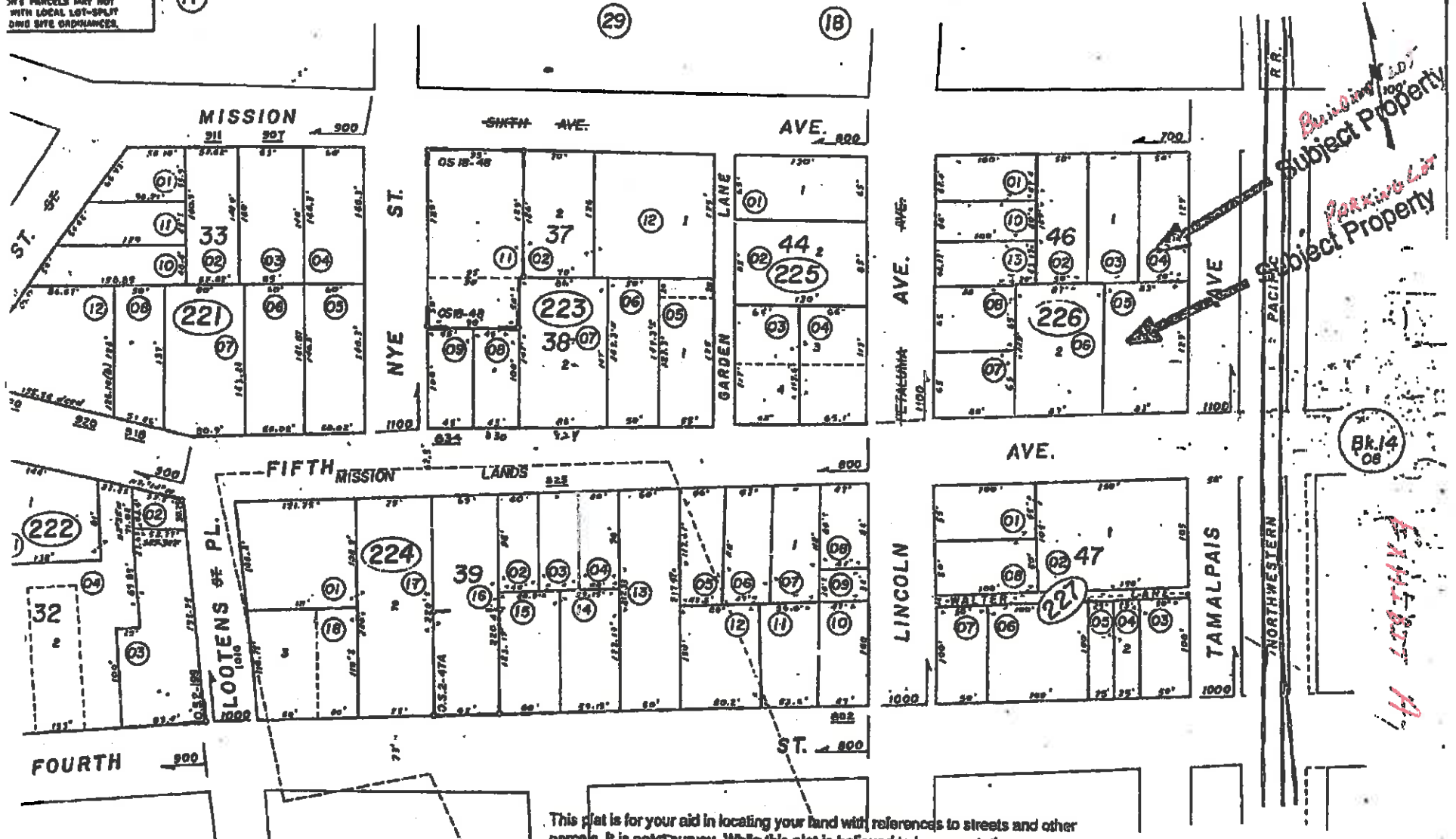
EXHIBIT A

DIAGRAM OF PREMISES SHOWING THE BUILDING AND ADJOINING PARKING LOT

MAP
 WAS PREPARED FOR
 VENT PURPOSES ONLY.
 CITY IS ASSUMED FOR
 URACY OF THE DATA SHOWN.
 NO PARCELS MAY NOT
 WITH LOCAL LOT-SPLIT
 AND SITE ORDINANCES.

10X 1016 1100
 8-023

11-22



This plat is for your aid in locating your land with references to streets and other parcels. It is not a survey. While this plat is believed to be correct, the company assumes no liability for any loss occurring by reason of reliance thereon.

CALIFORNIA LAND TITLE COMPANY

700 IRWIN STREET at SECOND
 SAN RAFAEL, CALIFORNIA 94901

NOTE—Assessor's Block Numbers Shown in Ellipses.
 Assessor's Parcel Numbers Shown in Circles.

CITY OF SAN RAFAEL
 Assessor's Map Bk. 11-Pg. 22
 County of Marin, Calif.

Johnette of San Rafael, Rack 1 Pull 4

EXHIBIT A-1

**DIAGRAM SHOWING CURRENT LAYOUT OF PARKING SPACES
IN LESSOR'S PARKING LOT**

Current Parking Scheme at 700 Fifth Ave San Rafael, CA 94901 - Office Building August 25 2014

Space # 8	Space # 7	Space # 6	Space # 5	Space # 4	Space # 3	Space # 2	Space # 1 Handicap	
Space # 17	Space # 16	Space # 15	Space # 14	Space # 13	Space # 12	Space # 11	Space # 10	Space # 9
Space # 26	Space # 25	Space # 24	Space # 23	Space # 22	Space # 21	Space # 20	Space # 19	Space # 18
Space # 35	Space # 34	Space # 33	Space # 32	Space # 31	Space # 30	Space # 29	Space # 28	Space # 27

EXHIBIT A-1

TDS

EXHIBIT B

WORK LETTER AGREEMENT

THIS WORK LETTER AGREEMENT supplements that certain Standard Industrial/Commercial Single-Tenant Lease dated September 8, 2014 ("Lease"), executed by 700 Fifth Avenue, LLC, as Lessor, and Marin Clean Energy, a not for profit governmental agency, joint powers authority, as Lessee. All capitalized terms not otherwise defined herein shall have the same meaning as those capitalized terms contained in the Lease.

1. Lessor shall be responsible for diligently constructing within the Building the tenant improvements ("Tenant Improvements") described in the preliminary space plan attached hereto as Exhibit B-1 ("Preliminary Space Plan"). The Tenant Improvements for the Premises will be more particularly described in the plans and construction drawings ("Construction Drawings") as approved below. Any additional work in the Building shall be at Lessee's sole cost and expense.

2. Using best commercially reasonable efforts, and in no event more than fifty-two (52) days after execution of the Lease, Lessor shall provide Lessee with the final Construction Drawings and Specifications showing the details of the Tenant Improvements. The final Construction Drawings shall be prepared by Lessor's architect, WK Design Group, and shall be in conformity with the Preliminary Space Plan. The Construction Drawings shall include full energy calculations as required by the State of California and the city agencies. In no event more than forty-seven (47) days after execution of the Lease, Lessor shall provide Lessee with preliminary Construction Drawings which are approximately ninety percent (90%) complete, with the exception of mechanical, electrical and plumbing drawings. Within five (5) days after receipt of the preliminary Construction Drawings, Lessee shall approve the drawings and/or request changes or modifications thereto. Any such request for changes or modifications shall be subject to Lessor's reasonable approval. Lessor shall not be required to approve any change in Construction Drawings which is inconsistent with the Preliminary Space Plan.

The final Construction Drawings must be completed and approved by Lessee no more than fifty-two (52) days after execution of this Lease. In the event Lessee has not approved the final Construction Drawings by that date, the March 9, 2015 scheduled Commencement Date shall be extended on a day for day basis and shall not be subject to a late delivery charge.

3. Lessee acknowledges that the Construction Drawings are subject to the approval of the appropriate government authorities. It shall be Lessee's responsibility to ensure that the design and function of the Tenant Improvements are suitable for Lessee's business and needs. It shall be Lessor's responsibility to construct the Tenant Improvements in accordance with current building standards, laws, regulations, ordinances and codes. Except as provided in paragraph 9, below, Lessor shall not be required to install any Tenant Improvements which do not conform to the Construction Drawings.

3.a. Lessor agrees to cause its general contractor to obtain at least three (3) bids from every subcontractor where the total cost of the subcontract is expected to exceed Twenty-Five Thousand Dollars (\$25,000.00). The contractor shall be required to accept the lowest bid for the portion of the work covered by the particular subcontract unless Lessor agrees to be responsible for any amount in excess of the lowest bid.

3.b. Lessor shall cause Lessor's contractor or architect to keep Lessee fully advised in writing or by email of the status of each application for permits to perform Lessor's Work and notify Lessee if any delays in obtaining permits are anticipated to cause a delay in Lessor's Work such that

Lessor will not be able to deliver possession of the Premises to Lessee by March 9, 2015, or that the completion of items 9.a. or 9.e. of this Work Letter would be delayed. The purpose of this provision is so that Lessee will be able to independently determine if there is a legitimate permit delay.

4. The total cost of the Tenant Improvements to be paid by Lessor shall not exceed Four Hundred Thirty Thousand Three Hundred Ninety-Seven Dollars (\$430,397.00). The total "cost" includes the following:

- (a) All construction costs and expenses associated with the Tenant Improvements;
- (b) The reasonable costs of the Preliminary Space Plan (including one revision thereto) and final Construction Drawings and engineering costs associated with completion of the State of California energy utilization calculations under Title 24 legislation and any engineering fees associated with the project; and
- (c) The reasonable costs of obtaining building permits and other necessary authorizations from the city, county and the State of California.

The cost allocation between Lessor and Lessee for Building improvements is detailed in Exhibit C attached as the "Improvement Budget". Any total costs associated with the Tenant Improvements in excess of \$430,397.00 shall be paid by Lessee within thirty (30) days after billing by Lessor; however, Lessee shall not be responsible for any costs not shown in Exhibit C if they are solely due to elevator installation, fire sprinkler installation, or are required to bring the Building into code compliance.

5. The Commencement Date of the Lease shall be determined in accordance with Paragraph 51 of the Lease.

6. Lessee may, with Lessor's written consent which consent shall not be unreasonably withheld, enter the Premises prior to the Commencement Date solely for the purpose of installing its Personal Property as long as such entry will not interfere with the orderly construction and completion of the Tenant Improvements by Lessor's contractor. Lessee shall notify Lessor of its desired time(s) of entry and shall submit for Lessor's written approval the scope of the Tenant's Work to be performed and the name(s) of the contractor(s) who will perform such work. Lessee agrees to indemnify, defend and hold harmless Lessor from and against any and all claims, actions, losses, liabilities, damages, costs or expenses (including, without limitation, reasonable attorneys' fees and claims for worker's compensation) of any nature whatsoever, arising out of or in connection with the Tenant's Work (including, without limitation, claims for breach of warranty, bodily injury or property damage).

7. The Premises shall be deemed "substantially completed" as of the date that all of the following conditions are satisfied ("Substantial Completion"):

(a) Except as otherwise provided in Paragraph 51.a., the Tenant Improvements have been substantially completed in accordance with the approved Construction Drawings (except for minor punch list items); and

(b) A temporary certificate of occupancy and/or a signed building permit, except for the items listed in Paragraph 9.a. (new exterior elevator) and 9.e. (fire sprinklers) of this Work Letter, has been issued for the Premises.

8. Pursuant to Paragraph 2 of the Lease, Lessee shall immediately prior to occupancy inspect the Premises and compile and furnish Lessor with an initial punch list of any missing or deficient Tenant Improvements. Within the first thirty (30) days after occupancy of the Premises, Lessee shall make a final punch list and submit this list to Lessor. Lessor shall diligently prosecute and use its best commercially reasonable efforts to complete the corrective work in a prompt, good and workman-like manner. Punch list corrections not corrected to the reasonable satisfaction of Lessee promptly following Lessor's receipt of the final punch list shall not be grounds for a delay or reduction in any rent payments due Lessor unless such corrections materially interfere with the use by Lessee of the Premises, in which case rent shall be abated as to the portion of the Premises rendered unusable on a day for day basis.

9. In addition to the Tenant Improvements, Lessor shall provide the following Additional Tenant Improvements at Lessor's sole cost and expense:

a. Installation of a new elevator on the outside of the Building from the parking lot to provide elevator access to the first and second floors, as well as exterior work which is affected by the installation of the elevator, such as replacement of the current fence (as described in Paragraph 9.b. below) and replacement of the current landscaping (as described in Paragraph 9.b. below). This work must be completed within ninety (90) days of the date possession of the Premises is delivered to Lessee or Lessor shall pay to Lessee the sum of \$4,000 per month prorated for each day of delay in completing this item of the Additional Tenant Improvements. The parties agree that the provisions of Paragraph 51 (d) regarding liquidated damages shall also apply to this Paragraph 9.a.

b. Replace the current fence in the parking lot;

c. Mill the current asphalt in the parking lot, repair the surface as needed, apply a new topcoat, and restripe (the configuration and number of parking spaces in the parking lot may change based on requirements of existing laws, ordinances and rules);

d. Replace the current landscaping per Lessor's design; and

e. Install Fire Sprinklers if required by the San Rafael Building Department. This work must be completed within ninety (90) days of the date possession of the Premises is delivered to Lessee or Lessor shall pay to Lessee the sum of \$4,000 per month prorated for each day of delay in completing this item of the Additional Tenant Improvements, provided, however, Lessor must have had a period of at least thirty (30) days after the Marin Municipal Water District has completed the installation of the new water main in order to perform the work to connect the fire sprinklers to the new water main, before Lessor shall be liable for any payment to Lessee under this Paragraph 9.e. The parties agree that the provisions of Paragraph 51 (d) regarding liquidated damages shall also apply to this Paragraph 9.e. In connection with securing the written consent of the City of San Rafael Fire Marshall to permit the Premises to be occupied by Lessee prior to the fire sprinklers being connected to a water source and being in operating condition, Lessor and Lessee each agrees to execute an agreement to indemnify, defend, protect and hold harmless the City of San Rafael and the San Rafael Fire Department from any claims or causes of action related to the fire sprinklers not being operational when the Premises are delivered.

The Additional Tenant Improvements described in b. (new fence), c. (parking lot repairs) and d. (landscaping), above, may be deferred by Lessor if Lessor reasonably determines that some or all of those Additional Tenant Improvements should not be installed until after installation of the Building elevator

and water main for the sprinkler system connection.. The design and materials used to construct the foregoing Additional Tenant Improvements shall be at Lessor's sole discretion.

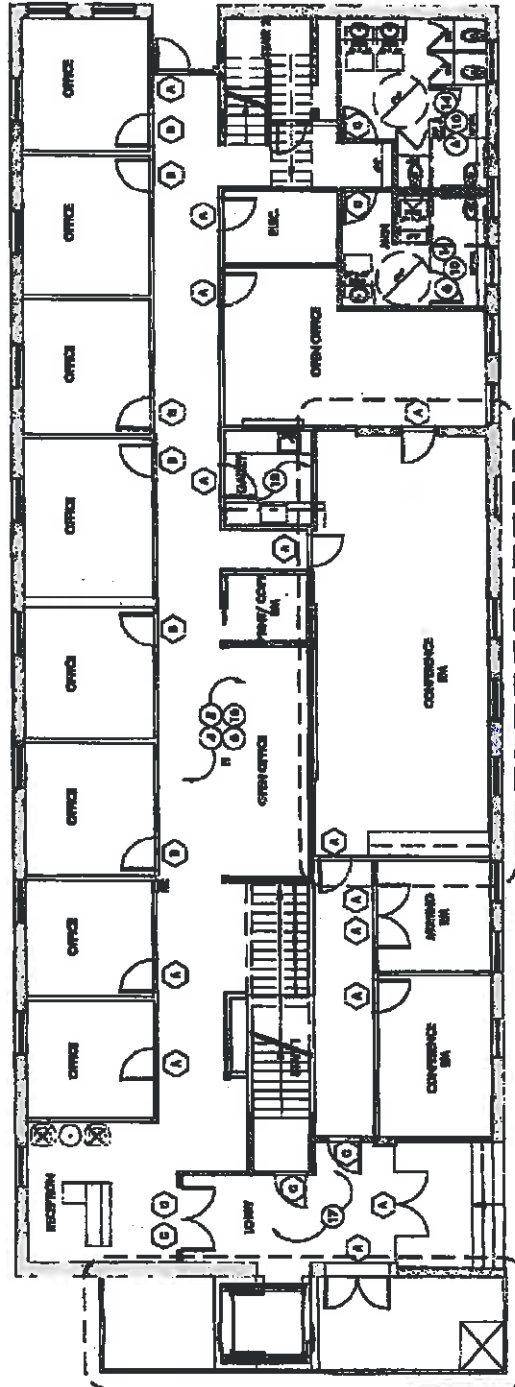
EXHIBIT B-1

PRELIMINARY SPACE PLAN

ATTACH HERE PRICING PLAN PAGES PP1.1 AND PP1.2

PREPARED BY WESKE KARR DESIGN GROUP ISSUED FOR REVIEW 08.28.14

12



THE ELEVATOR DOOR AND CHAIR LEFT
NOTES ALL WORK IN THE AREA
SUBJECT TO FURTHER DISCUSSION
CONCERNING THE REQUIREMENTS
AND PLANNING. THE DOOR MUST

EXTENDING EXISTING CONTRACT,
RENEWAL & ALLOW DESIGN EACH
AND 12 MONTHS PER YEAR



FIRST FLOOR CONSTRUCTION PLAN

$$\frac{1}{16''} = 1'-0''$$

PARTIAL IMAGE OF SHEET: PP1.1

TBS

MARIN CLEAN ENERGY
700 5TH AVENUE
SAN RAFAEL, CA 94901

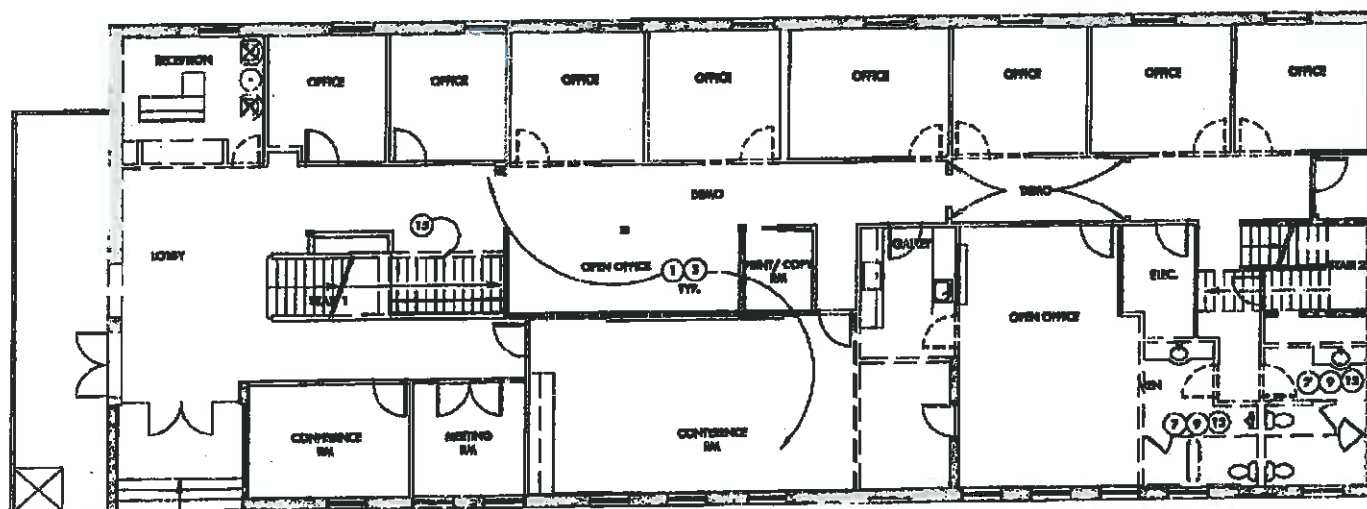


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1971 and Weeks at the 200 and 400 m. Inset: at 400 m. 1971 and Weeks at the 200 m. Inset: at 400 m. 1971 and Weeks at the 200 m. Inset: at 400 m.

[illegible]

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NTS



1

$$1/16'' = 1'-0''$$

PARTIAL IMAGE OF SHEET: PP1.1

W
Waste
351 Millbrook St., Suite 300 San Francisco, CA 94104
Phone: 415.332.8650 Fax: 415.363.4230

MARIN CLEAN ENERGY
700 5TH AVENUE
SAN RAFAEL, CA 94901

MCE

EXHIBIT B-1
Page 2 of 6

KEY NOTES	DOOR NOTES
<p>1 DEMO IN PLACE EXISTING THROUGHOUT AND PREP FOR NEW.</p> <p>2 NOTED.</p> <p>3 DEMO TO CEILING AND LIGHTING.</p> <p>4 MINIMUM CEILING LUMINOUS THROUGHOUT EXIST. CEILING BARS, DOWN LIGHTS, AND EXISTING LIGHTING TO REMAIN. SECOND FLOOR, BARS, WHERE EXISTING LIGHTING "KICKER" 2'x4' AND EXISTING LIGHTING ON EXISTING.</p> <p>5 PREP AND PAINT/PAINT BARS.</p> <p>6 PATCH, REPAIR, PAINT WALL MATERIAL FROM ADJACENT SPACES AND JACOBS.</p> <p>7 DEMO IN PLACE AND BASE THROUGHOUT AND PREP FOR NEW.</p> <p>8 PAINT ALL WALLS, BASE, DOOR FRAMES ON BOTH SIDES, SEE FINISH NOTES FOR SPEC.</p> <p>9 DEMO IN PLUMBING THROUGHOUT, EXISTING, TUBS, AND WALL. ACCESSORIES TO REMAIN FOR RE-VALUATION IF POSSIBLE.</p> <p>10 PREP AND PAINT BASE, THROUGHOUT, PREP FOR ASH OF IN TUB, BATHROOM.</p> <p>11 BLUE IN RECEPTION DESK.</p> <p>12 NOTED.</p> <p>13 DEMO IN PLACE ROOM FLOOR AND FINISH THROUGHOUT AND PREP FOR NEW.</p> <p>14 EXISTING CORNER.</p> <p>15 DEMO IN PLACE CORNER AS SHOWN FOR AREA COMPLIANCE.</p> <p>16 DEMO IN PLACE CORNER, BARS AND WALL ACCESSORIES.</p> <p>17 DEMO IN PLACE CORNER, BARS AND WALL ACCESSORIES.</p> <p>18 DEMO IN PLACE CORNER, BARS AND WALL ACCESSORIES.</p> <p>19 DEMO IN PLACE CORNER, BARS AND WALL ACCESSORIES.</p> <p>20 DEMO IN PLACE CORNER, BARS AND WALL ACCESSORIES.</p> <p>21 DEMO IN PLACE CORNER, BARS AND WALL ACCESSORIES.</p> <p>22 DEMO IN PLACE CORNER, BARS AND WALL ACCESSORIES.</p> <p>23 DEMO IN PLACE CORNER, BARS AND WALL ACCESSORIES.</p> <p>24 DEMO IN PLACE CORNER, BARS AND WALL ACCESSORIES.</p> <p>25 DEMO IN PLACE CORNER, BARS AND WALL ACCESSORIES.</p> <p>26 DEMO IN PLACE CORNER, BARS AND WALL ACCESSORIES.</p> 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FIRST FLOOR KEY NOTES & LEGENDS

PARTIAL IMAGE OF SHEET: PP1.1

TBS



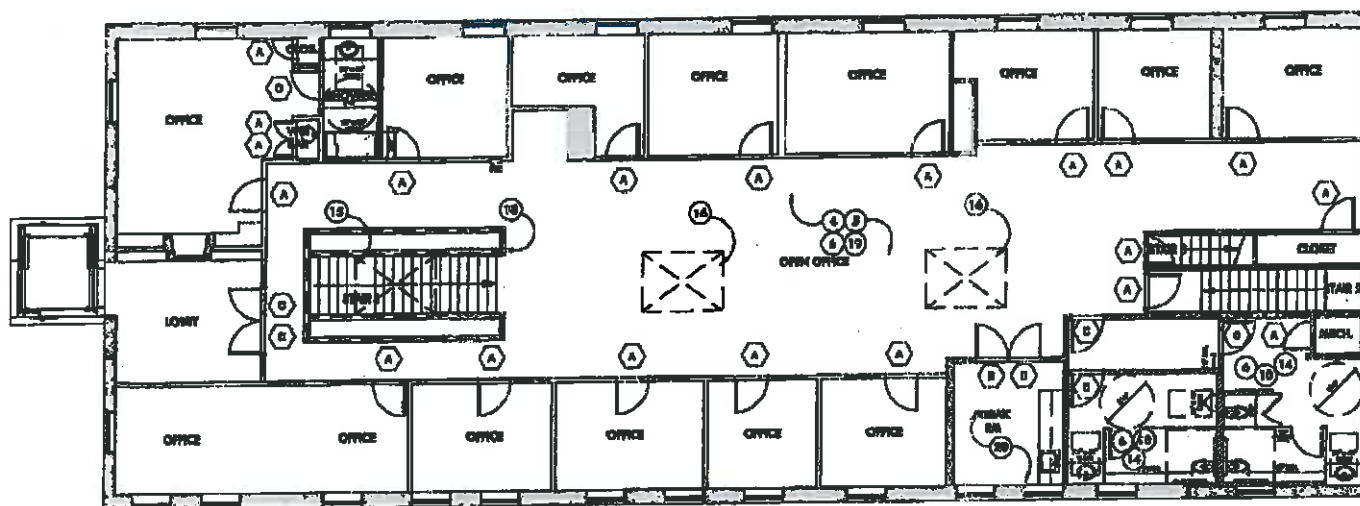
MARIN CLEAN ENERGY
700 5TH AVENUE
SAN RAFAEL, CA 94901



[illegible]

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NT\$



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$$1/16'' = 1'-0''$$

PARTIAL IMAGE OF SHEET: PP1.2

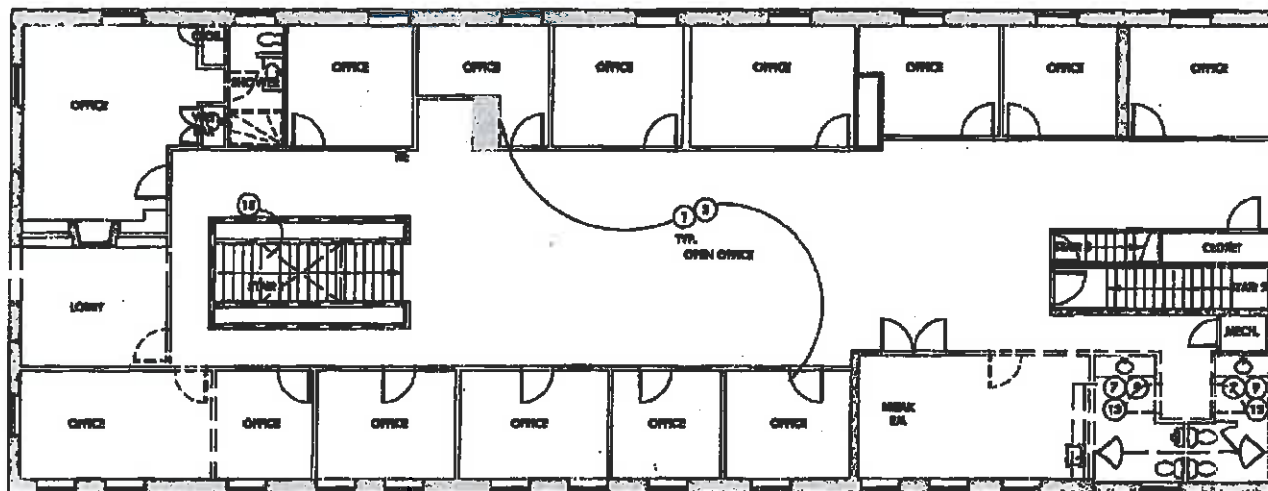
MARIN CLEAN ENERGY
700 5TH AVENUE
SAN RAFAEL, CA 94901



- GENERAL PRICING NOTES**
- A. All work shall be in accordance with the latest edition of the California Building Code, unless otherwise specified.
 - B. All materials and labor shall be at the current market price, as determined by the contractor.
 - C. All work shall be completed within the specified time frame, unless otherwise specified.
 - D. All work shall be done in accordance with the latest edition of the California Building Code, unless otherwise specified.
 - E. All materials and labor shall be at the current market price, as determined by the contractor.
 - F. All work shall be completed within the specified time frame, unless otherwise specified.
 - G. All work shall be done in accordance with the latest edition of the California Building Code, unless otherwise specified.
 - H. All materials and labor shall be at the current market price, as determined by the contractor.
 - I. All work shall be completed within the specified time frame, unless otherwise specified.
 - J. All work shall be done in accordance with the latest edition of the California Building Code, unless otherwise specified.
 - K. All materials and labor shall be at the current market price, as determined by the contractor.
 - L. All work shall be completed within the specified time frame, unless otherwise specified.
 - M. All work shall be done in accordance with the latest edition of the California Building Code, unless otherwise specified.
 - N. All materials and labor shall be at the current market price, as determined by the contractor.
 - O. All work shall be completed within the specified time frame, unless otherwise specified.
 - P. All work shall be done in accordance with the latest edition of the California Building Code, unless otherwise specified.
 - Q. All materials and labor shall be at the current market price, as determined by the contractor.
 - R. All work shall be completed within the specified time frame, unless otherwise specified.
 - S. All work shall be done in accordance with the latest edition of the California Building Code, unless otherwise specified.
 - T. All materials and labor shall be at the current market price, as determined by the contractor.
 - U. All work shall be completed within the specified time frame, unless otherwise specified.
 - V. All work shall be done in accordance with the latest edition of the California Building Code, unless otherwise specified.
 - W. All materials and labor shall be at the current market price, as determined by the contractor.
 - X. All work shall be completed within the specified time frame, unless otherwise specified.
 - Y. All work shall be done in accordance with the latest edition of the California Building Code, unless otherwise specified.
 - Z. All materials and labor shall be at the current market price, as determined by the contractor.

2 GENERAL PRICING NOTES

NTS



1 SECOND FLOOR DEMO PLAN

1/16" = 1'-0"

PARTIAL IMAGE OF SHEET: PP1.2

W
Weber
301 California St., Suite 300 San Francisco, CA 94104
Phone: 415.337.9400 Fax: 415.337.9400

MARIN CLEAN ENERGY
700 5TH AVENUE
SAN RAFAEL, CA 94901



EXHIBIT C

IMPROVEMENT BUDGET

		<u>Lessee's scope</u>	<u>Lessor's scope</u>	
Basic Scope				
06/26/14	Budget Items 1-19 Basic Scope	430,397.00	430,397.00	
08/12/14	Budget Items 1-20 Basic Scope	493,196.00		
Difference between 06/26/14 budget and 08/12/budget		62,799.00		
Alternates				
Aits. from 08/12/14 Budget				
alt. 1	stairway relocate	n/a		
alt. 2	Elev.			
	Elevator		70,000.00	Will be affected by Planning Dept.impositions on Parking. May be limited to recapture of 2 or less stalls.
	Structural @ shaft		75,000.00	
	ADA contingency @ lobbies*	20,000.00 *		
alt. 3	Exterior Improvements			
	Fencing		9,000.00	
	ADA access		13,000.00	
	Deck	4,000.00		Will be affected by Planning Dept.impositions on Parking, appearance, etc. May be limited to recapture of only 2 stalls.
alt. 4	Asphalt/Paving		15,000.00	
alt. 5	Landscape		10,000.00	
alt. 6	All new doors	n/a		
alt. 7	Fire sprinklers		150,000.00	Includes allowance of \$45,000.00 for City Hook up. Allow 12 - 14 weeks
alt. 8	Restroom expansion and upgrades*	53,100.00 *		
alt. 9	Exterior Window upgrade	** n/a		City has not said that this is a title 24 requirement. Budget is \$112,000.00
	Est. Const. Subtotal	139,899.00	772,397.00	
	Est. Total Const.		912,296.00	
Soft Costs				
Allocation of Soft Costs				
	A&E Fees	65,000.00		allowance
	Bldg. Dept	25,000.00		allowance (quoted by the City)
	Planning Dept.	5,000.00		allowance
	Architect's reimbursables	3,000.00		allowance
	Total Soft Costs est. (10.7% of Const. est.)		98,000.00	
Soft Costs Allocated by scope				
	Tenant basic scope	62,799.00 @10.7	6,719.49	
	Tenant aits.	77,100.00 @10.7	8,249.70	
	Basic Scope	430,397.00 @10.7	10,702.60	35,350.48
	Landlord basic aits.	342,000.00 @10.7		36,594.00
	Est. Total by scope	165,570.19	844,341.48	TOTAL 1,009,911.67

NOTE: BUDGET ESTIMATES:
Any Budget or Budgeting Assistance offered by WK design group for the project, or for a component of the project, is for estimating Rough Order of Magnitude (ROM) only, based on available information and industry standards. Budgets are not a guaranteed maximum, and the final project cost may vary based on a variety of factors. WK design group assumes no liability for any variation in final project cost.

*Up to reference for ADA contingency at lobbies and alt. 8 restroom expansion and upgrades assumes that these are not to exceed amounts.

785

**FIRST AMENDMENT TO AIR COMMERCIAL REAL ESTATE ASSOCIATION
STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE-GROSS**

THIS FIRST AMENDMENT TO AIR COMMERCIAL REAL ESTATE ASSOCIATION STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE-GROSS ("Amendment") is made and entered into as of March 5, 2015, by and between **700 FIFTH AVENUE, LLC**, a California limited liability company ("Lessor"), and **MARIN CLEAN ENERGY**, a not for profit governmental agency, joint powers authority ("Lessee"),

RECITALS

This Amendment is entered into on the basis of the following facts, understandings and intentions of the parties:

A. Lessor and Lessee are parties to that certain AIR Commercial Real Estate Association Standard Industrial/Commercial Single-Tenant Lease-Gross, dated September 8, 2014 (the "Lease"), with respect to certain premises commonly known as 700 Fifth Avenue, San Rafael, California, and more fully described in the Lease (the "Premises").

B. Lessor and Lessee desire to amend the Lease as hereinafter provided, to document the terms and conditions on which Lessor will cause certain additional tenant improvements (the "Additional Tenant Improvements") to be made to the Premises, as described below, and accordingly, Lessor and Lessee hereby agree as follows:

1. Defined Terms. Capitalized terms used herein and not otherwise defined herein shall have, unless the context indicates otherwise, the same meanings as set forth in the Lease.

2. Additional Tenant Improvements. Lessor shall be responsible for contracting with Bryson Burns Construction Inc. (“Contractor”), a duly licensed California general contractor which has already been constructing the Tenant Improvements described in the Work Letter attached to the Lease as Exhibit B, and will cause Contractor to diligently construct within the Building the Additional Tenant Improvements described on Exhibit A and Exhibit B attached to this Amendment, all in accordance with the Bryson Burns Marin Clean Energy work Schedule attached as Exhibit C hereto, and the Tenant Improvements Plans for Marin Clean Energy issued January 15, 2015 by Weske Design Group and attached as Exhibit D hereto.

3. Completion of Additional Tenant Improvements. If not already commenced, the Additional Tenant Improvements shall be commenced on March 5, 2015 and Lessor shall use reasonable efforts to cause the Contractor to complete the Additional Tenant Improvements by June 30, 2015. Notwithstanding the foregoing, the scheduled Lease Commencement Date shall remain March 9, 2015, or as soon thereafter as Lessor receives a temporary Occupancy Permit from the San Rafael Building Department.

4. Maximum Cost to Lessee. The amounts for the individual items on Exhibit B are given for convenience only, but in no event shall the maximum cost to

Lessee for the all of the Additional Tenant Improvements exceed the maximum sum of \$73,551.07.

5. Fees and Payment Scheduling; Invoicing. The fees and payment schedule for furnishing services under this Amendment shall be based on the schedule which is attached hereto as Exhibit B. Those fees shall remain in effect for the entire term of the Amendment. Lessor is responsible for billing Lessee in a timely and accurate manner. Lessor shall invoice Lessee on a monthly basis for any services rendered or expenses incurred hereunder. The final invoice must be submitted within sixty (60) days of completion of all of the Additional Tenant Improvements. All invoices shall be paid by Lessee within ten (10) business days from receipt.

6. Brokers. Each party warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Amendment, and that it knows of no real estate broker or agent who is or might be entitled to a commission in connection with this Amendment. If either party has dealt with any person or real estate broker or agent with respect to this Amendment, such party shall be solely responsible for the payment of any fee due said person or firm and that party shall hold the other free and harmless against any liability with respect thereto, including attorneys' fees and costs.

7. Counterparts and Facsimile Signatures. This Amendment may be executed in counterparts which when taken together shall constitute one fully executed original. Facsimile and PDF signatures via e-mail on this Amendment shall be treated and have the same effect as original signatures.

8. Ratification. Lessor and Lessee hereby ratify and confirm all of the terms and provisions of the Lease as modified by paragraphs 1 through 7 above.

IN WITNESS WHEREOF, Lessor and Lessee have executed this First Amendment to AIR Commercial Real Estate Association Standard Industrial/Commercial Single-Tenant Lease-Gross as of the date first above written.

LESSEE:

MARIN CLEAN ENERGY, a not for profit governmental agency, joint powers authority

By: _____
Dawn Weisz, Chief Executive Officer

LESSOR:

700 FIFTH AVENUE, LLC,
a California limited liability company

By: _____
Ted B. Shuel, Manager

EXHIBIT A

SCOPE OF SERVICES (required)

Lessor will cause the Additional Tenant Improvements described below and on Exhibit B to be completed in the Building as requested and directed by Lessee's staff, up to the total fee allowed under this Amendment.

Key components of the scope including but not limited to the following are detailed by category below. In general the intention of this Amendment is installation of structure, facilities and equipment reasonably suitable to the purposes intended including any hardware, finishes, and appurtenance installed in a professional manner. Detailed specifications for the following items of Additional Tenant Improvements are set forth in existing emails, plans and lists between WK Design Group and Dawn Weisz, Emily Goodwin and/or Jennifer Dowdell.

Bathroom:

- Private stalls
- Tile
- Recycled counter tops
- Flooring and paint

Solar and IT Data Room Infrastructure:

- Solar conduits to allow for solar car port shade structure power feed to building meter
- Dedicated HVAC unit to ensure air temperature control for server room and large conference room

Secure stair and 2nd floor office access:

- Switchback stringer stairs
- Stained and finished concrete treads
- Glass enclosure surrounding the entire staircase from main lobby

Skylights:

- Addition of triple pane glass for two new skylights on 2nd floor allowing for maximum light and heat efficiency while protecting for comfort

Doors, hardware and finishes:

- Glass doors on 1st floor offices
- Matching hardware and finishes

Final Certificate of Occupancy and Final Punch-out Items

- Completion of tenant premises walk-through and contractor punch list items agreed to and signed off by tenant and contractor.
- New bathroom plumbing flowing and enclosure hardware locking properly
- New tile, counter tops and flooring, paint finishes sealed and complete
- New HVAC output flow checked and running properly
- New finishes on stringer stairs and concrete treads sealed and complete
- New glass stair enclosure sealed and security key card access door secure
- Roof penetrations caulked and sealed properly
- Eight (8) new doors with spring hinges and keypad locking checked and complete
- All new nickel-finish door hardware and finishes complete

EXHIBIT B

FEES AND PAYMENT SCHEDULE

For services provided under this Amendment Lessee shall reimburse Lessor in accordance with the following milestone payment schedule:

#	Item	Amount	Conditions Precedent
1	Bathrooms (including ADA compatible, private stalls, tile, recycled counter tops, flooring and shower for bike commuters)	\$8,653.39	Upon presentation and validation of invoices against work completed by and payments made to Bryson Burns
2	Solar and IT Data Room HVAC and Infrastructure	\$9,253.80	Upon presentation and validation of invoices against work completed by and payments made to Bryson Burns
3	Glass stair enclosure and door/2nd Floor Agency Office Access (including switchback stringer stairs with concrete treads and glass enclosed from the main lobby for 2 nd floor access but exclusive of security key card access system) and Temporary Certificate of Occupancy	\$25,405.64	Upon presentation and validation of invoices against work completed by and payments made to Bryson Burns and presentation of temporary certificate of occupancy and full access by Lessee
4	Doors, Skylights , Hardware and Finishes	\$ 5,882.80	Upon presentation and validation of invoices against work completed by and payments made to Bryson Burns
5	Contractor Management and Overhead	\$ 5,685.26	
6	Final Certificate of Occupancy and Final Punch List Items <ul style="list-style-type: none"> • Completion of quality assurance checklist for all tenant improvements aforementioned • New bathroom plumbing flowing and enclosure hardware locking properly • New tile, counter tops and flooring, paint finishes sealed and complete • New HVAC output flow checked and running properly • New finishes on stringer stairs and concrete treads complete • New glass stair enclosure sealed and security key card access door secure • Roof penetrations caulked and sealed properly • Eight (8) new doors with spring hinges and keypad locking checked and complete • All new nickel-finish door hardware and finishes complete 	\$18,670.18	Presentation of Final Certificate of Occupancy and punch list walk-through and final documentation of all invoices for Lessee by Lessor
Total Unapproved Proposed Build-out Costs			\$73,551.07

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of \$73,551.07 for the term of the Amendment.

BRYSON BURNS CONSTRUCTION, INC.				Marin Clean Energy Schedule												2/11/15																
ID	Task Name	Duration	Start	Finish	5, '14		Oct 26, '14		Nov 16, '14			Dec 7, '14			Dec 28, '14		Jan 18, '15			Feb 8, '15		Mar 1, '15			Mar 22, '15			Apr 12, '15			May 3, '15	
					F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	
1	PERMIT PROCURMENT	42 days	Fri 10/31/14	Mon 12/29/14																												
2	SUBMIT FOR BUILDING PERMIT	0 days	Thu 10/30/14	Thu 10/30/14	◆ 10/30																											
3	1ST CITY REVIEW	15 days	Mon 11/3/14	Fri 11/21/14																												
4	RESPOND TO COMMENTS	10 days	Mon 11/24/14	Fri 12/5/14																												
5	SECOND REVIEW	15 days	Mon 12/8/14	Fri 12/26/14																												
6	PERMIT ISSUED	0 days	Mon 12/29/14	Mon 12/29/14	◆ 12/29																											
7	ELEVATOR	45 days	Mon 12/15/14	Fri 2/13/15																												
8	EXCAVATE/STRUCTURAL	20 days	Mon 12/15/14	Fri 1/9/15																												
9	CEMENT	3 days	Mon 1/12/15	Wed 1/14/15																												
10	DEMO	20 days	Wed 11/12/14	Tue 12/9/14																												
11	SKYLIGHTS	20 days	Mon 2/2/15	Fri 2/27/15																												
12	FRAMING	5 days	Mon 2/2/15	Fri 2/6/15																												
13	INSTALL SKYLIGHTS	2 days	Mon 2/23/15	Tue 2/24/15																												
14	ROOFING	2 days	Thu 2/26/15	Fri 2/27/15																												
15	SWITCHBACK STAIRS	37 days	Fri 1/9/15	Mon 3/2/15																												
16	ROIUGH INSTALL	1 day	Wed 2/18/15	Wed 2/18/15																												
17	COLORLED CEMENT	2 days	Thu 2/19/15	Fri 2/20/15																												
18	PAINT	3 days	Mon 2/23/15	Wed 2/25/15																												
19	RAIL SYSTEM AND ATTACHMENT OF TREADS	1 day	Thu 2/26/15	Thu 2/26/15																												
20	*PARKING LOT FOR TCO	2 days	Thu 2/26/15	Fri 2/27/15																												
21	CONSTRUCTION	49 days	Tue 12/30/14	Fri 3/6/15																												
22	MOBILIZE TO JOB SITE	1 day	Fri 1/2/15	Fri 1/2/15																												
23	SPRINKLER ROUGH INSTALL	12 days	Tue 2/17/15	Wed 3/4/15																												
24	ROUGH FRAMING	15 days	Fri 12/19/14	Thu 1/8/15																												

Page 1



Marin Clean Energy
Schedule

2/11/15

ID	Task Name	Duration	Start	Finish	5, '14		Oct 26, '14		Nov 16, '14			Dec 7, '14		Dec 28, '14			Jan 18, '15			Feb 8, '15		Mar 1, '15			Mar 22, '15			Apr 12, '15			May 3, '15	
					F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	
25	ROUGH ELECTRICAL	40 days	Mon 12/29/14	Fri 2/20/15																												
26	ROUGH PLUMBING	20 days	Fri 12/19/14	Thu 1/15/15																												
27	ROUGH MECHANICAL	20 days	Tue 12/23/14	Mon 1/19/15																												
28	ROUGH INSPECTION	0 days	Fri 2/20/15	Fri 2/20/15																												
29	DRYWALL TAPE/TEXTURE	31 days	Fri 1/9/15	Fri 2/20/15																												
30	INSTALL T-BAR GRID SYSTEM	11 days	Wed 2/18/15	Wed 3/4/15																												
31	SPRINKLER TRIM	8 days	Mon 2/23/15	Wed 3/4/15																												
32	INSTALL LIGHT FIXTURES	8 days	Mon 2/23/15	Wed 3/4/15																												
33	*BATHROOM TILE	5 days	Mon 2/23/15	Fri 2/27/15																												
34	INSTALL DOORS/FRAMES/HARDWARE	9 days	Mon 2/23/15	Thu 3/5/15																												
35	MEASURE FOR GLASS AND INSTALL	5 days	Thu 2/26/15	Wed 3/4/15																												
36	INSTALL MILLWORK	4 days	Mon 2/23/15	Thu 2/26/15																												
37	PAINT	13 days	Mon 2/16/15	Wed 3/4/15																												
38	ELECTRICAL TRIM	4 days	Mon 3/2/15	Thu 3/5/15																												
39	PLUMBING TRIM	5 days	Thu 2/26/15	Wed 3/4/15																												
40	HVAC TRIM	8 days	Mon 2/23/15	Wed 3/4/15																												
41	INSTALL FLOORING	5 days	Mon 2/23/15	Fri 2/27/15																												
42	SINAGE/FIRE EXTINGUISHERS	3 days	Fri 2/27/15	Tue 3/3/15																												
43	FINAL CLEAN	2 days	Thu 3/5/15	Fri 3/6/15																												
44	FIRE TCO	4 days	Mon 3/2/15	Thu 3/5/15																												
45	FINAL TCO	2 days	Thu 3/5/15	Fri 3/6/15																												
46	COMMISSION FIRE SPRINKLER	45 days	Mon 3/9/15	Fri 5/8/15																												

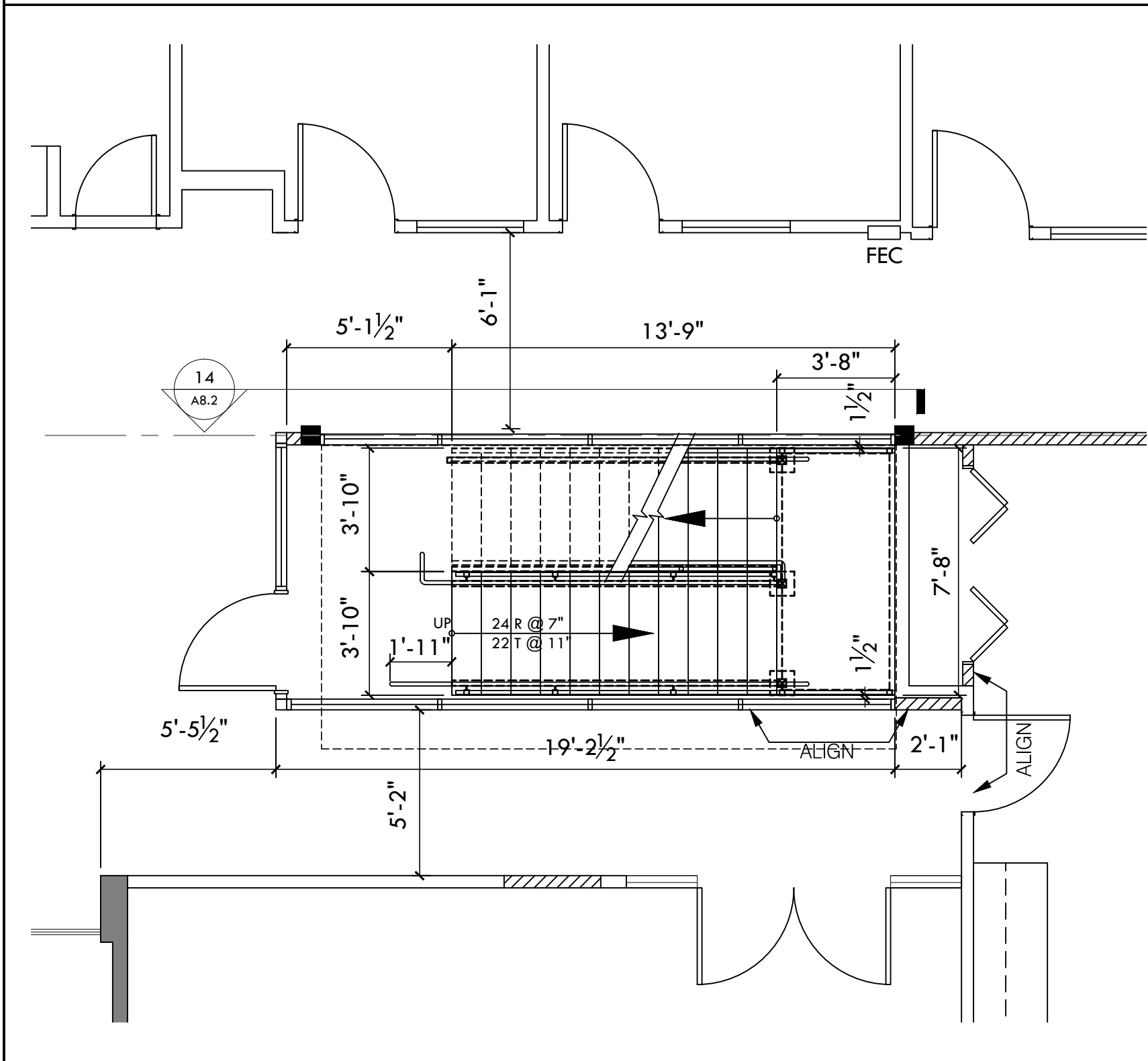


Marin Clean Energy
Schedule

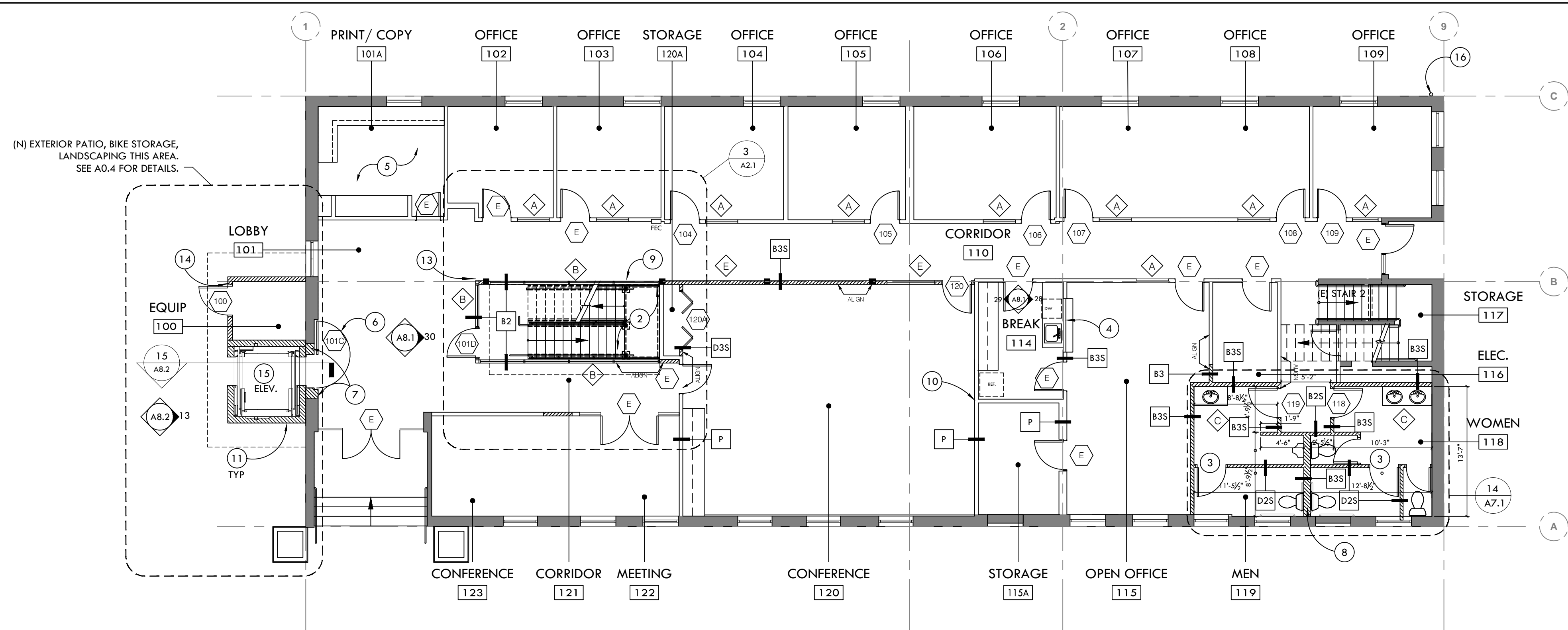
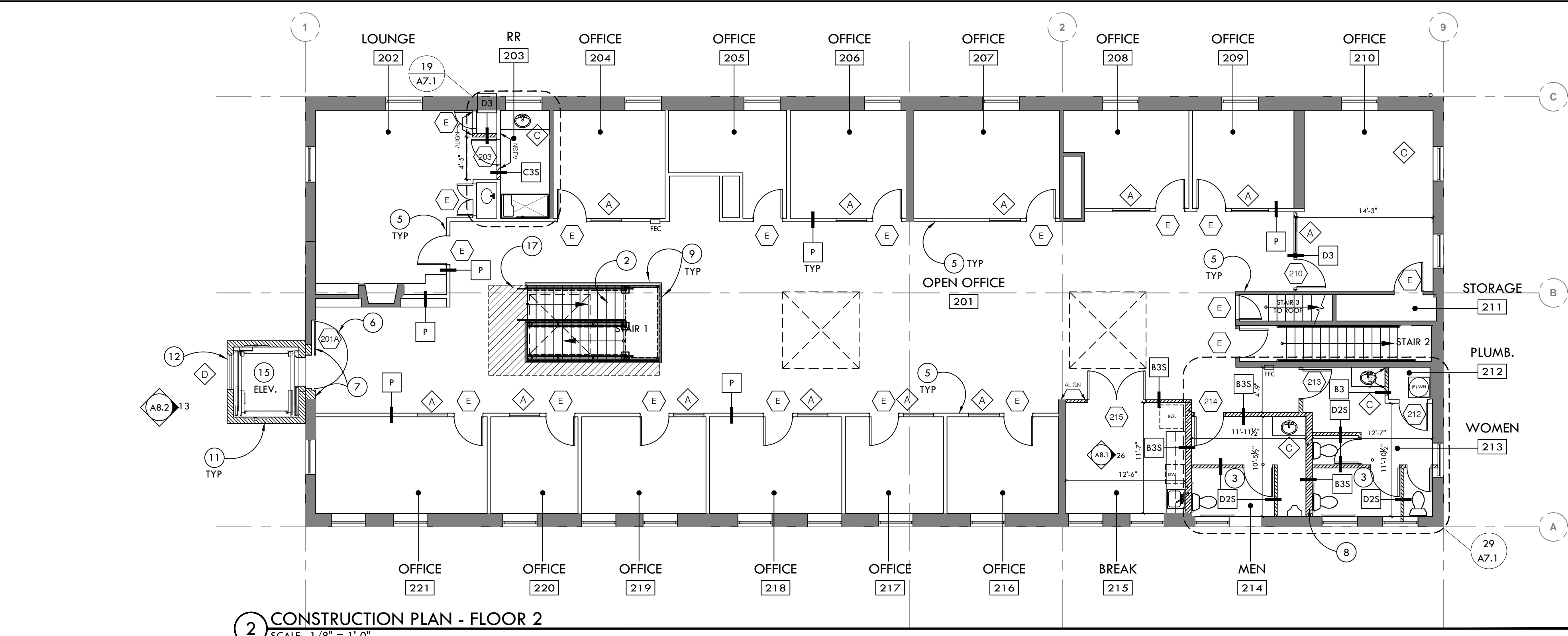
2/11/15

ID	Task Name	Duration	Start	Finish	5, '14		Oct 26, '14			Nov 16, '14			Dec 7, '14			Dec 28, '14			Jan 18, '15			Feb 8, '15			Mar 1, '15			Mar 22, '15			Apr 12, '15			May 3, '15			
					F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W						
47	CITY HOOK-UP	1 day			<div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div><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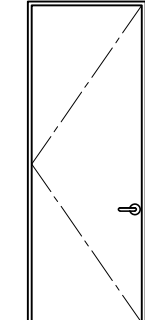
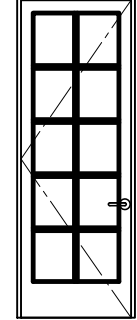
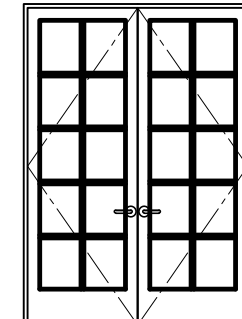
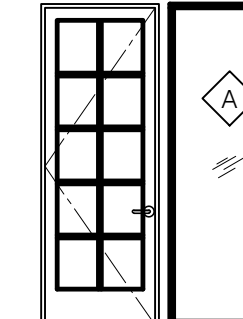
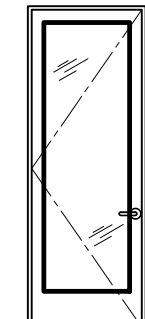
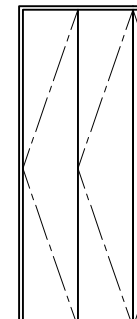

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3 ENLARGED SWITCHBACK STAIR CONSTRUCTION PLAN - FLOOR 1
SCALE: 1/4" = 1'-0"



1 CONSTRUCTION PLAN - FLOOR 1
SCALE: 1/8" = 1'-0"

KEY NOTES		DOOR TYPES		HARDWARE GROUPS		DOOR SCHEDULE																																																																																																																																																																																																																																																																																																																																			
<div>1 PATCH, REPAIR, PAINT WALL DAMAGE FROM ABANDONED DEVICES AND J-BOXES. TYP. THROUGHOUT BOTH FLOORS. U.O.N.</div> <div>2 BUILD NEW PREFAB STEEL PAN STAIR.</div> <div>3 (N) FULL HT. TOILET PARTITIONS, TYP. U.O.N. SEE A7.1 AND A7.2 FOR MORE DETAILS.</div> <div>4 (N) SERVICE WINDOW.</div> <div>5 ALL (E) INTERIOR FACING WALLS SURROUNDING OPEN OFFICE AND MAIN CONFERENCE ROOM TO BE PONY WALLS TO UNDERSIDE OF DECK. SEE WALL TYPE-P DETAIL 14/A9.1</div> <div>6 (N) 180 SWING FIRE SHUTTER DOOR @ ELEVATOR DOOR OPENING. SEE DOOR SCHEDULE.</div> <div>7 REBUILD EXTERIOR WALL T.M.E. WHERE CUT BACK FOR ELEVATOR INSTALLATION.</div> <div>8 6" METAL STUD WALL AT SHARED PLUMBING WALL DETAIL 21/A9.1 SIM.</div> <div>9 (N) CABLE GUARD RAIL AT FLOOR PERIMETER. CABLE GUARD AND HAND RAILS AT OPEN WEST SIDE OF STAIR. SEE DETAILS 15, 20, 26, 28, 30 ON A9.3.</div> <div>10 ADD BACKING IN WALL @ 60" A.F.F. FOR 2 (N) TENANT PROVIDED TV'S.</div> <div>11 BUILD EXTERIOR SHELL WALLS OF ELEVATOR SHAFT T.M.E. SEE ELEVATION 13/A8.2 FOR DETAILS.</div> <div>12 (N) EXTERIOR WINDOW T.M.E. BUILDING STANDARD SPECS.</div> <div>13 ADD ALT #2: REUSE (E) M.C.E. TENANT SPACE ALUMINUM FRAMES & GLAZING</div> <div>14 LOCATION OF REMOTE ELEVATOR EQUIPMENT CLOSET. COORDINATE W/ ELEV. MFGR.</div> <div>15 NEW ELEVATOR, SEE STRUCTURAL DRAWING & MFG. CUT SHEETS FOR ELEVATOR DETAILS.</div> <div>16 PROPOSED LOCATION OF (N) FIRE RISER ON EXTERIOR</div> <div>17 REQUIRES NEW LANDING @ 2ND FLOOR. SEE STRUCTURAL</div> <div>18 NOT USED</div>		<div> A: SINGLE</div> <div> B: SINGLE T.M.E.</div> <div> D: DOUBLE T.M.E.</div> <div> C: SINGLE WITH (N) FULL HT. BORROWED LITE</div> <div> F: SINGLE STORE FRONT</div> <div> E: BI-FOLD DOUBLE DOOR</div> <div> ALIGN WINDOW W/ DR. HEAD</div>		<div>GROUP 1: OFFICE LOCKSET (SINGLE DOOR)</div> <ul style="list-style-type: none">1 ADA COMPLIANT LEVER HANDLE TO MATCH (E) BLDG. STD.1 CYLINDER LOCKSET TO MATCH (E) BLDG. STD.2 PAIR BUTT HINGES TO MATCH (E) BLDG. STD.1 DOOR STOP TO MATCH (E) BLDG. STD. <div>GROUP 2: LATCHSET (SINGLE DOOR)</div> <ul style="list-style-type: none">1 ADA COMPLIANT LEVER HANDLE TO MATCH (E) BLDG. STD.1 CYLINDER LATCHSET TO MATCH (E) BLDG. STD.2 PAIR BUTT HINGES TO MATCH (E) BLDG. STD.1 DOOR STOP TO MATCH (E) BLDG. STD. <div>GROUP 3: LOCKSET WITH CARD READER (SINGLE DOOR)</div> <ul style="list-style-type: none">1 ADA COMPLIANT LEVER HANDLE TO MATCH (E) BLDG. STD.1 CYLINDER LOCKSET TO MATCH (E) BLDG. STD.1 1/2 PAIR BUTT HINGES TO MATCH (E) BLDG. STD.1 1/2 PAIR ELECTRIC HINGE TO MATCH (E) BLDG. STD.1 CARD READER TO MATCH (E) BLDG. STD.1 DOOR STOP TO MATCH (E) BLDG. STD.1 CLOSER <div>GROUP 4: LATCHSET (DOUBLE DOOR)</div> <ul style="list-style-type: none">1 ADA COMPLIANT LEVER HANDLE TO MATCH (E) BLDG. STD.1 CYLINDER LATCHSET TO MATCH (E) BLDG. STD.4 PAIR BUTT HINGES TO MATCH (E) BLDG. STD.2 DOOR STOP TO MATCH (E) BLDG. STD.1 DUSTPROOF STRIKE TO MATCH (E) BLDG. STD. <div>GROUP 5: OFFICE LATCHSET (DOUBLE DOORS)</div> <ul style="list-style-type: none">1 ADA COMPLIANT LEVER HANDLE TO MATCH BLDG. STD.1 CYLINDER LOCKSET TO MATCH (E) BLDG. STD.4 PAIR BUTT HINGES TO MATCH (E) BLDG. STD.2 DOOR STOP TO MATCH (E) BLDG. STD.1 DUSTPROOF STRIKE TO MATCH (E) BLDG. STD.1 FLUSHBOLT TO MATCH (E) BLDG. STD.1 COORDINATOR TO MATCH (E) BLDG. STD.1 ASTRAGAL TO MATCH (E) BLDG. STD.1 CARD READER TO MATCH (E) BLDG. STD. <div>GROUP 6: STORAGE LOCKSET (DOUBLE DOOR)</div> <ul style="list-style-type: none">1 ADA COMPLIANT LEVER HANDLE TO MATCH (E) BLDG. STD.1 CYLINDER LOCKSET TO MATCH (E) BLDG. STD.4 PAIR BUTT HINGES TO MATCH (E) BLDG. STD.1 MANUAL FLUSHBOLT TO MATCH (E) BLDG. STD.1 DUSTPROOF STRIKE TO MATCH (E) BLDG. STD.		<table><tr><th>MARK</th><th>SIZE WxH</th><th>DOOR TYPE</th><th>FRAME TYPE</th><th>HARDWARE</th><th>RATING</th><th>HEAD</th><th>JAMB</th><th>SILL</th><th colspan="4">NOTES</th></tr><tr><td>100</td><td>3'-0"x6'-8"</td><td>A</td><td>MTL</td><td>-</td><td>60 MIN</td><td></td><td></td><td></td><td colspan="4">H.M. DOOR W/ STOREROOM LOCKSET</td></tr><tr><td>101A</td><td>3'-0"x6'-8"</td><td>B</td><td>T.M.E.</td><td>3</td><td></td><td>T.M.E.</td><td>T.M.E.</td><td>T.M.E.</td><td colspan="4">ALL HW TO BE BRUSHED STAINLESS FINISH.</td></tr><tr><td>101B</td><td>3'-0"x6'-8"</td><td>B</td><td>T.M.E.</td><td>3</td><td></td><td>T.M.E.</td><td>T.M.E.</td><td>T.M.E.</td><td colspan="4">ALL HW TO BE BRUSHED STAINLESS FINISH.</td></tr><tr><td>101C</td><td>3'-6"x7'-0"</td><td>A</td><td>MTL</td><td>TBD</td><td>60 MIN</td><td></td><td></td><td></td><td colspan="4">ALL HARDWARE TO BE BRUSHED STAINLESS FINISH. SEE DOOR NOTE 8</td></tr><tr><td>101D</td><td>3'-0"x8'-0"</td><td>F</td><td>ALUM</td><td>3</td><td></td><td></td><td></td><td></td><td colspan="4">ALL HW TO BE BRUSHED STAINLESS FINISH.</td></tr><tr><td>104</td><td>3'-0"x6'-8"</td><td>C</td><td>T.M.E.</td><td>1</td><td></td><td>T.M.E.</td><td>T.M.E.</td><td>T.M.E.</td><td colspan="4">ALL HW TO BE BRUSHED STAINLESS FINISH EXCEPT (E) BRASS HINGES TO REMAIN, REUSE, TYP.</td></tr><tr><td>105</td><td>3'-0"x6'-8"</td><td>C</td><td>T.M.E.</td><td>1</td><td></td><td>T.M.E.</td><td>T.M.E.</td><td>T.M.E.</td><td colspan="4">ALL HW TO BE BRUSHED STAINLESS FINISH EXCEPT (E) BRASS HINGES TO REMAIN, REUSE, TYP.</td></tr><tr><td>106</td><td>3'-0"x6'-8"</td><td>C</td><td>T.M.E.</td><td>1</td><td></td><td>T.M.E.</td><td>T.M.E.</td><td>T.M.E.</td><td colspan="4">ALL HW TO BE BRUSHED STAINLESS FINISH EXCEPT (E) BRASS HINGES TO REMAIN, REUSE, TYP.</td></tr><tr><td>107</td><td>3'-0"x6'-8"</td><td>C</td><td>T.M.E.</td><td>1</td><td></td><td>T.M.E.</td><td>T.M.E.</td><td>T.M.E.</td><td colspan="4">ALL HW TO BE BRUSHED STAINLESS FINISH EXCEPT (E) BRASS HINGES TO REMAIN, REUSE, TYP.</td></tr><tr><td>108</td><td>3'-0"x6'-8"</td><td>C</td><td>T.M.E.</td><td>1</td><td></td><td>T.M.E.</td><td>T.M.E.</td><td>T.M.E.</td><td colspan="4">ALL HW TO BE BRUSHED STAINLESS FINISH EXCEPT (E) BRASS HINGES TO REMAIN, REUSE, TYP.</td></tr><tr><td>109</td><td>3'-0"x6'-8"</td><td>C</td><td>T.M.E.</td><td>1</td><td></td><td>T.M.E.</td><td>T.M.E.</td><td>T.M.E.</td><td colspan="4">ALL HW TO BE BRUSHED STAINLESS FINISH EXCEPT (E) BRASS HINGES TO REMAIN, REUSE, TYP.</td></tr><tr><td>120</td><td>3'-0"x6'-8"</td><td>C</td><td>T.M.E.</td><td>1</td><td></td><td>T.M.E.</td><td>T.M.E.</td><td>T.M.E.</td><td colspan="4">ALL HARDWARE TO BE BRUSHED STAINLESS FINISH. 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<div>1 ALL DOOR, FRAME & WINDOW HEIGHTS ARE TO MATCH EXISTING.</div> <div>2 ALL NEW DOOR FRAMES, HARDWARE AND MISC. METAL FINISHES ARE TO MATCH EXISTING BLDG. STD.</div> <div>3 ALL NEW DOORS ARE TO MATCH EXISTING WOOD TYPE, GRAIN, COLOR AND FINISH.</div> <div>4 ALL GLASS TO BE 3/8" CLEAR VISION TEMPERED GLASS (T), U.O.N.</div> <div>5 ALL EXISTING DOORS ARE TO BE SPOT REFINISHED AS REQUIRED TO PROVIDE LIKE-NEW CONDITION.</div> <div>6 REFER TO DETAIL 21/A9.3 FOR TYPICAL MOUNTING HEIGHT REQUIREMENT.</div> <div>7 PROVIDE 10" KICK PLATE ON PUSH SIDE OF DOORS.</div> <div>8 PROVIDE DOOR MAGNETIC HOLD OPEN DEVICE. INTERCONNECT TO FIRE ALARM SYSTEM.</div> <div>9 PROVIDE AUTOMATIC DOOR CLOSER.</div>																																																																																																																																																																																																																																																																																																																																									
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CONSTRUCTION NOTES

- PATCH AND FINISH DISTURBED AREAS TO MATCH ADJACENT MATERIALS AND FINISHES. REPAIR FIREPROOFING ON STRUCTURAL ELEMENTS. WHERE SLAB ON GRADE IS REMOVED REPLACE ALL SUBSTRATE MATERIALS.
- CLEANUP DAILY. CONTROL DUST AND DEBRIS. KEEP JOB SITE ROOM CLEAN AND FREE OF DEBRIS DAILY.
- MAINTAIN ALL BUILDING SYSTEMS AT ALL TIMES, INCLUDING LIFE SAFETY, FIRE PROTECTION, AND SECURITY SYSTEMS.
- REPORT ANY HAZARDOUS MATERIALS ENCOUNTERED TO THE OWNER/ARCHITECT.
- ADJACENT SPACES ARE OCCUPIED. DO NOT ALLOW ADHESIVE ODOR AND OTHER FUMES TO ENTER HVAC SYSTEM.
- PROVIDE PROTECTION FOR ALL EXISTING FINISHES IN THE SUITE AND IN THE PUBLIC CORRIDORS, AND REPAIR ANY DAMAGE THAT OCCURS.
- QUALITY OF WORK: ALL WORK SHALL BE PLUMB, SQUARE, LEVEL, TRUE, IN PROPER ALIGNMENT, AND SECURELY FASTENED.
- DIMENSIONS ARE FINISHED FACE TO FINISHED FACE, UNLESS OTHERWISE NOTED.
- DIMENSIONS SHALL BE EXACT WITHIN 1/8" IN 10'-0" ALONG FULL HEIGHT AND LENGTH OF PARTITIONS. CONTRACTOR SHALL NOT ADJUST DIMENSIONS MARKED "CLEAR" OR "CLR" WITHOUT WRITTEN APPROVAL FROM THE ARCHITECT.
- CONCEALED WOOD TO BE FIRE TREATED.
- VERIFY PARTITION THICKNESS FOR INTERNAL INCLUSIONS SUCH AS PLUMBING, PANEL BONES, TOILET ROOM ACCESSORIES, ETC.
- GLAZING SHALL CONFORM TO CHAPTER 24 OF CBC, 2013 EDITION.
- INSTALL TEMPERED GLASS WITH MANUFACTURER'S SEAL LOCATED AT A LOWER CORNER OF THE LITE. CONCEAL TONG MARKS IF ANY.
- SILICON SEALANT TO BE CLEAR, UNLESS OTHERWISE NOTED.
- PROVIDE SLIP JOINT AT TOP OF FULL HEIGHT PARTITIONS.
- GYP. BOARD TO BE 5/8" TYPE "X", UNLESS OTHERWISE NOTED. INSTALL GYP. BOARD WITH LONG DIMENSION PERPENDICULAR TO FRAMING.
- PROVIDE WATER RESISTANT GYP. BOARD AT TOILET ROOM PARTITIONS.
- ALL EXPOSED GYP. BOARD EDGES TO HAVE METAL EDGE TRIM.
- CEILING HEIGHT PARTITIONS SHALL BE INSTALLED TIGHT TO FINISHED CEILING, WITH NO JOINTS VARYING MORE THAN 1/8" OVER 6'-0" AND NO JOINTS GREATER THAN 3/16", UNLESS OTHERWISE NOTED.
- GYP. BOARD SHALL CONFORM TO CHAPTER 25 OF CBC, 2013 EDITION.
- GYP. BOARD TO HAVE A "LEVEL 4" FINISHED SURFACE READY TO RECEIVE SCHEDULED FINISH. WHERE DEEP TONE PAINT IS SCHEDULED, SKIM COAT, FULL SURFACE.
- PROVIDE RECESSED METAL CABINETS WITH FIRE EXTINGUISHERS AS INDICATED ON THE DRAWINGS AND AS REQUIRED BY OFFICIALS PER BUILDING STANDARD. ALL PORTIONS OF THE BUILDING SHALL BE WITHIN 75 FEET OF A FIRE EXTINGUISHER. THE MINIMUM SIZE OF THE EXTINGUISHER SHALL BE 2-A-10-BC.
- THE CAVITY FOR ALL RECESSED METAL CABINETS IN 1-HOUR RATED PARTITIONS SHALL BE LINED WITH 5/8" TYPE "X" GYP. BD. TOP, BOTTOM, SIDES, AND BACK.
- MODIFICATIONS OF (E) CONSTRUCTION: OBTAIN APPROVAL FROM ARCHITECT PRIOR TO MODIFYING COLUMN FURNING, RELOCATING PIPES, AND SIMILAR SYSTEMS AND ITEMS, ADJUSTING ANY AND ALL OTHER FIELD CONDITIONS REQUIRED TO FIT PLANS.
- BUILDING STANDARD BLINDS AT ALL EXTERIOR WINDOWS TO REMAIN. PROTECT FROM CONSTRUCTION DAMAGE. RELOCATE TRACKS WHERE NECESSITATED BY NEW CONSTRUCTION.
- DOORS: TRIM THE BOTTOMS OF DOORS TO CLEAR THE TOP OF FINISHED FLOOR, AS APPLICABLE, BY 1/4" INCH MAXIMUM, UNLESS OTHERWISE NOTED. VERIFY SLAB CONDITIONS. TRIM EACH DOOR TO FIT CONDITION. WHERE RADICAL VARIATIONS IN FLOOR ELEVATION EXIST, DOORS SHALL BE ORDERED WITH BOTTOM STILE SIZED TO ACCOMMODATE THESE UNDERCUT CONDITIONS.
- EGRESS DOORS SHALL BE READILY OPENABLE FROM THE EGRESS SIDE WITHOUT THE USE OF A KEY, THUMB TURN, OR ANY SPECIAL KNOWLEDGE OR EFFORT. MANUALLY OPERATED FLUSH BOLTS OR SURFACE BOLTS ARE NOT PERMITTED.

GRAPHIC LEGEND

WALL GRAPHIC KEY

- TYPICAL OF EXISTING CORE & SHELL CONSTRUCTION TO REMAIN. NOTE: THE GRAPHIC REPRESENTATION OF WALLS IN EXISTING AREAS THAT ARE NOT PART OF THIS PROJECT MAY VARY. THIS DATA MAY BE FROM OTHERS.
- TYPICAL OF EXISTING CONSTRUCTION TO REMAIN. NOTE: THE GRAPHIC REPRESENTATION OF WALLS IN EXISTING AREAS THAT ARE NOT PART OF THIS PROJECT MAY VARY. THIS DATA MAY BE FROM OTHERS.
- TYPICAL OF WALLS AND DOORS TO BE REMOVED IF SHOWN ON THIS PLAN. CHECK PROJECT INDEX FOR DEMOLITION.
- TYPICAL OF NEW CEILING HEIGHT AND NEW FULL HEIGHT WALLS; SEE DESIGNATED WALL TYPE DETAIL FOR CONSTRUCTION.
- TYPICAL OF NEW ONE HOUR AND NEW TWO HOUR RATED WALLS; SEE DESIGNATED WALL TYPE DETAIL FOR CONSTRUCTION.
- TYPICAL OF NEW WINDOWS AND NEW WINDOW WALLS; SEE WINDOW SCHEDULE FOR LAYOUT AND CONSTRUCTION.
- TYPICAL OF NEW DOORS; SEE DOOR SCHEDULE FOR LAYOUT, CONSTRUCTION, AND HARDWARE.

WALL TYPE DETAILS

SEE SHEET A0.1 FOR SPECIFIC PARTITION WALL TYPE DETAILS

WALL TYPE TAGS

- FULL HT. 2-HOUR RATED PARTITION SEE DETAIL 21/A9.1
- FULL HT. PARTITION SEE DETAIL 21/A9.1
- Ceiling HT. Partition SEE DETAIL 11/A9.1
- PARTITION TO 6" ABOVE CEILING HT. SEE DETAIL 16/A9.1
- FULL HT. SOUND ATTENUATED PARTITION SEE DETAIL 21/A9.1
- Ceiling HT. SOUND ATTENUATED PARTITION SEE DETAIL 11/A9.1
- SOUND ATTENUATED PARTITION TO 6" ABOVE CEILING HT. SEE DETAIL 16/A9.1
- FULL HT. 1-HOUR RATED PARTITION SEE DETAIL 21/A9.1
- LOW HEIGHT PARTITION SEE DETAIL 11/A9.1
- FURRED PARTITION SEE DETAIL 16/A9.1
- FURRED SOUND ATTENUATED PARTITION SEE DETAIL 21/A9.1
- PONY WALL PARTITION SEE DETAIL 14/A9.1

DOOR SCHEDULE

WINDOW SCHEDULE

DOOR SCHEDULE TAG

WINDOW SCHEDULE TAG

WINDOW TYPES

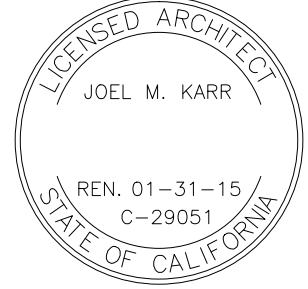


MARIN CLEAN ENERGY
700 5TH AVENUE
SAN RAFAEL, CA 94901

TENANT IMPROVEMENTS



351 california st., suite 350 san francisco ca. 94104
phone: 415.537.9400 fax: 415.863.4209



REV.	DESCRIPTION	DATE
------	-------------	------

1	ISSUE FOR PERMIT	10.31.14
2	PLAN CHECK RESPONSE	12.03.14
3	ISSUE FOR CONSTRUCTION	01.14.15

CONSTRUCTION PLAN

SCALE: AS NOTED
PROJECT NO: 13001.04
THIS SHEET IS 30" x 42"

A2.1

Comparative Cost Analysis**781 Lincoln**

Year	Size	Rent/SF	Rent/Month	Rent/Year	Util&Jan/SF	Util&Jan/Month	Util&Jan/Year	Occ. Cost	Occ Cost/Sf/Month
2014	4957	\$ 3.35	\$ 16,605.95	\$ 199,271.40	Included	Included	Included	\$ 199,271.40	\$ 3.35
2015	4957	\$ 3.38	\$ 16,754.66	\$ 201,055.92	Included	Included	Included	\$ 201,055.92	\$ 3.38

** We are required to move no later than March 1, 2015*

750 Lindaro

Year	Size	Rent/SF	Rent/Month	Rent/Year	Util&Jan/SF	Util&Jan/Month	Util&Jan/Year	Occ. Cost	Occ Cost/Sf/Month
1	6300	\$ 3.38	\$ 21,294.00	\$ 255,528.00	Included	Included	Included	\$ 255,528.00	\$ 3.38
2	6300	\$ 3.48	\$ 21,932.82	\$ 263,193.84	Included	Included	Included	\$ 263,193.84	\$ 3.48
3	6300	\$ 3.58	\$ 22,554.00	\$ 270,648.00	Included	Included	Included	\$ 270,648.00	\$ 3.58
4	6300	\$ 3.70	\$ 23,310.00	\$ 279,720.00	Included	Included	Included	\$ 279,720.00	\$ 3.70
5	6300	\$ 3.81	\$ 24,009.30	\$ 288,111.60	Included	Included	Included	\$ 288,111.60	\$ 3.81
6	6300	\$ 3.93	\$ 24,729.58	\$ 296,754.95	Included	Included	Included	\$ 296,754.95	\$ 3.93
7	6300	\$ 4.04	\$ 25,471.47	\$ 305,657.60	Included	Included	Included	\$ 305,657.60	\$ 4.04
8	6300	\$ 4.16	\$ 26,235.61	\$ 314,827.32	Included	Included	Included	\$ 314,827.32	\$ 4.16
9	6300	\$ 4.29	\$ 27,022.68	\$ 324,272.14	Included	Included	Included	\$ 324,272.14	\$ 4.29
10	6300	\$ 4.42	\$ 27,833.36	\$ 334,000.31	Included	Included	Included	\$ 334,000.31	\$ 4.42
Average		\$ 3.73	\$ 23,472.29	\$281,667.52				\$281,667.52	\$ 3.73

700 Fifth

Year	Size	Rent/SF	Rent/Month	Rent/Year	Util&Jan/SF	Util&Jan/Month	Util&Jan/Year	Occ. Cost	Occ Cost/Sf/Month
1	10710	\$ 1.86	\$ 19,890.00	\$ 179,010.00	\$ 0.20	\$ 2,142.00	\$ 25,704.00	\$ 204,714.00	\$ 1.59
2	10710	\$ 2.50	\$ 26,790.00	\$ 321,480.00	\$ 0.21	\$ 2,206.26	\$ 26,475.12	\$ 347,955.12	\$ 2.71
3	10710	\$ 3.25	\$ 34,768.00	\$ 417,216.00	\$ 0.21	\$ 2,272.45	\$ 27,269.37	\$ 444,485.37	\$ 3.46
4	10710	\$ 3.34	\$ 35,812.00	\$ 429,744.00	\$ 0.22	\$ 2,340.62	\$ 28,087.45	\$ 457,831.45	\$ 3.56
5	10710	\$ 3.44	\$ 36,886.00	\$ 442,632.00	\$ 0.23	\$ 2,410.84	\$ 28,930.08	\$ 471,562.08	\$ 3.67
6	10710	\$ 3.58	\$ 38,361.00	\$ 460,332.00	\$ 0.23	\$ 2,483.17	\$ 29,797.98	\$ 490,129.98	\$ 3.81
7	10710	\$ 3.73	\$ 39,896.00	\$ 478,752.00	\$ 0.24	\$ 2,557.66	\$ 30,691.92	\$ 509,443.92	\$ 3.96
8	10710	\$ 3.87	\$ 41,492.00	\$ 497,904.00	\$ 0.25	\$ 2,634.39	\$ 31,612.68	\$ 529,516.68	\$ 4.12
9	10710	\$ 4.03	\$ 43,151.00	\$ 517,812.00	\$ 0.25	\$ 2,713.42	\$ 32,561.06	\$ 550,373.06	\$ 4.28
10	10710	\$ 4.19	\$ 44,877.00	\$ 538,524.00	\$ 0.26	\$ 2,794.82	\$ 33,537.89	\$ 572,061.89	\$ 4.45
Average		\$ 3.38	\$ 36,192.30	\$ 428,340.60	\$ 0.23	\$ 2,455.56	\$ 29,466.76	\$ 457,807.36	\$ 3.56



March 5, 2015

TO: Marin Clean Energy Board

FROM: Sarah Estes-Smith, Administrative Associate

RE: Seventh Agreement with Maher Accountancy (Agenda Item #05 – C.4)

ATTACHMENT: Seventh Agreement with Maher Accountancy

Dear Board Members:

SUMMARY:

On March 4, 2010 Maher Accountancy began providing MCE with general accounting services.

Maher Accountancy continues to provide general accountancy services, budget tracking, invoice processing, as well as employee payroll and employee benefit and accruals accounting services for MCE.

MCE staff has prepared the Seventh Agreement with Maher Accountancy to continue these essential services with an effective date of April 1, 2015 through March 31, 2016 with a maximum cost not to exceed \$160,000.

Recommendation: Approve the Seventh Agreement with Maher Accountancy.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**SEVENTH AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND MAHER ACCOUNTANCY**

THIS SEVENTH AGREEMENT ("Agreement") is made and entered into this day **March 5, 2015** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and MAHER ACCOUNTANCY, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: accounting and payroll processing 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 **\$160,000**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **April 1, 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:

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 the 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.

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. Copies of any of the above-referenced local laws and resolutions may be secured from MCE's contact person referenced in paragraph 19. NOTICES below.

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:	700 Fifth 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:	John Maher
Address:	1101 Fifth Avenue, Suite 200
	San Rafael, CA 94901
Email Address:	jmaher@maher CPA.com
Telephone No.:	(415) 459-1249 ext. 1

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 services as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

General Accounting Services

- Prepare timely monthly financial statements
- Monitor compliance with budgetary limits over expenditures
- Monitor services provider contract fiscal provisions
- Process cash disbursements
- Process payroll and maintain compensated absence accounting records
- Manage cash balances
- Manage the general ledger and prepare analyses to reconcile bank and other accounts
- Provide a means of maintaining appropriate segregation of duties and other internal controls
- Assistance with development and maintenance of budget for expenditures
- Maintain segregated account structure to enable regulatory accounting for Energy Efficiency program, maintenance of incentive payments, and budget reporting

Assistance with Annual Financial Statement Audit

Maher Accountancy shall prepare annual financial statement in accordance with generally accepted accounting principles, prepare and provide financial analyses and other support to MCE's independent auditors in order to minimize the cost of the audit.

Additional Accounting or Consulting Services, as necessary

Services requested by the CEO that are beyond the scope indicated above will be performed under a separate agreement.

EXHIBIT B
FEES AND PAYMENT SCHEDULE

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

- Fees for general accounting services and payroll processing will be performed for \$144,000. Payment will be made in monthly installments of \$12,000, on or about the 15th of each month.
- Assistance with the annual audit will be performed for \$16,000 and will be payable at the conclusion of the audit.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$160,000** for the term of the agreement.



March 5, 2015

TO: Marin Clean Energy Board

FROM: Sarah Estes-Smith, Administrative Associate

RE: Fourth Agreement with Jay Marshall (Agenda Item #05 – C.5)

ATTACHMENT: Fourth Agreement with Jay Marshall

Dear Board Members:

SUMMARY:

Jay Marshall has been providing Information Technology (IT) support to MCE since July 2010, including computer, telephone and internet support services. The attached Fourth Agreement would allow for Jay Marshall to continue providing core business IT services and support to the MCE staff between April 1, 2015 and March 31, 2016. The contract amount will not exceed \$35,000.

Recommendation: Approve the Fourth Agreement with Jay Marshall.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**FOURTH AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND JAY MARSHALL**

THIRD AGREEMENT ("Agreement") is made and entered into this day **March 5, 2015** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and JAY MARSHALL, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: general information technology (IT) support as requested by MCE staff;

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 **\$35,000**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **April 1, 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:

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 the 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.

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. Copies of any of the above-referenced local laws and resolutions may be secured from MCE's contact person referenced in paragraph 19. NOTICES below.

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:	700 Fifth 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:	Jay Marshall
Address:	16 Portola Avenue
	San Rafael, CA 94903
Email Address:	jay@primemovertech.com
Telephone No.:	(415) 987-7153

20. ACKNOWLEDGEMENT OF EXHIBITS

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

IN WITNESS WHEREOF, the parties have executed this 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 shall be responsible for the complete and successful move and integration of all IT and communications equipment from MCE's existing office at 781 Lincoln Avenue, Suite 320 in San Rafael to the new headquarters at 700 Fifth Avenue in San Rafael. This includes all individual work stations, conference rooms, server room, and other data and communication drop locations throughout the new office. The move will take place in March of 2015 and any related technical issues that arise at the start of this agreement will take priority over all other scope of work.

As requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement, the Contractor will provide the following general information technology (IT) support services for maintaining and addressing issues related to operations of:

- Computer systems, including desktops, networking, internet connectivity
- File server and Switch/WIFI/Firewall
- Telephone systems, including 25 handsets, voicemail, Allwork version 7.5 telephony software, connections to Internet and SIP provider for telephony
- Microsoft operating system and a single file/print server and Service Pack Installation and updates as required
- Google Applications and Egnyte file services support (Email and Cloud Back-up)
- Software, including Office, Acrobat Professional, Dreamweaver, anti-virus and anti-malware, and others
- Other hardware components

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

Support is available Monday through Friday from 9:00am to 5:00pm, excluding holidays.

EXHIBIT B
FEES AND PAYMENT SCHEDULE

For services provided under this agreement, MCE shall pay the Contractor an hourly fee of \$125 per hour, billed in .25 hour increments. Contractor shall bill MCE monthly for all services rendered. Invoices will not be accepted if received more than 60 days from the original invoice date.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$35,000** for the term of the agreement.

EXHIBIT C
INSURANCE REDUCTION/WAIVER (if applicable)

CONTRACTOR: Jay Marshall

CONTRACT TITLE: Fourth Agreement By and Between Marin Clean Energy and Jay Marshall

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

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

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

The nature of services being provided by this contractor does not place MCE into any significant liability risk.
Contractor shall provide proof of individual automobile liability insurance.

Contract Manager Signature: _____

Date: _____

Telephone: _____

Approved by: _____

Date: _____



March 5, 2015

TO: Marin Clean Energy Board

FROM: Sarah Estes-Smith, Administrative Associate

RE: Third Agreement with Braun, Blaising, McLaughlin & Smith
(Agenda Item #05 – C.6)

ATTACHMENT: Third Agreement with Braun, Blaising, McLaughlin & Smith

Dear Board Members:

SUMMARY:

Braun, Blaising, McLaughlin & Smith (BBMS) has provided legal and regulatory assistance to MCE through two Agreements for services. Specifically, BBMS has provided assistance on the Long Term Procurement Plan (LTPP) proceedings, Energy Resource Recovery Account (ERRA) proceedings and other regulatory proceedings as requested. BBMS has also provided assistance on legal questions related to CCA and municipal utility issues and other legal questions as requested. There is an ongoing need for the services provided by BBMS, and BBMS has proven to be an excellent provider of such services. Staff recommends approval of a Third Agreement with Braun, Blaising, McLaughlin & Smith in the amount of \$50,000 for continuation of legal and regulatory services.

Recommendation: Approve the Third Agreement with Braun, Blaising, McLaughlin & Smith.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**THIRD AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND BRAUN, BLAISING, MCLAUGHLIN & SMITH**

THIS THIRD AGREEMENT ("Agreement") is made and entered into this day **March 5, 2015** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and BRAUN, BLAISING, MCLAUGHLIN & SMITH, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: regulatory and legal services as needed and requested by MCE staff;

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 **April 1, 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:

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 the 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.

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. Copies of any of the above-referenced local laws and resolutions may be secured from MCE's contact person referenced in paragraph 19. NOTICES below.

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:	700 Fifth 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:	Scott Blaising
Address:	915 L Street, Suite 1270
	Sacramento, CA 95814
Email Address:	blaising@braunlegal.com
Telephone No.:	(916) 682-9702 / (916) 712-3961

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 task-specific legal and regulatory services and assistance 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 in accordance with the following annual rates for the following attorneys:

Senior Partners	\$390
Junior Partners	\$315
Senior Associates	\$290
Junior Associates	\$240
Of Counsel	\$305-\$345
Contract Associate (As Authorized)	\$270
Law Clerk and Associates Not Admitted to Bar	\$150

The contractor shall bill in .10 hour increments on a monthly basis for all services rendered. 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.



March 5, 2015

TO: Marin Clean Energy Board

FROM: Sarah Estes-Smith, Administrative Associate

RE: Fifth Agreement with Niemela Pappas & Associates (Agenda Item #05 – C.7)

ATTACHMENT: Fifth Agreement with Niemela Pappas & Associates

Dear Board Members:

SUMMARY:

Niemela Pappas & Associates (formerly Lehman, Levi, Pappas & Sadler) has provided contract lobbyist services on behalf of MCE. Staff recommends creating a new agreement with Niemela Pappas & Associates in the amount of \$90,000 for continuation of these services.

Recommendation: Approve the Fifth Agreement with Niemela Pappas & Associates.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**FIFTH AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND NIEMELA PAPPAS & ASSOCIATES**

THIS FIFTH AGREEMENT ("Agreement") is made and entered into this day **March 5, 2015** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and NIEMELA PAPPAS & ASSOCIATES, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: Contractor will act as a contract lobbyist on behalf of MCE as needed and as requested 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 **\$90,000**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **April 1, 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:

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 the 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.

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. Copies of any of the above-referenced local laws and resolutions may be secured from MCE's contact person referenced in paragraph 19. NOTICES below.

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 Contract Manager and all notices shall be given to MCE at the following location:

Contract Manager:	Sarah Estes-Smith
MCE Address:	700 Fifth 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:	Emily Pappas
Address:	1414 K Street, Suite 270
	Sacramento, CA 95814
Email Address:	pappas@npalobby.com
Telephone No.:	(916) 661-5365

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 act as contract lobbyist on behalf of MCE. Work will be provided primarily by Emily Pappas. Activities will include:

- Maintain constant communication with MCE staff.
- Monitor on a daily basis all bills that are introduced and amended.
- Provide immediate notification of bills and related legislative activities that impact MCE. This includes any lobbying efforts directed for and against MCE, and the context surrounding them.
- Maintain a regularly updated bill tracking record.
- Monitor state regulatory agencies, such as the CPUC and CEC.
- Continuously educate members of the Legislature, key legislative staff, members of the Governor's Administration, and other key Capitol decision makers about MCE. This will include legislators that represent areas of MCE expansion.
- Continuously cultivate MCE's relationships with its own legislative delegation.
- Set up meetings for MCE and legislators, key committee staff, members of the Governor's Administration, and relevant interest groups as needed.
- Actively lobby bills that either support or negatively impact MCE when directed to do so. These activities include:
 - Working with MCE staff on drafting letters of support or opposition, and delivering those letters to the correct players.
 - Providing strategic advice on how to effectively achieve MCE's desired outcome.
 - Testifying in committees.
 - Lobbying legislators.
 - Lobbying the Governor's office.
 - Lobbying appropriate regulatory agencies to support MCE's positions.
 - Soliciting support from MCE's allies.
- On bills sponsored by MCE, or requiring amendments, activities will include, in addition to those listed above:
 - Assistance in drafting language, and inserting it into applicable bills, such as the Budget Act.
 - Garnering support from effective Capitol-based entities that share MCE's position.
- Assist MCE in efforts to build an effective statewide coalition with MCE supporters in order to push MCE legislative goals to the finish line.
- Identify opportunities that will enhance MCE's clout both in the Capitol and in regulatory agencies, such as supporting gubernatorial appointees requiring confirmation by the State Senate.
- Prepare necessary documents for filing with the Secretary of State and provide these documents to MCE for approval and signature.

EXHIBIT B
FEES AND PAYMENT SCHEDULE

Contractor shall bill MCE monthly for all professional services rendered under this agreement. A monthly retainer of \$7,500 will be paid by MCE to Contractor for each month of service beginning April 1, 2015 until the end of the agreement.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$90,000** for the term of the agreement.



March 5, 2015

TO: Marin Clean Energy Board

FROM: Sarah Estes-Smith, Administrative Associate

RE: Sixth Agreement with Richards, Watson & Gershon (Agenda Item #05 – C.8)

ATTACHMENT: Sixth Agreement with Richards, Watson & Gershon

Dear Board Members:

SUMMARY:

Richards, Watson & Gershon provides various municipal and general legal services to Marin Clean Energy. These services have included providing advice on a wide range of municipal and joint powers authority issues, recommendations regarding the Brown Act, the Public Records Act, the California Environmental Quality Act and conflict of interest laws. Staff recommends creating a new contract in the amount of \$90,000 with Richards, Watson & Gershon for continuation of these essential services.

Recommendation: Approve the Sixth Agreement with Richards, Watson & Gershon.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**SIXTH AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND RICHARDS, WATSON & GERSHON**

THIS SIXTH AGREEMENT ("Agreement") is made and entered into this day **March 5, 2015** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and RICARDS, WATSON & GERSHON, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: legal assistance regarding joint powers authority issues and procedures;

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 **\$90,000**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **April 1, 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:

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 the 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.

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. Copies of any of the above-referenced local laws and resolutions may be secured from MCE's contact person referenced in paragraph 19. NOTICES below.

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:	700 Fifth 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:	Greg Stepanicich
Address:	44 Montgomery Street, Suite 3800
	San Francisco, CA 94104-4811
Email Address:	gstepanicich@rwglaw.com
Telephone No.:	(415) 421-8484

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 legal services as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

- Attendance at meetings of the Board of Directors and its subcommittees when requested;
- Advice concerning MCE's Joint Powers Agreement;
- Transactions with various contractors, and legal opinions related thereto;
- The Brown Act, Public Records Act, California Environmental Quality Act and conflict of interest laws; and
- Other legal tasks as specified by the CEO.

EXHIBIT B
FEES AND PAYMENT SCHEDULE

Contractor shall bill monthly for all services rendered under this agreement, according to the following hourly rates:

Shareholders/Senior Attorneys	\$275
Associates	\$225

Reimbursement of costs shall include copying charges (at the rate of 10 cents per page), messenger and delivery services, express mail and other similar out-of-pocket expenses at the firm's cost.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$90,000** for the term of the agreement.



March 5, 2015

TO: Marin Clean Energy Board

FROM: Sarah Estes-Smith, Administrative Associate

RE: Third Agreement with Troutman Sanders, LLP (Agenda Item #05 – C.9)

ATTACHMENT: Third Agreement with Troutman Sanders, LLP

Dear Board Members:

SUMMARY:

Troutman Sanders, LLP provides regulatory services pertaining to new and existing power purchase agreements, including transaction support in drafting, negotiations, finalization and implementation. Troutman Sanders is also working closely with MCE staff on open season and development of future power purchase agreements. Staff recommends creating a new contract in the amount of \$96,000 with Troutman Sanders, LLP for energy transaction and related services.

Recommendation: Approve the Third Agreement with Troutman Sanders, LLP.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**THIRD AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND TROUTMAN SANDERS LLP**

THIS THIRD AGREEMENT ("Agreement") is made and entered into this day **March 5, 2015** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and TROUTMAN SANDERS LLP, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: legal services to MCE related to new and existing power purchase agreements as requested by MCE staff;

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 **\$96,000**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **April 1, 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:

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 the 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.

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. Copies of any of the above-referenced local laws and resolutions may be secured from MCE's contact person referenced in paragraph 19. NOTICES below.

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:	700 Fifth 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:	Stephen Hall
Address:	805 SW Broadway, Suite 1560
	Portland, OR 97205
Email Address:	stephen.hall@troutmansanders.com
Telephone No.:	(503) 290-2336

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 legal services to MCE related to new and existing power purchase agreements as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement. Services may also include transaction support in drafting, negotiations, finalization, and appropriate implementation of power supply transactions.

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:

Stephen Hall	\$675 per hour
Brian Harms	\$575 per hour
John Leonti	\$675 per hour

All rates are subject to a 10 percent discount. Contractor shall bill MCE monthly. Contractor services will be task-specific with MCE providing direction on tasks to be undertaken in writing by letter, voice communication or email.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$96,000** for the term of the agreement.



March 5, 2015

TO: Marin Clean Energy Board
FROM: Sarah Estes-Smith, Administrative Associate
RE: Sixth Agreement with Green Ideals (Agenda Item #05 – C.10)
ATTACHMENT: Sixth Agreement with Green Ideals

Dear Board Members:

SUMMARY:

Green Ideals began providing marketing, branding, graphic design and communication services for MCE in 2010.

The Fifth Agreement with Green Ideals is currently set to expire on March 31, 2015. The attached Sixth Agreement with Green Ideals would allow for continued marketing, branding, graphic design and communication services for a total amount not to exceed \$40,000.

Recommendation: Approve the Sixth Agreement with Green Ideals.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**SIXTH AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND GREEN IDEALS**

THIS SIXTH AGREEMENT ("Agreement") is made and entered into this day **March 5, 2015** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and (CONTRACTOR), hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: marketing, branding, graphic design and communications services as requested and 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 **\$40,000**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **April 1, 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:

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 the 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.

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. Copies of any of the above-referenced local laws and resolutions may be secured from MCE's contact person referenced in paragraph 19. NOTICES below.

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:	700 Fifth 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:	Susan Bierzychudek
Address:	400 Red Hill Avenue
	San Anselmo, CA 94960
Email Address:	susan@green-ideals.com
Telephone No.:	(415) 453-8070

20. ACKNOWLEDGEMENT OF EXHIBITS

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

IN WITNESS WHEREOF, the parties have executed this 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 marketing, branding, graphic design and communications services as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement.

EXHIBIT B
FEES AND PAYMENT SCHEDULE

Contractor shall be compensated at a rate of \$175 per hour for professional services rendered under this agreement. Contractor shall bill monthly. In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$40,000** for the term of the agreement.

EXHIBIT C
INSURANCE REDUCTION/WAIVER (if applicable)

CONTRACTOR: Green Ideals

CONTRACT TITLE: Sixth Agreement By and Between Marin Clean Energy and Green Ideals

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

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

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

Workers' Compensation – Contractor is a sole proprietor and is not required to hold Worker's Compensation
insurance.
Professional Liability – The nature of services being provided by this contractor does not place MCE into any
significant liability risk.

Contract Manager Signature: _____

Date: _____

Telephone: _____

Approved by: _____

Date: _____



March 5, 2015

TO: Marin Clean Energy Board

FROM: Greg Brehm, Director of Power Resources

RE: Second Amendment to Power Purchase Agreement with Cottonwood Solar, LLC (Agenda Item #05 – C.11)

ATTACHMENTS: A. Draft Second Amendment to Power Purchase Agreement with Cottonwood Solar, LLC
B. First Amendment to Power Purchase Agreement with Cottonwood Solar, LLC
C. Original Power Purchase Agreement with Cottonwood Solar, LLC

Dear Board Members:

Background:

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

In December 2013, your Board approved the attached First Amendment to Power Purchase Agreement with Cottonwood Solar, LLC, which, based on the decrease of equipment prices and improvement in system efficiencies, allowed EDF to modify the selected technology to utilize a tracking array and crystalline photovoltaic modules at a lower system cost than their original system design. It was determined that this technology change would result in significant production increases per MW of capacity. To accommodate the new technology while ensuring that production would be in alignment with original projections and MCE's related planning activities, MCE and EDF worked collaboratively to prepare the First Amendment to the Power Purchase Agreement with Cottonwood Solar, LLC, which included the following changes:

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

A proposed Second Amendment to the Power Purchase Agreement with Cottonwood Solar, LLC is now needed to facilitate the following contracting items specific to the 1 MW Marin County "local" project, now planned as a Carport Structure to be built in Novato at the Buck Institute. Needed changes include:

1. Separate Interconnection application process for a Non-Export facility distinct from the larger 23 MW project in the central valley which exports power to the CAISO controlled grid. This Second Amendment also accommodates a separate Delivery Point and metering arrangement.
2. Adds references to multiple "Host Site Agreements" required to allow this separate interconnection, site lease, meter location, and settlement process.
3. Reinstates the general applicability of the Power Purchase Agreement limiting the enforcement of creditors' rights by the exercise of judicial discretion in accordance with general principles of equity which was altered in the First Amendment.

Recommendation: Authorize execution of the Second Amendment to Power Purchase Agreement with Cottonwood Solar, LLC for renewable energy supply.

SECOND AMENDMENT TO POWER PURCHASE AGREEMENT

THIS SECOND AMENDMENT TO POWER PURCHASE AGREEMENT (the “**Second Amendment**”), is made, entered into and is effective as of _____, 2015 (the “**Effective Date**”), by and between Cottonwood Solar, LLC (“**Seller**”) and Marin Clean Energy, f/k/a Marin Energy Authority (“**Buyer**”). Seller and Buyer are each a “**Party**”, and are jointly referred to as “**Parties**”.

RECITALS

WHEREAS, Seller and Buyer are parties to that certain Solar Power Purchase and Sale Agreement dated July 8, 2011, as amended by that First Amendment to Power Purchase Agreement, dated as of December 5, 2013 (as amended, the “**Agreement**”);

WHEREAS, the Agreement originally contemplated, among other things, that one of the solar generating facilities would be developed, constructed and installed at a carport facility and interconnected with the PTO such that Energy from that facility could be exported to the PTO’s distribution system;

WHEREAS, Seller and Buyer desire to revise the Agreement as provided herein such that the carport facility will be interconnected directly to the host site instead of to the PTO’s distribution system.

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

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

2. **Amendments.**

2.1 Section 1.1 is hereby amended by adding the following definitions in the appropriate alphabetical order:

“**Carport Facility**” means the solar carport facility located in Marin County, as described in Exhibit A.

“**Host Customer**” means the retail, end-use electricity customer at the location of the Carport Facility.

“**Host Interruption**” means any situation, event or circumstance, other than a Force Majeure Event, Buyer Default or Curtailment Period, that does not arise from a Seller Default and that results in the Carport Facility being unable (i) to deliver Energy to any Delivery Point, (ii) to remain located at the site or (iii) to remain interconnected with all of the Host Load, including in each case the termination or other failure to maintain any Host Site Agreement, any reduction in

the Host Load, any emergency or operational condition at the Host Customer's facility, the inability of Seller to access the Carport Facility, or any electrical outage at or affecting Host Customer's facility.

"Host Load" means the electrical load at the location of the Carport Facility identified on Exhibit A.

"Host Site Agreements" means any and all agreements and elections of tariffed services, whether such agreements or elections are with the PTO, Buyer, Seller or any other Person, that must be executed and maintained by the Host Customer in order (i) to permit the Carport Facility to be located at the Host Customer's location, (ii) to permit the Carport Facility to supply the Host Load, or (iii) to permit the Host Customer to receive electricity service from Buyer or transmission, distribution and related services from Host Customer's local utility.

"Rule 21" means the PTO's Electric Rule No. 21 Generation Facility Interconnections, approved by the California Public Utilities Commission as of the Effective Date, as applicable to Non-Export Generating Facilities (as defined therein).

2.2 The definition of **"Delivery Point"** in Section 1.1 is hereby deleted in its entirety and replaced with the following definition:

"Delivery Point" means (a) the 12 kV bus at the CAISO pnode associated with each Solar Facility other than the Carport Facility, as described in Exhibit A, and (b) as applicable to the Carport Facility only, the single location or locations where the electrical system of the Carport Facility interconnects with the electrical system of the Host Load.

2.3 The definition of **"Forced Facility Outage"** in Section 1.1 is hereby modified as follows:

the phrase "or Host Interruption" is added after "Transmission System".

2.4 The definition of **"Interconnection Agreement"** in Section 1.1 is hereby deleted in its entirety and replaced with the following definition:

"Interconnection Agreement" means (a) the interconnection agreement entered into by Seller pursuant to which each Solar Facility (other than the Carport Facility) will be interconnected with the Transmission System, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term, and (b) with respect to the Carport Facility, the Generation Facility Interconnection Agreement for Non-Exporting Generation Facilities as approved by the California Public Utilities Commission and executed by Seller and, if applicable, any Special Facilities Agreement that may be required thereunder.

2.5 The definition of “**Interconnection Facilities**” in Section 1.1 is hereby deleted in its entirety and replaced with the following definition:

“**Interconnection Facilities**” means (a) with respect to each Solar Facility (other than the Carport Facility), the interconnection facilities, control and protective devices and metering facilities required to connect such Solar Facility with the Transmission System in order to meet the terms and conditions of this Agreement and (b) with respect to the Carport Facility, the interconnection facilities, control and protective devices required to interconnect the Carport Facility in accordance with Rule 21.

2.6 The definition of “**Participating Transmission Owner**” or “**PTO**” in Section 1.1 is hereby deleted in its entirety and replaced with the following definition:

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

2.7 The definition of “**Test Energy**” in Section 1.1 is hereby modified as follows:

the phrase “other than the Carport Facility” is added after “Solar Facilities”.

2.8 Section 4.5 is hereby deleted and replaced in its entirety with the following:

4.5 **Events Downstream of the Delivery Point.** Seller shall be responsible for all interconnection, electric losses and transmission arrangements and costs required to make available Energy and Test Energy from the Solar Facilities to the Delivery Point. Buyer shall be responsible for all CAISO and PTO costs and charges, electric transmission losses and congestion at and from the Delivery Point to points beyond. As between the Parties, neither Party assumes responsibility for or shall be liable under this Agreement for any costs or charges assessed on or imposed by Host Customer.

2.9 The following is hereby added after the last sentence of Section 8.1:

“With respect to the Carport Facility, the meter shall: (1) be placed on the electrical system of the Carport Facility; (2) include appropriate adjustments to reflect electrical losses before the Delivery Point; and (3) not meter or be affected by the electrical usage of the Host Load. The Parties shall cooperate to ensure that Buyer receives the data from this meter in a timely manner.”

2.10 The following is hereby added at the end of Section 11.1(c), but before the period:

“; or (viii) a Host Interruption except if such interruption otherwise constitutes a Force Majeure Event.”

2.11 Exhibit A is hereby deleted in its entirety and replaced with a new Exhibit A, included as Attachment 1 to this Second Amendment.

2.12 Notwithstanding anything in the Agreement to the contrary, with respect to the Carport Facility, the amendments to the Agreement set forth on Attachment 2 to this Second Amendment are hereby incorporated into the Agreement where applicable. In the event of a conflict between Attachment 2 and the Agreement, the provisions of Attachment 2 shall prevail.

3. **Miscellaneous.**

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

3.2 **Effective Date.** This Second Amendment shall be effective as of the Effective Date defined above.

3.3 **Representations and Warranties.** Each of the Parties agrees, represents and warrants in favor of the other that (a) it has the full power and authority to execute and deliver this Second Amendment and to perform its obligations hereunder; (b) it has taken all action necessary for the execution and delivery of this Second Amendment and the performance by it of its obligations hereunder, (c) that this Second Amendment has been executed and delivered by a duly authorized representative, and (d) the Agreement, as modified and amended by this Second Amendment, constitutes a legal, valid and binding obligation of each such Party enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

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

3.5 **Counterparts.** This Second Amendment may be executed in any number of separate counterparts, each of which shall be deemed an original and all of which, taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of this Second Amendment by facsimile or other electronic method of transmission

shall be equally as effective as delivery of an original executed counterpart of this Second Amendment.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

COTTONWOOD SOLAR, LLC

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

Signature: _____

Name:

Title:

MARIN CLEAN ENERGY

Signature: _____

Name: _____

Title: Chairperson

Signature: _____

Name: _____

Title: Executive Officer

Approved as to form:

Signature: _____

Name: _____

Title: Legal Director

Attachment 1 to Second Amendment**EXHIBIT A****DESCRIPTION OF POTENTIAL SOLAR FACILITIES**

Site Name	APN	County	Acres	MW AC	P-node/Delivery Point
Corcoran - City of Corcoran	034-012-015	Kings	~ 136.5	11	34420_CORCORAN_115_B1 or 34528_CORCORAN_70.0_B1
Goose Lake - Esnoz	069-162-12	Kern	~ 158.2	12	34702_GOSE LKE_115_B2
Marin Carport - Buck Institute	125-580-07	Marin	~ 4.29	1	[At the electrical switchgear located on the property where the solar carport facilities are located]

* Seller shall use commercially reasonable efforts to locate sites in Marin County for construction of solar carport facilities totaling approximately 1 MW of Inverter Capacity, as agreed by the Parties. Seller shall notify Buyer upon site identification, and Seller's desire to enter into lease negotiations for the site or sites. The terms of any lease or leases must be satisfactory to Seller, in its sole discretion. Subject to Section 2.5, in the event that Seller, after commercially reasonable efforts, is unable to achieve Commercial Operation for the solar carport facilities in Marin County totaling 1 MW within one (1) year after the Commercial Operation Date, Seller shall pay "**Carport Damages**" to Buyer in the amount of Two Hundred Fifty Thousand Dollars (\$250,000), pro-rated and payable for that portion of the Inverter Capacity, as agreed by the Parties hereunder for which Commercial Operation has not been achieved. Upon the payment of Carport Damages, Seller shall have no further obligation to construct the corresponding solar carport facility or facilities in Marin County for the applicable portion, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

Attachment 2 to Second Amendment

Amendments Applicable to Carport Facility

The Parties hereby agree that the following provisions shall apply where applicable throughout the Agreement:

1. Defined Terms. Any references in the Agreement to the “solar carport facility or facilities” or the “solar carport facility or facilities in Marin County” shall be deemed to be references to the “Carport Facility”.

2. CAISO. Any references in the Agreement to the applicability of CAISO, or CAISO-related approvals, requirements, tariffs, policies or protocols, to the Solar Facilities shall be to the Solar Facilities, other than the Carport Facility.

3. Excess Carport Product.

3.1 Sections 5.3(a) of the Agreement shall not apply to the Carport Facility.

3.2 The Parties acknowledge and agree that the Carport Facility is a “Non-Exporting Generating Facility” as such term is defined in Rule 21. If (i) Buyer fails or is unable to take Energy made available during any period, and such failure to take is not excused by a Seller Default or Force Majeure Event, or (ii) Seller is not able to make Energy available at the Delivery Point due to a Buyer Default, Buyer shall pay Seller an amount equal to the product of (1) the Deemed Energy Generation of the Carport Facility for such period and (2) the Contract Price applicable during such period.

4. Full Capacity Requirements. Section 3.7(a)-(d) shall not apply to the Carport Facility.

5. PIRP. Section 3.9 of the Agreement shall not apply to the Carport Facility.

6. Scheduling. Section 4.3 of the Agreement shall not apply to the Carport Facility.

7. Metering.

7.1 In Section 8.1 of the Agreement, only the first and second sentences shall apply to the Carport Facility.

7.2 Buyer and Seller shall cooperate on the form of meter data to be provided to Buyer. In no event shall the meter data provided to Buyer be provided to CAISO by Buyer or read by CAISO without the prior written consent of Seller.

FIRST AMENDMENT TO POWER PURCHASE AGREEMENT

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

RECITALS:

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

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

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

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

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

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

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

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

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

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

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

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

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

2.4 The following definitions are hereby added to Section 1.1:

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

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

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

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

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

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

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

3.3 Contract Price.

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

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

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

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

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

4. Clarifications Related to Solar Carport Facility or Facilities.

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

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

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

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

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

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

- 6.1 Revised Guaranteed Construction Start Date** Section 2(a), of Exhibit B is hereby amended by deleting the date “September 1, 2013” and replacing it with “September 1, 2014”.
- 6.2 Revised Guaranteed Commercial Operation Date**. Section 3(a) of Exhibit B is hereby amended by deleting the date “March 31, 2014” and replacing it with “March 29, 2015”.
- 6.3 Extension of the Guaranteed Dates**. Section 5 of Exhibit B, “Extension of the Guaranteed Dates”, is hereby deleted in its entirety and replaced with the following: “Extension of the Guaranteed Dates” Under no circumstances shall the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date be extended.

7. Miscellaneous.

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

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

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

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

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

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

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

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

COTTONWOOD SOLAR, LLC

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

Signature: _____

Name:

Title:

MARIN ENERGY AUTHORITY

Signature:

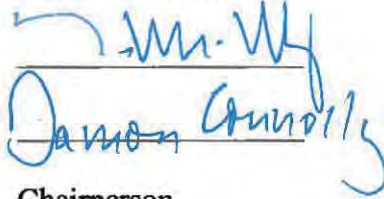
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Title:

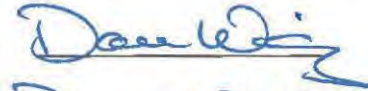
Signature:

Name:

Title:



Chairperson



Dawn Weiss

Executive Officer

Approved as to form:

Signature:

Name:

Title:



BETH KELLY

Legal Director

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

COTTONWOOD SOLAR, LLC

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

Signature: 

Name: Ryan Pfaff

Title: Executive VP, Transactions

MARIN ENERGY AUTHORITY

Signature: _____

Name: _____

Title: Chairperson

Signature: _____

Name: _____

Title: Executive Officer

Approved as to form:

Signature: _____

Name: _____

Title: Legal Director

Exhibit A**EXHIBIT C
CONTRACT PRICE**

The price of the Product shall be:

Contract Year	Base Contract Price	Excess Contract Price
1	\$121.00	\$60.50
2	\$122.82	\$61.41
3	\$124.66	\$62.33
4	\$126.53	\$63.27
5	\$128.42	\$64.21
6	\$130.35	\$65.18
7	\$132.31	\$66.16
8	\$134.29	\$67.15
9	\$136.31	\$68.16
10	\$138.35	\$69.18
11	\$140.43	\$70.22
12	\$142.53	\$71.27
13	\$144.67	\$72.34
14	\$146.84	\$73.42
15	\$149.04	\$74.52
16	\$151.28	\$75.64
17	\$153.55	\$76.78
18	\$155.85	\$77.93
19	\$158.19	\$79.10
20	\$160.56	\$80.28
21	\$162.97	\$81.49
22	\$165.41	\$82.71
23	\$167.90	\$83.95
24	\$170.41	\$85.21
25	\$172.97	\$86.49
26	\$175.56	\$87.78

All Products from the solar carport facility or facilities in Marin County shall be paid at the Base Contract Price, and the Products produced by the solar carport facility or facilities in Marin County shall not be included in the calculation of Expected Solar Energy for purposes hereunder.

Exhibit B**SCHEDULE H-1****EXPECTED SOLAR ENERGY**

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

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

SOLAR POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

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

Buyer: Marin Energy Authority, a California joint powers authority

Effective Date: July 8, 2011

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

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

Contract Price: As set forth in Exhibit C hereto.

Assets Sold:

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

Green Attributes ☒ Yes ☐ No

Limitation on Damages:

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

Governing Law: California

Notice Addresses:

Seller:

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

With a copy to:

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

Scheduling:

Lyrae Stage (lyrae.stage@enxco.com)

Phone No.: (507) 677-2274

Fax No.: (507) 677-2560

Buyer:

Marin Energy Authority

781 Lincoln Avenue, Suite 320

San Rafael, CA 94901

Attention: Dawn Weisz, Executive Officer

Fax No.: (415) 459-8095

Phone No.: (415) 464-6020

Email: dweisz@marinenergyauthority.org

With a copy to:

Richards, Watson & Gershon

44 Montgomery Street, Suite 3800

San Francisco, California 94104-4811

Attention: Greg Stepanicich

Fax No.: (415) 421-8486

Phone No.: (415) 421-8484

Email: gstepanicich@rwglaw.com


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

SELLER:

Cottonwood Solar, LLC

By: enXco Development Corporation

Its: Sole Member and Manager

By: 
Name: Tristan Grimberty
Title: President & CEO

BUYER:

Marin Energy Authority

Approved as to form:

By: 
MEA Attorney

By: 
MEA Chairman

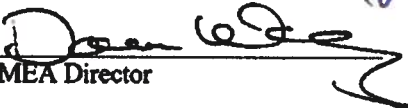
By: 
MEA Director

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SOLAR POWER PURCHASE AND SALE AGREEMENT

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

RECITALS

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

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

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

ARTICLE 1 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Curtailment Period” means any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“MW” means megawatts measured in alternating current.

“MWh” means megawatt-hour.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

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

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

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

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

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

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

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

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

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

2.4 **Progress Reports.**

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

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

ARTICLE 3 PURCHASE AND SALE

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

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

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

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

3.5 **Future Environmental Attributes.**

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

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

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

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

3.7 **Capacity Attributes.**

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

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

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

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

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

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

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

ARTICLE 4

DELIVERY; TITLE; RISK OF LOSS

4.1 Delivery.

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

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

4.2 Title and Risk of Loss.

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

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

4.3 Scheduling Coordinator.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5

REDUCTIONS IN DELIVERY; TEMPORARY SHUTDOWN

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

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

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

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

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

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

5.3 **Buyer's Failure to Take Energy.**

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

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

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

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

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

ARTICLE 6 TAXES

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

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

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

ARTICLE 7 MAINTENANCE OF THE SOLAR FACILITIES

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

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

ARTICLE 8 METERING

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

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

ARTICLE 9 INVOICING AND PAYMENT; CREDIT

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 10 NOTICES

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

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

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

ARTICLE 11 FORCE MAJEURE

11.1 Definition.

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

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

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

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

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

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

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

ARTICLE 12

DEFAULTS; REMEDIES; TERMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 13

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES

13.1 Limitation of Liability.

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

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

13.3 WAIVER AND EXCLUSION OF OTHER DAMAGES

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

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

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

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

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

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 14

REPRESENTATIONS AND WARRANTIES; AUTHORITY

14.1 **Seller’s Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any applicable Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) SELLER MAKES NO WRITTEN OR ORAL REPRESENTATION, WARRANTY, OR COVENANT EITHER EXPRESS OR IMPLIED, REGARDING THE CURRENT OR FUTURE EXISTENCE OR USE OF ANY GREEN ATTRIBUTES OR CAPACITY ATTRIBUTES OR ANY LAW GOVERNING THE EXISTENCE OR USE OF ANY GREEN ATTRIBUTES OR CAPACITY ATTRIBUTES UNDER THIS AGREEMENT OR OTHERWISE OR THEIR CHARACTERIZATION OR TREATMENT UNDER APPLICABLE LAW OR OTHERWISE. NO RESTRICTION, ELIMINATION OR OTHER ADVERSE EFFECT ON THE EXISTENCE OR USE OF ANY GREEN ATTRIBUTE OR CAPACITY ATTRIBUTE SHALL RELIEVE BUYER OF ITS OBLIGATION TO PAY THE CONTRACT PRICE FOR THE DELIVERY OF ENERGY HEREUNDER.

(f) OTHER THAN THOSE WARRANTIES AND GUARANTIES EXPRESSLY SET FORTH IN THE TERMS OF THIS AGREEMENT, SELLER MAKES NO WARRANTIES AND GUARANTIES OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED, ORAL, WRITTEN OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING BY CUSTOM, TRADE USAGE, PROMISE, EXAMPLE OR DESCRIPTION, ALL OF WHICH WARRANTIES AND GUARANTIES ARE EXPRESSLY DISCLAIMED BY SELLER AND WAIVED BY BUYER.

14.2 Buyer's Representations and Warranties. As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of

California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other applicable laws.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any applicable Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

14.3 General Covenants. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any applicable Law.

14.4 **Buyer's Authority.** As a condition to the obligations of Seller under this Agreement, Buyer shall provide to Seller:

(a) within thirty (30) days of the Effective Date, opinions of legal counsel for Buyer, in form and substance reasonably satisfactory to Seller, with appropriate qualifications, assumptions and limitations, regarding the following matters: (A) Buyer is a validly existing community choice aggregator, (B) Buyer has the power and authority to execute, deliver and perform the Agreement, (C) the execution, delivery and performance by Buyer of the Agreement does not contravene: (x) Law, or (y) the Joint Powers Agreement of Buyer, and (D) the Agreement has been executed and delivered and is enforceable against Buyer in accordance with its terms; and

(b) within one hundred and twenty (120) days of the Effective Date, (i) certified copies of the Joint Powers Agreement and such relevant ordinances, resolutions, public notices and other public documents issued by Buyer evidencing the necessary authorizations with respect to the execution, delivery and performance by Buyer of this Agreement, and (ii) a certified incumbency setting forth the name and signatures of employees of Buyer with authority to act on behalf of Buyer.

ARTICLE 15 ASSIGNMENT

15.1 **General Prohibition on Assignments.** Except as provided below and in Article 11, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment that is allowed by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

15.2 **Permitted Assignment; Change of Control of Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); (c) a Lender, or (d) a Qualified Assignee; *provided, however*, that in each such case, Seller shall give notice to Buyer no fewer than fifteen (15) Business Days before such assignment that (i) notifies Buyer of such assignment and (ii) provides to Buyer a written agreement signed by the Person to which Seller wishes to assign its interests which (y) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (z) certifies that such Person shall meet the definition of a Qualified Assignee. Any assignment by Seller, its successors or assigns under this Section 15.2 shall be of no force and effect unless and until such notice and agreement by the assignee have been received by Buyer.

15.3 Change of Control of Buyer. Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, *provided* that no fewer than fifteen (15) Business Days before such assignment Buyer (a) notifies Seller of such assignment and (b) provides to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests stating that (i) such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and (ii) such Person has the financial capability to perform all of Buyer's obligations under this Agreement. In the event that Seller does not agree that Buyer's assignee has the financial capability to perform all of Buyer's obligations under this Agreement, then either Buyer must agree to remain financially responsible under this Agreement, or Buyer's assignee must provide payment security in an amount and form reasonably acceptable to Seller. Any assignment by Buyer, its successors or assigns under this Section 15.3 shall be of no force and effect unless and until such notice and agreement by the assignee have been received by Seller.

ARTICLE 16 LENDER ACCOMMODATIONS

16.1 Granting of Lender Interest. Notwithstanding Section 15.2, Seller may, without the consent of Buyer, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Seller's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which Seller's interest under this Agreement has been assigned. Such notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

16.2 Rights of Lender. If Seller grants an interest under this Agreement as permitted by Section 16.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by Seller in accordance with Section 12.1, and such act performed by Lender shall be as effective to prevent or cure a default as if done by Seller.

(b) Buyer shall cooperate with Seller or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments and other documents reasonably requested by Seller or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that Buyer recognizes the rights of such Lender upon foreclosure of Lender's security interest and such other provisions as may be requested by Seller or any such Lender.

(c) Buyer agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Seller or shall have any obligation or liability to Buyer with respect to this Agreement except to the

extent any Lender has expressly assumed the obligations of Seller hereunder; *provided* that Buyer shall nevertheless be entitled to exercise all of its rights hereunder in the event that Seller or Lender fails to perform Seller's obligations under this Agreement.

16.3 **Cure Rights of Lender.** Buyer shall provide notice of the occurrence of any Event of Default described in Section 12.1 or 12.2 hereof to any Lender, and Buyer shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any Seller Event of Default hereunder. Buyer shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between Buyer and any Lender. Notwithstanding any such action by any Lender, Seller shall not be released and discharged from and shall remain liable for any and all obligations to Buyer arising or accruing hereunder.

ARTICLE 17 DISPUTE RESOLUTION

17.1 **Governing Law.** This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California, without regard to principles of conflicts of law. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE NORTHERN DISTRICT OF THE UNITED STATES DISTRICT COURT IN ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH DISPUTE MAY BE HEARD AND DETERMINED IN SUCH FEDERAL COURT. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH PROCEEDING.

17.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days of initiating such discussions, or within forty (40) days after notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

17.3 **Attorneys' Fees.** If any legal action is brought for the enforcement of this Agreement or because of an alleged dispute, default, misrepresentation, or breach in connection with any of the provisions of this Agreement, each Party shall be responsible for its own attorneys' fees and costs.

ARTICLE 18 INDEMNIFICATION

18.1 **Indemnification.**

(a) Each Party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (and in the case of Seller, its contractors constructing or providing services to the Solar Facilities (including suppliers) and its Lenders) (collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents. The indemnification of third party claims provided under this Section 18.1 is limited by the limitation on damages set forth in Section 13.1.

(b) Nothing in this Section 18.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. This indemnification obligation shall apply notwithstanding the willful misconduct of the Indemnified Party, but the Indemnifying Party’s liability to pay damages to the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party’s willful misconduct contributed to the claim giving rise to, or increased the level of, the damages. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

18.2 **Claims.** Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 18 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs.

(a) If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement.

(b) Except as otherwise provided in this Article 18, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 18, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 19 INSURANCE

19.1 **Seller's Insurance.** *General Liability.* Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the aggregate, endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of five million dollars (\$5,000,000).

(b) *Workers Compensation Insurance.* Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(c) *Business Auto Insurance.* Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence and in the aggregate.

(d) *Construction All-Risk Insurance.* Seller shall maintain or cause to be maintained during the construction of the Solar Facilities prior to the Commercial Operation Date, construction all-risk form property insurance covering the Solar Facilities during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(e) *Subcontractor Insurance.* Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than one million dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence and in the aggregate. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clause (i), clause (ii) (for the employers' liability portion only), and clause (iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 19.1(e).

(f) *Evidence of Insurance.* Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior written notice by the insurer in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any solar or other incentive program administrator or any other applicable authority.

19.2 Buyer's Insurance.

(a) *General Liability.* Buyer shall maintain, at its sole expense, (i) commercial general liability insurance, including products and completed operations and

personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the aggregate, endorsed to provide contractual liability in said amount, specifically covering Buyer's obligations under this Agreement and naming Seller as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of two million dollars (\$2,000,000).

(b) *Workers Compensation Insurance.* Buyer, if it has employees, shall also maintain at all times during the Contract Term workers' compensation insurance coverage in accordance with applicable requirements of Law to include employers' liability coverage as required by law.

(c) *Evidence of Insurance.* Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Buyer shall deliver to Seller certificates of insurance evidencing such coverage. These certificates shall specify that Seller shall be given at least thirty (30) days prior written notice by the insurer in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Seller. Any other insurance maintained by Buyer is for the exclusive benefit of Buyer and shall not in any manner inure to the benefit of Seller.

ARTICLE 20 CONFIDENTIAL INFORMATION

20.1 **Definition of Confidential Information.** The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) proposals and negotiations before the Commercial Operation Date concerning this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

20.2 **Duty to Maintain Confidentiality.** Buyer and Seller agree not to disclose Confidential Information received from the other to anyone (other than Buyer's and Seller's Affiliates, counsel, consultants, lenders, prospective lenders, purchasers, prospective purchasers, investors, prospective investors, contractors constructing or providing services to the Solar Facilities (including suppliers), employees, officers and directors who agree to be bound by the provisions of this Article), without the deliverer's prior written consent. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion. In the event a recipient is required by Law or by a court or regulatory agency to disclose Confidential

Information, the recipient shall, to the extent possible, give the disclosing Party prompt notice of such request so that the disclosing Party may seek an appropriate protective order. If, in the absence of a protective order, the receiving Party is nonetheless advised by counsel that disclosure of the Confidential Information is finally required (after, if advance notice to the disclosing Party is permitted by applicable Law, exhausting any appeal requested by the disclosing Party at the disclosing Party's expense), the receiving Party may disclose such Confidential Information.

20.3 **Irreparable Injury; Remedies.** Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief and/or notwithstanding Section 13.2, consequential damages.

20.4 **Disclosure to Lender.** Notwithstanding anything to the contrary in this Article 20, Confidential Information may be disclosed by Seller to any potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 20 to the same extent as if it were a Party.

20.5 **Public Statements.** Neither Party may issue or make any formal public announcement, press release or statement regarding this Agreement unless such formal public announcement, press release or statement is issued jointly by the Parties; or, prior to the release of the formal public announcement, press release or statement, any such Party wishing to make any such formal public statement furnishes the other Party with a copy of such formal announcement, press release or statement, and obtains the approval of the other Party, such approval not to be unreasonably withheld, conditioned or delayed; *provided* that, notwithstanding any failure to obtain such approval, no Party shall be prohibited from issuing or making any such formal public announcement, press release or statement if it is necessary to do so in order to comply with applicable Law, legal proceedings or the rules and regulations of any stock exchange having jurisdiction over such Party.

ARTICLE 21 MISCELLANEOUS

21.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly.

21.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer;

provided, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

21.3 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy service provider and energy service recipient, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Solar Facilities or any business related to the Solar Facilities. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

21.4 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

21.5 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

21.6 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

21.7 **Facsimile or Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

21.8 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

21.9 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California

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

EXHIBIT A**DESCRIPTION OF POTENTIAL SOLAR FACILITIES**

Site Name	APN	County	Acres	MW AC	P-node/Delivery Point
Corcoran - CID	034-013-002	Kings		12	34420_CORCORAN_115_B1 or 34528_CORCORAN_70.0_B1
Corcoran - City of Corcoran	034-012-015	Kings		12	34420_CORCORAN_115_B1 or 34528_CORCORAN_70.0_B1
Gooselake - Esnoz	069-162-12	Kern		12	34702_GOSE LKE_115_B2
Elk Hills - Evans	298-170-27	Kern		6	30948_ELKHIL_G_230_B2 or 34920_ELK HLLS_70.0_B1
Smyrna T	046-280-13	Kern		6	34700_SMYRNA 2_115_B1
Stone Corral – R7	053-020-013, 014	Tulare		7	34498_STONCRRL_70.0_B1
Marin Carport(s)*	To be determined	Marin		1	To be determined

*Seller shall use commercially reasonable efforts to locate sites in Marin County for construction of solar carport facilities totaling 1 MW. Seller shall notify Buyer upon site identification, and Seller's desire to enter into lease negotiations for the site or sites. The terms of any lease or leases must be satisfactory to Seller, in its sole discretion. In the event that Seller, after commercially reasonable efforts, is unable to achieve Commercial Operation for the solar carport facilities in Marin County totaling 1 MW by March 31, 2014, Seller shall pay "**Carport Damages**" to Buyer in the amount of Two Hundred Fifty Thousand Dollars (\$250,000), pro-rated and payable for that portion of the 1 MW for which Commercial Operation has not been achieved. Upon the payment of Carport Damages, Seller shall have no further obligation to construct the corresponding solar carport facility or facilities in Marin County for the applicable portion, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT B

SOLAR FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Designation of Solar Facilities.** Seller may build Solar Facilities on any of the Potential Solar Facility sites listed in Exhibit A to satisfy Seller's obligations under this Agreement. Seller shall provide written notice to Buyer designating the Solar Facilities Seller intends to construct by May 15, 2013, and the size, in MW, of each Solar Facility, up to the Guaranteed Capacity.
2. **Construction of the Solar Facilities.**
 - a. Seller shall cause construction to begin on the Solar Facilities designated by September 1, 2013 (the "**Guaranteed Construction Start Date**"), as may be extended pursuant to this Exhibit B. The beginning of construction shall be the mobilization to site by Seller and/or its designees, and includes the physical movement of soil at the Solar Facilities.
 - b. If construction does not begin on the Solar Facilities designated by the Guaranteed Construction Start Date, Seller shall pay "**Construction Delay Damages**" to Buyer on account of such delay. Construction Delay Damages shall be payable in the amount of Two Hundred Fifty Dollars (\$250.00) per day for each MW of the Guaranteed Capacity for which construction has not begun by the Guaranteed Construction Start Date. Construction Delay Damages shall be payable to Buyer by Seller until the earlier of: (a) the beginning of construction for the affected Solar Facilities; or (b) the day on which Seller would owe Buyer a cumulative amount of Construction and Capacity Damages equal to the Construction and Capacity Damages Cap. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month. Construction Delay Damages shall be refundable to Seller pursuant to Section 3(b) of this Exhibit B.
3. **Commercial Operation of the Solar Facilities.** "**Commercial Operation**" means the condition existing when (i) all necessary permits have been obtained to operate the Solar Facilities and to produce, sell and transmit Energy, and (ii) ninety percent (90%) of the Guaranteed Capacity has been completed and is ready to produce and deliver Energy to Buyer. The "**Commercial Operation Date**" shall be the date on which Commercial Operation is achieved.
 - a. Seller shall cause Commercial Operation for the Solar Facilities by March 31, 2014, (the "**Guaranteed Commercial Operation Date**"), as may be extended pursuant to this Exhibit B. Seller shall notify Buyer not less than five (5) Business Days in advance of the Commercial Operation Date and shall confirm to Buyer in writing when Commercial Operation has been achieved. Seller shall provide Buyer with Schedule H-1 containing the Expected Solar Energy for the Solar Facilities within thirty (30) days of the Commercial Operation Date.

- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.
 - c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay “**Commercial Operation Delay Damages**” to Buyer on account of such delay in the amount of Two Hundred Fifty Dollars (\$250.00) per day for each MW of the Guaranteed Capacity which has not been completed and is not ready to produce and deliver Energy to Buyer as of the Guaranteed Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller for each MW of the affected Solar Facilities until the earlier of: (a) such MW of the affected Solar Facilities is completed and ready to produce and deliver Energy to Buyer; (b) the Commercial Operation Date; (c) the day on which Seller would owe Buyer a cumulative amount of Construction and Capacity Damages equal to the Construction and Capacity Damages Cap; or (d) termination of this Agreement. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.
4. **Termination for Failure to Achieve Commercial Operation.** If the Solar Facility has not achieved Commercial Operation within one hundred twenty (120) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement, which termination shall be effective thirty (30) days after written notice to Seller. Upon such termination, neither Party shall have further liability or obligation to the other Party, other than Construction and Capacity Damages accrued prior to the date of notice of termination.
5. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operate Date shall be extended, by a number of days equal to the period of such delay, if:
- a. despite the exercise of diligent and commercially reasonable efforts by Seller, all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority, required for Seller to own, construct, operate or maintain the applicable Solar Facility and to permit the Seller and Solar Facility to make available and sell Product are not received by July 31, 2013;
 - b. a Force Majeure Event occurs;
 - c. despite the exercise of diligent and commercially reasonable efforts by Seller, the Interconnection Facilities are not complete and ready for the Solar Facility to connect and sell Energy at the Delivery Point by December 31, 2013; or
 - d. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operations Date;

provided, however, that any extension pursuant to this section shall not exceed one (1) calendar year.

6. **Failure to Reach Guaranteed Capacity.** If, thirty (30) days after Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have until one (1) year after the Commercial Operations Date to install additional capacity such that the Installed Capacity is equal to the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to Thirty Thousand Dollars (\$30,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.
7. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Construction and Capacity Damages due hereunder, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation.
8. **Construction and Capacity Damages As Liquidated Damages and Sole Remedy.** Construction and Capacity Damages shall be payable as liquidated damages and in lieu of actual damages accrued for any period during which Construction and Capacity Damages are assessed. Buyer’s sole remedy and Seller’s sole liability for the failure of (i) Seller to construct the Solar Facilities, (ii) the Solar Facilities to achieve Commercial Operation by the Guaranteed Commercial Operation Date; or (iii) the Solar Facilities to achieve Commercial Operation at any specific Capacity shall be the payment by Seller of Construction and Capacity Damages as specified in Section 2, 3, and 6 above, and termination rights as specified in Section 4 above.

EXHIBIT C
CONTRACT PRICE

The price of the Product shall be:

Contract Year	Contract Price Per MWh
1	\$121.00
2	\$122.82
3	\$124.66
4	\$126.53
5	\$128.42
6	\$130.35
7	\$132.31
8	\$134.29
9	\$136.31
10	\$138.35
11	\$140.43
12	\$142.53
13	\$144.67
14	\$146.84
15	\$149.04
16	\$151.28
17	\$153.55
18	\$155.85
19	\$158.19
20	\$160.56
21	\$162.97
22	\$165.41
23	\$167.90
24	\$170.41
25	\$172.97
26	\$175.56

EXHIBIT D

[RESERVED]

EXHIBIT E
[RESERVED]

EXHIBIT F

EMERGENCY CONTACT INFORMATION

BUYER:

Dawn Weisz, Executive Officer
Marin Energy Authority
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Fax No.: (415) 459-8095
Phone No.: (415) 464-6020
Email: dweisz@marinenergyauthority.org

SELLER:

Janet Richardson
Risk Manager:
119 Bett Mar Lane
Saint Clairsville, OH 43950
Phone: (740) 526-0574
Cell: (740) 296-4887

Robert Miller
General Counsel
15445 Innovation Drive
San Diego, CA 92128
Phone: (760) 740-7888

EXHIBIT G
BUYOUT PRICE

Contract Year	Solar Carport(s) Only (1 MW capacity)	All Solar Facilities
10	\$2,005,493	\$62,170,283
15	\$1,579,916	\$48,977,409
20	\$922,360	\$28,593,163

EXHIBIT H

OUTPUT OF THE SOLAR FACILITIES

SECTION 1 - DEFINITIONS

“Guaranteed Output” means seventy percent (70%) of the Expected Solar Energy.

“Expected Solar Energy” means, for the relevant Contract Year, the estimated Energy to be delivered from the Solar Facilities as set forth on Schedule H-1 for such period, which shall be (i) based on the Installed Capacity of the Solar Facilities and (ii) for each Contract Year beginning with the second (2nd) Contract Year, consistent with the Guaranteed Capacity and a capacity factor of no less than twenty percent (20%).

SECTION 2 - PAYMENTS IN LIEU OF PERFORMANCE

For each Contract Year beginning with the second (2nd) Contract Year, Seller shall make payments to Buyer in lieu of performance for decreases in performance below the Guaranteed Output (**“Payments in Lieu of Performance”**).

(a) Payments in Lieu of Performance shall be calculated pursuant to the following formula:

$$(Bp - Cp) * (G - A1)$$

where:

Bp = the average hourly rate per MWh (excluding fixed costs) paid by Buyer during the relevant time period for equivalent energy and Green Attributes;

Cp = the Contract Price (measured as the hourly rate per MWh) under this Agreement for the relevant time period;

G = the Guaranteed Output, equal to seventy percent (70%) of the Expected Solar Energy for the relevant period;

A1 = the actual amount of Energy produced by the Solar Facility during the relevant Contract Year, as adjusted pursuant to Section 3, below;

No payment shall be due if the calculation of $(Bp - Cp)$ or $(G - A1)$ yields a negative number.

(b) For the purposes of this calculation, $(Bp - Cp)$ shall not exceed fifty dollars (\$50), and any higher result shall equal fifty dollars (\$50).

(c) For each Contract Year beginning with the second (2nd) Contract Year, Seller shall send Buyer an audit within sixty (60) days of the anniversary of such date summarizing the output of the Solar Facility during the preceding twelve (12) month period. Buyer shall have

thirty (30) days following receipt of such audit to dispute the conclusions therein, after which time the audit shall be binding on the Parties. Any payments due to Buyer shall be remitted to Buyer within twenty (20) days of the binding audit.

SECTION 3 – ADJUSTED ANNUAL PRODUCTION

(a) For purposes of this calculation, the actual amount of Energy produced by the Solar Facilities during the Contract Year shall be increased to account for:

- (i) any period during which a Force Majeure Event has occurred and is continuing;
- (ii) any period during which a Buyer Default has occurred;
- (iii) any deviation of annual insolation greater than eighty percent (80%) from historical weather patterns shown by a weather data collection system that measures and logs solar irradiance (in W/m²) on a fifteen (15) minute average basis within a five (5) mile radius of the Solar Facilities; and
- (iv) any Curtailment Period.

(b) The additions contemplated in paragraph (a) shall be calculated by assuming that the Solar Facilities would have produced an amount of electricity equal to the average production during the month of such non-production in the preceding two (2) Contract Years, if available, divided by the total number of days in all such months.

SECTION 4 – SOLE AND EXCLUSIVE REMEDY

(a) The Payments in Lieu of Performance shall be payable as liquidated damages and in lieu of actual damages. The Parties agree that the extent and amount of actual damages that would be suffered by Buyer as a result of Seller's failure to achieve the performance standards set forth in this Exhibit H is impractical and extremely difficult to determine or estimate. Therefore, Payments in Lieu of Performance set forth in this Exhibit H represent the Parties' best estimate of the sums that would be fair, average compensation for all losses that may be sustained as a consequence of the Solar Facilities' failure to achieve performance standards set forth in this Exhibit H.

(b) Notwithstanding anything to the contrary herein, Buyer and Seller agree that where there are any decreases in performance requiring Payments in Lieu of Performance, Buyer's sole and exclusive damage remedy for Seller's failure to achieve the performance standards in this Exhibit H or for any output related defaults for any such Contract Year shall be the liquidated damages provided for in Section 2 of this Exhibit H.

SCHEDULE H-1

EXPECTED SOLAR ENERGY

**[Expected Solar Energy for each Contract Year to be provided within 30 days of
Commercial Operation Date]**

Exhibit H

Schedule 1

EXHIBIT I

BUYOUT OPTION

(1) Buyout Option. No later than ninety (90) days prior to the last day of each of (i) the tenth (10th) Contract Year of the Contract Term, (ii) the fifteenth (15th) Contract Year of the Contract Term and (iii) the twentieth (20th) Contract Year of the Contract Term, Buyer may deliver notice to Seller indicating whether it elects to purchase the Solar Facilities. Buyer may make such election for all Solar Facilities making sales pursuant to this Agreement (including the solar carport facility or facilities in Marin County), or for the solar carport facility or facilities in Marin County only. Other than the option to purchase the solar carport facility or facilities, the purchase of some but not all Solar Facilities is not provided hereunder. If Buyer elects to make a purchase, Buyer shall pay to Seller a “**Buyout Payment**” within thirty (30) days prior to the last day of such Contract Year equal to the greater of (a) the Fair Market Value of the Solar Facilities as of such date, as determined pursuant to clause (2) below, or (b) as specified for such Contract Year in Exhibit G.

(2) Calculation of Fair Market Value. If Buyer provides notice to Seller that it is contemplating exercising its rights under this Exhibit I, the Parties shall mutually agree upon an independent appraiser on or before the date that is sixty (60) days prior to the last day of (i) the tenth (10th) Contract Year of the Contract Term, (ii) the fifteenth (15th) Contract Year of the Contract Term, or (iii) the twentieth (20th) Contract Year of the Contract Term, if applicable. Such appraiser shall determine, at equally shared expense of Buyer and Seller, the fair market value of the Solar Facilities as of the date on which the Buyout Payment is to be paid, taking into account such items as deemed appropriate by the appraiser, which may include the resale value of the Solar Facilities, and the price of the Product (the “**Fair Market Value**”). On or prior to the date that is thirty (30) days prior to the last day of such Contract Year, the appraiser shall deliver its determination of Fair Market Value to each of Buyer and Seller. In the event that Buyer and Seller cannot agree upon a single independent appraiser, each Party shall contract for an independent appraiser at its own expense, and the Fair Market Value shall be the simple average of the determinations of the two independent appraisers.

(3) Passage of Title. Upon receipt of the Buyout Payment, the Parties shall execute all documents necessary to cause title to the Solar Facilities to pass to Buyer on an as-is, where-is, with-all-faults basis; *provided, however*, that Seller shall remove any encumbrances held by Seller with respect to the Solar Facilities.



March 5, 2015

TO: Marin Clean Energy Board

FROM: Sarah Estes-Smith, Administrative Associate

RE: Second Amended and Restated Attorney-Client Fee Agreement with Morris Polich & Purdy LLP (Agenda Item #05 – C.12)

ATTACHMENTS: A. Attorney-Client Fee Agreement with Morris Polich & Purdy LLP
B. Amendment to Attorney-Client Fee Agreement with Morris Polich & Purdy LLP
C. Amended and Restated Attorney-Client Fee Agreement with Morris Polich & Purdy LLP
D. Draft Second Amended and Restated Attorney-Client Fee Agreement with Morris Polich & Purdy LLP

Dear Board Members:

SUMMARY:

On August 13, 2014, MCE entered into the Attorney-Client Fee Agreement with Morris Polich & Purdy LLP (“Agreement”) to provide legal services in connection with reviewing and advising MCE regarding the proposed new office lease at 700 Fifth Avenue, San Rafael, California. The Agreement stated that the maximum cost to MCE would be \$5,000. On August 27, 2014, MCE executed the Amendment to Attorney-Client Fee Agreement, which increased the contract maximum by \$5,500 for a total amount not to exceed \$10,500. On October 10, 2014, MCE executed the Amended and Restated Attorney-Client Fee Agreement, which increased the contract maximum by \$14,500 for a total amount not to exceed \$25,000.

Morris Polich & Purdy LLP has provided valuable services, including revision of the new office lease and relevant legal advice. Ongoing services are needed in order to successfully transition MCE into its new office with clear contractual obligations for all parties.

MCE staff requests approval of the proposed Second Amended and Restated Attorney-Client Fee Agreement, which would reflect an increase in the not to exceed amount from \$25,000 to \$50,000, and would extend the Agreement term through December 31, 2015.

Recommendation: Approve the Second Amended and Restated Attorney-Client Fee Agreement with Morris Polich & Purdy LLP.

ATTORNEY-CLIENT FEE AGREEMENT

This fee agreement ("Agreement") is between Morris Polich & Purdy LLP ("MPP") and Marin Clean Energy ("Client"). MPP will perform legal services to Client on the terms set forth below.

1. CONDITIONS. This Agreement will not take effect, and MPP will have no obligation to provide legal services, until Client returns a signed copy of this Agreement and the initial retainer or deposit called for under Paragraph 4.

2. SCOPE OF SERVICES. Client hires MPP to provide legal services in connection with reviewing and advising Client regarding Client's proposed new office Lease at 700 Fifth Avenue, San Rafael, California (the "Matter"), and such other matters as MPP agrees to in writing. MPP shall provide those legal services reasonably required to so represent Client. Services in any matter not described above will require a separate agreement. MPP will take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. Total fees and costs under this Agreement shall not exceed \$5,000.00, without Client's prior written consent.

3. CLIENT'S DUTIES. Client agrees to be truthful with MPP, to cooperate, to keep MPP informed of any information or development that may come to Client's attention, to abide by this Agreement, to pay MPP's bills on time, and to keep MPP advised of Client's address, telephone number, and whereabouts. Client will assist MPP in providing necessary information and documents and will appear when necessary at legal proceedings.

4. RETAINER. Client agrees to pay MPP an initial deposit of \$2,125.00 concurrently with the return of an executed copy of this Agreement. The initial retainer, as well as any future retainer, will be held in a trust account and utilized. Client authorizes MPP to use the retainer, at MPP's discretion, to pay the fees and other charges as they are incurred. Payments from the retainer will be made upon remittance to Client of a billing statement. Client acknowledges that the retainer is not an estimate of total fees and costs, but merely an advance for security. MPP may demand further retainers, which MPP determines are reasonable and necessary to provide security for payment of anticipated fees and costs associated with MPP's representation of Client. Client agrees to pay all retainers after the initial retainer within three (3) days of MPP's demand. Unless otherwise agreed in writing, any unused retainer at the conclusion of MPP's services will be refunded to Client.

5. LEGAL FEES AND BILLING PRACTICES. Client agrees to pay by the hour at the rate of \$425.00 per hour for partners, \$265.00 per hour for associates, and \$135.00 per hour for paralegals. MPP's rates are subject to change on 30-day written notice to Client. If Client declines to pay any increased rate, MPP will have the right to withdraw as attorney for Client.

The time charged will include the time MPP spends on telephone calls relating to Client's matter, including but not limited to calls with Client, witnesses and opposing counsel. The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting or other proceeding, each will charge for the time spent. MPP will charge for waiting time and for travel time, both local and out of town.

Time is charged in minimum units of one tenth (.1) of an hour.

6. COSTS AND OTHER CHARGES.

(a) In General: MPP will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements, and expenses in addition to the hourly fees. The costs and expenses commonly include long-distance telephone charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, travel costs, including parking, mileage, transportation, meals, and hotel costs, consultants' fees and other similar items. Except for the items listed below, all costs and expenses will be charged at MPP's cost except for the following items: In-office photocopying at \$.20/page; Facsimile charges at \$.20/page; and Mileage at \$.50/mile.

(b) Out-of-Town Travel: Client agrees to pay transportation, meals, lodging, and all other costs of any necessary out-of-town travel by MPP's personnel. Client will also be charged the hourly rates for the time legal personnel spend traveling.

(c) Experts, Consultants, and Investigators: To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants, or investigators. Client agrees to pay such fees and charges. MPP will select any expert witness, consultant, or investigator to be hired, and Client will be informed of persons chosen and their charges.

(d) Advancement of Costs: Upon request from MPP, Client agrees to advance to MPP estimated fees and costs including but not limited to mediation fees, expert witness fees, deposition transcripts, large copying projects, investigator's fees, travel expenses, jury fees, and arbitration fees, which MPP decides are necessary to aid in the preparation or presentation of Client's case. MPP is not obligated to advance any costs on behalf of Client.

(e) Direct Payment of Costs: Upon MPP's request, Client agrees to directly pay any costs in excess of \$250.00 which MPP elects not to advance on behalf of Client. Client agrees to pay these costs within thirty (30) days of the date MPP mails such a request to Client.

7. BILLING STATEMENTS. MPP will send Client periodic statements for fees and costs incurred. Each statement will be payable within 30 days of its mailing date. Client may request statements at intervals of no fewer than 30 days. If Client so requests, MPP will provide one within 10 days. The statements shall include the amounts, rates, and bases of calculation or other methods of determination of the fees and costs, which costs will be clearly identified by item and amount.

8. INTEREST. Client agrees to pay interest at the rate of 10 percent per annum, on the unpaid balance, compounded annually (to the extent permitted by the law) on any sums not paid within 30 days of the initial billing date.

9. DISCHARGE AND WITHDRAWAL. Client may discharge MPP at any time. MPP may withdraw with Client's consent or for good cause. Good cause includes Client's breach of this Agreement, Client's refusal to cooperate with or to follow MPP's advice on a material matter, and any fact or circumstance that would render MPP's continuing representation unlawful or unethical. When MPP's services conclude, all unpaid charges will immediately become due and payable.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE ON WHICH MPP FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

CLIENT:

MARIN CLEAN ENERGY

Dated: August 13, 2014

By: 

Name: ELIZABETH KELLY

Title: LEGAL DIRECTOR

MPP:

MORRIS POLICH & PURDY LLP


Dated: ~~August~~ September 7, 2014

By: 

Conrad D. Breece, Partner

Conrad D. Breece

To: Emily Goodwin (egoodwin@mcecleanenergy.org)
Subject: Morris Polich & Purdy LLP -Amendment to Attorney-Client Fee Agreement

August 27, 2014

Emily,

Thank you for indicating in your e-mail to me this morning that the legal fees and costs increase I requested yesterday in the fee agreement from \$5,000 to \$10,500 should be acceptable to MCE. In the event that a further fee increase is required, we understand that we must obtain prior written consent from MCE.

Would you please have the attached version of this e-mail which I have signed, signed and returned to me by an authorized individual on behalf of MCE to approve this increase.

Thank you.

Conrad

Accepted and agreed:

Marin Clean Energy

By

Name:

Title:

Morris Policy & Purdy LLP

By:

Conrad D. Breece, Partner

AMENDED AND RESTATED ATTORNEY-CLIENT FEE AGREEMENT

This amended and restated fee agreement ("Agreement") is between Morris Polich & Purdy LLP ("MPP") and Marin Clean Energy ("Client"). MPP will perform legal services to Client on the terms set forth below. This Agreement contains the entire agreement of the parties and supersedes that certain Attorney-Client Fee Agreement signed by Client on August 25, 2014 and MPP on September 7, 2014, as amended by that certain August 27, 2014 e-mail from Conrad Breece to Emily Goodwin which was accepted and agreed to by Client as of August 27, 2014.

1. CONDITIONS. This Agreement will not take effect, and MPP will have no obligation to provide legal services, until Client returns a signed copy of this Agreement and the initial retainer or deposit called for under Paragraph 4.

2. SCOPE OF SERVICES. Client hires MPP to provide legal services in connection with reviewing and advising Client regarding Client's proposed new office Lease at 700 Fifth Avenue, San Rafael, California (the "Matter"), and such other matters as MPP agrees to in writing. MPP shall provide those legal services reasonably required to so represent Client. Services in any matter not described above will require a separate agreement. MPP will take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. Total fees and costs under this Agreement shall not exceed \$25,000.00, without Client's prior written consent.

3. CLIENT'S DUTIES. Client agrees to be truthful with MPP, to cooperate, to keep MPP informed of any information or development that may come to Client's attention, to abide by this Agreement, to pay MPP's bills on time, and to keep MPP advised of Client's address, telephone number, and whereabouts. Client will assist MPP in providing necessary information and documents and will appear when necessary at legal proceedings.

4. RETAINER. Client agrees to pay MPP an initial deposit of \$2,125.00 concurrently with the return of an executed copy of this Agreement. The initial retainer, as well as any future retainer, will be held in a trust account and utilized. Client authorizes MPP to use the retainer, at MPP's discretion, to pay the fees and other charges as they are incurred. Payments from the retainer will be made upon remittance to Client of a billing statement. Client acknowledges that the retainer is not an estimate of total fees and costs, but merely an advance for security. MPP may demand further retainers, which MPP determines are reasonable and necessary to provide security for payment of anticipated fees and costs associated with MPP's representation of Client. Client agrees to pay all retainers after the initial retainer within three (3) days of MPP's demand. Unless otherwise agreed in writing, any unused retainer at the conclusion of MPP's services will be refunded to Client.

5. LEGAL FEES AND BILLING PRACTICES. Client agrees to pay by the hour at the rate of \$425.00 per hour for partners, \$265.00 per hour for associates, and \$135.00 per hour for paralegals. MPP's rates are subject to change on 30-day written notice to Client. If Client declines to pay any increased rate, MPP will have the right to withdraw as attorney for Client.

The time charged will include the time MPP spends on telephone calls relating to Client's matter, including but not limited to calls with Client, witnesses and opposing counsel. The legal

personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting or other proceeding, each will charge for the time spent. MPP will charge for waiting time and for travel time, both local and out of town.

Time is charged in minimum units of one tenth (.1) of an hour.

6. COSTS AND OTHER CHARGES.

(a) In General: MPP will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements, and expenses in addition to the hourly fees. The costs and expenses commonly include long-distance telephone charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, travel costs, including parking, mileage, transportation, meals, and hotel costs, consultants' fees and other similar items. Except for the items listed below, all costs and expenses will be charged at MPP's cost except for the following items: In-office photocopying at \$.20/page; Facsimile charges at \$.20/page; and Mileage at \$.50/mile.

(b) Out-of-Town Travel: Client agrees to pay transportation, meals, lodging, and all other costs of any necessary out-of-town travel by MPP's personnel. Client will also be charged the hourly rates for the time legal personnel spend traveling.

(c) Experts, Consultants, and Investigators: To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants, or investigators. Client agrees to pay such fees and charges. MPP will select any expert witness, consultant, or investigator to be hired, and Client will be informed of persons chosen and their charges.

(d) Advancement of Costs: Upon request from MPP, Client agrees to advance to MPP estimated fees and costs including but not limited to mediation fees, expert witness fees, deposition transcripts, large copying projects, investigator's fees, travel expenses, jury fees, and arbitration fees, which MPP decides are necessary to aid in the preparation or presentation of Client's case. MPP is not obligated to advance any costs on behalf of Client.

(e) Direct Payment of Costs: Upon MPP's request, Client agrees to directly pay any costs in excess of \$250.00 which MPP elects not to advance on behalf of Client. Client agrees to pay these costs within thirty (30) days of the date MPP mails such a request to Client.

7. BILLING STATEMENTS. MPP will send Client periodic statements for fees and costs incurred. Each statement will be payable within 30 days of its mailing date. Client may request statements at intervals of no fewer than 30 days. If Client so requests, MPP will provide one within 10 days. The statements shall include the amounts, rates, and bases of calculation or other methods of determination of the fees and costs, which costs will be clearly identified by item and amount.

8. INTEREST. Client agrees to pay interest at the rate of 10 percent per annum, on the unpaid balance, compounded annually (to the extent permitted by the law) on any sums not paid within 30 days of the initial billing date.

9. DISCHARGE AND WITHDRAWAL. Client may discharge MPP at any time. MPP may withdraw with Client's consent or for good cause. Good cause includes Client's breach of this Agreement, Client's refusal to cooperate with or to follow MPP's advice on a material matter, and any fact or circumstance that would render MPP's continuing representation unlawful or unethical. When MPP's services conclude, all unpaid charges will immediately become due and payable.

10. PAYMENT DISPUTE. Any dispute as to Client's failure to pay fees for professional services and/or costs and expenses incurred on behalf of Client shall, subject to the provisions of Business and Professions Code Section 6200 et seq., be resolved in the Superior Court of the State of California in the County of San Francisco, which shall have exclusive jurisdiction over such matters. The prevailing party in such Matter shall be entitled to recover from the other party the prevailing party's actual attorney's fees and costs incurred, including expert witness fees, witness fees, and associated expenses whether or not the Matter proceeds to judgment. Client submits himself to personal jurisdiction in the Superior Court of the State of California in the County of San Francisco.

11. DISCLAIMER OF GUARANTEE AND ESTIMATES. Nothing in this Agreement and nothing in MPP's statements to Client will be construed as a promise or guarantee about the outcome of the matter. MPP makes no such promises or guarantees. MPP's comments about the outcome of the matter are expressions of opinion only. Any estimate of fees and costs given by MPP shall not be a guarantee. Actual fees and costs may vary from estimates given.

12. RETENTION AND DESTRUCTION OF CLIENT FILES. If Client does not request the return of Client's file upon the conclusion of MPP's representation, MPP will retain Client's file for a period of three (3) years, after which MPP may have Client's file destroyed. If Client desires to have Client's file maintained beyond three (3) years after the conclusion of Client's matter, separate arrangements with MPP must be made. In the event Client wishes MPP to transfer possession of Client's file to Client or a third party, Client shall make the request in writing and Client or the third party shall acknowledge receipt of the file in writing. MPP is authorized to retain a copy of Client's file for a reasonable period of time in order to create a copy of the file at Client's expense.

13. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

14. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this Agreement is held, in whole or in part, to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

15. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing, signed by both of them, or an oral agreement only to the extent that the parties carry it out.

16. EFFECTIVE DATE. This Agreement will govern all legal services performed by MPP on behalf of Client, commencing on the date this agreement is fully executed and the retainer and/or deposit is received by MPP. Even if this Agreement does not take effect, Client will be obligated to pay MPP the reasonable value of any service MPP may have performed for Client.

17. COPY RECEIVED BY CLIENT. Client acknowledges receipt of a signed copy of this Agreement concurrently with Client's execution thereof.


18. SIGNATURES AND COUNTERPARTS. We both agree that facsimile and .pdf signatures on this Agreement may be considered the same as originals. This Agreement may be signed in counterparts.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE ON WHICH MPP FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

CLIENT:

MARIN CLEAN ENERGY


Dated: ^{October} September 10, 2014

By: 
Name: Dawn Weiss
Title: Executive Officer

MPP:

MORRIS POLICH & PURDY LLP

Dated: ^{October} September 13, 2014

By: 
Conrad D. Breece, Partner

SECOND AMENDED AND RESTATED ATTORNEY-CLIENT FEE AGREEMENT

This second amended and restated fee agreement ("Agreement") is between Morris Polich & Purdy LLP ("MPP") and Marin Clean Energy ("Client"). MPP will perform legal services to Client on the terms set forth below. This Agreement contains the entire agreement of the parties and supersedes that certain Attorney-Client Fee Agreement signed by Client on August 25, 2014 and MPP on September 7, 2014, as amended by that certain August 27, 2014 e-mail from Conrad Breece to Emily Goodwin which was accepted and agreed to by Client as of August 27, 2014, as further amended by that certain Amended and Restated Attorney-Client Fee Agreement executed by Client on October 10, 2014 and MPP on October 13, 2014..

1. CONDITIONS. This Agreement will not take effect, and MPP will have no obligation to provide legal services, until Client returns a signed copy of this Agreement and the initial retainer or deposit called for under Paragraph 4.

2. SCOPE OF SERVICES. Client hires MPP to provide legal services in connection with advising Client regarding Client's new office Lease at 700 Fifth Avenue, San Rafael, California, as requested and directed by Client's staff (the "Matter"), and such other matters as MPP agrees to in writing. MPP shall provide those legal services reasonably required to so represent Client. Services in any matter not described above will require a separate agreement. MPP will take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. Total fees and costs under this Agreement shall not exceed \$50,000 from the inception in August 2014 through December 31, 2015, without Client's prior written consent.

3. CLIENT'S DUTIES. Client agrees to be truthful with MPP, to cooperate, to keep MPP informed of any information or development that may come to Client's attention, to abide by this Agreement, to pay MPP's bills on time, and to keep MPP advised of Client's address, telephone number, and whereabouts. Client will assist MPP in providing necessary information and documents and will appear when necessary at legal proceedings.

4. RETAINER. Client has paid MPP an initial deposit of \$2,125.00 which has been fully applied. The initial retainer, as well as any future retainer, will be held in a trust account and utilized. Client authorizes MPP to use the retainer, at MPP's discretion, to pay the fees and other charges as they are incurred. Payments from the retainer will be made upon remittance to Client of a billing statement. Client acknowledges that the retainer is not an estimate of total fees and costs, but merely an advance for security. MPP may demand further retainers, which MPP determines are reasonable and necessary to provide security for payment of anticipated fees and costs associated with MPP's representation of Client. Client agrees to pay all retainers after the initial retainer within three (3) days of MPP's demand. Unless otherwise agreed in writing, any unused retainer at the conclusion of MPP's services will be refunded to Client.

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and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting or other proceeding, each will charge for the time spent. MPP will charge for waiting time and for travel time, both local and out of town.

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8. INTEREST. Client agrees to pay interest at the rate of 10 percent per annum, on the unpaid balance, compounded annually (to the extent permitted by the law) on any sums not paid within 30 days of the initial billing date.

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matter, and any fact or circumstance that would render MPP's continuing representation unlawful or unethical. When MPP's services conclude, all unpaid charges will immediately become due and payable.

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15. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing, signed by both of them, or an oral agreement only to the extent that the parties carry it out.

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CLIENT:

MARIN CLEAN ENERGY

Dated: February ____, 2015

By: _____

Name: _____

Title: _____

MPP:

MORRIS POLICH & PURDY LLP

Dated: _____, 2015

By: _____
Conrad D. Breece, Partner



March 5, 2015

TO: Marin Clean Energy Board

FROM: John Dalessi

RE: Monthly FY 14/15 Budget Report (Agenda Item #06)

ATTACHMENT: MCE Budget Reports 2015-01 (Unaudited)

Dear Board Members:

SUMMARY:

The attached budget update compares the FY 2014/15 budget to the unaudited revenue and expenses of MCE for the month ending January 2015. Note that the budget amendments approved in February 2015 will not affect these January statements.

OPERATING BUDGET:

Year-to-date revenues and cost of energy continue at levels slightly under budget, with the driving factor being lower volume than expected. Operating expenditures are pushing beyond 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 completely offset by revenue. A deferred asset is recorded for funds received by the CPUC that have yet to be expended by MCE.

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.

Recommendation: No action needed. Informational only.

MARIN CLEAN ENERGY
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2014 through January 31, 2015

	<u>2013/14 YTD Actual</u>	<u>2014/15 YTD Budget</u>	<u>2014/15 YTD Actual</u>	<u>2014/15 YTD Budget Variance (Under) Over</u>	<u>2014/15 YTD Actual/Budget %</u>	<u>2014/15 Annual Budget</u>	<u>2014/15 Budget Remaining</u>
REVENUE AND OTHER SOURCES:							
Revenue - Electricity (net of allowance)	\$ 71,781,974	85,739,735	\$ 83,525,860	\$ (2,213,875.50)	97.42%	\$ 101,138,394	\$ 17,612,534
EXPENDITURES AND OTHER USES:							
CURRENT EXPENDITURES							
Cost of energy	63,637,583	72,542,716	71,373,391	(1,169,325)	98.39%	88,410,551	17,037,160
Staffing	1,244,009	1,608,750	1,669,235	60,485	103.76%	1,950,000	280,765
Technical consultants	451,147	474,738	426,268	(48,470)	89.79%	560,000	133,732
Legal counsel	125,567	283,819	258,707	(25,112)	91.15%	335,000	76,293
Communications consultants and related expenses	614,873	593,750	459,758	(133,992)	77.43%	750,000	290,242
Data manager	2,061,982	2,225,000	2,136,875	(88,125)	96.04%	2,670,000	533,125
Service fees- PG&E	483,274	558,333	562,665	4,332	100.78%	670,000	107,335
Other services	213,295	250,000	278,624	28,624	111.45%	300,000	21,376
General and administration	268,324	291,667	306,105	14,438	104.95%	350,000	43,895
Marin County green business program	15,000	15,000	15,000	-	0.00%	15,000	-
Solar rebates	-	15,000	-	(15,000)	0.00%	25,000	25,000
Total current expenditures	69,115,054	78,858,774	77,486,628	(1,372,146)	98.26%	96,035,551	18,548,923
CAPITAL OUTLAY	1,656	16,667	21,975	5,308	131.85%	20,000	(1,975)
DEBT SERVICE	993,505	995,833	994,900	(933)	99.91%	1,195,000	200,100
INTERFUND TRANSFER TO:							
Local Renewable Energy Development Fund	51,536	109,994	109,994	-	100.00%	109,994	-
Total expenditures	70,161,751	79,981,268	78,613,497	\$ (1,367,771)	98.29%	97,360,545	\$ 18,747,048
Net increase (decrease) in available fund balance	<u>\$ 1,620,223</u>	<u>\$ 5,758,468</u>	<u>\$ 4,912,363</u>	<u>\$ (846,105)</u>		<u>\$ 3,777,849</u>	<u>\$ (1,134,514)</u>

**MARIN CLEAN ENERGY
ENERGY EFFICIENCY PROGRAM FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2014 through January 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	\$ 884,458	\$ 621,244	58.74%
EXPENDITURES AND OTHER USES:				
CURRENT EXPENDITURES				
Public purpose energy efficiency program	<u>1,505,702</u>	<u>884,458</u>	<u>621,244</u>	<u>58.74%</u>
Net increase (decrease) in fund balance	<u>\$ -</u>	<u>\$ -</u>		

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

**LOCAL RENEWABLE ENERGY DEVELOPMENT FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2014 through January 31, 2015**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Transfer from Operating Fund	\$ 109,994	\$ 109,994	\$ -	100.00%
EXPENDITURES AND OTHER USES:				
Capital Outlay	<u>109,994</u>	<u>84,853</u>	<u>25,141</u>	<u>77.14%</u>
Net increase (decrease) in fund balance	<u>\$ -</u>	<u>\$ 25,141</u>		

**MARIN CLEAN ENERGY
BUDGETARY SUPPLEMENTAL SCHEDULE
April 1, 2014 through January 31, 2015**

	<u>Actual</u>
Other services	
Audit	\$ 34,500
Accounting	101,500
IT Consulting	27,531
Human resources & payroll fees	4,878
Legislative consulting	75,260
Miscellaneous professional fees	34,955
	<hr/>
Other services	\$ 278,624
	<hr/>
 General and administration	
Cell phones	\$ 737
Data and telephone service	25,796
Insurance	7,171
Office and meeting rentals	100,594
Office equipment lease	4,674
Dues and subscriptions	89,292
Conferences and professional education	5,985
Travel	15,157
Business meals	5,684
Interest and late fees	15,836
Miscellaneous administration	57
Office supplies and postage	35,122
	<hr/>
General and administration	\$ 306,105
	<hr/>



March 5, 2015

TO: Marin Clean Energy Board

FROM: John Dalessi, Pacific Energy Advisors

RE: Proposed Marin Clean Energy Rates for Fiscal Year 2016
(Agenda Item #07)

ATTACHMENT: Marin Clean Energy Proposed FY 2016 Rates

Dear Board Members:

SUMMARY:

The Marin Clean Energy Community Choice Aggregation Implementation Plan and Statement of Intent ("Implementation Plan") describes the policies and procedures for setting and modifying electric rates for the Marin Clean Energy (MCE) program. As described in the Implementation Plan, the MCE annual ratesetting process is coordinated with the establishment of fiscal year program budgets. MCE rates are typically reviewed on an annual basis during the month of January to determine whether rate changes are warranted in consideration of: 1) the next fiscal year's projected budget; and 2) other ratesetting objectives such as rate competitiveness, rate stability, customer understanding and equity among customers. Final rates for the fiscal year are typically adopted during the month of March.

MCE's ratesetting policies establish a thirty-day public review period for proposed rate changes before final rates are adopted by the Board. Public release of the proposed rates in late January initiates the public review period. The proposed rates set forth in Attachment A were published in January 2015 and discussed at the February 5th, 2015 MCE Board meeting. These rates are recommended for adoption to become effective on April 1, 2015.

BACKGROUND – MCE RATESETTING CYCLE, POLICIES AND PROCESS

Ratesetting Cycle

MCE typically adjusts its rates on an annual basis, and the new rates go into effect at or near the start of each fiscal year. Ratesetting is coordinated with the annual budgeting cycle due to the inherent linkages between MCE program budgets and MCE rates. Rates could be adjusted more frequently, if necessary, to ensure recovery of all MCE program costs, but this is not typical and has not been necessary to date.

Proposed rates are typically presented to your Board in February, based on the proposed upcoming fiscal year budget. This release of the proposed rates initiates a thirty-day public review and comment period. If rate increases are being proposed, the affected MCE customers are provided with notice of said rate increase. Following completion of the thirty-day public review and comment period, final rates are adopted by your Board in March and placed into effect on April 1. Final rates may differ from the initially proposed rates to account for changes resulting from adoption of the final fiscal year budget, consideration of public comments received during the aforementioned review period, and/or other factors that may be considered by your Board. No changes have been made to the preliminary rates published in January and discussed at the February 5, 2015 MCE Board meeting, and these rates are now recommended for adoption.

Ratesetting Policies

MCE has established various policies that are considered in designing MCE rates. These ratesetting policies include the following:

Revenue sufficiency: rates must recover all program expenses, debt service requirements, and prudent reserves; i.e., the “revenue requirement”.

Rate competitiveness: rates must allow MCE to successfully compete in the marketplace to retain and attract customers.

Rate stability: rates changes should be minimized to reduce customer bill impacts.

Customer understanding: rates should be simple, transparent and easily understood by customers.

Equity among customers: rate differences among customers should be justified by differences in usage characteristics and/or cost of service.

Efficiency: rates should encourage conservation and efficient use of electricity (e.g., off-peak vehicle charging).

To the extent that the policies may be in tension with one another, the rate proposal attempts to strike an appropriate balance. For example, a cost-of-service analysis might suggest that a particular rate should be increased, but the increase might be limited in the interest of rate stability or rate competitiveness. In accordance with the Implementation Plan, the policy of revenue sufficiency may not be violated; however, the Board may use discretion in how the other ratesetting policies are reflected in MCE rates.

Ratesetting Process

The ratesetting cycle begins with a forecast of MCE sales for the coming fiscal year. The forecast includes the number of customers that are expected to be enrolled and take service on each of the MCE rate schedules as well as the monthly billing quantities expected under each rate schedule. Depending upon the rate schedule in question, billing quantities can include monthly kWh, kWh during specified time-of-use periods (on-peak, partial peak, off-peak), maximum monthly kW demand and maximum kW demand during specified time-of-use periods. The forecasted billing quantities are used to derive a forecast of revenues at current (and proposed) MCE rates.

The projected revenue at current rates, termed “present rate revenues”, are compared to the fiscal year budget that must be funded through rates (the “revenue requirement”) to determine whether rate adjustments are warranted to address any projected surplus or deficit.

As an interim step in the rate design process, the revenue requirement is first allocated to customer classes. Customers are classified based on end-use and other service characteristics in an attempt to represent groups of customers with relatively similar cost-of-service profiles within the group. MCE has established nine customer classes that includes residential (Res-1), small commercial (Com-1 and Com-6), medium commercial (Com-10), large commercial (Com-19), industrial (Com-20), agricultural (Ag), street lighting (SL) and traffic control (TC) end uses. Revenues are allocated based on a cost of service analysis, assessment of competitiveness, and other policy considerations.

Typical end uses within the commercial customer classes are described below:

Rate Group	Example End Use
Com-1 and Com-6	Small office, small retail
Com-10	Bank, restaurant, mixed use retail
Com-19	Department store, large office building, grocery store
Com-20	Institutional, hospital, college, water treatment facility

Rates are designed for the various rate schedules associated with each customer class in order to recover the revenues allocated to that class. There are currently 30 rate schedules that MCE customers may take service under.

FY 2016 PROPOSED RATES

Proposed rates have been developed consistent with the proposed budget that was adopted on February 5, 2015. Preliminary rates were presented to the MCE Executive Committee on January 21, 2015, and the proposed rates were prepared in consideration of input received during that meeting. The proposed rates were also discussed at the February 5, 2015 MCE Board meeting, and no changes have been requested by your Board or through public comment.

FY 2016 Revenue Requirement

The FY 2016 revenue requirement is based on the adopted FY 2016 budget. The difference between the revenue requirement used for ratesetting and the budgeted revenue is due to the revenue deficiency associated with uncollectible customer accounts as well as the treatment of net energy metering revenues and costs. The proposed revenue requirement for FY 2016 is \$146,122,839 as shown in Table 1. Revenues at present rates are projected to yield \$140,168,177, resulting in the need to increase rates by approximately 4.2% in aggregate to avoid a projected deficiency of \$5,954,662.

The increase is primarily related to higher power supply costs expected for FY 2016 relating to significant new renewable energy projects coming online, higher energy prices under certain existing power purchase agreements, and to a lesser extent higher administrative costs associated with a growing organization and expansion of MCE

service to four new member communities. In regards to higher renewable energy costs, MCE expects to take delivery during the upcoming fiscal year of additional renewable energy supply produced by 44 MW of newly constructed solar photovoltaic generation and 99 MW of newly constructed wind generation – these deliveries are specified within previously executed power purchase agreements, which were approved by your Board. Costs related to these deliveries impose somewhat higher costs in the near term but are expected to help stabilize MCE’s power supply costs over the longer term.

The proposed revenue requirement, including a reconciliation to the adopted FY 2016 Budget, is shown in Table 1.

Table 1: Proposed FY 2016 Revenue Requirement

<i>Revenue Requirement</i>	
FY 2016 Budgeted Expenditures and Reserves	\$145,933,097
Uncollectible Account Expenses	\$724,204
Net Energy Metering Revenue	(\$534,462)
Proposed Revenue Requirement	146,122,839
Present Rate Revenues	\$140,168,177
Surplus (Deficiency) in Funds	\$ (5,954,662)
Required Rate Increase	4.2%

Proposed FY 2016 Revenue Allocation

In consideration of cost-of-service metrics for customers within the major customer rate groupings as well as a comparative assessment of MCE rates relative to PG&E rates, MCE proposes to allocate revenues to customer classes as shown in Table 2.

Table 2: Proposed Class Revenue Allocation (FY 2016 rates)

Rate Group	Revenue at Present Rates	Revenue at Proposed Rates	Change in Revenues	% Change
Residential	\$63,739,836	\$65,926,974	\$2,187,137	3.4%
Small Commercial 1 (Com-1)	\$16,970,856	\$17,553,186	\$582,330	3.4%
Small Commercial 2 (Com-6)	\$4,486,523	\$5,040,471	\$553,948	12.3%
Medium Commercial (Com-10)	\$20,209,779	\$20,903,248	\$693,468	3.4%
Large Commercial (Com-19)	\$21,289,088	\$22,519,591	\$1,230,503	5.8%
Industrial (Com-20)	\$10,756,820	\$11,375,924	\$619,104	5.8%
Agricultural	\$1,490,072	\$1,541,202	\$51,130	3.4%
Street Lighting (SL-1)	\$1,130,806	\$1,169,608	\$38,802	3.4%

Rate Group	Revenue at Present Rates	Revenue at Proposed Rates	Change in Revenues	% Change
Traffic Control (TC-1)	\$94,397	\$92,636	\$(1,761)	-1.9%
Total	\$140,168,177	\$146,122,839	\$5,954,662	4.2%

In order to inform the rate proposal, staff has performed a cost-of-service analysis and a comparative rate analysis to ascertain how MCE rates compare to costs as well as how they compare to similar rates charged by PG&E. Table 3 summarizes the results of the cost-of-service and competitive rate assessment. For ease of comparison, figures are shown as single cents-per-KWh average revenue or cost for each customer classification. Table 3 compares the average revenue paid by each customer class under the proposed rate structure to the average cost-of-service for the respective customer class and to the average revenues that would be paid under the currently effective PG&E generation rates.

Table 3: FY 2016 Proposed Cost and Rate Comparative Analysis Summary (Class Averages)¹

Rate Group	Proposed MCE Average Revenue (cents per kwh)	MCE Cost of Service (cents per kwh)	PG&E Generation Average Revenue ² (cents per kwh)	PG&E CCA Surcharges ³ (cents per kwh)
Residential	8.2	8.5	9.8	1.3
Small Commercial 1 (Com-1)	8.2	8.4	10.2	1.1
Small Commercial 2 (Com-6)	8.5	7.8	10.8	1.1
Medium Commercial (Com-10)	8.7	8.1	10.6	1.2
Large Commercial (Com-19)	8.1	7.9	10.0	1.0
Industrial (Com-20)	7.6	7.4	9.3	0.9
Agricultural	8.0	8.1	9.7	1.1
Street Lighting (SL-1)	7.6	7.0	8.7	0.2
Traffic Control (TC-1)	7.4	8.6	8.5	1.1
Total	8.2	8.2	10.0	1.2

The proposed revenue allocation strikes a balance between the objectives of rate competitiveness (comparison to PG&E), equity (comparison to cost) and stability (comparison to current).

As reflected in Table 3, the proposed MCE rates are generally lower than the generation rates currently charged by PG&E. Total customer generation costs, which include the

¹ Figures in Table 3 are averages for the respective customer classes. Individual customer rates may vary.

² PG&E class average generation revenue for 2015 are calculated for the MCE customer base using rates contained in PG&E Advice Letter 4484-E-A, filed December 31, 2014. The total figures shown reflect a weighted average for the MCE customer base.

³ PG&E CCA surcharges include the Power Charge Indifference Adjustment and the Franchise Fee Surcharge. Figures are class averages for the 2012 vintage.

MCE charges as well as the cost impacts of the PG&E CCA surcharges, are likewise generally lower for MCE customers for all customer classes. While these relationships hold for the vast majority of MCE customers, individual customer impacts may vary depending on usage and other service characteristics.

In aggregate, MCE customers are projected to save \$10.6 million during the fiscal year by virtue of receiving generation service from MCE, as shown in Table 4. These savings include payment of the PG&E CCA surcharges charged to MCE customers that are estimated at \$20.6 million in aggregate during the fiscal year. Table 4 shows projected revenues, PG&E CCA surcharges, and aggregate cost differences for each of the major customer classes.

Table 4: FY 2016 Proposed Rate Comparative Analysis Summary

Rate Group	Revenue at Proposed MCE Rates	Revenue at Current PG&E Generation Rates⁴	PG&E CCA Surcharges⁵	Total Cost Difference	% Cost Difference
Res-1	\$65,926,974	\$78,779,018	\$10,369,231	\$(2,482,813)	-3%
Com-1	\$17,553,186	\$21,802,368	\$2,456,533	\$(1,792,649)	-8%
Com-6	\$5,040,471	\$6,388,234	\$677,327	\$(670,436)	-10%
Com-10	\$20,903,248	\$25,453,869	\$2,797,417	\$(1,753,204)	-7%
Com-19	\$22,519,591	\$27,656,376	\$2,719,542	\$(2,417,243)	-9%
Com-20	\$11,375,924	\$13,917,619	\$1,332,232	\$(1,209,462)	-9%
Ag	\$1,541,202	\$1,860,936	\$214,187	\$(105,547)	-6%
SL-1	\$1,169,608	\$1,349,377	\$28,657	\$(151,111)	-11%
TC-1	\$92,636	\$107,311	\$14,436	\$(238)	0%
Total	\$146,122,839	\$177,315,106	\$20,609,563	\$(10,582,704)	-6%

Rate Design

Generally speaking, the proposed rate change is implemented by applying the average percentage change for the respective customer class shown in Table 2 to each current MCE rate component. Using Schedule Com-19 as an example, there are five MCE rate components (energy charges by season and time-of-use period), and each of those charges will be increased by 5.8% from their current levels. This approach to rate design maintains the existing rate differentials among the various MCE charges, furthering the interest of rate stability.

An exception to this approach was made for the Com-6 energy rates. In order to more closely align MCE's Com-6 rate to PG&E's equivalent A-6 rate and provide greater incentives for net energy metered solar projects common on this rate schedule, peak energy rates were increased by a larger percentage than mid and off-peak energy rates.

Other rate design changes include the addition of five new agricultural and pumping rate options that have been developed to provide comparable rates for customers in Napa

⁴ PG&E generation revenue for 2015 are calculated for the MCE customer base using rates contained in PG&E Advice Letter 4484-E-A, filed December 31, 2014.

⁵ PG&E CCA surcharges include the Power Charge Indifference Adjustment and the Franchise Fee Surcharge applied to projected sales for the MCE customer base. Actual surcharges will vary based on the applicable vintage for each customers as assigned by PG&E.

County transitioning to MCE service. These new MCE rate schedules, AG-RA, AG-RB, AG-VA, AG-VB and AG-4-C, were adopted on February 5, 2015 and will not change on April 1 because these rates were designed consistent with the adopted FY 2016 budget and the proposed revenue allocation to the agricultural and pumping rate class. Finally, a demand charge has been introduced on Schedule AG-1B to make it more comparable to the PG&E equivalent schedule and to better reflect cost of service. Energy charges were adjusted to maintain revenue neutrality on this rate schedule.

Bill Comparison Example

Individual customer bills vary due to factors including usage, applicable rate schedule, participation in optional programs, and other unique circumstances. MCE maintains rate calculator tools on its website to enable specific customer comparisons that take into consideration customer specific parameters. While it is challenging to describe bill impacts for “typical” customers in consideration of the diversity of the MCE customer base, the vast majority of MCE customers are residences that take service on the Res-1 rate schedule. To provide an example of how bills compare for what might be considered a typical residential customer, the monthly bill for a customer using 500 kWh per month can be used to illustrate the impact of the proposed rate change. Under the proposed rates, a residential customer using 500 kWh monthly would see a monthly bill increase of \$1.50. The monthly bill for such a customer would be \$1.29 lower than what PG&E would charge using its currently effective rates for bundled (generation and delivery) service.

Table 5: Residential Electric Bill Comparison Example⁶

Rate Component	MCE Current	MCE Proposed	PG&E Current
Generation	\$39.50	\$41.00	\$48.73
PG&E CCA Surcharges ⁷	\$6.44	\$6.44	N/A
Delivery	\$42.35	\$42.35	\$42.35
Monthly Electric Bill	\$88.29	\$89.79	\$91.08

Recommendation: Adopt the proposed rates contained in Attachment A to become effective on April 1, 2015.

⁶ Residential customer served under MCE schedule Res-1 and PG&E schedule E-1 using 500 kWh per month. Delivery charges calculated assuming baseline zone X, basic service, for a winter month. PG&E rates effective as of January 28, 2015.

⁷ Includes the Power Charge Indifference Adjustment and Franchise Fee Surcharge for a 2012 vintage customer.

MARIN CLEAN ENERGY
PRESENT AND FY 2016 PROPOSED RATES

PG&E EQUIVALENT SCHEDULE	MCE RATE SCHEDULE	UNIT/PERIOD	PRESENT RATE	PROPOSED RATE
<u>RESIDENTIAL CUSTOMERS</u>				
E-1, M, S, SR, T	RES-1			
	ENERGY CHARGE (\$/KWH)	All Energy	0.07900	0.08200
EL-1 (CARE)	RES-1-L			
	ENERGY CHARGE (\$/KWH)	All Energy	0.07900	0.08200
E-6	RES-6			
	ENERGY CHARGE (\$/KWH)			
		Summer Peak	0.20600	0.21300
		Summer Part Peak	0.08600	0.08900
		Summer Off-Peak	0.05800	0.06000
		Winter Partial Peak	0.08000	0.08300
		Winter Off-Peak	0.05800	0.06000
EL-6 (CARE)	RES-6-L			
	ENERGY CHARGE (\$/KWH)			
		Summer Peak	0.20600	0.21300
		Summer Part Peak	0.08600	0.08900
		Summer Off-Peak	0.05800	0.06000
		Winter Partial Peak	0.08000	0.08300
		Winter Off-Peak	0.05800	0.06000
E-7	RES-7			
	ENERGY CHARGE (\$/KWH)			
		Summer Peak	0.39600	0.41000
		Summer Off-Peak	0.05300	0.05500
		Winter Peak	0.23500	0.24300
EL-7 (CARE)	RES-7-L			
	ENERGY CHARGE (\$/KWH)			
		Summer Peak	0.39600	0.41000
		Summer Off-Peak	0.05300	0.05500
		Winter Peak	0.23500	0.24300
		Winter Off-Peak	0.05300	0.05500

E-8	RES-8			
	ENERGY CHARGE (\$/KWH)			
	Summer	0.07900	0.08200	
	Winter	0.07900	0.08200	
EL-8 (CARE)	RES-8-L			
	ENERGY CHARGE (\$/KWH)			
	Summer	0.07900	0.08200	
	Winter	0.07900	0.08200	
E-9	RES-9			
	ENERGY CHARGE (\$/KWH)			
	Summer Peak	0.17100	0.17700	
	Summer Part Peak	0.09600	0.09900	
	Summer Off-Peak	0.05300	0.05500	
	Winter Partial Peak	0.07900	0.08200	
	Winter Off-Peak	0.05300	0.05500	
EV	RES-EV			
	ENERGY CHARGE (\$/KWH)			
	Summer Peak	0.19300	0.20000	
	Summer Part Peak	0.08600	0.08900	
	Summer Off-Peak	0.04800	0.05000	
	Winter Peak	0.07000	0.07200	
	Winter Partial Peak	0.04800	0.05000	
	Winter Off-Peak	0.04800	0.05000	

COMMERCIAL, INDUSTRIAL AND GENERAL SERVICE CUSTOMERS

A-1	COM-1		
	ENERGY CHARGE (\$/KWH)		
	SUMMER	0.09500	0.09800
	WINTER	0.06300	0.06500
A-1 TOU	COM-1-TOU		
	ENERGY CHARGE (\$/KWH)		
	<u>SUMMER</u>		
	PEAK	0.11100	0.11500
	PART-PEAK	0.10500	0.10900
	OFF-PEAK	0.08200	0.08500
	<u>WINTER</u>		
	PART-PEAK	0.07200	0.07400
	OFF-PEAK	0.05600	0.05800
A-6	COM-6		
	ENERGY CHARGE (\$/KWH)		
	<u>SUMMER</u>		
	PEAK	0.24700	0.30500
	PART-PEAK	0.09700	0.10900
	OFF-PEAK	0.04800	0.05100
	<u>WINTER</u>		
	PART-PEAK	0.07600	0.08500
	OFF-PEAK	0.04900	0.05100
A-10-A	COM-10-A		
	ENERGY CHARGE (\$/KWH)		
	SUMMER	0.09300	0.09600
	WINTER	0.06700	0.06900
	DEMAND CHARGE (\$/KW)		
	SUMMER MAX	3.00000	3.10000
A-10-B	COM-10-B		
	ENERGY CHARGE (\$/KWH)		
	<u>SUMMER</u>		
	PEAK	0.11400	0.11800
	PART-PEAK	0.09400	0.09700
	OFF-PEAK	0.08000	0.08300
	<u>WINTER</u>		
	PART-PEAK	0.07300	0.07600
	OFF-PEAK	0.06200	0.06400
	DEMAND CHARGE (\$/KW)		
	SUMMER MAX	3.00000	3.10000

E-19-S, V

COM-19-S

ENERGY CHARGE (\$/KWH)

SUMMER

PEAK	0.10800	0.11400
PART-PEAK	0.07500	0.07900
OFF-PEAK	0.05200	0.05500

WINTER

PART-PEAK	0.07000	0.07400
OFF-PEAK	0.04900	0.05200

DEMAND CHARGE (\$/KW)

SUMMER

PEAK	8.20000	8.70000
PART-PEAK	1.70000	1.80000

E-19-P, V

COM-19-P

ENERGY CHARGE (\$/KWH)

SUMMER

PEAK	0.10900	0.11500
PART-PEAK	0.07000	0.07400
OFF-PEAK	0.04900	0.05200

WINTER

PART-PEAK	0.06400	0.06800
OFF-PEAK	0.04900	0.05200

DEMAND CHARGE (\$/KW)

SUMMER

PEAK	8.00000	8.50000
PART-PEAK	1.70000	1.80000

E-19-T, V

COM-19-T

ENERGY CHARGE (\$/KWH)

SUMMER

PEAK	0.08300	0.08800
PART-PEAK	0.06400	0.06800
OFF-PEAK	0.05100	0.05400

WINTER

PART-PEAK	0.05700	0.06000
OFF-PEAK	0.04800	0.05100

DEMAND CHARGE (\$/KW)

SUMMER

PEAK	8.30000	8.80000
PART-PEAK	1.80000	1.90000

E-20-S

COM-20-S

ENERGY CHARGE (\$/KWH)

SUMMER

PEAK	0.10200	0.10800
PART-PEAK	0.07000	0.07400
OFF-PEAK	0.04900	0.05200

WINTER

PART-PEAK	0.06300	0.06700
OFF-PEAK	0.04600	0.04900

DEMAND CHARGE (\$/KW)

SUMMER

PEAK	7.80000	8.20000
PART-PEAK	1.60000	1.70000

E-20-P

COM-20-P

ENERGY CHARGE (\$/KWH)

SUMMER

PEAK	0.10800	0.11400
PART-PEAK	0.07100	0.07500
OFF-PEAK	0.05000	0.05300

WINTER

PART-PEAK	0.06200	0.06600
OFF-PEAK	0.04900	0.05200

DEMAND CHARGE (\$/KW)

SUMMER

PEAK	8.50000	9.00000
PART-PEAK	1.80000	1.90000

E-20-T

COM-20-T

ENERGY CHARGE (\$/KWH)

SUMMER

PEAK	0.07700	0.08100
PART-PEAK	0.06000	0.06300
OFF-PEAK	0.04600	0.04900

WINTER

PART-PEAK	0.05800	0.06100
OFF-PEAK	0.04500	0.04800

DEMAND CHARGE (\$/KW)

SUMMER

PEAK	9.90000	10.50000
PART-PEAK	2.10000	2.20000

AGRICULTURAL CUSTOMERS

AG-1-A	AG-1-A			
	ENERGY CHARGE (\$/KWH)			
	SUMMER	0.09300	0.09600	
	WINTER	0.07400	0.07700	
	CONNECTED LOAD (\$/HP)			
	SUMMER MAX	1.20000	1.20000	
	WINTER MAX	-	-	
AG-1-B	AG-1-B			
	ENERGY CHARGE (\$/KWH)			
	SUMMER	0.09300	0.08400	
	WINTER	0.07100	0.06500	
	DEMAND CHARGE (\$/KW)			
	SUMMER MAX	-	1.80000	
	WINTER MAX	-	-	
AG-RA	AG-RA			
	ENERGY CHARGE (\$/KWH)			
	<u>SUMMER</u>			
	PEAK	0.22000	0.22000	
	OFF-PEAK	0.05500	0.05500	
	<u>WINTER</u>			
	PART-PEAK	0.06100	0.06100	
	OFF-PEAK	0.05200	0.05200	
	CONNECTED LOAD (\$/HP)			
	SUMMER	1.2000	1.2000	
	WINTER	0.0000	0.0000	
AG-RB	AG-RB			
	ENERGY CHARGE (\$/KWH)			
	<u>SUMMER</u>			
	PEAK	0.23400	0.23400	
	OFF-PEAK	0.06500	0.06500	
	<u>WINTER</u>			
	PART-PEAK	0.06000	0.06000	
	OFF-PEAK	0.05000	0.05000	
	DEMAND CHARGE (\$/KW)			
	<u>SUMMER</u>			
	MAX	1.7000	1.7000	
	PEAK	1.8000	1.8000	
	WINTER	0.0000	0.0000	

AG-VA

AG-VA

ENERGY CHARGE (\$/KWH)			
<u>SUMMER</u>			
PEAK	0.20000	0.20000	
OFF-PEAK	0.05500	0.05500	
 <u>WINTER</u>			
PART-PEAK	0.06200	0.06200	
OFF-PEAK	0.05300	0.05300	
 CONNECTED LOAD (\$/HP)			
SUMMER	1.2000	1.2000	
WINTER	0.0000	0.0000	

AG-VB

AG-VB

ENERGY CHARGE (\$/KWH)			
<u>SUMMER</u>			
PEAK	0.20400	0.20400	
OFF-PEAK	0.06200	0.06200	
 <u>WINTER</u>			
PART-PEAK	0.05800	0.05800	
OFF-PEAK	0.05000	0.05000	
 DEMAND CHARGE (\$/KW)			
<u>SUMMER</u>			
MAX	1.6000	1.6000	
PEAK	1.9000	1.9000	
 <u>WINTER</u>			
	0.0000	0.0000	

AG-4-A

AG-4-A

ENERGY CHARGE (\$/KWH)

SUMMER

PEAK	0.13700	0.14200
OFF-PEAK	0.05700	0.05900

WINTER

PART-PEAK	0.06000	0.06200
OFF-PEAK	0.05000	0.05200

CONNECTED LOAD (\$/HP)

SUMMER	1.20000	1.20000
WINTER	-	-

AG-4-B

AG-4-B

ENERGY CHARGE (\$/KWH)

SUMMER

PEAK	0.10500	0.10900
OFF-PEAK	0.05900	0.06100

WINTER

PART-PEAK	0.05800	0.06000
OFF-PEAK	0.04800	0.05000

DEMAND CHARGE (\$/KW)

SUMMER

MAX	2.00000	2.10000
PEAK	2.00000	2.10000

WINTER	-	-
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AG-4-C

AG-4-C

ENERGY CHARGE (\$/KWH)

SUMMER

PEAK	0.11900	0.11900
PART-PEAK	0.06700	0.06700
OFF-PEAK	0.04800	0.04800

WINTER

PART-PEAK	0.05400	0.05400
OFF-PEAK	0.04500	0.04500

DEMAND CHARGE (\$/KW)

SUMMER

PEAK	5.00000	5.00000
PART-PEAK	0.90000	0.90000

WINTER	0.00000	0.00000
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AG-5-A

AG-5-A

ENERGY CHARGE (\$/KWH)

SUMMER

PEAK	0.12700	0.13100
OFF-PEAK	0.06100	0.06300

WINTER

PART-PEAK	0.06400	0.06600
OFF-PEAK	0.05300	0.05500

CONNECTED LOAD (\$/HP)

SUMMER	3.10000	3.20000
WINTER	-	-

AG-5-B

AG-5-B

ENERGY CHARGE (\$/KWH)

SUMMER

PEAK	0.12100	0.12500
OFF-PEAK	0.03700	0.03800

WINTER

PART-PEAK	0.05700	0.05900
OFF-PEAK	0.03100	0.03200

DEMAND CHARGE (\$/KW)

SUMMER

MAX	3.90000	4.00000
PEAK	4.70000	4.90000

WINTER	-	-
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AG-5-C

AG-5-C

ENERGY CHARGE (\$/KWH)

SUMMER

PEAK	0.09800	0.10100
PART-PEAK	0.05200	0.05400
OFF-PEAK	0.03900	0.04000

WINTER

PART-PEAK	0.04600	0.04800
OFF-PEAK	0.03500	0.03600

DEMAND CHARGE (\$/KW)

SUMMER

PEAK	8.60000	8.90000
PART-PEAK	1.60000	1.70000

WINTER	-	-
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STREET AND OUTDOOR LIGHTING

LS-1, LS-2, LS-3, OL-1	SL-1		
	ENERGY CHARGE (\$/KWH)	0.07300	0.07600

TC-1	TC-1		
	ENERGY CHARGE (\$/KWH)	0.07500	0.07300

DEEP GREEN OPTION

Customers electing the Deep Green service option will pay the applicable rate for the Light Green service option plus the Deep Green Energy Charge.

	ENERGY CHARGE (\$/KWH)	0.01000	0.01000
Voltage Discount			
For primary voltage, each component of the standard rate shall be discounted.		4%	

Overview of MCE Board Offices and Committees February, 2015

Board Offices

Kate Sears, Chair

Tom Butt, Vice Chair

Denise Athas, Auditor/Treasurer

Dawn Weisz, Secretary

Executive Committee

1. Tom Butt, Chair
2. Denise Athas
3. Sloan Bailey
4. Ford Greene
5. Kevin Haroff
6. Bob McCaskill
7. Kate Sears

Technical Committee

1. Kate Sears, Chair
2. Kevin Haroff
3. Ford Greene
4. Emmett O'Donnell
5. Carla Small
6. Ray Withy
7. _____

Proposed Ad Hoc Contracts Committee for 2015 Open Season

1. *Sloan Bailey*
2. *Kate Sears*
3. *Ford Greene (Alternate)*
4. *Kevin Haroff (Alternate)*
5. _____
6. _____
7. _____



March 5, 2015

TO: Marin Clean Energy Board

FROM: Greg Brehm, Director of Power Resources

RE: Power Purchase Agreement with Stion Corporation for MCE Solar One
(Agenda Item #09)

ATTACHMENT: Power Purchase Agreement with Stion Corporation

Dear Board Members:

Overview:

As a result of MCE's ongoing development of a 60 acre brownfield site at Chevron Products Company (CPC) Richmond Refinery, MCE Staff issued a request for offers for developers to build and operate a proposed 12 MW solar project at the site. Stion Corporation (Stion) was selected from the proposals received based upon:

- PPA Rate
- Buyout option pricing
- PPA prepayment options
- Energy harvest
- Developer experience, and
- U.S. manufactured equipment content

MCE staff has negotiated the attached draft Power Purchase Agreement with Stion for the purchase of energy, capacity and renewable attributes from the project. The Project, "MCE Solar One," has a guaranteed capacity of 10.5 MW AC, slightly smaller than originally anticipated due to capacity limitations in the available power distribution circuits and parcel size.

Renewable energy volumes produced by the facility will complement MCE's existing renewable energy supply with output from a local generating project. The timing of deliveries will help replace the planned reduction in renewable energy deliveries under the Shell Energy North America (SENA) agreement. Additional information is provided below regarding the prospective counterparty.

Location & Project Viability:

The Project area includes three parcels bordered by the Richmond Parkway on the east side and totaling approximately 60 Acres. Ongoing evaluation of this site by staff and outside consultants have determined that approximately 49 acres of the site are useable, including 0.8 acres for a proposed visitor center/ public viewing kiosk. The site is located in the City of Richmond and is zoned M-3, Heavy Industrial District, upon which Public Utilities, both major and minor, are permitted uses.



Portfolio Fit:

MCE's development of the Project will benefit the public by allowing MCE to provide electricity from local renewable resources to customers in alignment with MCE's role as a California Joint Powers Authority. MCE's status as a California Joint Powers Authority and the public benefit that will result from MCE's involvement in the Project are key factors in CPC's decision to lease the property to MCE.

Counterparty Strength:

[Stion](#) is a leading U.S. manufacturer of high-efficiency thin-film solar modules based on state-of-the-art materials, device technology and proven production processes. Stion was founded in 2006 and is headquartered in San Jose, CA, with 125 megawatts of annual production capacity at its manufacturing facilities in Hattiesburg, Mississippi.

Stion has participated in multiple utility scale [projects](#).

Stion has been capitalized with over \$300 million in announced capital investments, including significant investments from Khosla Ventures, Stion's principal owner and the leading Cleantech investor in the U.S. with over \$3 billion in funds under management, and a \$70 million economic development package from the State of Mississippi.

Stion's financier for the MCE Solar One, Sol System's was introduced by Stion in order to provide MCE with the most flexibility to allow for an early buyout of the solar system during the PPA term and allow PPA prepayment options to reduce the PPA rate.

Sol Systems is purely a solar energy finance and investment firm. The company has facilitated financing for 171MW solar projects on behalf of Fortune 100 corporations,

insurance companies, utilities, banks, family offices, and individuals. [Sol Systems](#) has \$550 million in assets under management as of October 2014.



Contract Overview:

- Project: 10.5 MW of new solar PV– capable of supplying the annual electric needs of approximately 3,400 MCE residential customers.
- Project location: City of Richmond- within MCE's service territory.
- Project will utilize technologically proven ground mount single axis solar PV technology
- Guaranteed commercial operation date: September, 2016
- Contract term: 20 years
- Delivery profile: peaking
- Expected annual energy production: approximately 20,400 MWhs
- Energy price: fixed energy price applicable to each year of contract
- Operations and Maintenance includes a 2% escalator

- No credit/collateral obligations for MCE

Summary:

The MCE Solar One Project and the Stion PPA are a good fit for MCE's resource portfolio based on the following considerations:

- The Project size supports MCE's expansion and future renewable energy requirements
- Timing of initial energy deliveries under the agreement is aligned with planned reduction in renewable energy deliveries under SENA agreement
- The Project is being developed by an experienced team
- The Project is located within California and meets the highest value renewable portfolio standards category ("Bucket 1")
- The Project is highly viable and has passed through some of the early stages of development
- Energy from the Project is competitively priced

Recommendation: Approve power purchase agreement with Stion Corporation for local renewable energy supply.

EXECUTION VERSION

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: Stion MCE Solar One, LLC

Buyer: Marin Clean Energy, a California joint powers authority

Description of Facility:

A ~11.3 MW DC (~10.5 MW AC) PV System comprised of three (3) phases described below (each, a “**Phase**” and collectively, the “**Phases**”):

- **Site 1 (1X Tracker):** a 3.95 MW DC (3.5 MW AC) single-axis (1x) tracking PV system (the “**1x Tracking**” system”) to be installed during **Phase 2** of the project
- **Site 2 (Ballasted Fixed Tilt):** an initial 2.17 MW DC (2 MW AC) to be installed as **Phase 1** of the project followed by a 5.2 MW DC (5 MW AC) ballasted fixed tilt ground mounted PV system (each a “**Fixed Tilt**” system) to be installed during **Phase 3** of the project

Guaranteed Commercial Operation Date:

- **Phase 1:** Initial 2.17 MW DC Fixed Tilt system operational in May 1, 2016
- **Phase 2:** 3.95 MW DC 1x Tracking system operational in September 30, 2016
- **Phase 3:** 5.2 MW DC Fixed Tilt system operational in September 30, 2016

Delivery Term: Twenty (20) Contract Years.

Contract Price: [REDACTED] dollars (\$[REDACTED].00) per MWh, with no escalation

Product:

Energy

Green Attributes (if Renewable Energy Credit, please check the applicable box below):

- ☐ Renewable Energy Credit (Bucket 1)
- ☐ Renewable Energy Credit (Bucket 2)
- ☐ Renewable Energy Credit (Bucket 3)

Capacity Attributes

Expected Energy for Second Contract Year:

- 3,607 MWh from the Fixed Tilt System installed in Phase 1
- 7,612 MWh from the 1x Tracking System installed in Phase 2
- 8,670 MWh from the Fixed Tilt System installed in Phase 3

Scheduling Coordinator: Buyer/Buyer Third Party

Development Security: \$25/kW-AC

Performance Security: \$100/kW-AC

Notice Addresses:

Seller: Stion MCE Solar One, LLC c/o Stion Corporation

6321 San Ignacio Avenue
San Jose, CA 95119
Attention: Jeffrey Cheng
Phone No.: 408-284-8803
Fax No.: 408-574-0160

With a copy to:

Stion Corporation
6321 San Ignacio Avenue
San Jose, CA 95119
Attention: Richard Ogawa
Phone No.: 408-284-8803
Fax No.: 408-574-0160

Scheduling: Marin Clean Energy (c/o Buyer)

[Name]
Email: [_____]
Phone No.: [_____]
Fax No.: [_____]

Buyer:

Marin Clean Energy
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Attention: Greg Brehm, Director of Power Resources
Fax No.: (415) 459-8095
Phone No.: (415) 464-6037
Email: gbrehm@mceCleanEnergy.org

With a copy to:

Troutman Sanders LLP
805 SW Broadway, Suite 1560
Portland, Oregon 97205
Attention: Stephen Hall
Fax No.: (503) 290-2405
Phone No.: (503) 290-2336
Email: stephen.hall@troutmansanders.com

EXECUTION VERSION

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

SELLER
Stion MCE Solar One, LLC

By: _____
Name: _____
Title: _____

BUYER
Marin Clean Energy

By: _____
MCE Chairperson

By: _____
MCE Executive Officer

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Exhibit I-1	Form of Commercial Operation Date Certificate
Exhibit I-2	Form of Installed Capacity Certificate
Exhibit J	Form of Construction Start Certificate
Exhibit K	Form of Guaranty

POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement (“**Agreement**”) is entered into as of March ____, 2015 (the “**Effective Date**”), between Seller and Buyer (each also referred to as a “**Party**” and collectively as the “**Parties**”).

RECITALS

WHEREAS, Seller intends to develop, design, construct, and operate a photovoltaic electric generating facility to be located in Contra Costa County, California at the locations identified in Exhibit A, and having an aggregate Guaranteed Capacity to Buyer of ten and five tenths (10.5) MW AC (the “**Facility**”); and

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

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

ARTICLE 1 DEFINITIONS

1.1 **Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

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

“**Adjusted Energy Production**” has the meaning set forth in Exhibit F.

“**Agreement**” has the meaning set forth in the Preamble and includes any exhibits, schedules and any written supplements hereto, any designated collateral, credit support or similar arrangement between the Parties.

“**Available Capacity**” means the capacity from the Facility, expressed in whole MWs, that is available to generate Energy.

“**Bankrupt**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such

petition filed or commenced against it which remains unstayed or undismissed for a period of sixty (60) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

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

“Buyer” has the meaning set forth on the Cover Sheet.

“Buyer Bid Curtailment” means the occurrence of all of the following:

(a) the CAISO provides notice to a Party or Buyer’s SC, requiring the Party to produce less Energy from the Facility than forecasted to be produced from the Facility for a period of time;

(b) for the same time period as referenced in (a), Buyer or Buyer’s SC:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Energy forecasted to be produced from the Facility; and

(c) no other circumstances exist that constitute a Planned Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same time period as referenced in (a).

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce generation from the Facility by the amount, and for the period of time set forth in such order, for reasons unrelated to a Planned Outage, Forced Outage, Force Majeure and/or Curtailment Order.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order, and no other circumstances exist that constitute a Planned Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same time period.

“Buyout Payment” has the meaning set forth in Exhibit G.

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

“CAISO Charges Invoice” has the meaning set forth in Section 4.3(d).

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

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

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the CAISO grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“Capacity Damages” has the meaning set forth in Exhibit B.

“CEC” means the California Energy Commission or its successor agency.

“CEC Certification and Verification” means the certification and verification process that the CEC has established to determine whether the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and whether Energy generated by the Facility qualifies as generation from an Eligible Renewable Energy Resource.

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

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

“Commercial Operation Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) sixty (60).

“Confidential Information” has the meaning set forth in Section 19.1.

“Construction Start Date” shall have the meaning set forth in Exhibit B.

“Contract Price” has the meaning set forth in Section 3.3(a).

“Contract Term” has the meaning set forth in Section 2.1.

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

Date to December 31 of such calendar year, and the last Contract Year shall mean the period from January 1 of the last Contract Year through the last day of the Contract Term.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

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

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

“Curtailment Cap” is the yearly quantity per Contract Year, in MWh, equal to the product of twenty-nine (29) hours times the amount of the Installed Capacity.

“Curtailment Order” means any of the following:

a) the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including, but not limited to, (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO’s electric system integrity or the integrity of other systems to which the CAISO is connected;

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

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

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

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order.

“Daily Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

“Day-Ahead Forecast” has the meaning set forth in Section 4.4(c).

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Deemed Delivered Energy” means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to (a) the EIRP Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, whether or not Seller is participating in EIRP during the Buyer Curtailment Period, less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period or, (b) if there is no EIRP Forecast available, using relevant Facility availability, weather, historical and other pertinent data for the period of time during the Buyer Curtailment Period less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference calculated pursuant to (a) or (b) above is negative as compared to the amount of metered Energy at the CAISO revenue meter for the Facility, the Deemed Delivered Energy shall be zero (0).

“Deemed Delivered Energy Price” means the price to be paid by Buyer to Seller for Deemed Delivered Energy, as specified in Section 3.3(b).

“Defaulting Party” has the meaning set forth in Section 11.1(a).

“Delivered Energy” means all Energy produced from the Facility as measured in MWh at the CAISO revenue meter of the Facility based on a power factor of precisely one (1) and net of all Electrical Losses.

“Delivery Point” means the [*Facility PNode*] [*NP15 Trading Hub as defined by the CAISO [TH_NP15_GEN-APND]*].

“Delivery Term” shall mean the period of twenty (20) Contract Years beginning on the Commercial Operation Date of the first Phase to reach Commercial Operation and ending on the twentieth (20th) anniversary of the Commercial Operation Date of the last Phase to achieve Commercial Operation, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Development Cure Period” has the meaning set forth in Exhibit B.

“Development Security” means the collateral in the amount required of Seller, as specified in the Cover Sheet to this Agreement, and referred to in Section 8.7, which may be provided in the form of (i) cash or (ii) a Letter of Credit.

“Distribution Loss Factor” is a multiplier factor that reduces the amount of Delivered Energy produced by a Facility connecting to a distribution system to account for the electrical distribution losses, including those related to distribution and transformation, occurring between the Point of Interconnection, as defined in the applicable Wholesale Distribution Tariff, at the

point where the distribution system meter is physically located, and the first Point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.

“Early Termination Date” has the meaning set forth in Section 11.2.

“Effective Date” has the meaning set forth on the Preamble.

“Eligible Intermittent Resource Protocol” or **“EIRP”** has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

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

“Electrical Losses” means all applicable losses, including the following: (a) any transmission or transformation losses between the CAISO revenue meter and the Delivery Point; and (b) the Distribution Loss Factor, if applicable.

“Energy” means metered electrical energy, measured in MWh, which is produced by the Facility.

“Event of Default” has the meaning set forth in Section 11.1.

“Expected Energy” has the meaning set forth in Exhibit F, Schedule F-1.

“Facility” means the facility described more fully in Exhibit A attached hereto.

“Fair Market Value” has the meaning set forth in Exhibit G.

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

“Force Majeure Event” has the meaning set forth in Section 10.1.

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

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

“Full Capacity Deliverability Status Finding” means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

“Future Environmental Attributes” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and

allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the non-defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

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

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its displacement of conventional Energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS operating rules.

“Guaranteed Capacity” means ten and five tenths (10.5) MW AC capacity measured at the Delivery Point, which amount is subject to and will be reduced so as to equal the amount of generation capacity permitted under any final permitting or environmental restrictions imposed by a Governmental Authority, or Interconnection Agreement limitations as required by the Transmission Provider and agreed upon by the Parties.

“Guaranteed Commercial Operation Date” has the meaning set forth in Exhibit B.

“Guaranteed Construction Start Date” has the meaning set forth in Exhibit B.

“Guaranteed Energy Production” has the meaning set forth in Section 4.7.

“Guarantor” means, with respect to Seller, any person that (a) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (b) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (c) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit K, or as reasonably acceptable to Buyer.

“Imbalance Energy” means the amount of Energy, in any given settlement period, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

“Indemnified Party” has the meaning set forth in Section 17.1.

“Indemnifying Party” has the meaning set forth in Section 17.1.

“Installed Capacity” means the sum of the actual generating capacity of the Facility, not to exceed ten and five tenths (10.5) MW AC.

“Inter-SC Trade” has the meaning set forth in CAISO Tariff.

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

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

“Interest Rate” has the meaning set forth in Section 8.2.

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

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

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form reasonably acceptable to Buyer.

“Locational Marginal Price” or **“LMP”** has the meaning set forth in CAISO Tariff.

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

“Lost Output” has the meaning set forth in Exhibit F.

“Milestones” means the development activities for significant permitting, interconnection, financing and construction milestones set forth in Exhibit H.

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

“MW” means megawatts measured in alternating current.

“MWh” means megawatt-hour.

“Negative LMP” means, in any Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Delivery Point is less than zero dollars (\$0).

“Negative LMP Costs” means, in any Settlement Interval during which Seller delivers Energy amounts in excess of the Installed Capacity and there is a Negative LMP, an amount equal to such Negative LMP times such excess MWh.

“Non-Defaulting Party” has the meaning set forth in Section 11.2.

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

“Output Event of Default” has the meaning set forth in Exhibit F.

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

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

“Party” has the meaning set forth in the Preamble.

“Performance Measurement Period” has the meaning set forth in Section 4.7.

“Performance Security” means the collateral in the amount required of Seller, as specified in the Cover Sheet to this Agreement, and referred to in Section 8.8, which may be provided in the form of (i) cash, (ii) a Guaranty, or (iii) a Letter of Credit.

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

“Phase” and **“Phases”** has the meaning set forth on the Cover Sheet.

“PNode” has the meaning set forth in the CAISO Tariff.

“Product” means (i) Energy, (ii) Green Attributes and (iii) Capacity Attributes.

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

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

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

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

“Renewable Energy Credit (Bucket 1)” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Credit (Bucket 2)” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Credit (Bucket 3)” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c)

any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.

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

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

“Schedule” means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered on any given day or days at a specified Delivery Point.

“Scheduled Energy” means the Energy that clears under the applicable CAISO market based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices.

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

“Seller” has the meaning set forth on the Cover Sheet.

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

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

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

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term,

including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Termination Payment” has the meaning set forth in Section 11.3.

“Terminated Transaction” has the meaning set forth in Section 11.2.

“Test Energy” means the Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Facility to the CAISO and (ii) the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

“Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

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

“WECC” means the Western Electricity Coordinating Council or its successor.

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

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

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

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

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

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

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

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

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

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

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

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

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

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

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

1.3 **Service Contract.** The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and shall not be construed as a capital lease, and that this Agreement is and shall be treated as a "service contract" within the meaning of pursuant to Section 7701(e) of the Internal Revenue Code.

1.4 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. § 366 or another provision of 11 U.S.C. § 101-1532.

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein (“**Contract Term**”).

(b) Buyer shall have the right, but not the obligation, to extend the Contract Term for an additional five (5) Contract Years at the then-current Contract Price, but Seller must receive Notice of such extension at least two (2) years before the end of the initial Contract Term.

(c) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 19 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

(d) Buyer may elect to purchase the Facility during the Delivery Term in accordance with Exhibit G.

2.2 Conditions Precedent.

(a) Either Party may terminate this Agreement upon Notice to the other Party if any of the following events have not occurred by September 30, 2015:

(i) Seller has received a “Notice of Determination” from the applicable Governmental Authority with respect to the necessary environmental permits or approvals that is acceptable to both Parties, as determined by each Party in its sole discretion;

(ii) The PTO has offered Seller a draft Interconnection Agreement acceptable to both Parties, as determined by each Party in its sole discretion; and

(iii) Buyer has entered into a lease for the Facility site with Chevron Products Company, and obtained any required consents in connection with such lease.

Upon such termination, neither Party shall have any further liability or obligation to the other Party, save and except for those obligations specified in Section 2.1(c).

(b) Subject to Section 3.7, Buyer shall have no obligation whatsoever to purchase the Product produced by a Phase of the Facility under this Agreement until Seller completes to Buyer’s reasonable satisfaction each of the following conditions as to such Phase:

(i) Seller shall have delivered to Buyer completion certificates from an licensed professional engineer substantially in the form of Exhibit I-1 and Exhibit I-1;

(ii) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(iii) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(iv) The Interconnection Facilities of Seller have demonstrated the ability to accept the full-load output of the Facility and final permission to commence Commercial Operation has been granted by the PTO and the CAISO, including completion of all Network Reliability Upgrades (as defined in the CAISO Tariff) and satisfaction of all other requirements of the Interconnection Agreement;

(v) All applicable regulatory authorizations, approvals and permits for the operation of the Facility shall have been obtained, all conditions thereof shall have been satisfied, and shall be in full force and effect;

(vi) Seller has received documentation from the PTO that Delivery Network Upgrades (as defined in the CAISO Tariff) for the Facility have been completed;

(vii) Seller has received the requisite pre-certification of the CEC Certification and Verification and reasonably expects to receive final CEC Certification and Verification for the Facility (or Phase, if applicable) in no more than ninety (90) days from the Commercial Operation Date;

(viii) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system or have completed any other requirements to enable Buyer to fulfill its RPS requirements; and

(ix) Seller has paid Buyer for all Daily Delay Damages and Commercial Operation Delay Damages owing under this Agreement, if any.

2.3 **Progress Reports.** Seller shall report to Buyer quarterly on progress of the Milestones, from the Effective Date until the start of construction, at which point Seller shall report to Buyer monthly, until the Commercial Operation Date. The form of these progress reports are set forth as Exhibit H.

ARTICLE 3 PURCHASE AND SALE

3.1 **Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable Contract Price, all of the Product produced by the Facility. At its sole discretion, Buyer may re-sell or use for another purpose all or a portion of the Product. Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, and/or any Capacity Attributes thereof, from the Facility for resale in the market, and retain and receive any and all related revenues. Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event affecting Buyer's ability to receive the Product (but not its ability to transmit the Product from the Delivery Point), or a Curtailment Order. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all of the Green Attributes, attributable to the Energy produced by the Facility.

3.3 **Compensation.**

(a) The Contract Price shall be as set forth in Exhibit C (the "**Contract Price**").

(b) Subject to Section 3.3(c), Buyer shall pay Seller the Contract Price for (i) each MWh of Delivered Energy and (ii) each MWh of Deemed Delivered Energy above the Curtailment Cap.

(c) If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap, if any, exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, for each additional MWh of Product delivered to Buyer in such Contract Year, the price to be paid shall be the lesser of (i) seventy-five percent (75%) of the Contract Price or (ii) the Day-Ahead price for each Settlement Interval.

(d) If during any Settlement Interval, Seller delivers Product amounts in excess of the Installed Capacity, then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the Negative LMP Costs.

(e) If (i) Buyer fails or is unable to take Product made available at the Delivery Point during any period and such failure to take is not excused by an Event of Default where Seller is the Defaulting Party or a Force Majeure Event, or (ii) Seller is not able to make Product available due to an Event of Default where Buyer is the Defaulting Party, Buyer shall pay Seller, as Seller's sole remedy, an amount equal to the product of (1) the Deemed Delivered Energy for such period and (2) the Contract Price applicable during such period.

3.4 **Imbalance Energy.** Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Scheduled Energy. Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible and Seller shall take such other commercially reasonable actions requested by Buyer that can be undertaken by Seller without cost or economic detriment to Seller to minimize charges and imbalances associated with Imbalance Energy. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred.

3.5 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.6 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. In such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 **Test Energy.** If and to the extent the Facility generates Test Energy, Seller shall make available to Buyer and Buyer shall take all Test Energy made available. As compensation for such Test Energy, Buyer shall pass through and deliver to Seller any CAISO revenues, credits and other payments for or attributable as a result of such Test Energy, net of any CAISO fees and Scheduling Coordinator service costs.

3.8 **Capacity Attributes.** By no later than the Effective Date, Seller shall have submitted all necessary PG&E interconnection applications.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term, as applicable, Seller shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. As applicable, Seller hereby covenants and agrees to transfer all Resource Adequacy benefits to Buyer.

3.9 **CEC Certification and Verification.** Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the *RPS Eligibility Guidebook, Seventh Edition* (or its successor). Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.10 **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

3.11 **California Renewables Portfolio Standard.** Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) **Energy.** Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Delivered Energy on an as-generated, instantaneous basis. Notwithstanding anything to the contrary in this Agreement (including with respect to any Force Majeure Event), Buyer shall be responsible for all charges, penalties, Negative LMPs, ratcheted demand or similar charges, and any transmission related charges, including imbalance penalties or congestion charges associated with Delivered Energy from and after the Delivery Point. Seller shall be responsible for all charges, penalties, Negative LMPs, ratcheted demand or similar charges, and any transmission related charges, including imbalance penalties or congestion charges associated with Delivered Energy up to the Delivery Point. Seller shall also be responsible for any other charges, costs or penalties assessed by CAISO that

are associated with the Facility or Seller's violation of applicable regulatory requirements. Notwithstanding any of the foregoing to the contrary, Buyer shall assume all liability and reimburse Seller for any and all CAISO charges or penalties incurred by Seller as a result of Buyer's actions or failures to comply with its obligations under this Agreement, including those resulting from a Buyer Curtailment Period. Each Party shall perform all generation, scheduling, and transmission services in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Delivered Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 Title and Risk of Loss.

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

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

4.3 Scheduling Coordinator Responsibilities.

(a) Buyer as Scheduling Coordinator for the Facility. Upon initial synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Product at the Delivery Point. At least thirty (30) days prior to the initial synchronization of the Facility to the CAISO Grid, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Facility effective as of initial synchronization of the Facility to the CAISO Grid. On and after initial synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer. Buyer (as Seller's SC) shall submit Schedules to the CAISO based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Buyer (as Seller's SC) shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Delivered Energy consistent with PIRP whenever PIRP is applicable, and consistent with Buyers' best estimate based on the information reasonably available to Buyer including Buyer's forecast whenever PIRP is not applicable.

(b) Notices. Buyer (as Seller's SC) shall provide Seller with access to a web

based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as provided below, Buyer shall be responsible for all CAISO costs (including scheduling and forecasting fees, penalties and other charges) and shall be entitled to all CAISO revenues (including Imbalance Energy and other credits and payments) in each case, associated with Delivered Energy, except to the extent (i) such CAISO costs are incurred as a consequence of the Facility not being available, (ii) the Seller not notifying the CAISO and Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), and (iii) any other failure by Seller to abide by the CAISO Tariff, this Agreement, or with any CAISO, Buyer Curtailment, or Scheduling Coordinator dispatch instructions. The Parties agree that any Availability Incentive Payments under CAISO Tariff Section 40.9 are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges or other CAISO charges associated with the Facility not providing sufficient Resource Adequacy capacity under CAISO Tariff Section 40.9 are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered by Buyer after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall reflect any such adjustments on subsequent CAISO Charges Invoices. Seller shall pay the amount of CAISO Charges Invoices within ten Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Reserved.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such

expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

4.4 Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller's Available Capacity forecasts shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Available Capacity. No less than forty-five (45) days before (i) the first day of the Delivery Term and (ii) the beginning of each subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Delivered Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) Monthly Forecast of Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

(c) Daily Forecast of Available Capacity. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Facility's Available Capacity (or if PIRP is not available for any reason, the expected Delivered Energy) for each hour of the immediately succeeding day ("Day-Ahead Forecast"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Facility's Available Capacity (or if PIRP is not available for any reason, the expected Delivered Energy). Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

(d) Hourly and Sub-Hourly Forecasts of Available Capacity. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason including Forced Outages (other than a

scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(e) CAISO Tariff Requirements. Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.5 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the Facility's generation by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or Buyer Bid Curtailment. Except for a failure or curtailment resulting from a Force Majeure Event, Curtailment Order, Buyer Curtailment Order, or Buyer Bid Curtailment, the failure of electric transmission service shall not excuse performance with respect to either Party for the delivery or receipt of the Product to be provided under this Agreement; provided that, if Buyer fails to accept Energy due to a failure of transmission service, whether or not excused, Seller will nonetheless be deemed to have fulfilled its obligations hereunder so long as the Facility was available to produce Energy immediately prior to such failure of transmission service and such failure was not the direct or indirect result of the negligence of Seller.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Energy from the Facility to the Delivery Point for the amount and for the period set forth in a Buyer Curtailment Order or Buyer Bid Curtailment delivered to Seller, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period pursuant to Section 3.3(b). Seller agrees to reduce the Facility's generation by the amount and for the period set forth in the applicable Buyer Curtailment Order.

(c) Seller Curtailment. Buyer and Seller shall use commercially reasonable efforts to develop a protocol to automatically curtail deliveries of Energy from the Facility when Negative LMP prices are below -\$30/MWh. Buyer may adjust such Negative LMP curtailment price on ten (10) days' Notice to Seller. For purposes of compensation to Seller, such curtailments will be deemed a Buyer Curtailment and a Buyer Curtailment Period and Seller will be compensated for such curtailments in accordance with Section 4.5(b).

(d) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Delivered Energy that the Facility generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh, (B) is the Negative LMP Costs, if any, for the Buyer Curtailment Period or Curtailment Period and (C) is amount of any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment

Order.

4.6 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit F:

(a) **Facility Maintenance.** Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller.

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

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

(d) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Expected Energy and Guaranteed Energy Production.** The quantity of Energy that Seller expects to be able to deliver to Buyer during each Contract Year is set forth in Exhibit F, Schedule F-1 (“**Expected Energy**”) and is subject to an annual degradation of 0.5% solar irradiance available at the Facility, Force Majeure Events, Curtailment Periods and Buyer Curtailment Periods that occur during any such Contract Year or Performance Measurement Period. Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any twenty-four (24) consecutive calendar month period during the Delivery Term (“**Performance Measurement Period**”). “**Guaranteed Energy Production**” means an amount of Energy, as measured in MWh, equal to one-hundred sixty percent (160%) of the Expected Energy for such period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period to the extent of any Force Majeure Events, an Event of Default where Buyer is the Defaulting Party, Curtailment Periods and Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, an Event of Default where Buyer is the Defaulting Party, Curtailment Periods, and Buyer Curtailment Periods in accordance with Exhibit F. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit F.

4.8 **Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently

applied.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available Product to Buyer, that are imposed on Product prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and from the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). Notwithstanding the foregoing, each Party shall be responsible for its own Taxes calculated based on the income or profits generated in connection with the purchase and sale of the Product hereunder. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Energy hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

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

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility.** Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

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

ARTICLE 7 METERING

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

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

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall provide Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Facility for any Settlement Interval during the preceding month, including, without reservation, the amount of Product in MWh delivered during the prior billing period as set forth in CAISO T+12 settlement statements, the amount of Product in MWh produced by the facility as read by the CAISO revenue grade meter, the Contract Price applicable to such Product, deviations between the quantity of Product produced and the quantity of Product delivered, and the CAISO prices at the Delivery Point for each Settlement Interval; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer, as Scheduling Coordinator, shall provide Seller with all necessary CAISO settlement data and the CAISO Charges Invoice no later than five (5) Business Days following receipt of the T+12 settlement statements from CAISO in a form mutually agreed upon by Buyer and Seller.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay

undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer’s monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the non-erring Party received Notice thereof.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of

the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Exhibits B and F, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer in the amount set forth in the Cover Sheet to this Agreement for each Phase and within thirty (30) days of the later of: (A) execution of the Interconnection Agreement for such Phase or (B) receipt of the "Notice of Determination" from the applicable Governmental Authority regarding all environmental impacts and required mitigation, if any, or exemption from such requirements, under the environmental permits or approvals necessary for such Phase. Seller shall maintain the Development Security in full force and effect until Seller posts the Performance Security pursuant to Section 8.8 below and if Buyer collects or is entitled to collect Daily Delay Damages from Seller for Seller's failure to achieve the Guaranteed Construction Start Date, Seller shall replenish the Development Security by an amount equal to the encumbered Development Security. Following the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly return the Development Security to Seller, less the amounts drawn in accordance with Exhibit B. If the Development Security is a letter of credit and the issuer of such letter of credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such letter of credit and such letter of credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such letter of credit by such issuer, Seller shall have three (3) Business Days to either post cash or deliver a substitute letter of credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer in the applicable amount set forth in the Cover Sheet to this Agreement upon Commercial Operation Date of each Phase. If the Performance Security is not in the form of cash, it shall be in a form and substance reasonably satisfactory to Buyer. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a letter of credit and the issuer of such letter of credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such letter of credit and such letter of credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such letter of credit by such issuer, Seller shall have three (3) Business Days to either post cash or deliver a substitute letter of credit that meets the requirements set forth in the definition of Performance Security.

ARTICLE 9 NOTICES

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

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 **Definition.**

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term **“Force Majeure Event”** does not include (i) economic conditions that render a Party’s performance of this Agreement at the

Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy Energy at a lower price than the Contract Price, Buyer's inability economically to use or resell the Product purchased hereunder, or Seller's ability to sell Energy at a higher price than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility; (ii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iii) a Curtailment Period; (iv) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility; (v) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

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

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

10.4 Termination Following Force Majeure Event. If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive eight (8) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, the non-claiming Party shall have no liability to the Force Majeure Event claiming Party, save and except for those obligations specified in Section 2.1(c).

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 Events of Default. An “**Event of Default**” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party’s obligations to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 4.3) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Facility;

(ii) the failure by Seller to achieve Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least ten percent (10%) of the Expected Energy amount for the current Contract Year, and Seller fails to demonstrate to Buyer’s reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 of this Agreement;

(v) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the right (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) Business Days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date, to accelerate all amounts owing between the Parties, and to collect liquidated damages calculated in accordance with Section 11.3 Termination Payment below; (b) to withhold any payments due to the Defaulting Party under this Agreement; (c) to suspend performance; and (d) to exercise any other right or remedy available at law or in equity, including injunctive relief to the extent permitted under this Agreement, except to the extent such remedies are expressly limited under this Agreement.

11.3 **Termination Payment.** The Termination Payment (“**Termination Payment**”) for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party netted into a single amount. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages, lost revenues or lost profits; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination

Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.

11.6 **Rights And Remedies Are Cumulative.** Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.7 **Mitigation.** Any Non-Defaulting Party shall be obligated to mitigate its Costs, losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE, BUSINESS INTERRUPTION OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

12.2 **Waiver and Exclusion of Other Damages.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL

OF THEIR ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTION 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT F, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEXT SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller’s Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

13.2 **Buyer's Effective Date Representations and Warranties.** 2As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Laws.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

2 Note: these deleted reps and warranties are already stated in Section 3.10, and would only apply during the Delivery Term (not reps and warranties made as of the Effective Date).

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any Law.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment that is allowed by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

14.2 Permitted Assignment; Change of Control of Seller. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); or (c) subject to Section 15.1, a Lender as collateral, *provided however*, that in each of the foregoing situations, the assignee shall be a Qualified Assignee; *provided, further*, that in each such case, Seller shall give Notice to Buyer no fewer than fifteen (15) Business Days before such assignment that (i) notifies Buyer of such assignment and (ii) provides to Buyer a written agreement signed by the Person to which Seller wishes to assign its interests which (y) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (z) certifies that such Person shall meet the definition of a Qualified Assignee. In the event that Buyer, in good faith, does not agree that Seller's assignee meets the definition of a Qualified Assignee, then either Seller must agree to remain financially responsible under this Agreement, or Seller's assignee must provide payment security in an amount and form reasonably acceptable to Buyer. Any direct or indirect change of control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this Section 14.2. Any assignment by Seller, its successors or assigns under this Section 14.2 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Buyer.

14.3 Change of Control of Buyer. Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, *provided* that no fewer than fifteen (15) Business Days before such assignment Buyer (a) notifies Seller of such assignment and (b) provides to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests stating that (i) such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 15.2(b) and (ii) such Person has the financial capability to perform all of Buyer's obligations under this Agreement. In the event that Seller, in good faith, does not agree that Buyer's assignee has the financial capability to perform all of Buyer's obligations under this Agreement, then either Buyer must agree to remain financially responsible under this Agreement, or Buyer's assignee must provide payment security in an amount and form reasonably acceptable to Seller. Any assignment by Buyer, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Seller.

ARTICLE 15 LENDER ACCOMMODATIONS

15.1 Granting of Lender Interest. Notwithstanding Section 14.2 or Section 14.3, either Party may, without the consent of the other Party, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Each Party's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party's interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving the other Party such initial Notice, the granting

Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.

15.2 **Rights of Lender.** If a Party grants an interest under this Agreement as permitted by Section 15.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by the granting Party under this Agreement to prevent or cure a default by the granting Party in accordance with Section 11.2, and such act performed by Lender shall be as effective to prevent or cure a default as if done by the granting Party.

(b) The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments and other documents reasonably requested by the granting Party or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that Buyer recognizes the Lender's security interest and such other provisions as may be reasonably requested by Seller or any such Lender; provided, however, that all costs and expenses (including reasonable attorney's fees) incurred by Buyer in connection therewith shall be borne by Seller.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the granting Party hereunder; *provided* that non-granting shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.

15.3 **Cure Rights of Lender.** The non-granting Party shall provide Notice of the occurrence of any Event of Default described in Section 11.1 or 11.2 hereof to any Lender, and such Party shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder. The non-granting Party shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder.

ARTICLE 16 DISPUTE RESOLUTION

16.1 **Governing Law.** This agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

16.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement,

within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

16.3 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 17 INDEMNIFICATION

17.1 Indemnification.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 17.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

17.2 **Claims.** Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such

consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 18 INSURANCE

18.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than two million dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of five million dollars (\$5,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than one million dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the one million dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than one million dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000).

per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 18.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, Seller, among other things and without restricting Buyer's remedies under the law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 18 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 19

CONFIDENTIAL INFORMATION

19.1 Definition of Confidential Information. The following constitutes "Confidential Information," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) proposals and negotiations until this Agreement is approved and executed by the Buyer, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

19.2 Duty to Maintain Confidentiality. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent

such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion.

19.3 **Irreparable Injury; Remedies.** Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 19 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief and/or notwithstanding Section 12.2, consequential damages.

19.4 **Disclosure to Lender.** Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to any potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 19 to the same extent as if it were a Party.

ARTICLE 20 MISCELLANEOUS

20.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

20.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

20.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

20.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy service provider and energy service recipient, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart

any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

20.5 **Severability**. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

20.6 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

20.7 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

20.8 **Facsimile or Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

20.9 **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

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

EXHIBIT A

DESCRIPTION OF THE FACILITY

Site Name: MCE Solar One, Richmond, California

APN:

County: Contra Costa

MW AC: 10.5

P-node/Delivery Point:

Additional Information:

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. Seller shall cause construction to begin on each Phase of the Facility within sixty (60) days of the later of (i) receipt of final construction permits or (ii) the executed Interconnection Agreement for such Phase, (as may be extended by the Development Cure Period (defined below), the “**Guaranteed Construction Start Date**”). Seller shall demonstrate the start of construction through mobilization to site by Seller and/or its designees, and which may include activities such as the physical movement of soil at the Facility, grading, grubbing, site access preparation or vegetation removal, at a sufficient level to reasonably demonstrate that Seller is preparing the location for the construction of the Facility (“**Construction Start**”). On the date of the beginning of construction for each Phase (the “**Construction Start Date**”), Seller shall deliver to Buyer a certificate substantially in the form attached as Exhibit J hereto.
- b. If Construction Start is not achieved as to any Phase, by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of such Phase or Phases of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B.

2. Commercial Operation of the Facility. “**Commercial Operation**” means, with respect to each Phase, the condition existing when (i) all conditions to operate the Phase have been satisfied and complied with in order to produce, sell and transmit Energy, (ii) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement, and (iii) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved. The “**Commercial Operation Date**” shall be the later of (x) May 1, 2016 for Phase 1, September 30, 2016 for Phase 2, and September 30, 2016 for Phase 3, or (y) the date on which Commercial Operation is achieved for each Phase.

- a. Seller shall cause Commercial Operation for Phase 1 to occur by May 1, 2016 and Commercial Operation for both Phase 2 and Phase 3 to occur by September 30, 2016 (as to each Phase, as each may be extended by the Development Cure Period (defined below), the “**Guaranteed Commercial Operation Date**”). Seller shall notify Buyer at least sixty (60) days before the Commercial Operation Date for each Phase and shall confirm to Buyer in writing when Commercial Operation for each Phase has been achieved.

- b. If Seller achieves Commercial Operation for all three Phases by the Guaranteed Commercial Operation Dates, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.
 - c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay “**Commercial Operation Delay Damages**” to Buyer for each day the Phase has not been completed and is not ready to produce and deliver Energy to Buyer as of the Guaranteed Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date is reached for the applicable Phase. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.
3. **Termination for Failure to Achieve Commercial Operation.** If a Phase has not achieved Commercial Operation within sixty (60) days after the applicable Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement as to such Phase, which termination shall be effective upon Notice to Seller.
4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended, by a number of days equal to the period of such delay, if:
- a. despite the exercise of diligent and commercially reasonable efforts by Seller, any Governmental Authority or the PTO delays the approvals of any material permits, consents, licenses, approvals, or authorizations required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit the Seller and Facility to make available and sell Product;
 - b. a Force Majeure Event occurs;
 - c. despite the exercise of diligent and commercially reasonable efforts by Seller, the Interconnection Facilities are not complete and ready for the Facility to connect and sell Energy at the Delivery Point, including as a result of any delays caused by CAISO and/or the PTO, within sixty days of the Guaranteed Commercial Operation Date for each Phase; or
 - d. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operations Date.

provided, however, that any cumulative extensions granted pursuant to this section shall not exceed one hundred fifty (150) days (the “**Development Cure Period**”).

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or network upgrades such

that the Installed Capacity is equal to the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to One Hundred Thousand Dollars (\$100,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.

EXHIBIT C
CONTRACT PRICE

The Contract Price of the Product shall be:

Contract Year	Contract Price
1 – 20	\$ [REDACTED] /MWh

EXHIBIT D

EMERGENCY CONTACT INFORMATION

BUYER:

Greg Brehm, Director of Power Resources
Marin Clean Energy
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Fax No.: (415) 459-8095
Phone No.: (415) 464-6037
Email: gbrehm@mceCleanEnergy.org

SELLER:

Jeffrey Cheng, Vice President of Projects & Systems

Stion MCE Solar One, LLC
c/o Stion Corporation
6321 San Ignacio Avenue
Fax No: 408-574-0160
Phone No: 408-284-8803
Email: jcheng@stion.com

EXHIBIT E

[RESERVED]

EXHIBIT F

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production, during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$(A - B) * (C - D)$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) \$50/MWh

D = the Contract Price for the Performance Measurement Period, in \$/MWh

“Adjusted Energy Production” shall mean the sum of the following: Delivered Energy + Deemed Delivered Energy + Lost Output.

“Lost Output” means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of a Force Majeure Event, an Event of Default where Buyer is the Defaulting Party, a Curtailment Period or Buyer Curtailment Period. The additional MWh shall be calculated by assuming that the Facility would have produced an amount of electricity in such periods equal to the average production during the month of such non-production in the preceding two (2) Contract Years.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer within thirty (30) days of such Notice.

SCHEDULE F-1

EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
MAY																								
JUN																								
JUL																								
AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

PHASE 3 (5.0 MW) Contract Quantity (Mwh) YEAR 2
SCHEDULE F-1

CONTRACT QUANTITY (MWh) Year 2																									
	HE 1	HE 2	HE 3	HE 4	HE 5	HE 6	HE 7	HE 8	HE 9	HE 10	HE 11	HE 12	HE 13	HE 14	HE 15	HE 16	HE 17	HE 18	HE 19	HE 20	HE 21	HE 22	HE 23	HE 24	Total
Jan	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	-0.1	13.0	32.7	46.4	62.2	61.9	62.0	52.7	36.5	5.0	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	370.1
Feb	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	4.3	26.2	43.4	59.5	68.3	72.4	68.9	59.7	39.1	17.9	1.6	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	459.4
Mar	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	0.5	19.2	47.7	69.9	95.1	107.3	104.9	98.5	93.5	63.8	40.0	7.2	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	745.8
Apr	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	7.4	34.6	67.3	95.8	106.3	113.2	116.9	109.5	94.6	72.7	44.7	20.2	0.0	-0.2	-0.2	-0.2	-0.2	-0.2	881.5
May	-0.2	-0.2	-0.2	-0.2	-0.2	0.9	16.2	44.5	73.1	96.9	117.7	133.7	137.2	127.0	108.7	89.0	57.0	26.8	2.3	-0.2	-0.2	-0.2	-0.2	-0.2	1029.5
Jun	-0.2	-0.2	-0.2	-0.2	-0.2	1.7	14.8	39.7	68.5	96.1	115.5	129.9	131.7	124.7	110.0	86.6	57.7	31.1	9.4	-0.2	-0.2	-0.2	-0.2	-0.2	1015.9
Jul	-0.2	-0.2	-0.2	-0.2	-0.2	0.7	11.8	33.5	59.2	89.2	114.8	128.7	132.3	125.9	111.7	90.0	61.5	30.6	9.2	-0.2	-0.2	-0.2	-0.2	-0.2	997.6
Aug	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	8.2	33.4	64.1	92.6	117.5	130.2	133.1	126.4	110.8	87.5	56.7	25.5	0.0	-0.2	-0.2	-0.2	-0.2	-0.2	984.4
Sep	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	3.0	22.3	48.8	76.9	112.2	120.0	122.7	113.9	95.3	71.5	39.1	6.8	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	830.9
Oct	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	0.0	16.7	39.6	63.0	84.7	92.6	93.5	87.1	73.0	48.6	16.8	0.0	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	613.8
Nov	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	6.8	29.6	46.1	63.3	72.3	73.0	65.9	48.0	29.1	1.4	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	433.6
Dec	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	0.3	14.4	33.0	46.7	51.9	51.9	51.6	38.1	21.2	0.9	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	-0.2	307.8

HOUR ENDING (MWh)

totals | 8670.1

PHASE 2 (3.5MW) Tracker, Contract Quantity (Mwh) YEAR 2
SCHEDULE F-1

CONTRACT QUANTITY (MWh) Year 2																									
	HE 1	HE 2	HE 3	HE 4	HE 5	HE 6	HE 7	HE 8	HE 9	HE 10	HE 11	HE 12	HE 13	HE 14	HE 15	HE 16	HE 17	HE 18	HE 19	HE 20	HE 21	HE 22	HE 23	HE 24	Total
Jan	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	11.8	28.9	32.4	37.4	35.5	39.0	40.5	34.2	4.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	262.1
Feb	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	4.0	28.0	40.1	43.9	44.1	44.6	45.3	46.3	38.6	18.8	1.4	-0.1	-0.1	-0.1	-0.1	-0.1	353.7
Mar	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	1.5	25.8	56.7	64.0	72.1	72.2	68.7	69.3	76.2	64.6	48.3	8.3	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	626.3
Apr	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	16.1	52.5	77.9	87.2	82.0	79.6	80.9	81.3	80.7	76.3	61.9	31.1	0.8	-0.1	-0.1	-0.1	-0.1	-0.1	807.1
May	-0.1	-0.1	-0.1	-0.1	-0.1	3.2	34.2	68.4	81.3	87.5	93.0	97.4	99.0	98.4	95.9	96.7	81.0	48.4	4.0	-0.1	-0.1	-0.1	-0.1	-0.1	987.3
Jun	-0.1	-0.1	-0.1	-0.1	-0.1	6.0	32.1	59.2	76.9	88.6	93.3	96.9	96.8	97.7	97.4	93.2	80.6	59.4	19.1	-0.1	-0.1	-0.1	-0.1	-0.1	996.1
Jul	-0.1	-0.1	-0.1	-0.1	-0.1	2.0	23.6	49.3	65.7	82.8	93.1	95.8	96.2	97.3	97.3	95.0	84.1	56.3	16.4	-0.1	-0.1	-0.1	-0.1	-0.1	953.6
Aug	-0.1	-0.1	-0.1	-0.1	-0.1	0.0	18.0	52.1	74.6	85.7	92.8	93.1	93.0	94.8	95.4	93.3	80.4	43.5	1.0	-0.1	-0.1	-0.1	-0.1	-0.1	916.4
Sep	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	5.2	28.4	52.7	67.5	83.5	80.4	81.5	83.1	82.6	78.5	52.4	8.8	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	703.3
Oct	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	0.1	17.6	42.0	52.5	58.7	57.8	58.8	61.8	63.8	53.2	17.7	0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	482.7
Nov	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	6.0	29.0	37.5	41.6	41.8	42.8	44.9	41.1	27.3	1.0	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	311.3
Dec	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	0.1	13.0	27.8	30.6	29.6	29.7	33.1	30.8	18.7	0.5	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	212.3

HOURLY ENDING (MWh)

totals | 7612.2

PHASE 1 (2MW) Contract Quantity (Mwh) YEAR 2
SCHEDULE F-1

CONTRACT QUANTITY (MWh) Year 2

	HE 1	HE 2	HE 3	HE 4	HE 5	HE 6	HE 7	HE 8	HE 9	HE 10	HE 11	HE 12	HE 13	HE 14	HE 15	HE 16	HE 17	HE 18	HE 19	HE 20	HE 21	HE 22	HE 23	HE 24	Total
Jan	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	0.0	5.4	13.6	19.3	25.9	25.8	25.8	21.9	15.2	2.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	154.1
Feb	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	1.8	10.9	18.1	24.8	28.4	30.1	28.7	24.9	16.3	7.5	0.7	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	191.3
Mar	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	0.2	8.0	19.9	29.1	39.6	44.6	43.6	41.0	38.9	26.6	16.7	3.0	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	310.4
Apr	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	3.1	14.4	28.0	39.9	44.2	46.9	48.3	45.5	39.4	30.3	18.6	8.4	0.0	-0.1	-0.1	-0.1	-0.1	-0.1	366.3
May	-0.1	-0.1	-0.1	-0.1	-0.1	0.4	6.8	18.5	30.4	40.3	49.0	55.4	56.8	52.8	45.2	37.1	23.7	11.2	1.0	-0.1	-0.1	-0.1	-0.1	-0.1	428.0
Jun	-0.1	-0.1	-0.1	-0.1	-0.1	0.7	6.2	16.6	28.5	40.0	48.0	54.0	54.6	51.9	45.8	36.1	24.0	13.0	3.9	-0.1	-0.1	-0.1	-0.1	-0.1	422.5
Jul	-0.1	-0.1	-0.1	-0.1	-0.1	0.3	4.9	14.0	24.7	37.1	47.8	53.5	54.9	52.4	46.5	37.5	25.6	12.8	3.8	-0.1	-0.1	-0.1	-0.1	-0.1	415.0
Aug	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	3.4	13.9	26.7	38.5	48.9	54.2	55.3	52.6	46.1	36.4	23.6	10.6	0.0	-0.1	-0.1	-0.1	-0.1	-0.1	409.6
Sep	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	1.3	9.3	20.3	32.0	46.7	49.9	51.0	47.4	39.7	29.8	16.3	2.8	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	345.8
Oct	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	0.0	7.0	16.5	26.2	35.3	38.5	38.9	36.2	30.4	20.2	7.0	0.0	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	255.5
Nov	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	2.8	12.3	19.2	26.4	30.1	30.4	27.5	20.0	12.1	0.6	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	180.6
Dec	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	0.1	6.0	13.7	19.4	21.6	21.6	21.5	15.9	8.9	0.4	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	128.2

HOUR ENDING (MWh)

totals | 3607.4

EXHIBIT G

BUYOUT OPTION

(1) Buyout Option. No later than ninety (90) days prior to the last day of each of (i) the seventh (7th) Contract Year of the Delivery Term (ii) the tenth (10th) Contract Year of the Delivery Term, (iii) the fifteenth (15th) Contract Year of the Delivery Term and (iv) the twentieth (20th) Contract Year of the Delivery Term, Buyer may deliver Notice to Seller indicating whether it elects to purchase the Facility. If Buyer elects to make a purchase, Buyer shall pay to Seller a “**Buyout Payment**” within thirty (30) days prior to the last day of such Contract Year equal to the Fair Market Value of the Facility as of such date, as determined pursuant to clause (2) below.

(2) Calculation of Fair Market Value. If Buyer provides Notice to Seller that it is contemplating exercising its rights under this Exhibit G, the Parties shall mutually agree upon an independent appraiser on or before the date that is sixty (60) days prior to the last day of (i) the seventh (7th) Contract Year of the Delivery Term, (ii) the tenth (10th) Contract Year of the Delivery Term, (iii) the fifteenth (15th) Contract Year of the Delivery Term, or (iv) the twentieth (20th) Contract Year of the Delivery Term, if applicable. Such appraiser shall determine, at equally shared expense of Buyer and Seller, the fair market value of the Facility as of the date on which the Buyout Payment is to be paid, taking into account such items as deemed appropriate by the appraiser, which may include the resale value of the Facility, and the price of the Product (the “**Fair Market Value**”). On or prior to the date that is thirty (30) days prior to the last day of such Contract Year, the appraiser shall deliver its determination of Fair Market Value to each of Buyer and Seller. In the event that Buyer and Seller cannot agree upon a single independent appraiser, each Party shall contract for an independent appraiser at its own expense, and the Fair Market Value shall be the simple average of the determinations of the two independent appraisers.

(3) Passage of Title. Upon receipt of the Buyout Payment, the Parties shall execute all documents necessary to cause title to the Facility to pass to Buyer on an as-is, where-is, with-all-faults basis, subject in any event to receipt of any necessary approvals of applicable Governmental Authorities; *provided, however*, that Seller shall remove any encumbrances held by Seller with respect to the Facility.

EXHIBIT H

QUARTERLY MILESTONE PROGRESS REPORTING FORM

After the Effective Date, Seller shall prepare a written report (this “**Quarterly Milestone Progress Reporting Form**”) at the end of each calendar quarter on its progress on the Milestones and the development construction, testing, start-up, and operation of the Facility.

Within fifteen (15) days of the end of the applicable calendar quarter, Seller must (a) complete this Quarterly Milestone Progress Reporting Form and (b) submit such completed report to Buyer.

Each Milestone Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones.
9. List of issues that could potentially impact Seller’s Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

Once the project achieves Commercial Operation, Seller's Quarterly Milestone Progress Reporting Form must include the following items:

1. Executive Summary.
2. Description of any planned outages or maintenance activities.
3. Description of any forced outages.
4. Actual CAISO metered energy production for the previous calendar quarter.
6. Summary of expected activities during the current calendar quarter.
7. List of issues that could potentially impact Seller's delivery obligations under the PPA and Seller's expected mitigation measures.
8. Any changes to the Facility or site.

EXHIBIT I-1

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of the Commercial Operation is delivered by [licensed professional engineer] (“**Engineer**”) to MARIN CLEAN ENERGY (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated _____ (“**Agreement**”) by and between Stion MCE Solar One, LLC and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

1. Seller has successfully completed an initial Phase performance test under Seller’s EPC contract for the Phase which demonstrates peak Phase electrical output of no less than ninety percent (90%) of the Guaranteed Capacity for such Phase at the Delivery Point, as adjusted for ambient conditions on the date of the performance test;
2. Seller has installed equipment with a nameplate capacity of no less than ninety percent (90%) of the Guaranteed Capacity at the Delivery Point for such Phase and that such equipment is capable of generating energy in accordance with the manufacturer’s specifications (“**Initial Mechanical Completion**”);
3. The electrical collection system for such Phase comprising the total installed power capacity referenced in (1) above is substantially complete (subject to completion of punch-list items), functional, and energized for such Phase;
4. The substation for such Phase is substantially complete (subject to completion of punch-list items) and capable of delivering the Energy;
5. The Initial Commissioning Completion (defined below) has been achieved for the equipment that has achieved Initial Mechanical Completion; and
6. The Phase is operational and interconnected with the CAISO Grid, has been approved by CAISO to commence operations, and is capable of delivering Energy through the permanent interconnection facilities for the Phase.

For purposes of Section 4 above, “**Initial Commissioning Completion**” means that the electrical and control systems have been energized and tested in accordance with the equipment manufacturer’s specifications.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-2

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity is delivered by [licensed professional engineer] (“**Engineer**”) to MARIN CLEAN ENERGY (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated _____ (“**Agreement**”) by and between Stion MCE Solar One, LLC and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

The initial Phase performance test under Seller’s EPC contract for the Phase demonstrated peak Facility electrical output of __MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test (“**Installed Capacity**”).

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification (“**Certification**”) of the Construction Start Date is delivered by STION MCE SOLAR ONE, LLC (“**Seller**”) to MARIN CLEAN ENERGY (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. the EPC Contract related to the Facility (or Phase, if applicable) was executed on _____;
2. the Limited Notice to Proceed with the construction of the Facility (or Phase, if applicable) was issued on _____ (attached);
3. the Construction Start Date has occurred;
4. the precise Site on which the Phase is located is, which must be within the boundaries of the previously identified Site:

(such description shall amend the description of the Site in Exhibit A).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ____ day of _____.

STION MCE SOLAR ONE, LLC

By: _____

Its: _____

Date: _____

EXHIBIT K

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [_____] (the “Effective Date”) by and between [_____] a [_____] (“Guarantor”), and Marin Clean Energy, a California joint powers authority (together with its successors and permitted assigns, “Buyer”).

Recitals

- A. Buyer and Stion MCE Solar One LLC, a Delaware limited liability company (“Seller”), entered into that certain Power Purchase and Sale Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [____], 2015.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages), as and when required pursuant to the terms of the PPA strictly in accordance therewith (collectively, the “Guaranteed Amount”); provided that, other than with respect to the Enforcement Expenses, Guarantor’s aggregate liability hereunder shall in no circumstances exceed **\$180/kW** (the “Guaranty Cap”). This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein. Guarantor further agrees to pay any and all expenses (including the reasonable fees and disbursements of counsel) that may be paid or incurred by Buyer in enforcing any rights with respect to, or collecting, any or all of the Guaranteed Amount and/or enforcing any rights with respect to, or collecting against, Guarantor under this Guaranty (any such expenses, the “Enforcement Expenses”); it being understood and agreed that the amount of any such Enforcement Expenses shall not be included in calculating Guarantor’s liability hereunder for purposes of the Guaranty Cap.

2. Demand Notice. If Seller has not timely paid any Guaranteed Amount as required

pursuant to the PPA after written notice of such failure to Seller (the “Demand Notice”) and the expiration of five (5) Business Days after delivery of such Demand Notice, then Guarantor shall, within two (2) Business Days, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until both (i) the Delivery Term under the PPA has expired or terminated early and (ii) all Guaranteed Amounts have been paid in full. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for any reason, including the following:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, attachment, injunction, restraint, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed or asserted by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation in such event, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or
- (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the notice

requirement in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the payment in full of all Guaranteed Amounts, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty, and (f) Guarantor has a tangible net worth greater than \$[_____].

8. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four business days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of

transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at

Marin Clean Energy
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Attn: Greg Brehm, Director of Power
Resources
Fax: 415.459.8095

If delivered to Guarantor, to it at

[____]
Attn: [____]
Fax: [____]

9. **Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Francisco, California.

10. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

11. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) **JURY WAIVER.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY

(WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

- (i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.
- (ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).
- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

[Signature on next page]



March 5, 2015

TO: Marin Clean Energy Board of Directors

FROM: Katie Gaier, Human Resources Coordinator

RE: New MCE Positions (Agenda Item #10)

ATTACHMENTS: A. Job Description for Manager of Business and Community Development
B. Job Description for Creative Content Designer
C. Job Description for Power Supply Contracts Manager – Tier II
D. Job Description for Administrative Assistant
E. MCE Organizational Chart

SUMMARY:

As MCE has grown in its service offerings to more communities, our staffing needs have grown in three areas including public affairs, power supply contracts management and administrative support. In the Public Affairs area, engagement in the community has increased. Due to the current span of authority assigned to the Director of Public Affairs, an additional level of management is needed within the division. In particular, a supervisory manager is needed in the area of business and community development. In addition, the volume of advertising and outreach to the existing and new communities calls for a position dedicated to the design of materials both for print media and the web. To address these needs, staff recommends the addition of two new positions for the Public Affairs team as follows:

- Manager of Business and Community Development
- Creative Content Designer

The attached draft job descriptions and compensation level recommendations have been reviewed and approved for your consideration by the MCE Executive Committee at its February 18, 2015 meeting.

Manager of Business and Community Development

Working primarily with the Public Affairs team, the Manager of Business and Community Development will develop data-driven strategies and plans to educate and motivate employees to implement effective sales and outreach in MCE's service areas and plans for future development. Due to an existing Manager within the Public Affairs team, an internal comparison was done to link the Manager of Business and Community Development to other manager positions at this level within the team in order to provide compensation within the same salary range. Therefore, the salary for this position is linked to the Manager of Account and

Billing Services.

Recommendation: Approve the job description for the new position of Manager of Business and Community Development and set the salary range at \$77,883 - \$ 96,657 with exact compensation to be determined by the Executive Officer within the existing Board approved budget.

Creative Content Designer

The Creative Content Designer will work to develop marketing and branding strategies and design content for MCE's wide array of communication sources for the Public Affairs Team, as well as for the Energy Efficiency and Regulatory teams. In order to align the position internally, the vacant position of Account Manager II was reviewed as its level of education and experience are similar and it is also assigned to the Public Affairs Team. Therefore, the salary is linked to the Account Manager II position.

Recommendation: Approve the job description for the new position of Creative Content Designer and set the salary range at \$58,000 – \$80,000 with exact compensation to be determined by the Executive Officer within the existing Board approved budget.

Power Supply Contracts Manager – Tier II

In recruiting for the Power Supply Contracts Manager, the caliber of the candidates indicated that more responsibility, autonomy and even supervisory duties could be assigned to the position if at a Tier II level, freeing the Director of Power Resources for the highest level of work within the procurement division. In addition with the customer base increasing so rapidly and the number of suppliers and agreements to track has increased substantially, higher level work would be a benefit in managing the necessary generation resources for MCE-served communities. The salary for this position was set by reviewing both similarly-situated internal positions as well as job descriptions from similar outside agencies.

Recommendation: Approve the job description for the new position of Power Supply Contracts Manager and set the salary range at \$77,833 - \$96,657 with exact compensation to be determined by the Executive Officer within the existing Board approved budget.

Administrative Assistant

Due to organizational changes within the Internal Operations team, it is necessary to create a position that would handle the less complex duties of an Administrative Associate position, to provide support to all MCE teams by providing clerical and basic administrative duties, such as reception and phone answering, meeting coordination and management, and office management, as well as handling tasks in accounts payable. In order to keep salary ranges consistent internally, it is recommended that the salary for this position be set at 10% below that of the Administrative Associate.

Recommendation

Approve the job description for the new position of Administrative Assistant and set the salary at \$40,000 - \$52,000 with exact compensation to be determined by the Executive Officer within the existing Board approved budget.



JOB DESCRIPTION

MANAGER OF BUSINESS AND COMMUNITY DEVELOPMENT

Summary

Under general direction of the Director of Public Affairs, the Manager of Business and Community Development will drive and facilitate the growth of Marin Clean Energy (MCE), both by generating new customers and by motivating and challenging employees and the customer services company under contract, through a variety of strategies, as described below. Working primarily with the Public Affairs team, the Manager of Business and Community Development develops data-driven strategies and plans to educate and motivate employees to implement effective sales and outreach, in collaboration with MCE's marketing staff, and other duties as assigned.

Class Characteristics

This single position class works independently under general direction from the Director of Public Affairs. With the assistance of subordinate staff, the Manager of Business and Community Development generates new MCE customers by developing and implementing data-driven strategic plans. The incumbent will motivate and challenge employees to implement effective community outreach and sales in line with MCE's current goals as well as for future development. The Manager of Business and Community Development will interface with MCE's internal staff, consultants and contractors, and residential, commercial and government entities.

Supervisory Responsibilities

The Manager of Business and Community Development supervises other members of the Public Affairs Team.

Essential Duties and Responsibilities (Illustrative Only)

- Reviews and analyzes data necessary for strategic planning
- Plans, organizes and implements business and community development strategies and goals for marketing and sales of MCE services to the general public, business customers and public agencies
- Develops strategies to increase Deep Green, Light Green, and Local Sol customer bases
- Develop and implements a sales contact plan to include cold-calling, direct marketing, and attending industry events to build relationships with key prospects
- Supervises, challenges and motivates staff to carry out sales, outreach goals and objectives

- Contributes to the learning environment by identifying areas where there is potential for learning and building knowledge with others
- Assists with performance reviews
- Works with other MCE divisions to promote and encourage participation in MCE's energy efficiency program
- Identifies trendsetter ideas by researching industry and related events, publications, and announcements
- Locates or proposes potential business deals by contacting potential partners; discovering and exploring opportunities
- Screens potential business deals by analyzing market strategies, deal requirements, potential, and financials; evaluating options; resolving internal priorities; recommending marketing investments to support sales acquisition
- Creates and maintains a target list of potential customers and identifies high value potential customers
- Creates and tracks sales targets
- Works closely with marketing communications staff to identify appropriate go to market messaging for specific business sectors

Education/Experience

Education and/or experience equivalent to a Bachelor's degree in communications, public administration, business administration, community development or a related field and six years of experience in business and community development and outreach.

Knowledge of

- Marin Clean Energy electric service options and customer programs
- The mission and goals of Marin Clean Energy
- Environmental policy, public administration, and energy regulation
- Microsoft Office Suite including Excel, Word, PowerPoint and Adobe Acrobat
- Diverse communities and cultures
- Effective sales and negotiations tactics
- Principles and practices of effective supervision

Ability to

- Take a client from initial introductory steps, pitching, and closing
- Respond to incoming requests for information in a professional and creative manner
- Enhance own development by taking responsibility for staying informed and up to date with industry knowledge
- Contribute to the learning environment by identifying areas where there is potential for learning and building knowledge with others
- Adopt the performance management scheme by setting objectives, participating in performance reviews and building a personal development plan for assigned staff
- Work with and develop the current prospect database within specified business sectors to generate effective leads & exceed sales targets for the business

- Develop effective tactical marketing strategies to support sales acquisition
- Manage and track lead generation and a sales pipeline through CRM system
- Communicate effectively in writing and in oral conversation as a strong presenter, negotiator, and influencer
- Organize work with attention to detail
- Work independently as well as work as part of a wide and varied team

Language and Reasoning Skills

- Exercise sound judgment, creative problem solving, and commercial awareness.
- Develop high-quality writing, research and communication work products.
- Deliver clear oral and written communication.
- Interact professionally and effectively with customers, commercial partners, MCE staff team and Board of Directors.
- Apply strong analytical and problem-solving skills.
- Manage projects and time efficiently.
- Organized with good attention to detail.

Mathematical Skills

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to compute rate, ratio, and percent and to draw and interpret bar graphs.

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. While performing the duties of this job, the employee is frequently required to use hands to finger, handle, or feel and reach with hands and arms. The employee is occasionally required to stand. The employee must occasionally lift and/or move up to 20 pounds.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. The noise level in the office work environment is usually moderate. The incumbent also works in the field at community meetings and other functions.

ADA Compliance

MCE will make reasonable accommodation of the known physical or mental limitations of a qualified applicant with a disability upon request.



JOB DESCRIPTION

CREATIVE CONTENT DESIGNER

Summary

Under general supervision of the Director of Public Affairs, the Creative Content Designer will strategize and create MCE marketing and branding content including graphic design and copy for print collateral, advertisements, newsletters, social media, and MCE's website, and other duties as assigned.

Class Characteristics

This single position class works independently under general supervision of the Director of Public Affairs and is responsible for the conceptualization and implementation of design and content to fulfill MCE marketing strategies.

Essential Duties and Responsibilities (Illustrative Only)

- Creates marketing materials to support MCE programs and services including, but not limited to, Deep Green, Light Green, Local Sol and Energy Efficiency
- Creates marketing materials, as needed, to support MCE's Legal and Regulatory team
- Identifies trendsetter ideas by researching industry and related events, publications, and announcements
- Attends and directs MCE photo shoots

Web Work

- Creates and designs new webpages
- Writes and edits web content
- Maintains and updates website to be up-to-date and functional
- Solves website code problems

Advertisements & Print Collateral

- Develops art and copy for print, outdoor and online advertisements, signs, flyers, brochures, presentations, and booklets
- Plans, illustrates and presents ad concepts
- Prepares and finalizes finished copy and art

Education/Experience

Education and experience equivalent to a Bachelor's degree in Graphic Design, Fine Arts or a related field and four years of creative, innovative design experience. Renewable energy and utility industry knowledge are desirable.

Knowledge of

- Microsoft Office Suite including Excel, Word, and PowerPoint
- Adobe Creative Suite including Photoshop, Illustrator, and InDesign
- HTML coding, WordPress programming, web design and content management
- Photography procedures
- Printing processes and specifications
- Marin Clean Energy electric service options and customer programs
- The mission and goals of Marin Clean Energy
- Diverse communities and cultures

Ability to

- Work closely with marketing communications staff to identify appropriate go to market messaging for specific sectors
- Develop effective tactical marketing strategies to support sales acquisition
- Create exceptional artistic and creative graphic design materials
- Communicate effectively in writing and in oral conversation
- Organize work with attention to detail
- Work independently as well as work as part of a wide and varied team
- Establish and maintain effective working relationships with persons encountered during the performance of duties

Language and Reasoning Skills

- Exercise sound judgment, creative problem solving, and commercial awareness.
- Develop high-quality writing, research and communication work products.
- Deliver clear oral and written communication.
- Interact professionally and effectively with customers, commercial partners, MCE staff team and Board of Directors.
- Apply strong analytical and problem-solving skills.
- Manage projects and time efficiently.

Mathematical Skills

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to compute rate, ratio, and percent and to draw and interpret bar graphs.

Physical demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. While performing the duties of this job, the employee is frequently required to use hands to finger, handle, or feel and reach with hands and arms. The employee is occasionally required to stand. The employee must occasionally lift and/or move up to 20 pounds.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. The noise level in the office work environment is usually moderate. The incumbent also works in the field at community meetings and other functions.

ADA Compliance

MCE will make reasonable accommodation of the known physical or mental limitations of a qualified applicant with a disability upon request.



POWER SUPPLY CONTRACTS MANAGER – TIER II JOB DESCRIPTION

SUMMARY

The Power Supply Contracts Manager, under general direction of the Director of Power Resources, has responsibility for contract monitoring, facilitation, and management as well as invoice review and validation to support Marin Clean Energy (MCE) power supply contracts. The incumbent may assist in the administration of RFP proposal processes, MCE open season procurement process, ongoing correspondence with counterparties including contract development and performance tracking, and other duties as assigned in support of the power supply procurement process.

CLASS CHARACTERISTICS

The Power Supply Contracts Manager Tier II performs assignments under general direction of the Director of Power Resources as part of the Power Resources and Procurement team and works closely with MCE's technical team including external consultants. This position provides support to the Director of Power Resources by developing and reviewing contracts for power supply and reviewing, validating and processing power supply invoices for payment. The position differs from the Power Supply Contracts Manager – Tier I in its higher level of autonomy and work assignments.

SUPERVISORY RESPONSIBILITIES

This position may have lead worker and/or supervisory responsibilities

ESSENTIAL DUTIES AND RESPONSIBILITIES (ILLUSTRATIVE ONLY)

Power Supply Contract Facilitation

- Under direction of the Director of Power Resources, establish standard operating procedures , protocols and safeguards to ensure procurement team decision making processes are aligned with agency goals
- Assist with drafting of new vendor and supplier agreements
- Serve as point of contact for counterparties in negotiations for supply agreements demonstrating excellent interpersonal skills and project management acumen
- Assist with creation of materials to facilitate Board review of potential supplier agreements include staff reports, supporting information, and presentation materials
- Manage stakeholder relationships, including PPAs, interconnection, staff and consultants, permitting agencies, community and public relations
- Conduct research and other due diligence to compile relevant information as needed for staff, technical consultants, legal consultants and Board members

- Track all steps needed to reach contract finalization, up to, and including, contract execution
- Maintain current knowledge of regulatory/ legislative trends and changes as well as current and future market conditions

Performance Monitoring

- Monitoring and management of assigned counterparty relationships as required to improve performance and contract compliance
- Performance auditing and monitoring for existing MCE contracts
- Track counterparty compliance with contract milestones and other deliverables
- Manage vendor and contractor agreements
- Maintain and update files as needed
- Maintain, update, and track contract files through contract management system

Invoice Management and Validation

- Identify opportunities for portfolio optimization, budget savings, congestion cost avoidance and project development
- Interface with power suppliers and contractors regarding timely invoicing
- Receive, file and process invoices in a timely and correct manner
- Perform validation on invoices as assigned to insure accurate charges and credits have been applied.
- CAISO statement validation and CAISO cost recovery from counterparties as provided for in contract terms.
- Track invoice payments and prepare related reports to management, technical team and external accountant
- Resolve, or provide support in resolving invoice and billing issues
- Provide information to assist external accountant with problem resolution

Other duties

- Development project management
- Prepare materials for the MCE staff to facilitate policy discussions related to procurement and resource planning
- Assist with the administration of RFP processes, the open season process and the assessment of unsolicited proposals
- May review and analyze proposals for electric power supply submitted to MCE by developers and brokers and provide summary information for staff and technical team
- May assist in preparation and presentation of information and recommendations to assist MCE staff and Board in assessing and identifying 'best fit' market opportunities for MCE
- May assist in tracking changes during contract negotiation for the purchase and/or sales of electric resources and Renewable Energy Credits (RECs)
- May assist in managing MCE's various renewable energy certificate accounts within the WREGIS system
- May assist with preparation of compliance reports and materials related to MCE power supply, including those required by the California Public Utilities Commission (CPUC), California Energy Commission (CEC), The Climate Registry, and the Department of Energy (DOE).

BREAKDOWN OF TIME

- Contract Development 25%
- Vendor Performance Monitoring 25%
- Invoice Management and Validation 15%
- Energy project management 20%
- Other as assigned 15%

MINIMUM QUALIFICATIONS

Experience/Education

Education and experience equivalent to a Bachelor's degree in business, economics or accounting, supplemented by a minimum of 5 years of progressively responsible experience at an electric utility, municipal utility, a Community Choice Aggregation program or in a closely related field. Technical experience in the management of contracts is required.

Knowledge of

- Contracts management best practices
- Microsoft Office software including Excel, Word and PowerPoint, Project.
- Energy generation technologies including carbon neutral electric energy, conventional energy, and renewable energy such as wind, biomass, geothermal, solar, concentrating solar, and hydroelectric
- Procurement process and use of renewable energy certificates to support mandatory and voluntary compliance programs
- The California Independent System Operator (CAISO) settlement process
- The structure and content of standard power purchase agreements for various resource types
- Renewable energy project development including environmental and local use permitting, interconnection agreements and processes
- California's Renewables Portfolio Standard, Power Content Label and Power Source Disclosure program
- California's Renewables Portfolio Standard, Power Content Label and Power Source Disclosure Programs
- Power scheduling
- Power purchase agreement structures, general terms and conditions and basic requirements.
- The Western Renewable Energy Information System (WREGIS)
- Regulatory reporting and compliance requirements of the California Public Utilities Commission (CPUC).

Language and Reasoning Skills

- Manage projects and time efficiently with a high level of attention to detail.
- Apply strong task prioritization, analytical and problem-solving skills.
- Exercise sound judgment, creative problem solving, and commercial awareness.
- Develop high-quality writing, research and communication work products.
- Deliver clear oral communications.
- Effectively interpret and apply contract language and commercial agreements.
- Analytical skills to evaluate contractor performance and potential project opportunities, and project siting, permitting and interconnection issues.

- Interact professionally and effectively with counterparties, consultants, MCE staff team and, when necessary, the Board of Directors.

Skills and Abilities

- Be thorough and detail-oriented.
- Manage multiple priorities and quickly adapt to changing priorities in a fast paced dynamic environment.
- Establish and maintain effective working relationships with persons encountered during the performance of duties.
- Take responsibility and work independently, as well as work as a team member
- Prepare professional written work products.
- Perform quantitative data and statistical analysis and effectively communicate results to others.
- Work accurately and swiftly under pressure.
- Demonstrate patience, tact, and courtesy.

MATHEMATICAL SKILLS

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals; compute rate, ratio, and percent and to create and interpret bar graphs

PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. While performing the duties of this job, the employee is frequently required to use hands to finger, handle, or feel and reach with hands and arms. The employee is occasionally required to stand.

The employee must occasionally lift and/or move up to 20 pounds.

WORK ENVIRONMENT

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job.

The noise level in the work environment is usually moderate.

ADA COMPLIANCE

MCE will make reasonable accommodation of the known physical or mental limitations of a qualified person with a disability upon request.



Job Description

Administrative Assistant

Summary

The Administrative Assistant, under supervision of the Internal Operations Coordinator, supports Marin Clean Energy staff by providing clerical and basic administrative level duties, such as reception and phone answering, meeting coordination, supply maintenance, records management and other duties as assigned.

Class Characteristics

The Administrative Assistant performs assignments under the supervision of the Internal Operations Coordinator. The incumbent provides administrative support to MCE staff works collaboratively with all MCE teams to ensure smooth office operations, meeting coordination, customer service and handles accounts payable and document management.

Supervisory Responsibilities

This job has no supervisory responsibilities.

Essential Duties and Responsibilities (Illustrative Only)

Accounts Payable

- Interface with vendors and contractors for all MCE teams
- Receive and process invoices in a timely and correct manner
- Track invoices and prepare related reports to management
- Resolve invoice and billing issues, as requested
- Maintain organization of hard copy and electronic files

Meeting Coordination/Management

- Coordinate conference room and equipment reservations
- Order and prepare refreshments for meetings, as requested
- Schedule conference calls
- Communicate directions and parking instructions to MCE visitors
- Organize and coordinate staff events, including staff birthdays

- Assist with coordination of conference registrations and related logistics
- Assist with logistical arrangements, equipment set up and printing of materials for on-site meetings

Office Management

- Interface with building management
- Maintain and update all agency insurance coverage
- Interface with IT consultants and resolve computer, phone, and system issues promptly
- Maintain office equipment
- Maintain, track, and replenish office, kitchen, and operational supplies
- Assist with maintaining overall tidiness of kitchen and office areas
- Receive and distribute mail
- Assist with tracking and execution of quarterly document purge
- Update office calendars as requested
- Assist MCE staff with preparation of printed materials and other administrative support as needed

Customer Service

- Respond to and direct incoming calls
- Greet customers, visitors, and other guests who come into the MCE office
- May assist walk-in customers with informational requests

Break-Down of Time Spent on Various Work Areas

Administrative Support to Staff	50%
Document Management	10%
Accounts Payable, Meeting Coordination & Management	20%
Customer Service	20%

Minimum Qualifications

To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required.

Experience/Education

Education and experience equivalent to an Associate degree and two (2) years of progressively responsible experience as an administrative support professional working in complex work environments, or an equivalent combination of education, training, and experience. A background in business administration, accounting, and office management is preferred.

Knowledge of

- Principles and practices of administrative support and office management
- Advanced Microsoft Office Suite (Excel, Word, Adobe, PowerPoint, Outlook)
- Business management including, but not limited to accounting practices, financial analysis, and budgeting concepts
- Document retention requirements and practices

Ability to

- Take responsibility and work independently
- Coordinate team efforts
- Work accurately and swiftly under pressure
- Handle multiple ongoing projects in a fast-paced, team-oriented environment
- Demonstrate patience, tact, and courtesy
- Communicate effectively in written and verbal form
- Establish and maintain effective working relationships with persons encountered during the performance of duties
- Demonstrate highest level of accountability, integrity, judgment, and confidentiality

Language and Reasoning Skills

- Exercise sound judgment, creative problem solving, and commercial awareness
- Manage multiple priorities and quickly adapt to changing priorities in a fast-paced, dynamic environment
- Develop high-quality writing, research, and communication work products
- Deliver clear and persuasive oral communication
- Interact effectively with administrative bodies, MCE's Executive Officer and Board of Directors, MCE staff, and external vendors and contractors
- Apply strong problem-solving skills
- Be thorough and detail-oriented and focus on work at hand

Mathematical Skills

- Add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals
- Compute rate, ratio, and percent
- Draw and interpret bar graphs

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. While performing the duties of this job, the employee is frequently required to use hands to finger, handle, or feel and reach

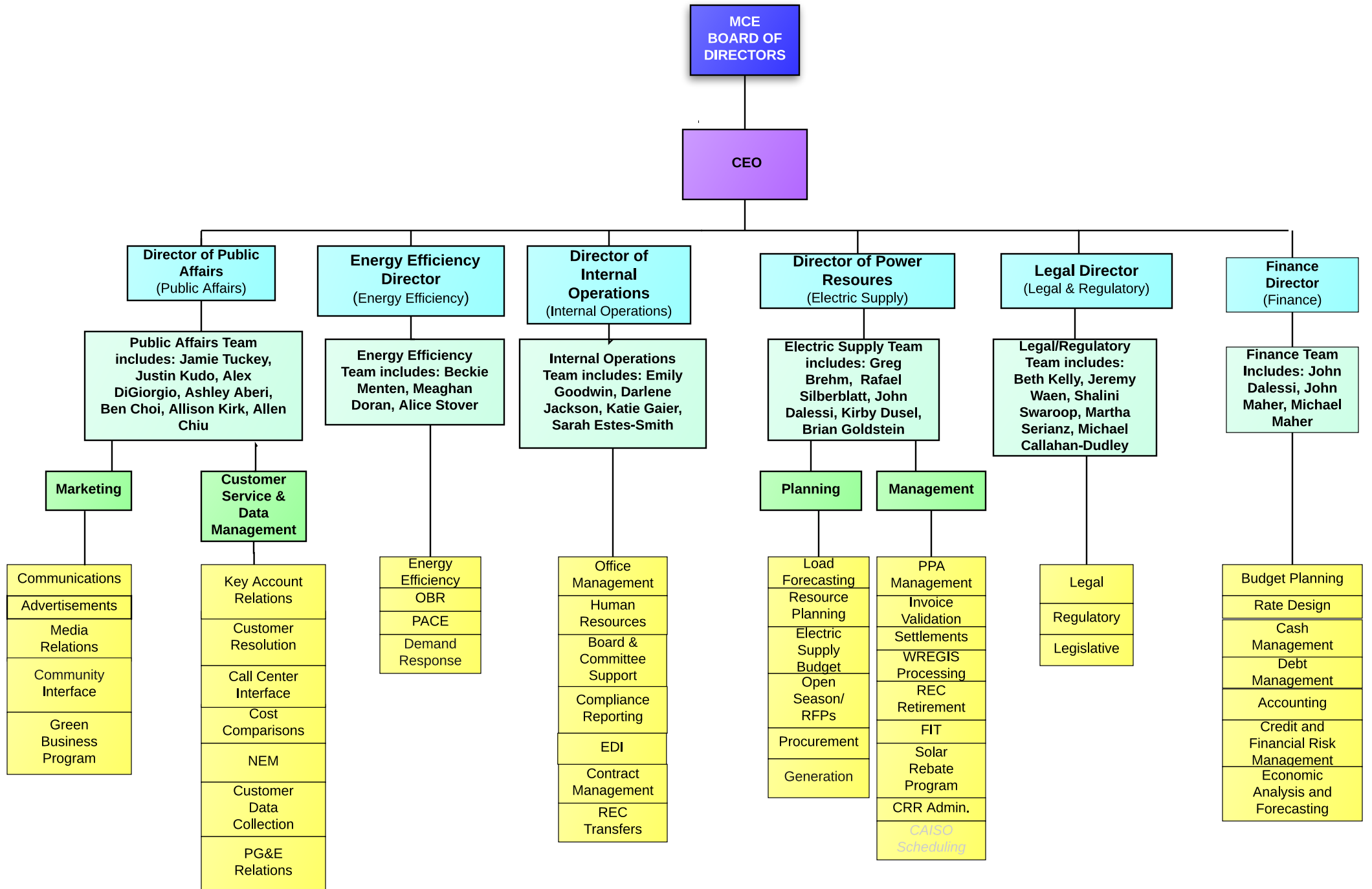
with hands and arms. The employee is occasionally required to stand. The employee must occasionally lift and/or move up to 20 pounds.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. The noise level in the work environment is usually moderate.

ADA Compliance

MCE will make reasonable accommodation of the known physical or mental limitations of a qualified applicant with a disability upon request.



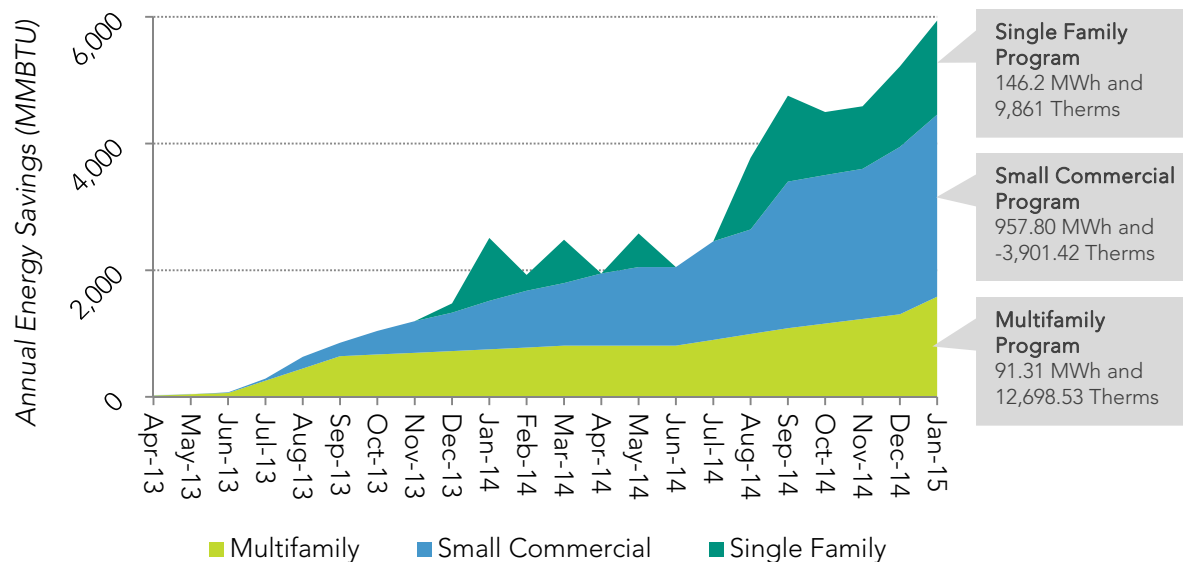


Energy Efficiency Mission Statement

MCE's Energy Efficiency program increases the efficiency of energy and water systems within existing and new buildings to reduce environmental impacts and improve health, comfort and safety.

The program empowers communities through local workforce development, and access to educational tools and financial incentives.

MCE Energy Efficiency Programs Monthly Update



Program Achievements – January 2013 to Present

Small Commercial

Small Businesses Audited
2,403*

Total Rebates Distributed
\$148,937.58

Number of Completed Projects
156

* Split between MCE, Marin Energy Watch and East Bay Energy Watch

Single Family

Number of My Energy Tool Accounts Created
2,162

Number of Action Plans Created
1,490

Number of Visits to the Website
7,745

Total Number of Home Utility Reports Delivered
153,058

Multifamily

Multifamily Properties Audited
36

Total Rebates Distributed
\$91,096.00

Number of Units Provided with Free Energy Saving Equipment
919

Carbon Reductions

Annual Greenhouse Gas Emissions from:
195 cars



CO₂ Emissions from:
127 Homes Annual Electricity Use





March 5, 2015

TO: Marin Clean Energy Board

FROM: Shalini Swaroop, Regulatory and Legislative Counsel

RE: MCE Legislative Executive Summary (Agenda Item #13)

Dear Board Members:

I. Proposed Legislation

1) SB 350 (de León and Leno) – Implementing the Governor’s 50-50-50 Benchmarks

SB 350 Implements the Governor's “50-50-50” benchmarks by raising California’s renewable portfolio standard from 33% to 50%, striving for a 50% reduction in petroleum use, and increasing energy efficiency in buildings by 50% by the year 2030.

Renewables Portfolio Standard (RPS):

The 50% renewable energy standard will be implemented by the CA Public Utilities Commission for the private utilities and by the CA Energy Commission for municipal utilities, as per current law. Unlike previous law, there will be no rulemaking at the CPUC to determine how CCAs should comply. Rather, CCAs are mandated to comply and are subject to the same terms and conditions as the IOUs. The CPUC and the CEC are responsible for tracking RECs in the system to ensure no double-counting. And the RPS standard will be modified as follows: 33% in 2020, 40% in 2024, 45% in 2027, and 50% in 2030.

Importantly, the bill as currently written applies the Cost Allocation Mechanism (CAM) to net capacity costs of renewable resources. This would result in higher fees for CCA customers for redundant procurement mechanisms administered by IOUs.

Vehicles:

The 50% reduction in petroleum use also will be implemented using existing laws and financial resources. Under current law, the state air board must reduce pollution in order to achieve state and federal ambient air standards. Current law (Health and

Safety Code Section 42013) requires the board to adopt standards for vehicles and fuels to achieve clean air.

MCE is currently taking an active role in electric vehicle proceedings at the California Public Utilities Commission.

Energy Efficiency (EE):

Finally, the 50% increase in energy efficiency in buildings will be done through the use of existing energy efficiency retrofit funding and regulatory tools already available to state energy agencies under existing law. The measure mandates on or before January 1, 2017 (and every three years thereafter), the CPUC shall update the EE program to double the deficiency of buildings. This implicates a three year cycle within the rolling portfolio proceeding currently underway at the CPUC (R.13-11-005).

MCE will engage on this bill to ensure protection of CCA ratepayers and to ensure fair treatment of CCAs in the adjustment to RPS and EE standards. MCE will also engage to ensure CCAs have access to energy efficiency funding.

2) SB 180 (Jackson) – Electricity: Emission of Greenhouse Gases

All load serving entities (LSEs) must adhere to emissions performance standards (EPS) in its baseload generation procurement. This bill adjusts existing standards by eliminating the EPS for baseload generation. It creates two new categories of generation now subject to the EPS: 1) primary generation and 2) secondary generation.

Primary generation is defined by a capacity factor of at least fifteen percent. Secondary generation is defined by a capacity factor below fifteen percent. However, power plants with a capacity factor below two percent are exempt from the EPS requirements. The bill requires the establishment of the new EPS by June 30, 2017; with updates every five years based on new technology; and coordination between the CPUC, CEC, CARB, and CAISO to consider reliability and cost impacts. The CPUC is required to establish the EPS for load serving entities through a rulemaking that will implicate CCA regulatory resources.

The bill requires an EPS at the lowest level that is technically feasible while considering reliability and cost impacts. The bill states the initial EPS for primary generation is eighty percent below the EPS for baseline generation on January 1, 2015.

MCE will likely oppose this bill due to technical concerns based on the feasibility of attempting an 80% mandate while balancing reliability concerns. MCE also has concerns on the expansion of EPS from baseload resources to a wider range of generation technologies.

3) AB 197 (Edwardo Garcia) – Public Utilities: Renewable Resources

This bill implements the goal of 50% renewable energy by Dec. 31, 2030 through procurement plans for electrical corporations and municipal utilities. The bill sets a procurement order requiring energy efficiency, demand response, renewables, and considering energy storage before conventional or gas-fired generation. It relies on Pub.

Util. Code § 399.12 to define renewables. It directs the CPUC to determine the cost-effectiveness of these preferred resources including the value of grid reliability and environmental benefits. The value of grid reliability should include diverse renewables (type, size, location) alone and in combination with “nontransmission alternatives.” The local environmental values should include the benefits of each renewable energy resource in disadvantaged communities. Procurement of preferred resources must exceed statutory and regulatory targets if cost-effective. The legislative findings allude to extensive geothermal resources in the County of Imperial.

MCE will monitor this bill to stay apprised of the implementation of the 50% renewable energy by 2030 target but will not likely take a position on the bill unless it changes.

4) SB 215 (Leno) – CPUC Reforms

TURN is the sponsor of this bill mandating reform at the CPUC in the wake of the recent inappropriate ex parte communications. The bill makes a number of significant changes to the CPUC regulatory process:

- Strip many powers of the presidency, including the ability to direct the executive director, the general counsel, and other key Commission staff;
- Require a public vote of the full Commission to assign or re-assign a case;
- Adopt measures to disqualify Commissioners from certain cases;
- Redefines key decisionmakers in cases to directors of substantive divisions (such as the head of Energy Division), the executive director, and the general counsel;
- Requires reporting of ex parte communications by non-parties to proceedings;
- Prohibits communications regarding procedural issues with decisionmakers aside from the ALJ in both ratesetting and adjudication cases;
- Eliminates the equal time ex parte requirement and removes the ability of the Commission to bar ex parte communications for a short period of time;
- Requires reporting of ex parte communications in quasi-legislative proceedings; and
- Mandates that ex parte communications are not part of the record and shall not be considered or relied upon for the resolution of contested issues.

Given MCE’s ratepayer advocacy on behalf of CCA customers, it is likely MCE will support this bill in many of its reforms.



March 5, 2015

TO: Marin Clean Energy Board
FROM: Jeremy Waen, Regulatory Analyst
RE: Regulatory Update for February 2015 (Agenda Item #13)

Dear Board Members:

Executive Summary of Regulatory Affairs for February 2015

Below is a summary of the key activities at the California Public Utilities Commission (CPUC) and the California Energy Commission (CEC) for December 2014 and January 2015 impacting community choice aggregation and MCE.

Matters before the CPUC:

Energy Efficiency

On February 20th, Pacific Gas and Electric (PG&E) filed Advice Letter 4590-E. This Advice Letter sets forth the customer authorization forms for on-bill repayment for solar projects for MCE customers and for energy storage rates for MCE customers. These forms were developed jointly with MCE and PG&E.

Green Tariff Shared Renewables (GTSR) and Enhanced Community Renewables (ECR) (A.12-01-008 et al.)

On January 29th the CPUC approved with a 5-0 vote its proposed decision approving the three utilities' proposals for Green Tariff renewable premium rate programs. Though modifications to the utilities' proposals were made, many of MCE's core concerns with the initial Proposed Decision remained unchanged:

- 1) The Decision permits the use of existing utility Renewable Portfolio Standard (RPS) resources to be redirected and used to meet Green Tariff demand, rather than meeting Green Tariff demand with exclusively new, additional renewable resources as Senate Bill (SB) 43 instructs.
- 2) The Decision allows the utilities to exempt Green Tariff customers from costs that all other ratepayers must pay (such as overhead), contrary to SB 43.
- 3) The Decision provides some, but not enough, protection for CCAs due to utilities' Green Tariff marketing efforts.

A new phase of this proceeding will begin in the coming months. MCE will continue its participation in this proceeding in order to mitigate impacts on CCA customers resulting from the January 29 decision.

PG&E, SCE & SDG&E's Proposals to Build-Out Electric Vehicle (EV) Charging Infrastructure and Charging Stations (R.13-11-007, A.14-04-014, A.14-10-014 & A15-02-009)

PG&E, following suite with SCE and SDG&E, recently filed and served an Application before the CPUC seeking approval of the utility's request to lead a \$654 million build-out of EV charging infrastructure and stations. PG&E proposes to install the infrastructure and charging stations needed to create 25,100 new EV charging points within its service territory over the course of four years. PG&E proposes to pay for these costs through its general ratebase and through customers' distribution rates.

While MCE applauds efforts to increase the usage of EVs, MCE staff has significant concerns regarding how PG&E's proposed build-out could be leveraged in an anti-competitive manner that by (i) excluding EV infrastructure and charging station build-out in communities either currently served by CCAs or considering being served by CCAs, (ii) using the promise of future EV infrastructure and charging station build-out as a deterrent for communities to consider taking CCA service, and (iii) prohibiting CCAs from supplying electricity to the charging stations built as a result of PG&E's proposal. MCE has similar concerns with SCE and SDG&E's proposals as well, and MCE staff has already begun communications with key decision makers on these matters to minimize anti-competitive impacts of the utilities proposals.

Resource Adequacy (RA) Program and Refinements for the 2016 and 2017 (R.14-10-010)

The Commission has begun the next program cycle for considering revisions to the Resource Adequacy (RA) obligation process that is overseen by CPUC Energy Division staff. At a workshop on February 9th, MCE staff presented reasons for refinement to allocation mechanism for capacity passed through to CCAs via the Cost Allocation Mechanism (CAM) before key Commission decision makers, staff, and other stakeholders. The proceeding record is continuing to develop, and MCE staff is contemplating next steps towards achieving the desired CAM reform within this proceeding.



KEY LEGISLATION, GLOSSARY OF TERMINOLOGY AND KEY ACRONYMS

Key Legislation:

AB 32 – Assembly Bill 32, the Global Warming Solutions Act of 2006

AB 32 is an environmental law in California that establishes a timetable to bring California into near compliance with the provisions of the Kyoto Protocol.

AB 117 – Assembly Bill 117, Community Choice Aggregation Enabling Legislation

AB 117 is the California legislation passed in 2002 that enabled community choice aggregation, authored by then Assemblywoman Carole Migden.

SB 790 – SB 790, Charles McGlashan Community Choice Aggregation Act

SB 790, authored by state Senator Mark Leno, was passed in 2012. This bill institutes a code of conduct, associated rules, and enforcement procedures for IOUs' regarding how they interact with CCA. This bill also clarified a CCA's equal right to participating in ratepayer-funded energy efficiency programs.

SB (1X) 2 – Senate Bill 2 (1st Extd. Session) California Renewable Energy Resources Act

SB (1X) 2 was approved in April of 2011 to expand upon previous RPS legislation. It raised the statewide RPS procurement target to 33% by 2020 and also includes interim procurement targets, new RPS content categories, and limitations. All IOUs, CCAs, ESPs, and POUs are all required to meet these procurement goals (with certain exceptions). The CPUC is addressing the implementation of SB (1X) 2 through its rulemaking process (R.11-05-005).

Terminology:

Bundled Customers receive both their electricity generation and distribution services from the same entity, typically the resident IOU.

Unbundled Customers receive their electricity generation and distribution services from separate entities. Customers of MEA are considered unbundled customers because they purchase their electricity generation for MEA and their electricity distribution from PG&E.

Key Acronyms:

CAISO – California Independent System Operator

The CAISO maintains reliability and accessibility to the California transmission grid. The CAISO manages, but does not own, the transmission system and oversees grid maintenance.

CAM – Cost Allocation Mechanism

CAM is a mechanism for passing through RA-related procurement costs within an IOU's service territory. In cases where there is a system or local reliability need, the Commission may authorize an IOU to procure RA on behalf of other LSEs and to recover the related capacity costs through a NBC.

CARB – California Air Resources Board

CARB was established by California's Legislature in 1967 to: 1) attain and maintain healthy air quality; 2) conduct research to determine the causes of and solutions to air pollution; and 3) address the issue of motor vehicles emissions.

CCA – Community Choice Aggregation

CCA allows cities and counties to aggregate the buying power of individual customers within a defined jurisdiction in order to secure alternative energy supply. MEA is the only operational CCA in California.

CEC – California Energy Commission

The CEC is California's primary energy policy and planning agency. It has responsibility for activities that include forecasting future energy needs, promoting energy efficiency through appliance and building standards, and supporting renewable energy technologies.

CHP – Combined Heat and Power

CHP (also referred to as Cogeneration) is the use of a heat engine or a power station to convert waste heat (usually steam) into additional electricity. Not necessarily considered renewable energy, CHP is still encouraged by state policy and regulations because it is more energy efficient than conventional power generation systems.

CIA – Conservation Incentive Adjustment

The CIA is a NBC unrelated to generation, transmission or distribution. This rate design will be implemented in the PG&E service territory in July 2012 and will result in flat generation and distribution rates, and a tiered CIA charge.

CPUC – California Public Utilities Commission

The CPUC, also simply called the Commission, is the entity that regulates privately-owned utilities in the state of California, including electric power, telecommunications, natural gas and water companies. The CPUC has limited jurisdiction over CCAs.

DA – Direct Access

DA is an option that allows eligible customers to purchase their electricity directly from competitive ESPs. There are legislatively mandated caps on DA that have gradually increased since the energy crisis. Large energy users in particular seek the cost certainty associated with being on DA service.

DG – Distributed Generation

DG refers to small, modular power sources sited at the point of power consumption. One example of residential distributed generation is an array of solar panels installed on a home's roof.

EE – Energy Efficiency

EE is a way of managing and restraining the growth in energy consumption. It refers to using less energy to provide the same service. For example: In the summer, efficient windows keep the heat out so that the air conditioner runs less often which helps save electricity.

ESP – Electricity Service Provider

ESPs are non-utility entities that offer DA electric service to customers within the service territory of an electric utility. ESPs share various regulatory interests with CCAs because the customers of both types of entities face departing load charges through the PCIA and other non-bypassable charges.

FIT – Feed-In Tariff

FITs are long-term, standard-offer, must-take contracts offered by electricity retailers to small-scale renewable developers for the procurement of DG renewable energy. MCE currently offers a FIT.

GHG – Greenhouse Gas

GHGs are gases in Earth's atmosphere that prevent heat from escaping into space. The burning of fossil fuels, such as coal and oil, and deforestation has caused the concentrations of **GHGs** to increase significantly in the Earth's atmosphere.

HUR – Home Utility Report

A HUR is a document that provides customers with a detailed analysis of their individual usage data, comparisons to other similar customers, and tips on how to reduce energy usage. HURs are delivered through the mail on a regular schedule to a subset of MCE customers as part of MCE's Single Family Energy Efficiency Program. Customers are selected to receive the HUR based on historic energy usage.

IOU – Investor Owned Utility

IOU refers to an electric utility provider that is a private company, owned by shareholders. The three largest IOUs in California are Pacific Gas and Electric (PG&E), Southern California Edison (SCE) and San Diego Gas and Electric (SDG&E).

LSE – Load Serving Entity

LSEs are a categorization term that refers to IOUs, ESPs, CCAs, and any other entity serving electricity load to end-use or wholesale customers. POUs are excluded from this categorization.

NBC – Non-Bypassable Charge

NBCs are line item charges that all distribution customers (both Bundled and Unbundled) must pay. Types of NBCs include transmission access charges and nuclear power plant decommissioning costs.

NEM – Net Energy Metering

NEM allows a customer to be credited when their renewable generation system generates more power than is used on site. The customer continues to pay for electricity when more power is used on site than the system produces.

OBF – On Bill Financing

OBR is a financing mechanism in which repayment is integrated into a customer's utility bill.

OBR – On Bill Repayment

OBR is a mechanism for loan repayment in which the loan payments are integrated into a customer's utility bill.

PAC – Program Administrator Cost

The PAC is one of two tests of energy efficiency program costs effectiveness used by the CPUC. The test measures the net benefits and costs that accrue to the program administrator (usually a utility) as a result of energy efficiency program activities. The PAC compares the benefits, which are the avoided cost of generating electricity and supplying natural gas, with the total costs, which include program administration costs. The PAC includes the cost of incentives, but excludes any participant costs or tax credits.

PACE – Property Assessed Clean Energy

PACE is a way of financing energy efficiency upgrades or renewable energy installations for buildings. In areas with PACE legislation in place municipal governments offer a specific bond to investors and then loan the money to consumers and businesses to put towards an energy retrofit. The loans are repaid over the assigned terms (typically 15 to 20 years) via an annual assessment on their property tax bill. One of the most notable characteristics of PACE programs is that the loan is attached to the property rather than an individual.

PCIA – Power Charge Indifference Adjustment

The PCIA is an “exit fee” imposed on departing load that is intended to protect bundled utility customers. When customers leave bundled service to purchase electricity from an alternative supplier, such as MEA, the IOU, who had previously contracted for generation to serve these customers on a going-forward basis, is able to charge these departing customers the above market costs of that power.

POU – Publicly Owned Utility

POUs are locally publically owned electric utilities that are administered by a board of publically appointed representatives (similar to a CCA). POU's are not within the jurisdiction of the CPUC, and are thus subject to different regulation and enforcement than IOUs, CCAs, and ESPs.

PV – Photovoltaic

PV is solar electric generation by conversion of light into electrons. The most commonly known form of solar electric power is roof panels on homes.

RA – Resource Adequacy

RA refers to a statewide mandate for all LSEs to procure a certain quantity of electricity resources that will ensure the safe and reliable operation of the grid in real time. RA also provides incentives for the siting and construction of new resources needed for reliability in the future.

RPS – Renewable Portfolio Standard

The RPS was created in 2002 under Senate Bill 1078 was most recently modified by SB (1X) 2 (2011). RPS requires that electricity providers meet certain minimum RPS requirements over time, and no less than 33% RPS by 2020.

SPOC – Single Point of Contact

The SPOC is a facilitator and participant guide to MCE program offerings, helping to guide the customer through the participation process from initial contact to project completion.

TRC – Total Resource Cost

The TRC is one of two tests of energy efficiency program cost effectiveness used by the CPUC. The test measures the net benefits and costs that accrue to society, which is defined as a program administrator (usually a utility) and all of its customers, as a result of energy efficiency program activities. The TRC compares the benefits, which are the avoided cost of generating electricity and supplying natural gas, with the total costs, which include program administration and customer costs. The TRC does not include the costs of incentives.

ZNE – Zero Net Energy

A building is ZNE if the amount of energy provided by on-site renewable energy sources is equal to the amount of energy used by the building.