



Executive Committee Meeting

Friday, December 2, 2016

12:00 P.M.

**The Barbara George Conference Room
1125 Tamalpais Avenue, San Rafael, CA 94901**

Kathrin Sears, Chair
County of Marin

Tom Butt, Vice Chair
City of Richmond

Bob McCaskill
City of Belvedere

Alan Schwartzman
City of Benicia

Sloan C. Bailey
Town of Corte Madera

Greg Lyman
City of El Cerrito

Barbara Coler
Town of Fairfax

Brandt Andersson
City of Lafayette

Kevin Haroff
City of Larkspur

Sashi McEntee
City of Mill Valley

Brad Wagenknecht
County and Cities of Napa

Denise Athas
City of Novato

P. Rupert Russell
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

Bob Simmons
City of Walnut Creek

1125 Tamalpais Avenue
San Rafael, CA 94901

1 (888) 637-3674

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1. Board Announcements (Discussion)
2. Public Open Time (Discussion)
3. Report from CEO (Discussion)
4. Consent Calendar (Discussion/Action)
 - C.1 Approval of 11.4.16 Meeting Minutes
 - C.2 Monthly Budget Update
 - C.3 Fifth Agreement with Association for Energy Affordability (AEA)
 - C.4 Fifth Agreement with Marin City Community Development Corporation (MCCDC)
 - C.5 First Addendum to the Fourth Agreement with Braun Blaising McLaughlin & Smith
 - C.6 First Agreement with NEST Lab, Inc.
5. Energy Efficiency Challenges and Application Preparation (Discussion)
6. Diablo Canyon Update (Discussion)
7. Review Draft 12.15.16 Board Agenda (Discussion)



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8. Committee Member & Staff Matters (Discussion)

9. Adjourn



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DRAFT

MCE

EXECUTIVE COMMITTEE MEETING

Friday, November 4, 2016

12:00 noon

**The Barbara George Conference Room
1125 Tamalpais Avenue, San Rafael, CA 94901**

Roll Call

Present:

Sloan Bailey, Town of Corte Madera
Tom Butt, Chair, City of Richmond
Kevin Haroff, City of Larkspur
Bob McCaskill, City of Belvedere
Kate Sears, County of Marin
Bob Simmons, City of Walnut Creek

Absent:

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

Staff:

Meaghan Doran, Energy Efficiency Program Manager
Alexandra McGee, Community Power Organizer
David McNeil, Finance and Project Manager
Jamie Tuckey, Director of Public Affairs
Dawn Weisz, CEO

Action Taken:

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

- C.1 Approval of 9.7.16 Meeting Minutes**
- C.2 Monthly Budget Update**
- C.3 Draft 2nd Addendum to the 4th Agreement with Troutman Sanders**
- C.4 3rd Addendum to the 4th Agreement with Bevilacqua-Knight, Inc.**

ACTION: It was M/S/C (Bailey/Simmons) to approve Consent Calendar Items C.1 through C.4. Motion carried by 6-0 roll call vote: (Absent: Athas and Greene).

DRAFT

Agenda Item #5 – Charles F. McGlashan Advocacy Award (Discussion/Action)

ACTION: It was M/S/C (Haroff/Simmons) to approve Jerri Gill with Sustainability Napa County as the Recipient of the Charles F. McGlashan Advocacy Award. Motion carried by 6-0 roll call vote: (Absent: Athas and Greene).

Agenda Item #6 – Customer Programs – 2015 Multifamily Case Studies (Discussion)

No action was required on this item.

Agenda Item #7 – Review Draft 11.17.16 Board Agenda (Discussion)

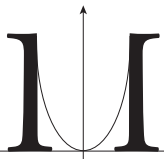
No action was required on this item.

The meeting was adjourned to the next Executive Committee Meeting on December 2, 2016.

Tom Butt, Executive Committee Chair

ATTEST:

Dawn Weisz, Chief Executive Officer



ACCOUNTANTS' COMPILATION REPORT

Board of Directors
Marin Clean Energy

Management is responsible for the accompanying special purpose statement of Marin Clean Energy (a California Joint Powers Authority) which comprise the budgetary comparison schedule for the period ended October 31, 2016, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

The special purpose statement is prepared in accordance with the budgetary basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. This report is intended for the information of the Board of Directors of MCE.

Management has elected to omit substantially all of the disclosures required by accounting principles generally accepted in the United States of America. If the omitted disclosures were included in the special purpose budgetary comparison statement, they might influence the user's conclusions about the Authority's results of operations. Accordingly, this special purpose budgetary comparison statement is not designed for those who are not informed about such matters.

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

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Mahe Accountancy

San Rafael, CA
November 18, 2016

**MARIN CLEAN ENERGY
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2016 through October 31, 2016**

	Actual - from April 1 through October 31		YTD Budget (Amended)	YTD Budget Variance (Under) Over	YTD Actual/Budget %	Annual Budget (Amended)	Budget Remaining
	2015/16	2016/17	2016/17	2016/17	2016/17	2016/17	2016/17
ENERGY REVENUE							
Revenue - Electricity (net of allowance)	\$ 91,589,889	\$ 99,816,015	\$ 102,723,000	\$ (2,906,985)	97.17%	\$ 181,351,000	\$ 81,534,985
Grant Income			75,000	(75,000)	0.00%	75,000	75,000
Other revenue	419,994	118,422		118,422		-	(118,422)
TOTAL ENERGY REVENUE	92,009,883	99,934,437	102,798,000	(2,863,563)	97.21%	181,426,000	81,491,563
ENERGY EXPENSES							
Cost of energy	72,504,871	80,891,917	83,890,000	(2,998,083)	96.43%	159,033,000	78,141,083
Service fees- PG&E	501,004	567,311	654,000	(86,689)	86.74%	1,255,000	687,689
TOTAL ENERGY EXPENSES	73,005,875	81,459,228	84,544,000	(3,084,772)	96.35%	160,288,000	78,828,772
NET ENERGY EXPENSES	19,004,008	18,475,209	18,254,000	221,209		21,138,000	2,662,791
OPERATING EXPENSES							
Personnel	1,658,777	2,472,348	2,510,853	(38,505)	98.47%	5,376,000	2,903,652
Data manager	1,659,408	1,823,080	2,007,700	(184,620)	90.80%	3,674,000	1,850,920
Technical consultants	363,642	328,915	429,600	(100,685)	76.56%	762,000	433,085
Legal counsel	203,588	315,663	476,583	(160,920)	66.23%	817,000	501,337
Communications consultants and related expenses	451,801	812,500	554,750	257,750	146.46%	951,000	138,500
Other services	251,559	310,829	273,583	37,246	113.61%	469,000	158,171
General and administration	151,743	240,897	243,833	(2,936)	98.80%	418,000	177,103
Occupancy	106,144	222,730	197,167	25,563	112.97%	338,000	115,270
Integrated demand-side pilot programs	21,340	6,697	29,167	(22,470)	22.96%	50,000	43,303
Marin County green business program	-	-	10,000	(10,000)	0.00%	10,000	10,000
Low income solar programs	-	23,700	20,417	3,283	0.00%	35,000	11,300
TOTAL OPERATING EXPENSES	4,868,002	6,557,359	6,753,653	(196,294)	97.09%	12,900,000	6,342,641
OPERATING INCOME (LOSS)	14,136,006	11,917,850	11,500,347	417,503	103.63%	8,238,000	(3,679,850)
NONOPERATING REVENUES (EXPENSES)							
Interest income	1,622	42,290	29,167	13,123	144.99%	50,000	7,710
Interest expense and financing costs	(123,680)	(32,515)	(202,583)	170,068	0.00%	(345,500)	(312,985)
Depreciation (supplemental)	(44,351)	(52,507)	(58,333)	5,826	90.01%	(100,000)	(47,493)
TOTAL NONOPERATING INCOME (EXPENSES)	(166,409)	(42,732)	(231,750)	189,018	18.44%	(395,500)	(352,768)
CHANGE IN NET POSITION	13,969,597	11,875,118	11,268,597	606,521	105.38%	7,842,500	(4,032,618)
CAPITAL EXPENDITURES, INTERFUND TRANSFERS & OTHER							
Capital outlay	(142,847)	(80,502)	(202,583)	122,081	39.74%	(383,000)	(302,498)
Depreciation (supplemental)	44,351	52,507	58,333	(5,826)	90.01%	100,000	47,493
Repayment of loan principal	(2,024,038)	-	-	-		-	-
Transfer to Renewable Energy Reserve	(1,000,000)	-	-	-		-	-
Transfer to Local Renewable Development Fund	(151,383)	(173,263)	(173,263)	-	100.00%	(173,263)	-
TOTAL CAPITAL EXPENDITURES, INTERFUND TRANSFERS & OTHER	(3,273,917)	(201,258)	(317,513)	116,255	63.39%	(456,263)	(255,005)
Net increase (decrease) in available fund balance	\$ 10,695,680	\$ 11,673,860	\$ 10,951,084	\$ 722,776		\$ 7,386,237	\$ (4,287,623)

**MARIN CLEAN ENERGY
ENERGY EFFICIENCY PROGRAM FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2016 through October 31, 2016**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Public purpose energy efficiency program	\$ 1,220,267	\$ 575,796	\$ 644,471	47.19%
EXPENDITURES AND OTHER USES:				
Public purpose energy efficiency program	<u>1,220,267</u>	<u>575,796</u>	<u>644,471</u>	<u>47.19%</u>
Net increase (decrease) in fund balance	<u>\$ -</u>	<u>\$ -</u>		

**LOCAL RENEWABLE ENERGY DEVELOPMENT FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2016 through October 31, 2016**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Transfer from Operating Fund	\$ 173,263	\$ 173,263	\$ -	100.00%
EXPENDITURES AND OTHER USES:				
Capital Outlay and related	<u>173,263</u>	<u>175,088</u>	<u>(1,825)</u>	<u>101.05%</u>
Net increase (decrease) in fund balance	<u>\$ -</u>	(1,825)		
Fund balance at beginning of period		<u>73,604</u>		
Fund balance at end of period		<u>\$ 71,779</u>		

**RENEWABLE ENERGY RESERVE FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2016 through October 31, 2016**

	<u>Amended Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Other proceeds	\$ 761,350	\$ -	\$ 761,350	0.00%
Transfer from Operating Fund	-	-	-	N/A
Total revenue and other sources	<u>\$ 761,350</u>	<u>\$ -</u>	<u>\$ 761,350</u>	
EXPENDITURES AND OTHER USES:				
	<u>939,850</u>	<u>-</u>	<u>939,850</u>	<u>0.00%</u>
Net increase (decrease) in fund balance	<u>\$ (178,500)</u>	-		
Fund balance at beginning of period		<u>1,000,000</u>		
Fund balance at end of period		<u>\$ 1,000,000</u>		

MARIN CLEAN ENERGY
BUDGETARY SUPPLEMENTAL SCHEDULE
April 1, 2016 through October 31, 2016

	Actual
Other services	
Audit	\$ 36,000
Accounting	84,000
IT Consulting	40,500
Human resources & payroll fees	6,396
Legislative consulting	55,125
Miscellaneous professional fees	176,078
Other services	\$ 398,099
 General and administration	
Data and telephone service	\$ 19,535
Meeting room rentals	575
Office equipment lease	3,389
Dues and subscriptions	113,005
Conferences and professional education	20,207
Travel	23,384
Business meals	6,262
Miscellaneous administration	13,854
Office supplies and postage	40,686
General and administration	\$ 240,897



December 2, 2016

TO: MCE Executive Committee

FROM: Meaghan Doran, Energy Efficiency Program Manager

RE: Proposed Fifth Agreement with Association for Energy Affordability (AEA) (Agenda Item #04 – C.3)

ATTACHMENT: Proposed Fifth Agreement with Association for Energy Affordability

Dear Executive Committee Members:

SUMMARY:

The proposed Fifth Agreement with Association for Energy Affordability (AEA) would allow for AEA to continue serving as the primary technical assistance consultant to MCE in support of the MCE Multifamily Energy Efficiency Program and the MCE Low-Income Families and Tenants (LIFT) Program.

Background

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

1. Multifamily
2. Single family utility demand reduction pilot program
3. Small commercial
4. Four financing pilot programs: On Bill Repayment for single family¹, multifamily, small commercial and a standard offer pilot.

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

The Multifamily Energy Efficiency Program is one of four program elements approved by the CPUC, and is funded at an annual total of \$667,555. The Program is designed to serve hard to reach multifamily properties and encourage property owners to invest in both common areas and tenant units. In addition to MCE's existing Multifamily Program, affordable properties will now receive additional rebates on in-unit upgrades up to

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

\$1,200 per unit under MCE's newly approved LIFT Program.

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

On October 4, 2012 your Board approved the First Agreement with AEA to provide services to the multifamily sector. On February 7, 2013 your Board approved a Second Agreement with AEA to provide Multifamily Program services. On November 7, 2013, your Board approved a Third Agreement with AEA. On December 4, 2014 your Board approved the First Addendum to the Third Agreement with AEA to extend the contract end date from December 31, 2014 to December 31, 2015. On December 17, 2015 your Board approved the Fourth Agreement with AEA to extend the contract end date from December 31, 2015 to December 31, 2016. AEA has supported MCE by serving as technical consultants and program implementers to the Multifamily Program. Their assistance has been instrumental in developing program guidelines, including audit procedures, report templates, quality assurance and quality control policies. AEA has assisted MCE staff in developing incentive structures that will support the greatest success in achieving the specific desired outcomes of the Program. Additionally, AEA has represented MCE well in the field through conducting the audits on multifamily properties. They have proven themselves as effective and professional program partners. In the time AEA has been supporting the MCE Program, the Program has accomplished energy assessments in 735 multifamily buildings, provided direct install services to 1,973, and saved 389,460 kWh and 62,946.76 therms.

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

MCE staff requests approval of the proposed Fifth Agreement with AEA, which requests a contract maximum of \$150,000 and a contract end date of December 31, 2017.

Fiscal Impacts: The requested amount of \$150,000 will be funded completely from Energy Efficiency Program Fund and will have no impact on MCE's Operating Fund.

Recommendation: Approve the Proposed Fifth Agreement with Association for Energy Affordability.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

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

THIS FIFTH AGREEMENT ("Agreement") is made and entered into this day **December 2, 2016** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and ASSOCIATION FOR ENERGY AFFORDABILITY (AEA), hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: technical consulting services for MCE's Multifamily, Low Income Families and Tenants, and Commercial Energy Efficiency Programs;

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 email invoices to MCE at invoices@mcecleanenergy.org on a monthly basis for any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement.

4. MAXIMUM COST TO MCE:

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

5. TIME OF AGREEMENT:

This Agreement shall commence on **January 1, 2017**, and shall terminate on **December 31, 2017**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

6. INSURANCE AND SAFETY:

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

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

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

6.1 GENERAL LIABILITY

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

6.2 AUTO LIABILITY

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

6.3 WORKERS' COMPENSATION

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

6.4 PROFESSIONAL LIABILITY INSURANCE

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

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

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

9. ASSIGNMENT:

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

10. RETENTION OF RECORDS AND AUDIT PROVISION:

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5)

years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged.

11. WORK PRODUCT:

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

12. TERMINATION:

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

13. AMENDMENT:

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

14. ASSIGNMENT OF PERSONNEL:

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

15. JURISDICTION AND VENUE:

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

16. INDEMNIFICATION:

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

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

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

18. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all Federal, State and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.

19. NOTICES

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

Contract Manager:	Catalina Murphy
MCE Address:	1125 Tamalpais Avenue
	San Rafael, CA 94901
Email Address:	contracts@mcecleanenergy.org
Telephone No.:	(415) 464-6014

Notices shall be given to Contractor at the following address:

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

20. ACKNOWLEDGEMENT OF EXHIBITS

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

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

21. SEVERABILITY

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

22. COMPLETE AGREEMENT

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

23. COUNTERPARTS

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

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

APPROVED BY

Marin Clean Energy:

CONTRACTOR:

By: _____
CEO

Date: _____

By: _____

Name: _____

By: _____
Chairperson

Date: _____

Date: _____

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

REASON(S) REVIEW:

- Standard Short Form Content Has Been Modified**
- Optional Review by MCE Counsel at Marin Clean Energy's Request**

MCE Counsel: _____

Date: _____

EXHIBIT A
SCOPE OF SERVICES (required)

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

#1: BUILDING INFORMATION & UTILITY DATA ANALYSIS

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

#2: BUILDING LEVEL ENERGY AUDITS:

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

#3: ENERGY EFFICIENCY MEASURE (EEM) IMPLEMENTATION:

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

#4: DATA MANAGEMENT FOR EM&V PROCESS:

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

#5: WORKFORCE DEVELOPMENT:

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

**EXHIBIT B
FEES AND PAYMENT SCHEDULE**

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

2017 Billing Rates	Hourly Rate
Director	\$165.00
Senior Analyst	\$150.00
Analyst	\$130.00

2017 Budget Categories	Total
Administration	\$8,133
Direct Implementation Non-Incentives	\$130,083
Incentives	\$8,034
Marketing, Education & Outreach	\$3,750
Total Not-to-Exceed (NTE):	\$150,000

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



December 2, 2016

TO: MCE Executive Committee

FROM: Meaghan Doran, Energy Efficiency Program Manager

RE: Proposed Fifth Agreement with Marin City Community Development Corporation (MCCDC) (Agenda Item #04 - C.4)

ATTACHMENT: Proposed Fifth Agreement with Marin City Community Development Corporation

Dear Executive Committee Members:

SUMMARY:

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

Background

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

1. Multifamily
2. Single family utility demand reduction pilot program
3. Small commercial
4. Four financing pilot programs: On Bill Repayment for single family¹, multifamily, small commercial and a standard offer pilot.

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

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

The multifamily energy efficiency program is one of four program elements approved by the CPUC, and is funded at an annual total \$667,555. The program is designed to serve hard to reach multifamily properties and encourage property owners to invest in both common areas and tenant units.

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

On October 4, 2012 your Board approved the First Agreement with MCCDC to provide energy efficiency program services. On February 7, 2013, your Board approved the Second Agreement with MCCDC to provide energy efficiency program services, expanding the scope to include a direct installation component. On November 7, 2013 your Board approved the Third Agreement with MCCDC for services to be delivered during calendar year 2014. On December 4, 2014, your Board approved the First Addendum to the Third Agreement with MCCDC, which extended the contract end date from December 31, 2014 to December 31, 2015. On December 17, 2015 your Board approved the Fourth Agreement with MCCDC to extend the contract end date from December 31, 2015 to December 31, 2016. MCCDC has been supporting the MCE multifamily program for the past three years.

MCCDC has demonstrated the ability to deliver a well-trained team of employees to accomplish the direct install work, conduct tenant outreach, and manage material inventory. Staff at MCCDC have offered high quality services to 1,973 units, collecting the data necessary to support reporting to the CPUC and interacting with tenants to improve opportunities for long term energy savings. This agreement would continue to support MCCDC in providing crews, including identifying and implementing any training necessary to fulfill this role.

MCE Staff requests approval of the draft Fifth Agreement with MCCDC with a contract maximum of \$50,000 and a contract end date of December 31, 2017. This agreement would continue to provide an opportunity for local training program graduates to gain valuable on-the-job training on energy upgrade projects.

Budget Impacts: Funding for the proposed agreement would come from the Energy Efficiency Program Fund and would have no impact on MCE's Operating Fund.

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

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**FIFTH AGREEMENT
BY AND BETWEEN**

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

THIS FIFTH AGREEMENT ("Agreement") is made and entered into this day **December 2, 2016** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and MARIN CITY COMMUNITY DEVELOPMENT CORPORATION (MCCDC), hereinafter referred to as "Contractor."

RECITALS:

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

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

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

1. SCOPE OF SERVICES:

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

2. FURNISHED SERVICES:

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

3. FEES AND PAYMENT SCHEDULE; INVOICING:

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

4. MAXIMUM COST TO MCE:

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

5. TIME OF AGREEMENT:

This Agreement shall commence on **January 1, 2017**, and shall terminate on **December 31, 2017**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

6. INSURANCE AND SAFETY:

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

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

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

6.1 GENERAL LIABILITY

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

6.2 AUTO LIABILITY

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

6.3 WORKERS' COMPENSATION

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

6.4 PROFESSIONAL LIABILITY INSURANCE

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

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

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

9. ASSIGNMENT:

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

10. RETENTION OF RECORDS AND AUDIT PROVISION:

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5)

years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged.

11. WORK PRODUCT:

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

12. TERMINATION:

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

13. AMENDMENT:

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

14. ASSIGNMENT OF PERSONNEL:

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

15. JURISDICTION AND VENUE:

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

16. INDEMNIFICATION:

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

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

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

18. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all Federal, State and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.

19. NOTICES

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

Contract Manager:	Catalina Murphy
MCE Address:	1125 Tamalpais Avenue
	San Rafael, CA 94901
Email Address:	contracts@mcecleanenergy.org
Telephone No.:	(415) 464-6014

Notices shall be given to Contractor at the following address:

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

20. ACKNOWLEDGEMENT OF EXHIBITS

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

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

21. SEVERABILITY

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

22. COMPLETE AGREEMENT

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

23. COUNTERPARTS

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

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

APPROVED BY

Marin Clean Energy:

CONTRACTOR:

By: _____
CEO

Date: _____

By: _____

Name: _____

By: _____
Chairperson

Date: _____

Date: _____

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

REASON(S) REVIEW:

- Standard Short Form Content Has Been Modified**
- Optional Review by MCE Counsel at Marin Clean Energy's Request**

MCE Counsel: _____

Date: _____

EXHIBIT A
SCOPE OF SERVICES (required)

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

A. Develop Direct Install Crew

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

Deliverables:

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

B. Complete Direct Installation of Energy Efficiency Measures

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

Deliverables:

1. Contractor will provide a Direct Install crew consisting of a Crew Leader and Energy Efficiency Specialists.
2. Contractor will meet the Quality Control standards established by MCE of the project, and MCE will provide feedback as needed.
3. Contractor will handle storage and transport of direct install materials to the worksite, and will provide monthly inventories of materials on hand for MCE. Contractor will timely communicate ordering needs to ensure adequate supplies are maintained.

**EXHIBIT B
FEES AND PAYMENT SCHEDULE**

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

1. Project allocated work will be billed monthly. All invoices must include sufficient documentation to verify the hours spent and the work completed during the invoice period. For 2017-18, backup documentation will include hours billed. Time allocations for MCCDC staff will indicate the following fields showing daily hours worked in the following areas:
 - a) Direct Implementation – including installation crew time, as well as coordination and/or supervision
 - b) Direct Install Team Training
2. Mileage and expenses (such as specific materials costs) submitted will show clear and direct relation to the MCE project. MCE must have on file proof of valid auto insurance before mileage expenses can be paid. Mileage expenses must comply with federal per diem mileage reimbursement rates. These rates can be found at: http://www.gsa.gov/portal/content/100715?utm_source=OGP&utm_medium=print-radio&utm_term=mileage&utm_campaign=shortcut. Equipment purchases totaling greater than \$20 per individual unit must be cleared with MCE staff in advance. All equipment purchases must be supported with documentation including a receipt at a minimum.
3. Parties acknowledge that at no point will services under Exhibit A be provided if there is not sufficient remaining budget available to cover such services.

MCCDC Efficiency Program Budget	2017
Direct Implementation	
Direct Implementation	\$45,000
Direct Install Team Training	\$5,000
Total Not-to-Exceed (NTE)	\$50,000

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

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



December 2, 2016

TO: MCE Executive Committee

FROM: Shalini Swaroop, Regulatory & Legislative Counsel

RE: First Amendment to the Fourth Agreement with Braun, Blaising, McLaughlin & Smith (Agenda Item #04 – C.5)

ATTACHMENTS: A. Fourth Agreement with Braun, Blaising, McLaughlin & Smith
B. Proposed First Amendment to the Fourth Agreement with Braun, Blaising, McLaughlin & Smith

Dear Executive Committee Members:

SUMMARY:

Braun, Blaising, McLaughlin & Smith (BBMS) has provided legal and regulatory assistance to MCE through four Agreements for services. Specifically, BBMS has provided assistance on the Integrated Resource Plan (IRP) proceedings, Energy Resource Recovery Account (ERRA) proceedings, Renewable Portfolio Standard (RPS) proceedings, and other regulatory proceedings as requested. BBMS has also been retained by other CCAs on a number of issues, which allows for cost-sharing and better coordination between CCAs. 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 the First Amendment to the Fourth Agreement with Braun, Blaising, McLaughlin & Smith in the amount of an additional \$40,000 for continuation of legal and regulatory services for a total amount not to exceed \$120,000.

Budget Impacts: Costs related to the proposed contract amendment are included in the FY 2016/17 Operating Fund Budget.

Recommendation: Approve the Proposed First Amendment to the Fourth Agreement with Braun, Blaising, McLaughlin & Smith.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

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

THIS FOURTH AGREEMENT ("Agreement") is made and entered into this day **March 17, 2016** 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;

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 **\$80,000**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **April 1, 2016**, and shall terminate on **March 31, 2017**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

6. INSURANCE AND SAFETY:

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

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

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

6.1 GENERAL LIABILITY

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

6.2 AUTO LIABILITY

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

6.3 WORKERS' COMPENSATION

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

6.4 PROFESSIONAL LIABILITY INSURANCE

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

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

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

9. ASSIGNMENT:

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

10. RETENTION OF RECORDS AND AUDIT PROVISION:

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

11. WORK PRODUCT:

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

12. TERMINATION:

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

13. AMENDMENT:

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

14. ASSIGNMENT OF PERSONNEL:

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

15. JURISDICTION AND VENUE:

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

16. INDEMNIFICATION:

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

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

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

18. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all Federal, State and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.

19. NOTICES

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

Contract Manager: LaWanda Hill

MCE Address: 1125 Tamalpais Avenue

San Rafael, CA 94901

Email Address: invoices@mcecleanenergy.org

Telephone No.: (415) 464-6048

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:	LaWanda Hill
MCE Address:	1125 Tamalpais Avenue
	San Rafael, CA 94901
Email Address:	invoices@mcecleanenergy.org
Telephone No.:	(415) 464-6048

Notices shall be given to Contractor at the following address:

Contractor:	Scott Blaising
Address:	915 L Street, Suite 1480
	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: [Signature]
 CEO
 Date: 3-17-16

By: [Signature]
 Chairperson
 Date: 3-17-16

CONTRACTOR:

By: [Signature]
 Name: SCOTT BLAISING
 Date: 3/21/16

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

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	\$395
Junior Partners	\$320
Senior Associates	\$295
Junior Associates	\$250
Of Counsel	\$305-\$345
Contract Associate (As Authorized)	\$280
Law Clerk and Associates Not Admitted to Bar	\$155

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 **\$80,000** for the term of the agreement.

EXHIBIT A
SCOPE OF SERVICES (required)

Contractor will provide task-specific legal and regulatory services and assistance as requested and directed by the General Counsel, up to the maximum time/fees allowed under this Agreement.

**FIRST AMENDMENT TO FOURTH AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND BRAUN, BLAISING, MCLAUGHLIN & SMITH**

This FIRST AMENDMENT is made and entered into on December 2, 2016, by and between MARIN CLEAN ENERGY, (hereinafter referred to as "MCE") and BRAUN, BLAISING, MCLAUGHLIN & SMITH (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and the Contractor entered into an agreement to provide regulatory and legal services as needed and requested by MCE dated March 17, 2016 ("Agreement"); and

WHEREAS, Section 4 and Exhibit B to the Agreement obligated Contractor to be compensated an amount not to exceed \$80,000 for the regulatory and legal services described within the scope therein; and

WHEREAS the parties desire to amend the Agreement to increase the contract amount by \$40,000 for a total not to exceed \$120,000.

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

AGREEMENT

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

MAXIMUM COST TO MCE:

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$120,000**.

2. The second sentence of the second paragraph of Exhibit B is hereby amended to read as follows:

In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of \$120,000 for the term of the agreement.

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

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

CONTRACTOR:

MARIN CLEAN ENERGY:

By: _____

By: _____

Date: _____

Date: _____

MARIN CLEAN ENERGY:

By: _____

Date: _____



December 2, 2016

TO: MCE Executive Committee

FROM: Alice Stover, Energy Efficiency Program Manager

RE: Proposed First Agreement with Nest Labs, Inc. (Agenda Item #04-C.6)

ATTACHMENT: Proposed First Agreement with Nest Labs, Inc.

Dear Executive Committee Members:

SUMMARY:

MCE's work on energy efficiency has included pilot programs related to automating load reduction in the residential sector and helping customers reduce energy costs. The Nest Seasonal Savings Pilot would demonstrate the role that smart thermostats can play in helping MCE achieve these objectives. If energy savings are demonstrated through this pilot and funds are made available to administer similar programs in the future, then rebates for smart thermostats could be offered to customers who do not yet have them. Expanding the pool of customers with smart thermostats and acclimating residential customers to the remote control of their devices are two important steps towards enrolling customers in automated demand response programs.

Furthermore, this pilot would support the state-wide goals laid out in AB 793 which calls for investment in energy management technology in homes and small businesses. By demonstrating energy savings this pilot will help establish savings estimates and incentive levels for similar programs focused on providing incremental and ongoing energy savings from smart thermostats, and thereby move the State closer to fulfilling the directives outlined in AB 793 regarding providing residential customers with energy management technology.

Through this proposed Agreement between MCE and Nest Labs, Inc. ("Nest"), Nest would run the Seasonal Savings Pilot Program for MCE customers. The Seasonal Savings Pilot Program is an innovative program designed to investigate the potential cost-effective savings in utilizing smart thermostat technology to remotely modify set points on Heating, Ventilation, and Air Conditioning ("HVAC") equipment.

The Nest Learning Thermostat has already been proven to save energy. There are a large number of third party measurement and verification ("M&V") studies that have been conducted on the Nest Learning Thermostat and other smart thermostats, including studies underway in partnership with the California investor-owned utilities ("IOUs"). The results of these studies indicate that Nest Learning Thermostats can drive savings equal to approximately 10%-12% of heating usage, and 15% of electrical cooling usage in homes with central air conditioning.

The Seasonal Savings Pilot Program takes the Nest Learning Thermostat energy savings one step further by providing customers with incremental energy savings throughout a particular heating or cooling season. The thermostat does this by making micro set point adjustments to the thermostat's schedule for those customers who have opted in to the program over a three-week period. The result is cost-effective, incremental energy savings and customer engagement. Nest has run this program elsewhere in the United States but not yet in Northern California's unique climate zones.

Through this pilot program MCE will partner with PG&E and SoCalGas, who are running similar pilot programs, to evaluate results collectively, and demonstrate the potential for energy savings from this innovative technology in California.

The maximum cost under this Agreement would be \$40,000 for a one year term.

Fiscal Impacts: This Agreement would be funded by CPUC ratepayer funds for energy efficiency programs upon approval of MCE's Advice Letter pertaining to this pilot program. Costs related to the Agreement are included in the 2016/17 Energy Efficiency Program Fund Budget. Costs that occur in subsequent periods would be included in the appropriate Energy Efficiency Program Fund Budget.

Recommendation: Approve the proposed First Agreement with Nest Labs, Inc.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**FIRST AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND NEST LABS, INC.**

THIS FIRST AGREEMENT ("Agreement") is made and entered into this day **December 2, 2016** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and NEST LABS, INC. (NEST), hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: programs covering the purchase and marketing of the NEST products and services to existing and new MCE customers;

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 email invoices to MCE at invoices@mcecleanenergy.org 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 **December 2, 2016**, and shall terminate on **December 31, 2017**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

6. INSURANCE AND SAFETY:

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

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 17 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 (REQUIRED FOR PROFESSIONAL SERVICES AGREEMENTS ONLY)

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

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

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

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

9. ASSIGNMENT:

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

10. RETENTION OF RECORDS AND AUDIT PROVISION:

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

11. WORK PRODUCT:

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

12. THIRD-PARTY FUNDING AVAILABILITY CONTINGENCY:

The Parties mutually acknowledge and agree that availability of funds for the program(s) and services described in this Agreement is contingent upon CPUC approval of MCE's Advice Letter pertaining to this program. In the event that requisite approval is not granted, this Agreement shall be of no further force or effect. In this event, MCE shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement, and Contractor shall not be obligated to perform any provisions of this Agreement.

13. TERMINATION:

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

14. AMENDMENT:

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

15. ASSIGNMENT OF PERSONNEL:

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

16. JURISDICTION AND VENUE:

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

17. INDEMNIFICATION:

Contractor agrees to indemnify, 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.

18. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

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

19. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all Federal, State and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.

20. NOTICES

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

Contract Manager:	Catalina Murphy
MCE Address:	1125 Tamalpais Avenue
	San Rafael, CA 94901
Email Address:	contracts@mcecleanenergy.org
Telephone No.:	(415) 464-6014

Notices shall be given to Contractor at the following address:

Contractor:	Jeff Gleeson
Address:	3400 Hillview Avenue
	Palo Alto, CA 94304
Email Address:	jgleeson@nestlabs.com
Telephone No.:	(805) 305-1330

21. ACKNOWLEDGEMENT OF EXHIBITS

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

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

22. SEVERABILITY

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

23. COMPLETE AGREEMENT

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

24. COUNTERPARTS

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

25. PERFORMANCE AND PAYMENT BOND (REQUIRED FOR CONSTRUCTION PROJECTS ONLY)

Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender,

supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

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

APPROVED BY

Marin Clean Energy:

CONTRACTOR:

By: _____
CEO

By: _____

Date: _____

Name: _____

By: _____
Chairperson

Date: _____

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 programs covering the purchase and marketing of the NEST products and services to existing and new MCE customers as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement.

1. **Implementation** - MCE will pay Nest a fee of \$10,000 for set up, and for ongoing support of, the MCE-Nest program (the "Program") within 30 days of the Effective Date. Included in this setup fee are all launch-related activities, including the following:
 - a. **Kick-Off** - As soon as reasonably practicable following the Effective Date, the stakeholders from Nest and MCE will meet to review Program launch activities and marketing best practices, and jointly develop a Program launch plan.
 - b. **Program Management** - Each party will assign a Program manager who will act as the primary point of contact for all Program launch-related activities. The parties will jointly agree upon the Program launch plan and Nest will provide MCE with a MCE Program launch manual adapted for the specifics of the MCE Program launch.
 - c. **Marketing Setup and Templates** - Marketing Set Up and Templates: Nest will provide co-brandable marketing templates to MCE. The Nest-provided templates may include webpage design, email, direct mail, print ads, bill insert and digital marketing.
 - d. **Product Training** - Nest will provide guidelines and sample training materials for MCE to incorporate into sales and support training programs for the Program. MCE will develop a training plan and Nest will support the execution of this plan by providing access to the Nest online training portal and/or in-person training sessions, as agreed by the parties.
2. **Seasonal Savings** - Nest shall provide MCE with an energy efficiency solution that will facilitate automated changes to customers' schedules to drive energy savings and customer engagement.
3. **Program Support** - For the length of the agreement following program launch, participation will be capped at 5,000 enrolled Products. NEST will provide the following program support for enrolled products:
 - a. **Business Analytics** - Nest will provide business analytics at an aggregated, anonymized level to MCE in a format and consisting of metrics agreed to by the Parties. Such metrics may include:
 - i. HVAC profile data
 - ii. Visits to energy MCE page on Nest.com
 - iii. Customer demographicsNest will provide a link to MCE customers that will take them to a survey that is fully owned by MCE.
 - b. **Ongoing Customer Support** - Nest will serve as resource for MCE customers that call seeking technical advice or questions regarding their Nest product, and will work with MCE to provide a seamless transfer from MCE's call center to Nest's technical support.
 - c. **Account Management** - The Nest Program manager will track and oversee Program health and each party's compliance with its obligations on an ongoing basis. The scope of the Nest Program manager's responsibilities will be

determined jointly by MCE and Nest upon completion of the Program implementation phase.

4. **Marketing Support** - Nest will provide marketing support that may include the following:
 - a. **Creative Services** - Custom Creative Services: Nest will review and provide consultation services with respect to assets (including co-branded assets) developed by MCE.
 - b. **Marketing Activities**
 - i. **Marketing Guidelines:** The parties agree to share and adhere to each other's marketing and brand guidelines.
 - ii. **Nest-Owned Marketing Activities:** Nest will provide promotional execution support using Nest-owned channels. Such Program support will include promotional activities, which will be made available by Nest in its sole discretion and may include the following channels: web, email, social, digital marketing, and retail. MCE may elect to be mentioned on Nest.com with detail to be mutually agreed by the parties. Nest will work with MCE to approve Nest marketing assets.
 - iii. **MCE-Owned Marketing Activities:** MCE may promote the Program using web, email, and digital marketing channels, and direct mail, as appropriate. Promotional activities will be developed by MCE and adhere to the Nest marketing guidelines provided to MCE. MCE will not promote the offer in retail, print, out-of-home, radio, TV, or any experiential marketing activity, unless the activity is explicitly approved by Nest in writing. MCE will work with Nest to approve MCE marketing assets.
 - iv. **Marketing Plan & Messaging Document:** By two weeks after the effective date, or such other date as agreed by the parties, MCE shall develop and the parties shall agree on a written marketing plan and messaging document that outlines MCE's proposed Program-related marketing activities to be carried out during the term of the Program (the "Marketing Plan"). Nest will provide a template marketing plan and messaging document.
 - v. **Nest MCE Marketing Kit:** Nest will provide product messaging, product imagery and co-brandable marketing examples to MCE. Example designs may include webpage, email, digital marketing and direct mail, as applicable to the Marketing Plan.
 - vi. **Marketing Materials Review:** The parties will independently or jointly develop, as agreed by the parties, co-branded marketing materials for use in each of the promotions set forth in the Marketing Plan, provided that each party retains complete discretion to approve proposed materials using such party's name or intellectual property in promotions by either party or their approved subcontractors. The parties will use reasonable efforts to review marketing assets and provide feedback within 48 hours.
5. **Measurement & Verification Support** - Nest and MCE will work collaboratively in a series of discussions to finalize the Seasonal Savings analysis, which may include support in stakeholder discussions.
6. **Lessons Learned** - Nest will work with MCE to share lessons learned from this pilot via webinar and/or workshop as predicated by the CPUC and outlined in the Ideation/Advice Letter submitted to the CPUC.

**EXHIBIT B
FEES AND PAYMENT SCHEDULE**

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

1. Implementation fee	\$10,000
2. MCE shall pay Nest a fee of \$6 ("Seasonal Savings Fee") per enrolled Product per year for the duration of this Agreement (total of 5,000 devices)	\$30,000
Total	\$40,000

Contractor shall invoice MCE for the full amount of the fees described herein, upon the occurrence of: a) execution of this Agreement, or b) confirmation of funding availability as described in Section 12 of this Agreement; whichever is the later.

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.

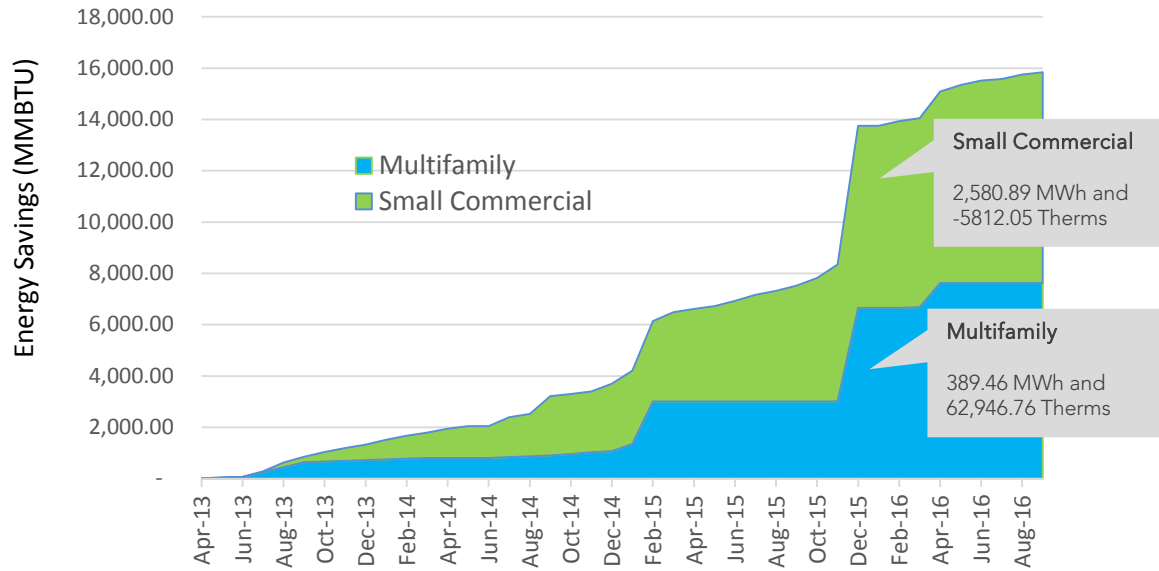


MCE Energy Efficiency Programs Monthly Update

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.



Program Achievements – January 2013 to September 2016 (most recent data)

Small Commercial*

Small Businesses Audited
2,308

Total Rebates Distributed
\$446,562

Number of Unique Projects Completed
357

* Split between MCE, Marin Energy Watch and East Bay Energy Watch

Single Family*

Number of My Energy Tool Accounts Created
2,726

Number of Action Plans Created
1,933

* Last updated in April 2016

Multifamily

Multifamily Buildings Audited
662

Total Rebates Distributed
\$477,516

Number of Units Provided with Free Energy Saving Equipment
1,345



Energy Efficiency Challenges Unique to CCAs

Lack of Institutional Knowledge and Clear Guidance

- » Rules and standards that apply to IOUs also apply to CCAs, but requirements and expectations are not well documented.
- » Custom projects are expected to use industry best practices and other standard assumptions that are not well documented. Feedback on custom projects is not shared between Program Administrators.
- » The lack of clear guidance presents challenges to CCAs in understanding how to make changes to programs, propose pilots, interpret policy, etc.
- » CCAs are expected to meet all obligations of IOUs with a fraction of the IOU budget; for 2013-2015 MCE's budget was 00.1% of PG&E's.¹
 - ◇ This spreads high administrative costs over smaller scale of savings, challenging the ability of the CCA to achieve TRC.

Competitive Issues are Not Addressed

- » IOUs currently dominate high TRC programs with no attribution to CCAs.
- » Advanced Meter Infrastructure (AMI) data is always a day behind - this creates ongoing challenges for time-metered programs, demand response programs, customer services, etc.
- » Historical program participation data gives IOUs a competitive advantage in interfacing with customers.

Incomplete Data Hinders Programs

- » Some data must be requested through IOUs. The data, when received, is often late, incomplete, and takes months to properly validate.
- » The potential analysis performed for the State of California, which informs measure selection, portfolio design, and other important Energy Efficiency (EE) planning decisions, is not done at the granularity necessary to inform CCA EE plans. Thus, CCAs need to fund and conduct their own potential analyses - without the advantage of historical program participation data.

¹ PG&E's budget for 2013-2015 was \$957.95 million, while MCE's was \$1.75 million. (<http://eestats.cpuc.ca.gov/Views/EEDataPortal.aspx>, MCE AL 18-E.)

CCAs and IOUs are Expected to Cooperate in a Competitive Market without CPUC Oversight

Without a process to resolve implementation issues, CCAs cannot effectively administer their programs. For example:

- » **Attribution:** D.16-08-019 directs Program Administrators to determine budget and attribution share for statewide programs. MCE has contacted PG&E numerous times to discuss and has presented MCE's proposal for attribution. PG&E has not responded either to requests to meet or to MCE's attribution proposal. This jeopardizes MCE's ability to complete cost effectiveness showings for its upcoming Business Plan filing.
- » **Program Overlap:** The CPUC approves overlapping programs but does not provide support for negotiating solutions between IOUs and CCAs that ensure coordination and avoid customer confusion. This occurred with MCE's small commercial program and PG&E's small business direct install program.
- » **Partnering:** It is difficult to partner with PG&E because of its lack of consideration for jointly implemented programs and unilateral decision-making (i.e. incentive levels) on programs that are jointly implemented. On occasion, these unilateral decisions have not been communicated to MCE.

More CPUC Resources Must be Devoted to CCA Challenges and Barriers

- » The recent Evaluation, Measurement and Verification (EM&V) roadmap contains misunderstandings of MCE's programs.
- » CCAs are still categorized with RENs when decisions and direction are issued, despite distinctions, such as:
 - ◇ Statutory rights as Program Administrators;
 - ◇ Obligations for cost effectiveness; and
 - ◇ CCAs, unlike RENs, are not told to focus on gaps, niches, and hard to reach market sectors.
- » CCA issues are not prioritized at the Commission.



For more information

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Tom Butt, Vice Chair
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Bob Simmons
City of Walnut Creek

DRAFT

**Board of Directors Meeting
Thursday, December 15, 2016
7:00 P.M.**

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

Agenda Page 1 of 1

- 1. Board Announcements (Discussion)
- 2. Public Open Time (Discussion)
- 3. Report from Chief Executive Officer (Discussion)
- 4. Consent Calendar (Discussion/Action)
 - C.1 11.17.16 Meeting Minutes
 - C.2 Approved Contracts Update
 - C.3 Monthly Budget Report
 - C.4
- 5. Board Member & Staff Matters (Discussion)
- 6. Adjourn

1125 Tamalpais Avenue
San Rafael, CA 94901



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