



MCE Executive Committee Meeting
Monday, June 1, 2026
12:00 p.m.

1125 Tamalpais Avenue
San Rafael, CA 94901

2300 Clayton Road, Suite 1500
Concord, CA, 94520

450 San Rafael Avenue
Belvedere, CA 94920
(City of Belvedere)

City Hall Committee Room
955 School Street
Napa, CA 94559
(City of Napa)

Public comments may be made in person or remotely via the details below.

Remote Public Meeting Participation

Video Conference: <https://t.ly/DnY7U>

Phone: Dial (669) 900-9128, Meeting ID: 861 2234 3784, Passcode: 415565

Materials related to this agenda are available for physical inspection at MCE's offices in San Rafael at 1125 Tamalpais Avenue, San Rafael, CA 94901 and in Concord at 2300 Clayton Road, Suite 1500, Concord, CA 94520.

DISABLED ACCOMMODATION: If you are a person with a disability who requires an accommodation or an alternative format, please contact MCE at (888) 632-3672 or ada-coordinator@mceCleanEnergy.org at least 72 hours before the meeting start time to ensure arrangements are made.

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1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
 - C.1. Approval of 5.4.26 Meeting Minutes

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C.2. Proposed Resolution 2026-04 Amending Resolution 2023-09 Accepting Congressionally Directed Spending Project From the Golden Fields Office of the U.S. Department of Energy and Proposed Agreements with Serious Controls, LLC

C.3. Review Draft 6.18.26 Board Agenda

6. Proposed Resolution 2026-05 Authorizing Remote Participation at Meetings of the MCE Board and MCE Finance Committee (Discussion/Action)
7. Agenda and Packet Management Technology: Challenges and Opportunities (Discussion)
8. Committee & Staff Matters (Discussion)
9. Adjourn

The Executive Committee may discuss and/or take action on any or all of the items listed on the agenda irrespective of how the items are described.

DRAFT

MCE EXECUTIVE COMMITTEE MEETING MINUTES

Monday, May 4, 2026

12:00 P.M.

Present: Stephanie Andre, City of Larkspur
Kari Birdseye, City of Benicia
Stephen Burke, Alternate, City of Mill Valley
Barbara Coler, Town of Fairfax, Chair
Cindy Darling, City of Walnut Creek, Vice Chair
Maika Llorens-Gulati, City of San Rafael
Laura Nakamura, City of Concord
Beth Painter, City of Napa
Shanelle Scales-Preston, County of Contra Costa
Sally Wilkinson, City of Belvedere

Absent: Devin Murphy, City of Pinole

Staff

& Others:

Jared Blanton, VP of Public Affairs
Vicken Kasarjian, Chief Operating Officer
Tanya Lomas, Board Clerk
Linda Lye, Senior Legal Counsel
Shaheen Khan, VP of Human Resources, Diversity, and Inclusion
Catalina Murphy, General Counsel
Ashley Muth, Internal Operations Associate
Justine Parmelee, VP of Internal Operations
Mike Rodriguez-Vargas, Internal Operations Assistant
Enyonam Senyo-Mensah, Manager of Internal Operations
Maíra Strauss, Chief Financial Officer
Jamie Tuckey, Chief Customer Officer
Dawn Weisz, Chief Executive Officer

1. Roll Call

Chair Coler called the regular Executive Committee meeting to order at 12:00 p.m. with quorum established by roll call.

2. Public Open Time (Discussion)

Chair Coler opened the public comment period and there was a comment from member of the public, Jody Timms.

3. Consent Calendar (Discussion/Action)

C.1 Approval of 4.6.26 Meeting Minutes

DRAFT

C.2 Review Draft 5.21.26 Board Agenda

Chair Coler opened the public comment period and there was a comment from member of the public, Jody Timms.

Action: It was M/S/C (Darling/Nakamura) **to approve Consent Calendar items C.1 and C.2.** Motion carried unanimously. (Absent: Murphy).

4. Credit Facility Extension (Discussion/Action)

Maíra Strauss, Chief Financial Officer, presented this item and addressed questions from Committee members.

Chair Coler opened the public comment period and there were no comments

Action: It was M/S/C (Llorens-Gulati/Painter) **to recommend to the Board of Directors approval of a one-year extension of the current Royal Bank of Canada credit facility, extending the term through May 21, 2027, and increasing the credit limit to \$80 million.** Motion carried by roll call vote. 8-Yays 2-Abstain (Abstentions: Andre and Wilkinson. Absent: Murphy).

5. Public Open Time on Closed Session Matter

Chair Coler opened the public comment period and there was a comment from member of the public, Jody Timms.

Begin Closed Session Chair Coler opened the closed session at 12:16 p.m.

6. Roll Call/Quorum

Chair Coler returned to open session at 2:28 p.m. with quorum established by roll call.

7. Agenda and Packet Management Technology: Challenges & Opportunities (Discussion)

This item was not discussed due to loss of quorum and was deferred to a future meeting.

8. Report from Chief Executive Officer (Discussion)

This item was not discussed due to loss of quorum.

9. Committee & Staff Matters (Discussion)

This item was not discussed due to loss of quorum.

10. Adjournment

Chair Coler adjourned the meeting at 2:30 p.m. to the next scheduled Executive Committee Meeting on June 1, 2026.

DRAFT

Barbara Coler, Chair

Attest:

Justine Parmelee, Secretary



June 1, 2026

TO: MCE Executive Committee

FROM: Alice Havenar-Daughton, Vice President of Customer Programs
Stephanie Penera, Senior Customer Programs Manager

RE: Proposed Resolution 2026-04 Amending Resolution 2023-09 Accepting
Congressionally Directed Spending Project from the Golden Fields
Office of the U.S. Department of Energy and Proposed Agreements with
Serious Controls, LLC (Agenda Item #05 C.2)

ATTACHMENTS:

- A. Agreement with Serious Controls, LLC for the Tiburon Police Station
- B. Agreement with Serious Controls, LLC for the Pinole Youth Center and Pinole Swim Center Tiny Tots Facility
- C. Resolution 2026-04 Amending Resolution 2023-09 Accepting Congressionally Directed Spending Project from the Golden Fields Office of the U.S. Department of Energy
- D. Resolution 2023-09 Accepting Congressionally Directed Spending Project from the Golden Fields Office of the U.S. Department of Energy

Dear Executive Committee Members:

Summary:

Staff has completed the evaluation and procurement process for MCE's Department of Energy-funded Energy Storage Program and identified three eligible, high-readiness projects at critical community facilities in Tiburon and Pinole. The recommended actions will amend Resolution 2023-09 to reflect current program execution and authorize vendor agreements to install battery energy storage systems that enhance community resilience, support emergency operations, and meet all federal funding requirements.

Background

On August 17, 2023, the Board adopted Resolution 2023-09 accepting Congressionally Directed Spending project funding from the Golden Fields Office of the U.S. Department of Energy ("DOE") for MCE's Energy Storage Program. The funding provides \$500,000 in federal funding with a \$500,000 match fund requirement from MCE.

Following Board approval, staff conducted program outreach, stakeholder engagement, technical assistance, and project evaluation activities consistent with DOE requirements, to identify potential battery site hosts. Outreach efforts included coordination with municipal staff from MCE member

communities, public webinars, development of program materials, and consultations with prospective participants regarding project eligibility, federal compliance requirements, and project readiness. Interested MCE municipal customers were invited to submit applications for a vetting and scoring process designed to evaluate project readiness and ensure applicants could satisfy all applicable DOE requirements.

Staff evaluated proposed projects based on eligibility, ability to comply with DOE requirements, and feasibility of completion within the DOE-established three-year performance period. MCE received 14 applications. The program originally set a goal of at least four projects (as stated in Resolution 2023-09), but only three projects demonstrated the ability to meet federal compliance requirements. Common issues among the projects that were not awarded funds included the need for more flexible implementation timelines, limited internal capacity to manage federal compliance requirements, or inability to meet DOE procurement, reporting, and environmental review standards.

MCE identified the following eligible and viable projects for DOE funding:

- Town of Tiburon Police Station/Emergency Operations Center;
- City of Pinole facilities:
 - Pinole Youth Center; and
 - Pinole Swim Center Tiny Tots facility.

Following identification of the eligible applicants, the site hosts each initiated a formal solicitation process to procure vendors that could satisfy DOE requirements, including Build America, Buy America (“BABA”) provisions. Staff supported site hosts throughout the procurement and evaluation process to ensure compliance with DOE requirements and project timelines.

The solicitation process resulted in Serious Controls, LLC being independently selected as the recommended vendor for each of the projects. The MCE team developed Vendor Agreements that will authorize the vendor to install the grant-funded projects.

Project Details

Site	System Size (kWh)
Town of Tiburon Police Station/Emergency Operations Center	400
Pinole Youth Center	100
Pinole Swim Center Tiny Tots Facility	100

Town of Tiburon Police Station / Emergency Operations Center

The Tiburon Police Station serves as a critical public safety facility and Emergency Operations Center for the Towns of Tiburon and Belvedere. During emergency events and power outages, the facility functions as a central coordination hub for emergency response and community support services.

Installation of a battery energy storage system will enable the facility to maintain continuity of operations during outages, supporting uninterrupted emergency response coordination and continued access to critical public safety and community services.

Pinole Youth Center

The Pinole Youth Center serves as a community hub for youth programming, educational activities, public meetings, and community events. The facility also houses operations for Pinole Community Television ("PCTV"), which broadcasts City Council meetings and other public programming requiring continuous server operations.

The City's Hazard Mitigation Plan and Climate Action and Adaptation Plan identify the facility as a future resilience and cooling center. Installation of battery energy storage will support continuity of operations, reduce energy costs, and enhance community resilience during grid disruptions and emergency events.

Pinole Swim Center Tiny Tots Facility

The Pinole Swim Center Tiny Tots Facility provides educational and recreational programming for preschool-age children and the broader community, including year-round recreational and community activities.

Installation of battery energy storage at the facility will improve operational resilience and support continuity of critical community services during outages and emergency conditions.

Next Steps: The recommended projects are government-owned facilities that provide critical community services and demonstrated readiness to meet DOE timelines and compliance requirements, including National Environmental Policy Act ("NEPA"), BABA, and applicable federal procurement standards. The projects are designed to provide battery dispatch capability during peak demand periods from 4:00 p.m. to 9:00 p.m. while enhancing continuity of operations during outages and emergency events.

Proposed Resolution No. 2026-04 Amending Resolution 2023-09 Accepting Congressionally Directed Spending Project from the Golden Fields Office of the U.S. Department of Energy is provided as an attachment for Executive Committee Review. Proposed Resolution 2026-04 will be brought to MCE's Board of Directors for consideration.

The proposed Vendor agreements, if approved, would authorize Serious Controls LLC to install batteries at the 3 selected site hosts using grant funding.

Fiscal Impacts:

There are no fiscal impacts of Proposed Resolution 2026-04. The proposed Vendor agreements have a not-to-exceed budget of \$660,000 (Tiburon Police Station) and \$340,000 (Pinole Youth Center and Pinole Swim Center Tiny Tots Facility). Funding for these projects will be provided through a combination of U.S. Department of Energy grant funds and MCE matching funds, with approximately 50% funded by the DOE grant and 50% funded by MCE. MCE's matching contribution will be funded through MCE's Resiliency Fund Budget in the fiscal year in which grant expenditures are anticipated.

Recommendation:

1. Recommend that the Board approve Proposed Resolution No. 2026-04, amending Resolution 2023-09 to reflect the current project implementation structure and grant conditions; and

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2. Approve the proposed Vendor Agreements and authorize the CEO to execute the agreements upon receipt of DOE approval of the vendor selections.

MCE ENERGY STORAGE PROGRAM CONTRACTOR AGREEMENT

This MCE Energy Storage Program Contractor Agreement (“**Contractor Agreement**”) is entered into by and between [**SERIOUS CONTROLS LLC,**] a [Georgia] [Limited Liability Company], CSLB License No. [] whose principal place of business is [9040 Main Street, Suite 108, Woodstock, Georgia 30188] (“**Contractor**”), and Marin Clean Energy, a California joint powers authority (“**MCE**” or) (each a “**Party**” and, together, the “**Parties**”), and is effective as of [month, day, year] (“**Effective Date**”).

1. BACKGROUND. Marin Clean Energy (“**MCE**” or “**Sponsor**”) is sponsoring the Energy Storage Program (the “**Program**”), partially funded by the Department of Energy (“**DOE**”) through a federal grant award received by MCE. The Program provides some funding = to encourage owners of critical facilities (each a “**Cost Sharing Participant**”) to install battery energy storage systems (each a “**BESS**”) assessed, sized, installed, and verified by a contractor participating in the Program (each a “**Contractor**”). Cost Sharing Participants will provide funding and support around the installation of the selected BESS project (each, a “**Project**”). Selected Contractors from a competitive solicitation supported by Cost Sharing Participant, will submit proposed Projects to MCE to submit to the DOE for approval (“**Project Approval**”). Each Project Approval will identify the Project specifications and any supplemental terms and conditions with which each Contractor must comply for that Project (“**Project Documents**”). Approved Projects are eligible for Program Funding. “**Program Funding**” means any payments, incentives, funding, bill credits, and/or financing provided by MCE to a Contractor under the Program.

2. AGREEMENT and INCORPORATION OF DOCUMENTS. Contractor’s Project will be governed by this Contractor Agreement, which includes and incorporates the following:

- Attachment (1): Program Overview and Requirements;
- Attachment (2): Terms and Conditions;
- Attachment (3): Insurance Requirements;
- Attachment (4): Payment/Performance Bond Form
- Attachment (5): Statement of Work
- Attachment (6): Contractor Invoice Checklist
- Attachment (7): MCE Non-Disclosure Agreement by and between Contractor and MCE dated as of [DATE] (“**MCE Non-Disclosure Agreement**”); and
- Project Documents for each Project.

3. CONTRACTOR REPRESENTATIONS. As a condition of participating in the Program, Contractor represents and agrees it: (a) has provided accurate and complete information in the Contractor competitive solicitation; (b) has read and understands this Contractor Agreement and all incorporated documents; (c) is eligible for the Program; (d) will perform the Work (as defined in Attachment (4)) in a timely, professional, good and workmanlike, and ethical manner Contractor; (e) can and will comply with all Terms and Conditions (as defined in Attachment (2)) and Contractor Insurance Requirements (as defined in Attachment (3)); (f) agrees that any person or entity engaged, hired, used or contracted by Contractor to perform any Work under the Program (other than Contractor and its employees) shall be deemed a Subcontractor under this Agreement; and (g) will notify MCE immediately if there are any changes to Contractor that would impact its compliance with this Contractor Agreement.

4. AUTHORITY. Each Party represents and warrants it has the requisite power, legal authority, and capacity to enter into this Contractor Agreement, and to perform the obligations required by this Contractor Agreement.

5. EXECUTION. Each Party agrees this Contractor Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same instrument. A copy of this Contractor Agreement signed electronically, whether digitally or encrypted, and/or delivered by e-mail or other means of electronic transmission, are intended to have the same force and effect as if signed manually.

IN WITNESS WHEREOF, the Contractor has read this Contractor Agreement, understands it, and agrees to be bound by its terms as of the Effective Date.

MCE: **Marin Clean Energy**

Contractor: [**SERIOUS CONTROLS LLC**]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ATTACHMENT (1)

PROGRAM OVERVIEW AND REQUIREMENTS

1. **Project.** Under the Program, the Project seeks to deploy behind-the-meter battery energy storage systems paired with existing solar at critical facilities to provide emergency backup power, and during normal operation to reduce energy use daily from 4-9pm. This Project will maximize onsite solar usage and alleviate grid strain to support more reliable energy supply and reduce greenhouse gas emissions statewide. The Projects and Sites are all subject to DOE approval and a final NEPA determination prior to work beginning on the Project.
2. **The Work.** For the Project, Contractor will meet all requirements set forth in the Program Documents (including this Contractor Agreement, Install Contract with the Cost Sharing Participant, the Agreement by and between MCE and the Cost Sharing Participant, and the Federal Rules set forth in 2 CFR part 200 as amended by 2 CFR part 910), which will include, but not be limited to, the services, (collectively, the “**Work**”) as further specified in the Attachment (5) Statement of Work.
3. **Cost Sharing Participant.** MCE has received a federal award to support the Work and ensure the installation of the Project. The Site Host for the Project is a Cost Sharing Participant and shall be responsible for some of the costs of the Work listed in Attachment (5).
 - **Cost Sharing Participant: Tiburon Police Department**
 - **Total Project Cost: \$771,817**
 - **Amount covered by Cost Sharing Participant: \$111,817**
 - **Program Funding Amount covered by MCE pursuant to this Agreement*: \$660,000**
**MCE shall not provide any additional funding beyond the amount listed above. Any costs that exceed this amount shall be borne by the Cost Sharing Participant.*

ATTACHMENT (2)

TERMS AND CONDITIONS

1. Agreement Term. The term of this Contractor Agreement is three (3) years (“**Term**”).
2. Contractor Representations, Warranties and Covenants. As of the Effective Date, and at all times during the Term of this Contractor Agreement and the performance of the Work, Contractor hereby represents warrants and covenants as follows:
 - a. Independent Contractor. Contractor is an independent contractor, and neither Contractor nor any of its directors, officers, employees, agents, representatives, or Subcontractors shall be considered, for any purpose, to be an employee, agent, or servant of MCE or any of their affiliates. Contractor shall be solely responsible for and shall promptly pay or cause to be paid all wages, salaries, costs, expenses, benefits, contributions and charges of any nature whatsoever which accrue to Contractor’s personnel, agents and Subcontractors arising out of or incidental to this Contractor Agreement, including overtime, vacation, severance, social security, unemployment contributions, insurance, profit sharing, welfare funds, life pensions and annuities, rest and holiday pay, as well as compensation due to sickness or disability of Contractor’s personnel, agents and Subcontractors.
 - b. Compliance with Laws. Contractor Parties are in compliance and will comply with all currently effective applicable local, state, and federal laws, rules, regulations, orders, ordinances, codes, statutes, permits, and other requirements of governmental authorities having jurisdiction over such Contractor Party, Projects, Project sites, the manner in which the Work is performed, or the design, operation, or use of Projects, including, without limitation, any such requirements relating to payment of or working conditions for employees, non-discrimination, immigration, employment taxes, health or safety of employees and other persons, licensing, building codes, interconnection, and environmental requirements.
 - c. Licensing. Contractor has obtained and will maintain, and shall cause each Contractor Party to obtain and maintain, at its sole cost and expense, all required licenses and registrations required for the operation of its business and the performance of the Work, including, but not limited to, licensure by the California Contractors State License Board. Contractor shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.
 - d. Performance Assurance: Bonding. Contractor and/or Subcontractor(s) providing any direct Project installation services shall obtain and maintain, at its/their sole cost and expense, all bonding requirements of the California State License Board, as may be applicable. Regardless of the specific Work provided, Contractor shall also maintain any payment and/or performance assurances as may be requested by MCE during the performance of the Work.
 - a. Bid Guarantee. Contractor must provide proof of a bid guarantee as a firm commitment, such as a bid bond, certified check, or other instrument, equivalent to five (5) percent of the bid price, accompanying their bid as assurance that Contractor will move forward with the Project and this Agreement.
 - b. Payment Bond. Contractor shall obtain and submit a signed and notarized copy to MCE of a payment bond in an amount that is not less than **100% of this Contract Agreement**, such amount being not less than 100% of the contract price, and nothing in this Agreement shall excuse this requirement. The required Payment Bond (Labor and Materials) form is attached hereto as **Attachment 6**.
 - c. Performance Bond. Contractor shall obtain and submit a signed and notarized copy to MCE of a performance bond in an amount that is not less than **100% of this Contract Agreement**, such amount being not less than 100% of the contract price, and nothing in this Agreement shall excuse this requirement. The required Performance Bond (performance of all work) form is attached hereto as **Attachment 6**.
 - e. Good Standing. Contractor and each Subcontractor (a) are duly organized, validly existing and in good standing under the laws of the State of California and (b) have full power and authority to execute, deliver and perform its or their obligations under this Contractor Agreement and to engage in the business they presently conduct and contemplate conducting, and (c) are and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.
 - f. Contracting. For all Projects, Contractor or its Subcontractor shall enter into installation contract with the Cost Sharing Participant in compliance with the California Business & Professions Code and all other legal requirements. The installation contract shall be included among the Project Documents. MCE shall have the authority to review the installation contract for compliance prior to approving the Project.
 - g. Safety. Contractor shall, and shall ensure that each Contractor Party shall:
 - (1) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;

- (2) abide by all applicable MCE security procedures, rules, and regulations, and cooperate with MCE security personnel whenever on MCE's property;
- (3) abide by Cost Sharing Participant's safety plan and other safety requirements as may be provided by MCE to Contractor from time to time;
- (4) provide all necessary training to its employees, and require each Contractor Party to provide training to their employees, about the safety and health rules and standards required under this Contractor Agreement;
- (5) have in place an effective Injury and Illness Prevention Program that meets the requirements of all applicable laws and regulations, including, but not limited to, Section 6401.7 of the California Labor Code;
- (6) initiate, maintain and supervise all safety precautions and programs in connection with the performance of the Contractor Agreement, the Projects and the Program.
- (7) monitor the safety of the Project sites during each Project to comply with all applicable federal, state, and local laws, and to follow safe work practices;
- (8) adhere to industry best practices for fire safety and applicable codes (e.g., NEC, National Fire Protection Association [NFPA] 1, NFPA 855);
- (9) install the battery package in accordance with UL9540A configurations, which span battery cells and fire protection (e.g., distance the system is installed from a wall, extinguisher equipment, etc.);
- (10) comply with all safety requirements specified by the manufacturer, distribution utility, and local authority having jurisdiction; and
- (11) comply with all other safety requirements (including MCE's standard safety program contract requirements) set forth elsewhere in the Contractor Agreement, as applicable, and in MCE's safety handbooks as may be provided by MCE to Contractor from time to time.

h. Background Checks.

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

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

3. Contractor Responsibilities.

- a. Standard of Performance. Contractor shall, and shall ensure its Subcontractors shall, deliver the Work under the Program in a timely, professional, good and workmanlike, and ethical manner as specified in the Statement of Work and in accordance with best energy storage industry practices. Contractor shall follow Cost Sharing Participant-provided performance specifications and installation requirements.
- b. Permits. Contractor shall, and shall cause its Subcontractors to, obtain, maintain, and obey any and all permits required by applicable law to install and maintain the Project. For the avoidance of doubt, Contractor will obtain a permit from the authority having jurisdiction for each Project. Contractor shall submit proof of the passed inspection for each Project to MCE.

- c. [Attendance at Meetings](#). Contractor's representative will attend all meetings required by MCE while the Work, or any part of it, is in progress, or as reasonably requested by MCE, and will be prepared and authorized to address all matters related to the Work.
- d. [No Discrimination; Equal Opportunity Employer](#). Contractor shall, and shall ensure all Subcontractors shall, be an Equal Employment Opportunity employer committed to the principles of equal employment opportunity. **Contractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), 60-741-5(a), and any other requirements of executive Order 11246.. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Additionally, these regulations require that covered contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability.**
- e. [Subcontractor Approval and Management](#). Contractor shall notify MCE before engaging, hiring, using or contracting with any Subcontractor, at any tier, to perform any Work under the Program, as all Subcontractors are subject to approval by the DOE under the Program. Such prior notice shall occur with sufficient time for MCE to obtain approval by DOE prior to performance of Work under the Program by such Subcontractor. MCE shall have the right to conduct due diligence on any Subcontractor to ensure Subcontractor meets the Program requirements and shall have the right to disapprove of the use of any Subcontractor under the Program. To the extent a Subcontractor further engages, hires, uses or contracts with a person or entity to perform Work under the Program, such person or entity shall also be deemed a Subcontractor hereunder and subject to all Subcontractor requirements. Contractor will preserve and protect the rights of the Parties with respect to any Work to be performed by any Subcontractor, and as a result this Contractor Agreement is deemed to be incorporated in full into, and made a material part of, any contract, subcontract, purchase order, or other agreement entered into between Contractor and any Subcontractor ("Subcontract"). Contractor agrees that it will expressly incorporate this Contractor Agreement into a written Subcontract, it will provide to each Subcontractor a copy of this Contractor Agreement and all incorporated documents, and it will require each Subcontractor to comply with all obligations of Contractor set forth in this Contractor Agreement. Contractor will be fully responsible and liable to MCE and the Cost Sharing Participant for the acts or omissions of any Subcontractor.
- f. [Project Completion](#). Prior to approval by MCE of Project completion, Contractor shall submit to MCE proof the Project has passed all inspections required by the authority having jurisdiction over the Project.
- g. [Warranties to Participants](#). Contractor shall provide standard, best practice installation warranty for the workmanship on the Project. Contractor shall provide proof to MCE that the Contractor has submitted all warranty registrations for the Project equipment. Contractor shall prosecute warranty claims on behalf of the Cost Sharing Participant. Contractor shall assist with warranty claims but shall not be responsible for manufacturer warranty performance or outcomes.
- h. [Post-Installation Maintenance and Operation](#). Contractor's responsibility is limited to installation and applicable workmanship warranty. Contractor shall not be responsible for ongoing maintenance or operation of the Project unless otherwise agreed in a separate written agreement. MCE will address ongoing operation and maintenance of the Project in its agreements with Cost Sharing Participants.
- i. [Information](#). For a period of seven (7) years from the Effective Date of the Contractor Agreement or the provision of Work pursuant to this Contractor Agreement, whichever is longer, Contractor shall, and shall cause Subcontractors to, release information reasonably requested by MCE, and their agents, DOE, or Cost Sharing Participant to assist any or all of them with evaluating this Program and each Project, such information to include, but not be limited to, the applicable Project name, billing records, billing history, Project documents, Project-related agreements, all meter usage data used for bill calculation and other identifying characteristics. Contractor agrees such information may be used in reports and other materials evaluating this Program, auditing Projects, and identifying key issues and resolution strategies, good building case studies, and solution cost profiles, all of which may be published by MCE, DOE, or either of their agents. Contractor shall not be required to provide proprietary business information, internal cost structures, or pricing methodologies.
- j. [Site Access](#). Contractor shall be responsible for obtaining any and all access rights from Cost Sharing Participant and other third parties to the extent necessary to perform the Work. Contractor shall also procure any and all access rights from Cost Sharing Participant and other third parties in order for MCE employees, representative, designees, and contractors as well as the DOE to access the Project site and inspect the Work prior to, during, and after installation

for the full Commitment Term to inspect the Work. Contractor's obligation to procure access shall be limited to reasonable coordination with the Cost Sharing Participant and shall not extend to enforcement against such parties.

4. Confidentiality.

- a. Contractor Non-Disclosure Obligations. Contractor shall comply with the requirements of the MCE Non-Disclosure Agreement (Attachment 6 to this Contractor Agreement). Prior to providing any Confidential Information (as that term is defined in the MCE Non-Disclosure Agreement) to any Subcontractor, Contractor shall require the Subcontractor to enter into the MCE Non-Disclosure Agreement as well. The provisions of the MCE Non-Disclosure Agreement are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to the public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this Agreement and are controlling.

5. Ownership and Use Rights.

- a. MCE Data. Unless otherwise expressly agreed to by MCE in writing, MCE shall retain all of its rights, title, and interest in MCE Data, as that term is defined in the MCE Energy Storage Program Non-Disclosure Agreement.
- b. Program Intellectual Property. Any and all materials, information, or other work product created, prepared, accumulated or developed by Contractor or any Contractor Party exclusively and solely for MCE and/or Cost Sharing Participant under this Contractor Agreement with Program funds ("Program Intellectual Property"), including inventions, processes, templates, documents, drawings, computer programs, designs, calculations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be limited strictly to Project-specific deliverables created exclusively for the Project, including site-specific drawings, as-built documentation, and required reports, and shall be owned by MCE subject to any applicable ownership rights attributable to the DOE. Contractor retains all rights to its standard installation methods, processes, templates, designs, and know-how, whether used or adapted for the Project ("Contractor Pre-Existing Intellectual Property"). No ownership transfer shall apply to Contractor Pre-Existing Intellectual Property, even if incorporated into Project deliverables. For the avoidance of doubt, any reports, BESS data or reports, summaries or analyses relating thereto created, prepared, accumulated or developed by Contractor or any Contractor Party for MCE, and/or Cost Sharing Participant under this Contractor Agreement shall be owned by MCE, subject to any applicable ownership rights attributable to the DOE, provided that such ownership does not include Contractor Pre-Existing Intellectual Property.
- c. Program Intellectual Property will be owned by MCE upon its creation. Contractor agrees and shall require all Contractor Parties to execute any such other documents, or take other actions as MCE may reasonably request, to perfect MCE's ownership in the Program Intellectual Property, or the DOE's ownership. MCE and the MCE Parties hereby grant to the Contractor Parties irrevocable, non-assignable, non-transferable, non-exclusive, perpetual, fully paid up, worldwide, royaltyfree, license to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of the Program Intellectual Property. Notwithstanding the foregoing, MCE retains all rights, title, and interest in MCE Data and the terms and conditions of the MCE Non-Disclosure Agreement shall continue to apply to all MCE Data
- d. Contractor's Pre-Existing Intellectual Property. Notwithstanding anything to the contrary herein, to the extent any work product provided under this Contractor Agreement includes any Contractor Party's proprietary information that is not prepared exclusively and solely for MCE, such proprietary information and any enhancements, modifications, improvements or derivative works relating thereto ("**Contractor Pre-Existing Intellectual Property**") will remain the property of such Contractor Party. If, and to the extent a Contractor Party retains any Contractor Pre-Existing Intellectual Property in any of the materials furnished to be used to create, develop, and prepare the Program Intellectual Property, Contractor hereby grants and shall cause each applicable Contractor Party to grant the MCE Parties, including the DOE, for governmental and regulatory purposes an irrevocable, non-assignable, non-transferable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, limited license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of any Contractor Party for the sole purpose of using such Program Intellectual Property for the conduct of MCE's business and for disclosure to the California Public Utilities Commission and the DOE for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Contractor Party shall retain all of its rights, title and interest in Contractor's Pre-Existing Intellectual Property.
- a) Marketing Collateral. Any marketing materials regarding the Project must be provided or approved by MCE, and must include MCE branding.

6. Payment.

- a. Payment Schedule. Payment to Contractor is on a reimbursement basis paid out at milestones based on the Statement of Work set forth in Attachment 5. The milestones are designed to pay out at 20%, 70%, and 10% of allowable costs (as defined under 2 CFR part 200 as amended by 2 CFR part 910) of the project with supporting documentation for Work completed.
 - i. 20% Milestone – Permitting. All required local permits for installation must be obtained by Contractor.
 - ii. 70% Milestone – Installation & Commissioning. Final inspection approval from local permitting authorities confirming installation meets all requirements.
 - iii. 10% Milestone – Permission to Operate (PTO). PTO has been submitted to PG&E and PTO has been approved.
- b. Post-Installation Verification. MCE is not obligated to provide final Program Funding until MCE and Cost Sharing Participant has performed a post-installation verification, unless MCE has explicitly waived this requirement. If MCE determines that the Project was not installed consistent with the approved Project, with generally accepted industry practices, and/or with the provisions of this Contractor Agreement, MCE may require changes before payment is owed to Contractor.

7. Termination or Suspension.

- a. MCE's Right to Suspend or Terminate for Convenience. For any reason or no reason, MCE may suspend this Contractor Agreement for any duration or terminate this Contractor Agreement, in either case by providing thirty (30) days' written notice to Contractor. In such an event, Contractor shall be compensated for all Work performed and materials ordered prior to suspension or termination, and provided that such costs are allowable costs as defined under 2 CFR part 200 as amended by 2 CFR part 910. In such event, Contractor shall also be compensated for reasonable demobilization costs.
- b. Contractor's Right to Suspend or Terminate for Convenience. For any reason or no reason, Contractor may suspend this Contractor Agreement for any duration or terminate this Contractor Agreement by providing MCE with thirty (30) days' written notice.
- c. MCE's Right to Suspend or Terminate for Breach. In the event of breach of this Contractor Agreement by Contractor or a Subcontractor, MCE may provide written notice to Contractor that is in breach and Contractor must commence to cure within ten (10) business days after receipt of the written notice, or, with respect to safety issues at a Project Site, within one (1) business day of email or telephonic notice. If Contractor fails to commence to cure within the cure periods set forth in the previous sentence, fails to cure a safety issue within one (1) business day, or otherwise fails to fully cure within a reasonable time thereafter, MCE may suspend or terminate this Contractor Agreement. In the event Contractor becomes insolvent or bankrupt, enters into any agreements with its creditors for relief of debt, takes advantage of any law for the benefit of debtors, or goes into liquidation or receivership, whether compulsory or voluntary, MCE may terminate Contractor's participation in the Program and this Contractor Agreement without giving Contractor any opportunity to cure, which termination shall be effective upon Contractor's receipt of MCE's written notice of termination.
- d. Obligations Upon Termination. Upon termination of this Contractor Agreement for any reason, including, but not limited to, Contractor's receipt of written notice from MCE, unless otherwise directed by MCE, Contractor shall and shall cause all Contractor Parties to bring the Work on all Projects to an orderly conclusion as directed by MCE. Each Contractor Party shall vacate each Project site, but shall not remove any material, plant, or equipment thereon without the approval of MCE. MCE, at its option, may take possession of any portion of the Work paid for.
- e. Termination Compensation. In the event of termination for convenience by MCE, Contractor shall be entitled to payment for all Work performed and materials ordered prior to termination, and provided that such costs are allowable costs as defined under 2 CFR part 200 as amended by 2 CFR part 910, as well as reasonable demobilization costs. In the event of termination for convenience, Contractor shall not be required to reimburse any Program Funding already earned for completed Work. Contractor shall only be required to reimburse Program Funding in the event of a material breach by Contractor that remains uncured.

8. Liabilities.

- a. No Warranties. MCE and each of their respective subcontractors, affiliates, directors, officers, employees, agents, representatives, or assigns ("MCE Parties") do not endorse, guarantee, or warrant any particular manufacturer or product, and provide no warranties, expressed or implied, including any implied warranty of merchantability or implied warranty of fitness for any product or services. MCE Parties are not liable or responsible for any act or omission of any Contractor Party to which assistance was provided under this Program. MCE Parties are not responsible for assuring that the design, engineering, and construction of the

facility or installation of a Project is proper or complies with any particular laws, codes, or industry standards. MCE Parties do not make any representations of any kind regarding the results to be achieved or the adequacy or safety of such measures.

- b. **Release and Waiver.** MCE Parties shall not be liable to any Contractor Party or its subcontractors, agents, representatives, directors, officers, employees, agents, assigns, successors in interest, heirs, estates, personal representatives, or family members for, and Contractor expressly discharges and releases MCE Parties from and waives, any claims it now may have or assert, or may have had in the past, or may have in the future, against any MCE Parties for any liabilities, damages, losses, costs, or expenses (including attorneys' fees, other legal fees, expert fees, and costs of litigation), of any kind, whether direct, indirect, consequential, incidental, or special (collectively, "Liabilities") arising out of, or connected with any MCE Party' s involvement with Contractor' s Project, any Contractor Party' s performance of or activities associated with this Contractor Agreement, or Contractor' s participation in the Program, due to any cause or causes whatsoever, including, but not limited to, negligence, errors, omissions, strict liability, indemnity, or breach of contract, regardless of whether such Liabilities were foreseeable, except to the extent such Liabilities arise from the gross negligence, willful misconduct, or material breach of this Contractor Agreement by MCE Parties. Contractor is on notice of, and hereby specifically and expressly waives, the provisions of California Civil Code § 1542, which provides that a "general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor," provided that such waiver shall not apply to claims arising from the gross negligence, willful misconduct, or material breach of this Contractor Agreement by MCE Parties.
- c. **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. Implementer 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 Contractor Agreement.
- d. **Indemnification of MCE.** Contractor agrees to indemnify, defend, and hold harmless MCE, its employees, officers, and any counties and cities within MCE's service territory and their employees or officers that have a role in selecting the locations of Projects ("MCE Indemnitees") from any and all Claims (defined as costs, losses, claims, fines, penalties, liabilities, damages and expenses, including, but not limited to, litigation costs and reasonable attorney's fees), but only to the extent caused by: (1) the negligent acts or omissions, recklessness, willful misconduct, or breach of this Contractor Agreement by a Contractor Party in the performance of the Work; (2) the breach by any Contractor Party of its obligations to maintain the confidentiality of Cost Sharing Participant or MCE Indemnitees' data associated with the Program, including, but not limited to, personally identifiable information or energy usage data; or (3) claims relating to nonpayment or underpayment for Work performed by a Contractor Party. Notwithstanding the foregoing, Contractor shall not be responsible for Claims to the extent arising from defects in equipment, design provided by others, or acts or omissions of MCE, the Cost Sharing Participant, or third parties not under Contractor's control. No Contractor Party shall settle any indemnified Claim or disclose the terms of any such settlement without MCE's prior written consent, which may not be unreasonably withheld. Contractor shall require all Subcontractors to provide the foregoing indemnification set forth in this Section 8(e) to MCE Indemnitees.

9. **Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.**

- a. **Foreign Nationals.** Foreign national is defined by DOE as a person without U.S. Citizenship or nationality. DOE must approve in advance any foreign national participation by Contractor or any Subcontractor.
- b. **NEPA.** Projects are subject to NEPA approval by DOE. Contractor shall use reasonable efforts to support and assist the NEPA review process on a Project. Contractor is not permitted to begin work on the Project unless and until NEPA review has been completed and approved by the DOE. All activities by Contractor must be under the approved NEPA determination. Any modification of activities or locations require a new NEPA review.
- c. **Work must be completed in the U.S. Pursuant to 2 CFR 200.322.** All Work must be completed in the U.S. and Contractor, to the greatest extent practicable, shall make every effort to purchase supplies and equipment within the U.S.
- d. **Publications.** Any publications regarding the Work require acknowledgement language and full legal disclosure language consistent with the DOE requirements and therefore any publication regarding this Work must be approved by MCE prior to being published.

- e. Equipment. Contractor shall comply with all property standards of the DOE established in 2 CFR 200.310 through 2 CFR 200.316 and also 2 CFR 910.360. These terms include all applicable insurance requirements for property and equipment purchased under this Agreement.
- f. Allowable Costs. Contractor shall only be reimbursed for allowable costs under this Agreement, consistent with 2 CFR part 200 as amended by 2 CFR part 910.
- g. Conflict of Interest. Contractor shall at all times during the term of the agreement be in compliance with the DOE's interim COI policy found at <https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance>
- h. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- i. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- j. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- k. Debarment and Suspension (Executive Orders 12549 and 12689). Contractor and any Subcontractor represents and warrants throughout the term of this Agreement that they are not listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235).
- l. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- m. Solid Waste Disposal Act. Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, [42 U.S.C. 6962](#). The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Contractor should, to the greatest extent practicable and consistent with

law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

- n. Transparency of Foreign Connections. The DOE prohibits certain activities with foreign countries of risk. The DOE has listed Iran, North Korea, Russia and China as foreign countries of risk. Contractor shall disclose to MCE any connection with foreign countries of risk and may be required to take measures set by the DOE to mitigate or eliminate risk.
- o. Video Surveillance. Pursuant to 2 CFR 200.216, Contractor is prohibited from expending funds on video surveillance equipment.
- p. Build America, Buy America. This Project is subject to the Build America, Buy America Act. Contractor must comply with all requirements of the Build America, Buy America set forth in 2 CFR part 184.
- q. DOE Funded Work. Contractor acknowledges and agrees that the Work under this Agreement and the Project is subject to the DOE federally awarded funding rules set forth in 2 CFR part 200 as amended by 2 CFR part 910 ("Federal Rules"). Contractor is subject to the Federal Rules for all Work under this Agreement. If a specific term of the Federal Rules is not listed in this Agreement, it does not waive Contractor's obligations to perform the Work consistent with the Federal Rules.

10. Miscellaneous.

- a. Entire Agreement. This Contractor Agreement, together with all exhibits and any amendments later made, constitutes a single, integrated written contract expressing the sole and entire agreement between the Parties concerning the subject matter hereof, and no extrinsic evidence may be introduced to reform the Contractor Agreement in any judicial or arbitration proceeding involving the Contractor Agreement. All negotiations, discussions, proposals, acknowledgments, and agreements made prior to the Effective Date of this Contractor Agreement, including, without limitation, any disclaimers or limits on liability, are merged herein and superseded by this Contractor Agreement. No covenants, representations, or warranties of any kind, whatsoever, have been made by any Party except as specifically stated in this Contractor Agreement.
- b. Modifications. Except as otherwise provided herein, this Contractor Agreement may not be changed in any way except by written agreement signed by both Parties.
- c. Severability. In the event any provision in the Contractor Agreement is found to be legally invalid or unenforceable, that provision will be revised to the degree allowed by law to give it the maximum effect allowed by law, or, if revision is not possible, will be severed and the remaining provisions of this Contractor Agreement will remain in full force and effect.
- d. No Contractor Assignment. This Contractor Agreement may not be assigned, sublet, or transferred by Contractor in whole or in part, without MCE's written consent, which consent may be withheld at MCE's sole and absolute discretion. Any purported assignment, subcontract, or transfer without MCE's written consent shall be void and of no effect.
- e. Non-Waiver. No term or condition of this Contractor Agreement may be waived by either Party except in writing signed by its duly authorized officer or agent. The failure of either Party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Contractor Agreement, or to exercise any right herein, will not be construed as a waiver or relinquishment of that term, covenant, condition, or right with respect to further performance. Any express waiver of any provisions of this Contractor Agreement will not be deemed a waiver of any of the other terms and conditions. Unless expressly stated otherwise, none of the remedies provided in the Contractor Agreement to are intended to be exclusive.
- f. Interpretation. This Contractor Agreement has been negotiated at arms' length between Parties who are experienced and knowledgeable in the matters contained in this Contractor Agreement, and the Parties hereby agree that any statute, law, or common law principles or other authority that would require interpretation of any ambiguities in this Contractor Agreement against the Party who has drafted it are not applicable and are hereby waived.
- g. Subheadings. Subheadings, captions, and titles in this Contractor Agreement are for convenience only and will not be used to interpret the meaning of the content of the provisions.
- h. Survival. All provisions of this Contractor Agreement which by their nature are intended to survive after its termination will remain in force after any termination or expiration of this Contractor Agreement including, but not limited to Section 2, Attachment 2, Sections 2(a),(h), (i), (j), 4, 5, 6, 7, 8, 9 and 10 and Attachment 3.
- i. Governing Law, Venue. To the fullest extent allowed by law, all terms and conditions of this Contractor Agreement will be construed and enforced according to the laws of the State of California and any and all applicable local laws,

without regard to principles of conflicts of laws. The Parties irrevocably submit to the exclusive jurisdiction of the courts in Sacramento, CA, and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

- j. Notices. To be valid, any notice required or permitted to be given hereunder must be in writing and will be deemed effective upon receipt, provided notice is given (i) by email, and also (ii) by hand-delivery against a receipt or return receipt requested of the addressee, by registered or certified mail, return receipt requested, or by reputable overnight courier, transmitted with all requisite postage prepaid, and sent to the addresses of the Parties set forth below:

If to MCE, send to: MCE Contracts, 1125 Tamalpais Ave, San Rafael, CA 94901
email: contracts@mcecleanenergy.org

If to Contractor, send to: [\[Mark Lane\]](#), [\[mlane@seriouscontrols.com\]](mailto:mlane@seriouscontrols.com)

Notwithstanding the foregoing, notice concerning safety issues at a Project Site may be given by email and/or by telephone. Either Party may change its physical or email address effective ten (10) days after written notice thereof to the other Party.

ATTACHMENT (3)

INSURANCE REQUIREMENTS

1. Insurance Requirements.

In addition to the insurance requirements for property and equipment purchased listed in 2 CFR 200.310 through 2 CFR 200.316 and 2 CFR 910.360, Contractor and all Subcontractors will obtain and maintain insurance of the types and amounts required herein. The insurance must be in effect before Work commences, and must remain in effect until final completion of the Work. The minimum requirements stated herein may not be adequate to protect Contractor for loss, damage, or liability arising from its Work – the insurance requirements herein will not be construed to relieve Contractor for liability in excess of such coverage. To the extent Contractor maintains insurance greater in scope and/or limits than these minimum requirements, Contractor agrees that such insurance will be applicable to any of Contractor’s liability and indemnity obligations hereunder, including that of the additional insured coverage, which will apply in full and without limitation.

2. Failure to Maintain Insurance.

Failure of Contractor or any Subcontractor to maintain the required insurance will constitute a material breach entitling MCE to terminate the Contractor Agreement, withhold payment of Program Funding assigned to Contractor, and/or purchase the required insurance at Contractor’s expense.

3. Required Coverages.

Contractor agrees to maintain, and to ensure each Subcontractor maintains, the following minimum insurance coverage:

<u>Type of Insurance</u>	<u>Limit of Liability</u>
Commercial General Liability (Coverage must be written on ISO form CG 00 01 and must cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and contractual liability)	\$1,000,000 each occurrence \$2,000,000 general aggregate \$2,000,000 products-completed operations aggregate * General aggregate limits shall apply per project ** Policy shall not exclude: wildfire exposure; or third-party action over claim ***Policy shall not include a Contractual Liability Limitation
Automobile Liability (Coverage must be written on ISO form CA 00 01 and must cover any auto including owned, hired, and non-owned autos)	\$1,000,000 combined single limit per accident
Umbrella Liability (Coverage must be at least as broad as the underlying coverage - General Liability, Automobile Liability, and Employers’ Liability)	\$3,000,000 each occurrence \$3,000,000 annual aggregate
Workers’ Compensation	<u>Workers’ Compensation</u> As required by the laws of the State where work is performed <u>Employers’ Liability</u> \$1,000,000 each accident \$1,000,000 policy limit bodily injury by disease \$1,000,000 each employee bodily injury by disease
Cyber, Network Security, Privacy and Electronic Media Liability	\$2,000,000 for each occurrence \$2,000,000 annual aggregate *Covering claims involving privacy violations (including alleged violations of any federal, state, local or foreign privacy protection laws and regulations), information theft, damage to or destruction of electronic information, intentional and/or unintentional release of confidential or private information, alteration of electronic information, extortion and network security. Coverage should address claims involving any professional services for which Contractor is engaged with MCE.
Professional Liability (if the Work involves providing professional services)	\$1,000,000 each claim \$2,000,000 annual aggregate * The retroactive date in the current and future policies must be prior to the commencement of all professional services. ** Where there is a project-specific policy, the policy shall provide excess coverage over such project-specific policy

4. Additional Coverage Requirements

The above-required insurance policies will have the following coverages and/or provisions.

- a. Additional Insured Endorsement. Except for workers' compensation, employer's liability, and professional liability, to the maximum extent permitted by law, all insurance coverages to be maintained by Contractor and Subcontractor must include an endorsement naming as Additional Insureds: Marin Clean Energy and its employees and officers and any counties and cities within MCE's service territory and their employees or officers that have a role in selecting the locations of Projects. The additional insured endorsement on the commercial general liability policy will include both "on-going operations" and liability arising from "your work/completed operations" (the equivalent of ISO additional insured endorsement ISO CG 20 10 10 01 and ISO CG 20 37 10 01);
- b. Primary/Non-contributory. Except for workers' compensation, employer's liability, professional liability, and riggers liability insurance, all insurance coverages to be maintained by Contractor and Subcontractor must be primary and non-contributory with respect to any insurance maintained by the Additional Insureds, such that any such other available insurance in force will be excess.
- c. Cancellation Notice. MCE must be provided a 30-day prior written notice of termination, reduction in coverage, or non-renewal in coverage and 10-day prior written notice of cancellation for non-payment.
- d. Waiver of Subrogation. All required coverages must be endorsed with a waiver of subrogation in favor of MCE, and their respective officers, directors, and employees for all Work performed by the Contractor or any Subcontractor.
- e. Per Occurrence Basis. All required coverage shall be payable on a per occurrence basis only, except Professional Liability Insurance, which may be provided on a claims-made basis consistent with the criteria noted therein.

5. Duration

All policies required herein must be maintained for five years after completion of the Work hereunder, or to the expiration of any applicable statute of repose, whichever is longer.

6. Deductibles

Contractor is solely responsible for payment of any policy premiums, self-insured retentions, or deductibles. Contractor may be required to demonstrate how any deductible or self-insured retention will be funded in the event of a claim. No Additional Insured person or entity will be responsible for payment of any premium, self-insured retention, or deductible associated with the policies required herein.

7. Insurance Carriers

The insurance carriers on the policies required by this Contractor Agreement must be authorized, licensed, and/or admitted in the jurisdiction where the Work is performed and, if applicable, where the Project is located, and must be rated A- or higher by AM Best or equivalent rating service.

8. Coverage Requirements for Subcontractors

Contractor shall require its Subcontractors to provide insurance that meets the requirements set forth herein.

9. Proof of Coverage and Certificates of Insurance

- a. Certificates of Insurance. Contractor must provide proof of all insurance required herein within three (3) days after the Effective Date of the Contractor Agreement. Contractor shall deliver an ACORD form certificate of insurance ("COI") evidencing the required coverages and including copies of the additional insured and waiver of subrogation policy endorsements.
- b. Submitting COIs. Contractor shall send COIs to tocontracts@mcecleanenergy.org.
- c. Renewal COIs. Renewal COIs are to be provided to MCE prior to the expiration of the required insurance policies.
- d. Approval by MCE. The COIs will be subject to approval of MCE, but failure of MCE to request such COI or other evidence of Contractor's compliance with insurance requirements, or failure of MCE to identify deficiencies from evidence that is provided, will in no way limit or relieve Contractor of its obligations to maintain such insurance. In the event a COI fails to comply with the requirements herein or becomes outdated, MCE may withhold payment of Program Funding, suspend performance of the Contractor Agreement, or take other appropriate action until an acceptable and properly dated COI is received by MCE.

e. Policies. Certified copies of policies, including all policy endorsements, will be furnished by Contractor within fifteen (15) Days of written request by MCE.

ATTACHMENT (4)

Bond No. _____

**PAYMENT BOND
(LABOR AND MATERIALS)**

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS the Marin Clean Energy ("Public Agency"), State of California, has awarded to _____ ("Principal") a contract (the "Contract") to _____.

WHEREAS, under the terms of the Agreement, the Principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the Public Agency to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

NOW, THEREFORE, we, the undersigned Principal, and _____

(Name and address of Surety)

("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, are held and firmly bound unto the Public Agency and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the Agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the penal sum of _____ (\$_____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by Public Agency in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this Bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this Bond.

Upon expiration of the time within which the California Labor Commissioner may serve a civil wage and penalty assessment against the principal, any of its subcontractors, or both the principal and its subcontractors pursuant to Labor Code Section 1741, and upon expiration of the time within which a joint labor management committee may commence an action against the principal, any of its subcontractors, or both the principal and its subcontractors pursuant to Labor Code Section 1771.2, if the condition of this Bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or the specifications accompanying the same shall in any manner affect its obligations on this Bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

"Principal"

"Surety"

By: _____
Its: _____

By: _____
Its: _____

(Seal)

(Seal)

Note: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. IF CONTRACTOR IS A PARTNERSHIP, ALL PARTNERS MUST EXECUTE BOND. DATE OF BOND MUST NOT BE PRIOR TO DATE OF CONTRACT. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.

ATTACHMENT (5)
STATEMENT OF WORK

Tiburon Police Department 1155 Tiburon Blvd. Tiburon, CA. 94920

Scope of Work

This Scope of Work defines the services to be provided for the design, permitting, interconnection, installation support, and commission in Scope of Work

This Scope of Work defines the services to be provided for the design, permitting, interconnection, installation support, commissioning, and long-term operations of the Tiburon Police Station Battery Energy Storage System (BESS), consistent with the requirements of the Town of Tiburon RFP and associated DOE and MCE funding obligations.

Phase 1 - Project Initiation and Engineering

1.1 Project Kickoff and Data Review

- Conduct project kickoff meeting with the Town of Tiburon and Marin Clean Energy (MCE)
- Review existing electrical drawings, utility bills, load data, and site conditions
- Confirm project objectives, resiliency requirements, and operational constraints

1.2 System Engineering and Design

- Develop preliminary and final BESS system design (up to 600 kWh)
- Electrical one-line diagrams, protection schemes, and controls architecture AC-coupled integration with existing solar PV
- Micro-grid and islanding design to support emergency operations
- Equipment specifications and layout drawings
- Fire/life safety, structural, and civil design as required
- Stamped engineering drawings prepared by licensed California Professional Engineers

Phase 2 - Permitting and Interconnection

2.1 Local Permitting and AHJ Coordination

- Prepare and submit permit applications to the Authority Having Jurisdiction (AHJ)
- Coordinate with Fire Marshal, Building Department, and other reviewing agencies
- Respond to plan check comments and secure permit approvals

2.2 Utility Interconnection

- Prepare and submit PG&E Rule 21 interconnection application for the BESS
- Coordinate required studies, reviews, and technical responses
- Support interconnection agreement execution, if required
- Track interconnection milestones through approval

Phase 3- Procurement and Compliance Management

3.1 Equipment Procurement

- Specify BESS, inverters, controls, and associated balance-of-system equipment
- Vendor selection and technical evaluation
- We are using a zinc-powered, **non-flammable battery system with a 20-year lifespan**, 10 years longer than similar lithium-based solutions.

3.2 Federal Compliance (DOE/ BABA)

- Ensure compliance with DOE funding requirements
- Verify Build America, Buy America (BABA) compliance for all applicable materials. The battery is over 91% US content.
- Collect and maintain manufacturer certifications and cost documentation
- Support Davis-Bacon and federal flow-down requirements as applicable

Phase 4 - Installation and Construction

- Provide installation and quality assurance
- Verify construction conforms to approved plans and specifications
- Coordinate site inspections and construction milestones
- Address non-conformances and corrective actions
- Maintain construction documentation and progress reporting

Phase 5 - Commissioning and Permission to Operate (PTO)

- System commissioning and functional testing
- Verify protection settings, controls operation, and islanding functionality
- Coordinate commissioning with equipment manufacturers, PG&E, and AHJs
- Prepare and submit PG&E Permission to Operate (PTO) documentation
- Support receipt of PTO approval

Phase 6 - Project Closeout and DOE Milestones

- Prepare final as-built drawings and documentation
- Compile commissioning reports and compliance certifications
- Support DOE milestone verification and reimbursement documentation
- Assist with project closeout reporting to the Town and MCE

This Scope of Work establishes a comprehensive, end-to-end approach that supports successful project delivery, federal compliance, and long-term operational reliability for the Tiburon Police Station BESS.

Project Time-Line

Based on the scope of work described above in phases, the following timeline will be used for project installation. Please note that certain milestones depend on third-party approvals and actions, including PG&E's interconnection review and the issuance of a Permission to Operate (PTO). The schedule below reflects a typical installation timeline and assumes no delays related to third-party coordination or approvals.

Phase 1	Phase 2	Phase 3	Phase 4	Phase 5	Phase 6
4 weeks	2 weeks*	2 weeks**	4 weeks	1 weeks*	2 weeks
15 Week Time Line					

* Certain phases of the project are subject to potential delays due to third-party review and approval timelines. Interconnection approvals, permitting, and the issuance of Permission to Operate (PTO) may extend the schedule depending on current processing backlogs at the City and PG&E. While we will proactively pursue parallel work streams where feasible to maintain project momentum, these third-party timelines are outside our direct control.

** Project schedules may also be affected by manufacturer equipment availability and lead times. Upon award of the project, we will immediately coordinate with our manufacturing partners to confirm production schedules and take all reasonable steps to minimize equipment lead times and associated schedule impacts.

Cost Breakdown

This cost breakdown is structured to align directly with the Scope of Work and requirements outlined in the Tiburon Police Station BESS RFP. Costs are organized by project phase to provide transparency, support DOE reimbursement requirements, and facilitate evaluation by the Town of Tiburon and Marin Clean Energy (MCE).

Phase 1- Project Management and Engineering

Estimated Cost: \$55,000

Includes:

- Project kickoff and coordination with the Town and MCE
- Review of existing electrical drawings, load data, and site conditions
- Preliminary and final BESS system engineering

- Electrical, controls, civil, structural, and fire/life safety design
- AC-coupled integration with existing solar
- Consider micro-grid and islanding designs
- Stamped engineering drawings by licensed California Professional Engineers

Phase 2 - Permitting and Interconnection

Estimated Cost: \$35,000

Includes:

- Preparation and submission of all AHJ permit applications
- Fire Marshal and building department coordination
- Plan check responses and permit approval support
- PG&E Rule 21 interconnection application preparation and submission
- Interconnection coordination and technical responses

Phase 3 - Equipment Procurement and Compliance Management

Estimated Cost: 400 kWh BESS -

\$415,150 Includes:

- Non-Lithium battery energy storage system (125kW / 400kWh), 20 year life-span, built for high cycle counts.
- Inverters, controls, switchgear, transformer, and balance-of-system equipment
- BABA-compliant equipment sourcing and documentation
- Vendor technical coordination, start-up, and commissioning
- 10-Year extended manufacturer's warranty
- Freight and Shipping
- Federal compliance documentation (DOE, BABA, Davis-Bacon flow-down)

Phase 4 - Installation and Construction

Estimated Cost: \$201,667

Includes:

- Construction oversight and quality assurance
- BESS, Transformer, and Inverter Installation
- Verification of conformance with approved plans
- Construction documentation and progress reporting
- OEM on-site installation support for BESS and Inverter
- On-site construction, including wall demo and reconstruction as needed

Phase 5 - Commissioning and Permission to Operate (PTO)

Estimated Cost: \$30,000

Includes:

- Commissioning planning and support
- OEM On-site commissioning for BESS and Inverter
- Functional testing and verification
- Coordination with equipment manufacturers
- PG&E PTO documentation preparation and submission
- Support through receipt of PTO approval

Phase 6 - Project Closeout and DOE Milestones

Estimated Cost: \$35,000

Includes:

- As-built documentation
- Commissioning reports and compliance certifications
- DOE milestone and reimbursement support
- Final reporting to the Town and MCE

Summary of Capital Costs (Phases 1-6)

400 kWh BESS Unit

Category	Cost
Engineering & Project Management:	\$55,000
Permitting & Interconnection:	\$35,000
Equipment & Compliance:	\$415,150
Installation Oversight:	\$201,667
Commissioning & PTO:	\$30,000
Closeout & DOE Milestones:	\$35,000
Total Estimated Capital Cost:	\$771,817

Notes

- Pricing is good for 60 days.
- Pricing reflects BABA-compliant equipment and DOE-funded project requirements.
- Construction labor costs may include sub-contractors to Serious Controls, consistent with the RFP structure.

ATTACHMENT (6)
Contractor Invoice Checklist

1. Invoice Document

- Subrecipient name
- Invoice number
- Invoice date
- Period of performance
- DOE Award Number (DE-EE0010819)
- Subaward/contract number
- Tasks billed (must match SOW)
- Total amount requested
- Federal share amount
- Cost share amount (if applicable)
- Cumulative totals (current + prior invoices)

2. Line-Item Cost Detail

- Labor
- Fringe
- Supplies
- Equipment
- Contractual
- Construction
- Other direct costs
- Indirect costs (if allowed)

3. Labor Documentation

- Timesheets w/ signature
- Supervisor approval
- Labor categories & rates
- Hours worked by date
- Payroll register
- Fringe calculation backup

4. Equipment & Materials Documentation

- Vendor invoices
- Proof of payment
- Serial numbers for equipment \geq \$5,000
- Manufacturer & model documentation
- Asset tag records
- Documentation for equipment \geq \$50,000
- Property record entries
- Location verification
- Buy America documentation

5. Cost Share Documentation

- Cost share commitment letter
- Cost share ledger/report
- Evidence of contributions
- Reconciliation
- Cumulative progress

6. Installation-Specific Documentation

- Installation Completion Certification
- Commissioning report
- Photos
- Final permit signoffs
- PTO documentation
- As-built drawings
- Delivery receipts
- Serial numbers cross-referenced
- Evidence work in U.S.

7. Buy America Documentation

- Manufacturer domestic content certification
- Supply chain documentation
- Contractor Buy America Certification

8. Required Certifications

- Cost Reasonableness Certification
- Allowable Cost Certification
- Prohibited Telecom Equipment Certification
- Export Control Certification
- U.S.-Work Certification
- Conflict of Interest Certification
- Debarment/SAM.gov Certification

9. Procurement Documentation

- Procurement method
- Cost/price analysis
- Debarment check (SAM.gov)
- Conflict of interest statement
- Sole-source justification (if used)
- Selection memo
- Contract with DOE flow-down terms

10. Proof of Payment

- Bank statement (redacted)
- Check image
- ACH confirmation
- Sub-ledger report

11. Cumulative Financial Reporting

- Current invoice total
- Prior invoice total
- Cumulative costs
- Remaining balance
- Federal vs. non-federal totals

MCE ENERGY STORAGE PROGRAM CONTRACTOR AGREEMENT

This MCE Energy Storage Program Contractor Agreement (“**Contractor Agreement**”) is entered into by and between [**SERIOUS CONTROLS LLC,**] a [Georgia] [Limited Liability Company], CSLB License No. [] whose principal place of business is [9040 Main Street, Suite 108, Woodstock, Georgia 30188] (“**Contractor**”), and Marin Clean Energy, a California joint powers authority (“**MCE**” or) (each a “**Party**” and, together, the “**Parties**”), and is effective as of [month, day, year] (“**Effective Date**”).

1. BACKGROUND. Marin Clean Energy (“**MCE**” or “**Sponsor**”) is sponsoring the Energy Storage Program (the “**Program**”), partially funded by the Department of Energy (“**DOE**”) through a federal grant award received by MCE. The Program provides some funding = to encourage owners of critical facilities (each a “**Cost Sharing Participant**”) to install battery energy storage systems (each a “**BESS**”) assessed, sized, installed, and verified by a contractor participating in the Program (each a “**Contractor**”). Cost Sharing Participants will provide funding and support around the installation of the selected BESS project (each, a “**Project**”). Selected Contractors from a competitive solicitation supported by Cost Sharing Participant, will submit proposed Projects to MCE to submit to the DOE for approval (“**Project Approval**”). Each Project Approval will identify the Project specifications and any supplemental terms and conditions with which each Contractor must comply for that Project (“**Project Documents**”). Approved Projects are eligible for Program Funding. “**Program Funding**” means any payments, incentives, funding, bill credits, and/or financing provided by MCE to a Contractor under the Program.

2. AGREEMENT and INCORPORATION OF DOCUMENTS. Contractor’s Project will be governed by this Contractor Agreement, which includes and incorporates the following:

- Attachment (1): Program Overview and Requirements;
- Attachment (2): Terms and Conditions;
- Attachment (3): Insurance Requirements;
- Attachment (4): Payment/Performance Bond Form
- Attachment (5): Statement of Work
- Attachment (6): Contractor Invoice Checklist
- Attachment (7): MCE Non-Disclosure Agreement by and between Contractor and MCE dated as of [DATE] (“**MCE Non-Disclosure Agreement**”); and
- Project Documents for each Project.

3. CONTRACTOR REPRESENTATIONS. As a condition of participating in the Program, Contractor represents and agrees it: (a) has provided accurate and complete information in the Contractor competitive solicitation; (b) has read and understands this Contractor Agreement and all incorporated documents; (c) is eligible for the Program; (d) will perform the Work (as defined in Attachment (4)) in a timely, professional, good and workmanlike, and ethical manner Contractor; (e) can and will comply with all Terms and Conditions (as defined in Attachment (2)) and Contractor Insurance Requirements (as defined in Attachment (3)); (f) agrees that any person or entity engaged, hired, used or contracted by Contractor to perform any Work under the Program (other than Contractor and its employees) shall be deemed a Subcontractor under this Agreement; and (g) will notify MCE immediately if there are any changes to Contractor that would impact its compliance with this Contractor Agreement.

4. AUTHORITY. Each Party represents and warrants it has the requisite power, legal authority, and capacity to enter into this Contractor Agreement, and to perform the obligations required by this Contractor Agreement.

5. EXECUTION. Each Party agrees this Contractor Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same instrument. A copy of this Contractor Agreement signed electronically, whether digitally or encrypted, and/or delivered by e-mail or other means of electronic transmission, are intended to have the same force and effect as if signed manually.

IN WITNESS WHEREOF, the Contractor has read this Contractor Agreement, understands it, and agrees to be bound by its terms as of the Effective Date.

MCE: **Marin Clean Energy**

Contractor: **SERIOUS CONTROLS LLC**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ATTACHMENT (1)

PROGRAM OVERVIEW AND REQUIREMENTS

1. [Project](#). Under the Program, the Project seeks to deploy behind-the-meter battery energy storage systems paired with existing solar at critical facilities to provide emergency backup power, and during normal operation to reduce energy use daily from 4-9pm. This Project will maximize onsite solar usage and alleviate grid strain to support more reliable energy supply and reduce greenhouse gas emissions statewide. The Projects and Sites are all subject to DOE approval and a final NEPA determination prior to work beginning on the Project.
2. [The Work](#). For the Project, Contractor will meet all requirements set forth in the Program Documents (including this Contractor Agreement, Install Contract with the Cost Sharing Participant, the Agreement by and between MCE and the Cost Sharing Participant, and the Federal Rules set forth in 2 CFR part 200 as amended by 2 CFR part 910), which will include, but not be limited to, the services, (collectively, the “**Work**”) as further specified in the Attachment (5) Statement of Work.
3. [Cost Sharing Participant](#). MCE has received a federal award to support the Work and ensure the installation of the Project. The Site Host for the Project is a Cost Sharing Participant and shall be responsible for some of the costs of the Work listed in Attachment (5).
 - **Cost Sharing Participant: City of Pinole**
 - **Total Project Cost: \$339,942**
 - **Amount covered by Cost Sharing Participant: \$0**
 - **Program Funding Amount covered by MCE pursuant to this Agreement*: \$340,000**
**MCE shall not provide any additional funding beyond the amount listed above. Any costs that exceed this amount shall be borne by the Cost Sharing Participant.*

ATTACHMENT (2)

TERMS AND CONDITIONS

1. Agreement Term. The term of this Contractor Agreement is three (3) years (“**Term**”).
2. Contractor Representations, Warranties and Covenants. As of the Effective Date, and at all times during the Term of this Contractor Agreement and the performance of the Work, Contractor hereby represents warrants and covenants as follows:
 - a. Independent Contractor. Contractor is an independent contractor, and neither Contractor nor any of its directors, officers, employees, agents, representatives, or Subcontractors shall be considered, for any purpose, to be an employee, agent, or servant of MCE or any of their affiliates. Contractor shall be solely responsible for and shall promptly pay or cause to be paid all wages, salaries, costs, expenses, benefits, contributions and charges of any nature whatsoever which accrue to Contractor’s personnel, agents and Subcontractors arising out of or incidental to this Contractor Agreement, including overtime, vacation, severance, social security, unemployment contributions, insurance, profit sharing, welfare funds, life pensions and annuities, rest and holiday pay, as well as compensation due to sickness or disability of Contractor’s personnel, agents and Subcontractors.
 - b. Compliance with Laws. Contractor Parties are in compliance and will comply with all currently effective applicable local, state, and federal laws, rules, regulations, orders, ordinances, codes, statutes, permits, and other requirements of governmental authorities having jurisdiction over such Contractor Party, Projects, Project sites, the manner in which the Work is performed, or the design, operation, or use of Projects, including, without limitation, any such requirements relating to payment of or working conditions for employees, non-discrimination, immigration, employment taxes, health or safety of employees and other persons, licensing, building codes, interconnection, and environmental requirements.
 - c. Licensing. Contractor has obtained and will maintain, and shall cause each Contractor Party to obtain and maintain, at its sole cost and expense, all required licenses and registrations required for the operation of its business and the performance of the Work, including, but not limited to, licensure by the California Contractors State License Board. Contractor shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.
 - d. Performance Assurance; Bonding. Contractor and/or Subcontractor(s) providing any direct Project installation services shall obtain and maintain, at its/their sole cost and expense, all bonding requirements of the California State License Board, as may be applicable. Regardless of the specific Work provided, Contractor shall also maintain any payment and/or performance assurances as may be requested by MCE during the performance of the Work.
 - a. Bid Guarantee. Contractor must provide proof of a bid guarantee as a firm commitment , such as a bid bond, certified check, or other instrument, equivalent to five (5) percent of the bid price, accompanying their bid as assurance that Contractor will move forward with the Project and this Agreement.
 - b. Payment Bond. Contractor shall obtain and submit a signed and notarized copy to MCE of a payment bond in an amount that is not less than **100% of this Contract Agreement**, such amount being not less than 100% of the contract price, and nothing in this Agreement shall excuse this requirement. The required Payment Bond (Labor and Materials) form is attached hereto as **Attachment 6**.
 - c. Performance Bond. Contractor shall obtain and submit a signed and notarized copy to MCE of a performance bond in an amount that is not less than **100% of this Contract Agreement**, such amount being not less than 100% of the contract price, and nothing in this Agreement shall excuse this requirement. The required Performance Bond (performance of all work) form is attached hereto as **Attachment 6**.
 - e. Good Standing. Contractor and each Subcontractor (a) are duly organized, validly existing and in good standing under the laws of the State of California and (b) have full power and authority to execute, deliver and perform its or their obligations under this Contractor Agreement and to engage in the business they presently conduct and contemplate conducting, and (c) are and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.
 - f. Contracting. For all Projects, Contractor or its Subcontractor shall enter into installation contract with the Cost Sharing Participant in compliance with the California Business & Professions Code and all other legal requirements. The installation contract shall be included among the Project Documents. MCE shall have the authority to review the installation contract for compliance prior to approving the Project.
 - g. Safety. Contractor shall, and shall ensure that each Contractor Party shall:
 - (1) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;
 - (2) abide by all applicable MCE security procedures, rules, and regulations, and cooperate with MCE security personnel whenever on MCE’s property;
 - (3) abide by Cost Sharing Participant’s safety plan and other safety requirements as may be provided by MCE to Contractor from time to time;

- (4) provide all necessary training to its employees, and require each Contractor Party to provide training to their employees, about the safety and health rules and standards required under this Contractor Agreement;
- (5) have in place an effective Injury and Illness Prevention Program that meets the requirements of all applicable laws and regulations, including, but not limited to, Section 6401.7 of the California Labor Code;
- (6) initiate, maintain and supervise all safety precautions and programs in connection with the performance of the Contractor Agreement, the Projects and the Program.
- (7) monitor the safety of the Project sites during each Project to comply with all applicable federal, state, and local laws, and to follow safe work practices;
- (8) adhere to industry best practices for fire safety and applicable codes (e.g., NEC, National Fire Protection Association [NFPA] 1, NFPA 855);
- (9) install the battery package in accordance with UL9540A configurations, which span battery cells and fire protection (e.g., distance the system is installed from a wall, extinguisher equipment, etc.);
- (10) comply with all safety requirements specified by the manufacturer, distribution utility, and local authority having jurisdiction; and
- (11) comply with all other safety requirements (including MCE's standard safety program contract requirements) set forth elsewhere in the Contractor Agreement, as applicable, and in MCE's safety handbooks as may be provided by MCE to Contractor from time to time.

h. Background Checks.

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

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

3. Contractor Responsibilities.

- a. Standard of Performance. Contractor shall, and shall ensure its Subcontractors shall, deliver the Work under the Program in a timely, professional, good and workmanlike, and ethical manner as specified in the Statement of Work and in accordance with best energy storage industry practices. Contractor shall follow Cost Sharing Participant-provided performance specifications and installation requirements.
- b. Permits. Contractor shall, and shall cause its Subcontractors to, obtain, maintain, and obey any and all permits required by applicable law to install and maintain the Project. For the avoidance of doubt, Contractor will obtain a permit from the authority having jurisdiction for each Project. Contractor shall submit proof of the passed inspection for each Project to MCE.
- c. Attendance at Meetings. Contractor's representative will attend all meetings required by MCE while the Work, or any part of it, is in progress, or as reasonably requested by MCE, and will be prepared and authorized to address all matters related to the Work.
- d. No Discrimination; Equal Opportunity Employer. Contractor shall, and shall ensure all Subcontractors shall, be an Equal Employment Opportunity employer committed to the principles of equal employment opportunity. **Contractor shall abide by the requirements**

of 41 CFR §§ 60-1.4(a), 60-300.5(a), 60-741-5(a), and any other requirements of executive Order 11246.. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Additionally, these regulations require that covered contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability.

- e. [Subcontractor Approval and Management](#). Contractor shall notify MCE before engaging, hiring, using or contracting with any Subcontractor, at any tier, to perform any Work under the Program, as all Subcontractors are subject to approval by the DOE under the Program. Such prior notice shall occur with sufficient time for MCE to obtain approval by DOE prior to performance of Work under the Program by such Subcontractor. MCE shall have the right to conduct due diligence on any Subcontractor to ensure Subcontractor meets the Program requirements and shall have the right to disapprove of the use of any Subcontractor under the Program. To the extent a Subcontractor further engages, hires, uses or contracts with a person or entity to perform Work under the Program, such person or entity shall also be deemed a Subcontractor hereunder and subject to all Subcontractor requirements. Contractor will preserve and protect the rights of the Parties with respect to any Work to be performed by any Subcontractor, and as a result this Contractor Agreement is deemed to be incorporated in full into, and made a material part of, any contract, subcontract, purchase order, or other agreement entered into between Contractor and any Subcontractor ("Subcontract"). Contractor agrees that it will expressly incorporate this Contractor Agreement into a written Subcontract, it will provide to each Subcontractor a copy of this Contractor Agreement and all incorporated documents, and it will require each Subcontractor to comply with all obligations of Contractor set forth in this Contractor Agreement. Contractor will be fully responsible and liable to MCE and the Cost Sharing Participant for the acts or omissions of any Subcontractor.
- f. [Project Completion](#). Prior to approval by MCE of Project completion, Contractor shall submit to MCE proof the Project has passed all inspections required by the authority having jurisdiction over the Project.
- g. [Warranties to Participants](#). Contractor shall provide standard, best practice installation warranty for the workmanship on the Project. Contractor shall provide proof to MCE that the Contractor has submitted all warranty registrations for the Project equipment. Contractor shall prosecute warranty claims on behalf of the Cost Sharing Participant. Contractor shall assist with warranty claims but shall not be responsible for manufacturer warranty performance or outcomes.
- h. [Post-Installation Maintenance and Operation](#). Contractor's responsibility is limited to installation and applicable workmanship warranty. Contractor shall not be responsible for ongoing maintenance or operation of the Project unless otherwise agreed in a separate written agreement. MCE will address ongoing operation and maintenance of the Project in its agreements with Cost Sharing Participants.
- i. [Information](#). For a period of seven (7) years from the Effective Date of the Contractor Agreement or the provision of Work pursuant to this Contractor Agreement, whichever is longer, Contractor shall, and shall cause Subcontractors to, release information reasonably requested by MCE, and their agents, DOE, or Cost Sharing Participant to assist any or all of them with evaluating this Program and each Project, such information to include, but not be limited to, the applicable Project name, billing records, billing history, Project documents, Project-related agreements, all meter usage data used for bill calculation and other identifying characteristics. Contractor agrees such information may be used in reports and other materials evaluating this Program, auditing Projects, and identifying key issues and resolution strategies, good building case studies, and solution cost profiles, all of which may be published by MCE, DOE, or either of their agents. Contractor shall not be required to provide proprietary business information, internal cost structures, or pricing methodologies.
- j. [Site Access](#). Contractor shall be responsible for obtaining any and all access rights from Cost Sharing Participant and other third parties to the extent necessary to perform the Work. Contractor shall also procure any and all access rights from Cost Sharing Participant and other third parties in order for MCE employees, representative, designees, and contractors as well as the DOE to access the Project site and inspect the Work prior to, during, and after installation for the full Commitment Term to inspect the Work. Contractor's obligation to procure access shall be limited to reasonable coordination with the Cost Sharing Participant and shall not extend to enforcement against such parties.

4. [Confidentiality](#).

- a. [Contractor Non-Disclosure Obligations](#). Contractor shall comply with the requirements of the MCE Non-Disclosure Agreement (Attachment 6 to this Contractor Agreement). Prior to providing any Confidential Information (as that term is defined in the MCE Non-Disclosure Agreement) to any Subcontractor, Contractor shall require the Subcontractor to enter into the MCE Non-Disclosure Agreement as well. The provisions of the MCE Non-Disclosure Agreement are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to the public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this Agreement and are controlling.

5. Ownership and Use Rights.

- a. MCE Data. Unless otherwise expressly agreed to by MCE in writing, MCE shall retain all of its rights, title, and interest in MCE Data, as that term is defined in the MCE Energy Storage Program Non-Disclosure Agreement.
 - b. Program Intellectual Property. Any and all materials, information, or other work product created, prepared, accumulated or developed by Contractor or any Contractor Party exclusively and solely for MCE and/or Cost Sharing Participant under this Contractor Agreement with Program funds ("Program Intellectual Property"), including inventions, processes, templates, documents, drawings, computer programs, designs, calculations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be limited strictly to Project-specific deliverables created exclusively for the Project, including site-specific drawings, as-built documentation, and required reports, and shall be owned by MCE subject to any applicable ownership rights attributable to the DOE. Contractor retains all rights to its standard installation methods, processes, templates, designs, and know-how, whether used or adapted for the Project ("Contractor Pre-Existing Intellectual Property"). No ownership transfer shall apply to Contractor Pre-Existing Intellectual Property, even if incorporated into Project deliverables. For the avoidance of doubt, any reports, BESS data or reports, summaries or analyses relating thereto created, prepared, accumulated or developed by Contractor or any Contractor Party for MCE, and/or Cost Sharing Participant under this Contractor Agreement shall be owned by MCE, subject to any applicable ownership rights attributable to the DOE, provided that such ownership does not include Contractor Pre-Existing Intellectual Property.
 - c. Program Intellectual Property will be owned by MCE upon its creation. Contractor agrees and shall require all Contractor Parties to execute any such other documents, or take other actions as MCE may reasonably request, to perfect MCE's ownership in the Program Intellectual Property, or the DOE's ownership. MCE and the MCE Parties hereby grant to the Contractor Parties irrevocable, non-assignable, non-transferable, non-exclusive, perpetual, fully paid up, worldwide, royaltyfree, license to use , reproduce, display, prepare and develop derivative works, perform, distribute copies of the Program Intellectual Property. Notwithstanding the foregoing, MCE retains all rights, title, and interest in MCE Data and the terms and conditions of the MCE Non-Disclosure Agreement shall continue to apply to all MCE Data
 - d. Contractor's Pre-Existing Intellectual Property. Notwithstanding anything to the contrary herein, to the extent any work product provided under this Contractor Agreement includes any Contractor Party's proprietary information that is not prepared exclusively and solely for MCE, such proprietary information and any enhancements, modifications, improvements or derivative works relating thereto ("**Contractor Pre-Existing Intellectual Property**") will remain the property of such Contractor Party. If, and to the extent a Contractor Party retains any Contractor Pre-Existing Intellectual Property in any of the materials furnished to be used to create, develop, and prepare the Program Intellectual Property, Contractor hereby grants and shall cause each applicable Contractor Party to grant the MCE Parties, including the DOE, for governmental and regulatory purposes an irrevocable, non-assignable, non-transferable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, limited license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of any Contractor Party for the sole purpose of using such Program Intellectual Property for the conduct of MCE's business and for disclosure to the California Public Utilities Commission and the DOE for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Contractor Party shall retain all of its rights, title and interest in Contractor's Pre-Existing Intellectual Property.
- a) Marketing Collateral. Any marketing materials regarding the Project must be provided or approved by MCE, and must include MCE branding.

6. Payment.

- a. Payment Schedule. Payment to Contractor is on a reimbursement basis paid out at milestones based on the Statement of Work set forth in Attachment 5. The milestones are designed to pay out at 20%, 70%, and 10% of allowable costs (as defined under 2 CFR part 200 as amended by 2 CFR part 910) of the project with supporting documentation for Work completed.
 - i. 20% Milestone – Permitting. All required local permits for installation must be obtained by Contractor.
 - ii. 70% Milestone – Installation & Commissioning. Final inspection approval from local permitting authorities confirming installation meets all requirements.
 - iii. 10% Milestone – Permission to Operate (PTO). PTO has been submitted to PG&E and PTO has been approved.
- b. Post-Installation Verification. MCE is not obligated to provide final Program Funding until MCE and Cost Sharing Participant has performed a post-installation verification, unless MCE has explicitly waived this requirement. If MCE determines that the Project was not installed consistent with the approved Project, with generally accepted industry practices, and/or with the provisions of this Contractor Agreement, MCE may require changes before payment is owed to Contractor.

7. Termination or Suspension.

- a. MCE's Right to Suspend or Terminate for Convenience. For any reason or no reason, MCE may suspend this Contractor Agreement for any duration or terminate this Contractor Agreement, in either case by providing thirty (30) days' written notice to Contractor. In

such an event, Contractor shall be compensated for all Work performed and materials ordered prior to suspension or termination, and provided that such costs are allowable costs as defined under 2 CFR part 200 as amended by 2 CFR part 910. In such event, Contractor shall also be compensated for reasonable demobilization costs.

- b. [Contractor's Right to Suspend or Terminate for Convenience](#). For any reason or no reason, Contractor may suspend this Contractor Agreement for any duration or terminate this Contractor Agreement by providing MCE with thirty (30) days' written notice.
- c. [MCE's Right to Suspend or Terminate for Breach](#). In the event of breach of this Contractor Agreement by Contractor or a Subcontractor, MCE may provide written notice to Contractor that is in breach and Contractor must commence to cure within ten (10) business days after receipt of the written notice, or, with respect to safety issues at a Project Site, within one (1) business day of email or telephonic notice. If Contractor fails to commence to cure within the cure periods set forth in the previous sentence, fails to cure a safety issue within one (1) business day, or otherwise fails to fully cure within a reasonable time thereafter, MCE may suspend or terminate this Contractor Agreement. In the event Contractor becomes insolvent or bankrupt, enters into any agreements with its creditors for relief of debt, takes advantage of any law for the benefit of debtors, or goes into liquidation or receivership, whether compulsory or voluntary, MCE may terminate Contractor's participation in the Program and this Contractor Agreement without giving Contractor any opportunity to cure, which termination shall be effective upon Contractor's receipt of MCE's written notice of termination.
- d. [Obligations Upon Termination](#). Upon termination of this Contractor Agreement for any reason, including, but not limited to, Contractor's receipt of written notice from MCE, unless otherwise directed by MCE, Contractor shall and shall cause all Contractor Parties to bring the Work on all Projects to an orderly conclusion as directed by MCE. Each Contractor Party shall vacate each Project site, but shall not remove any material, plant, or equipment thereon without the approval of MCE. MCE, at its option, may take possession of any portion of the Work paid for.
- e. [Termination Compensation](#). In the event of termination for convenience by MCE, Contractor shall be entitled to payment for all Work performed and materials ordered prior to termination, and provided that such costs are allowable costs as defined under 2 CFR part 200 as amended by 2 CFR part 910, as well as reasonable demobilization costs. In the event of termination for convenience, Contractor shall not be required to reimburse any Program Funding already earned for completed Work. Contractor shall only be required to reimburse Program Funding in the event of a material breach by Contractor that remains uncured.

8. [Liabilities](#).

- a. [No Warranties](#). MCE and each of their respective subcontractors, affiliates, directors, officers, employees, agents, representatives, or assigns ("MCE Parties") do not endorse, guarantee, or warrant any particular manufacturer or product, and provide no warranties, expressed or implied, including any implied warranty of merchantability or implied warranty of fitness for any product or services. MCE Parties are not liable or responsible for any act or omission of any Contractor Party to which assistance was provided under this Program. MCE Parties are not responsible for assuring that the design, engineering, and construction of the facility or installation of a Project is proper or complies with any particular laws, codes, or industry standards. MCE Parties do not make any representations of any kind regarding the results to be achieved or the adequacy or safety of such measures.
- b. [Release and Waiver](#). MCE Parties shall not be liable to any Contractor Party or its subcontractors, agents, representatives, directors, officers, employees, agents, assigns, successors in interest, heirs, estates, personal representatives, or family members for, and Contractor expressly discharges and releases MCE Parties from and waives, any claims it now may have or assert, or may have had in the past, or may have in the future, against any MCE Parties for any liabilities, damages, losses, costs, or expenses (including attorneys' fees, other legal fees, expert fees, and costs of litigation), of any kind, whether direct, indirect, consequential, incidental, or special (collectively, "Liabilities") arising out of, or connected with any MCE Party' s involvement with Contractor' s Project, any Contractor Party' s performance of or activities associated with this Contractor Agreement, or Contractor' s participation in the Program, due to any cause or causes whatsoever, including, but not limited to, negligence, errors, omissions, strict liability, indemnity, or breach of contract, regardless of whether such Liabilities were foreseeable, except to the extent such Liabilities arise from the gross negligence, willful misconduct, or material breach of this Contractor Agreement by MCE Parties. Contractor is on notice of, and hereby specifically and expressly waives, the provisions of California Civil Code § 1542, which provides that a "general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor," provided that such waiver shall not apply to claims arising from the gross negligence, willful misconduct, or material breach of this Contractor Agreement by MCE Parties.
- c. [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. Implementer 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 Contractor Agreement.

d. **Indemnification of MCE.** Contractor agrees to indemnify, defend, and hold harmless MCE, its employees, officers, and any counties and cities within MCE's service territory and their employees or officers that have a role in selecting the locations of Projects ("MCE Indemnitees") from any and all Claims (defined as costs, losses, claims, fines, penalties, liabilities, damages and expenses, including, but not limited to, litigation costs and reasonable attorney's fees), but only to the extent caused by: (1) the negligent acts or omissions, recklessness, willful misconduct, or breach of this Contractor Agreement by a Contractor Party in the performance of the Work; (2) the breach by any Contractor Party of its obligations to maintain the confidentiality of Cost Sharing Participant or MCE Indemnitees' data associated with the Program, including, but not limited to, personally identifiable information or energy usage data; or (3) claims relating to nonpayment or underpayment for Work performed by a Contractor Party. Notwithstanding the foregoing, Contractor shall not be responsible for Claims to the extent arising from defects in equipment, design provided by others, or acts or omissions of MCE, the Cost Sharing Participant, or third parties not under Contractor's control. No Contractor Party shall settle any indemnified Claim or disclose the terms of any such settlement without MCE's prior written consent, which may not be unreasonably withheld. Contractor shall require all Subcontractors to provide the foregoing indemnification set forth in this Section 8(e) to MCE Indemnitees.

9. Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

- a. **Foreign Nationals.** Foreign national is defined by DOE as a person without U.S. Citizenship or nationality. DOE must approve in advance any foreign national participation by Contractor or any Subcontractor.
- b. **NEPA.** Projects are subject to NEPA approval by DOE. Contractor shall use reasonable efforts to support and assist the NEPA review process on a Project. Contractor is not permitted to begin work on the Project unless and until NEPA review has been completed and approved by the DOE. All activities by Contractor must be under the approved NEPA determination. Any modification of activities or locations require a new NEPA review.
- c. **Work must be completed in the U.S.** Pursuant to 2 CFR 200.322. All Work must be completed in the U.S. and Contractor, to the greatest extent practicable, shall make every effort to purchase supplies and equipment within the U.S.
- d. **Publications.** Any publications regarding the Work require acknowledgement language and full legal disclosure language consistent with the DOE requirements and therefore any publication regarding this Work must be approved by MCE prior to being published.
- e. **Equipment.** Contractor shall comply with all property standards of the DOE established in 2 CFR 200.310 through 2 CFR 200.316 and also 2 CFR 910.360. These terms include all applicable insurance requirements for property and equipment purchased under this Agreement.
- f. **Allowable Costs.** Contractor shall only be reimbursed for allowable costs under this Agreement, consistent with 2 CFR part 200 as amended by 2 CFR part 910.
- g. **Conflict of Interest.** Contractor shall at all times during the term of the agreement be in compliance with the DOE's interim COI policy found at <https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance>
- h. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- i. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- j. **Clean Air Act (42 U.S.C. 7401-7671q.)** and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- k. Debarment and Suspension (Executive Orders 12549 and 12689). Contractor and any Subcontractor represents and warrants throughout the term of this Agreement that they are not listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235).
- l. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- m. Solid Waste Disposal Act. Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, [42 U.S.C. 6962](#). The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Contractor should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.
- n. Transparency of Foreign Connections. The DOE prohibits certain activities with foreign countries of risk. The DOE has listed Iran, North Korea, Russia and China as foreign countries of risk. Contractor shall disclose to MCE any connection with foreign countries of risk and may be required to take measures set by the DOE to mitigate or eliminate risk.
- o. Video Surveillance. Pursuant to 2 CFR 200.216, Contractor is prohibited from expending funds on video surveillance equipment.
- p. Build America, Buy America. This Project is subject to the Build America, Buy America Act. Contractor must comply with all requirements of the Build America, Buy America set forth in 2 CFR part 184.
- q. DOE Funded Work. Contractor acknowledges and agrees that the Work under this Agreement and the Project is subject to the DOE federally awarded funding rules set forth in 2 CFR part 200 as amended by 2 CFR part 910 ("Federal Rules"). Contractor is subject to the Federal Rules for all Work under this Agreement. If a specific term of the Federal Rules is not listed in this Agreement, it does not waive Contractor's obligations to perform the Work consistent with the Federal Rules.

10. Miscellaneous.

- a. Entire Agreement. This Contractor Agreement, together with all exhibits and any amendments later made, constitutes a single, integrated written contract expressing the sole and entire agreement between the Parties concerning the subject matter hereof, and no extrinsic evidence may be introduced to reform the Contractor Agreement in any judicial or arbitration proceeding involving the Contractor Agreement. All negotiations, discussions, proposals, acknowledgments, and agreements made prior to the Effective Date of this Contractor Agreement, including, without limitation, any disclaimers or limits on liability, are merged herein and superseded by this Contractor Agreement. No covenants, representations, or warranties of any kind, whatsoever, have been made by any Party except as specifically stated in this Contractor Agreement.
- b. Modifications. Except as otherwise provided herein, this Contractor Agreement may not be changed in any way except by written agreement signed by both Parties.
- c. Severability. In the event any provision in the Contractor Agreement is found to be legally invalid or unenforceable, that provision will be revised to the degree allowed by law to give it the maximum effect allowed by law, or, if revision is not possible, will be severed and the remaining provisions of this Contractor Agreement will remain in full force and effect.
- d. No Contractor Assignment. This Contractor Agreement may not be assigned, sublet, or transferred by Contractor in whole or in part, without MCE's written consent, which consent may be withheld at MCE's sole and absolute discretion. Any purported assignment, subcontract, or transfer without MCE's written consent shall be void and of no effect.
- e. Non-Waiver. No term or condition of this Contractor Agreement may be waived by either Party except in writing signed by its duly authorized officer or agent. The failure of either Party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Contractor Agreement, or to exercise any right herein, will not be construed as a waiver or relinquishment of that term, covenant, condition, or right with respect to further performance. Any express waiver of any provisions of this Contractor Agreement will not be deemed a waiver of any of the other terms and conditions. Unless expressly stated otherwise, none of the remedies provided in the Contractor Agreement to are intended to be exclusive.
- f. Interpretation. This Contractor Agreement has been negotiated at arms' length between Parties who are experienced and knowledgeable in the matters contained in this Contractor Agreement, and the Parties hereby agree that any statute, law, or common

law principles or other authority that would require interpretation of any ambiguities in this Contractor Agreement against the Party who has drafted it are not applicable and are hereby waived.

- g. Subheadings. Subheadings, captions, and titles in this Contractor Agreement are for convenience only and will not be used to interpret the meaning of the content of the provisions.
- h. Survival. All provisions of this Contractor Agreement which by their nature are intended to survive after its termination will remain in force after any termination or expiration of this Contractor Agreement including, but not limited to Section 2, Attachment 2, Sections 2(a),(h), (i), (j), 4, 5, 6, 7, 8, 9 and 10 and Attachment 3.
- i. Governing Law, Venue. To the fullest extent allowed by law, all terms and conditions of this Contractor Agreement will be construed and enforced according to the laws of the State of California and any and all applicable local laws, without regard to principles of conflicts of laws. The Parties irrevocably submit to the exclusive jurisdiction of the courts in Sacramento, CA, and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.
- j. Notices. To be valid, any notice required or permitted to be given hereunder must be in writing and will be deemed effective upon receipt, provided notice is given (i) by email, and also (ii) by hand-delivery against a receipt or return receipt requested of the addressee, by registered or certified mail, return receipt requested, or by reputable overnight courier, transmitted with all requisite postage prepaid, and sent to the addresses of the Parties set forth below:

If to MCE, send to: MCE Contracts, 1125 Tamalpais Ave, San Rafael, CA 94901
email: contracts@mcecleanenergy.org

If to Contractor, send to: [\[Mark Lane\]](#), [\[mlane@seriouscontrols.com\]](mailto:mlane@seriouscontrols.com)

Notwithstanding the foregoing, notice concerning safety issues at a Project Site may be given by email and/or by telephone. Either Party may change its physical or email address effective ten (10) days after written notice thereof to the other Party.

ATTACHMENT (3)

INSURANCE REQUIREMENTS

1. Insurance Requirements.

In addition to the insurance requirements for property and equipment purchased listed in 2 CFR 200.310 through 2 CFR 200.316 and 2 CFR 910.360, Contractor and all Subcontractors will obtain and maintain insurance of the types and amounts required herein. The insurance must be in effect before Work commences, and must remain in effect until final completion of the Work. The minimum requirements stated herein may not be adequate to protect Contractor for loss, damage, or liability arising from its Work – the insurance requirements herein will not be construed to relieve Contractor for liability in excess of such coverage. To the extent Contractor maintains insurance greater in scope and/or limits than these minimum requirements, Contractor agrees that such insurance will be applicable to any of Contractor’s liability and indemnity obligations hereunder, including that of the additional insured coverage, which will apply in full and without limitation.

2. Failure to Maintain Insurance.

Failure of Contractor or any Subcontractor to maintain the required insurance will constitute a material breach entitling MCE to terminate the Contractor Agreement, withhold payment of Program Funding assigned to Contractor, and/or purchase the required insurance at Contractor’s expense.

3. Required Coverages.

Contractor agrees to maintain, and to ensure each Subcontractor maintains, the following minimum insurance coverage:

<u>Type of Insurance</u>	<u>Limit of Liability</u>
Commercial General Liability (Coverage must be written on ISO form CG 00 01 and must cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and contractual liability)	\$1,000,000 each occurrence \$2,000,000 general aggregate \$2,000,000 products-completed operations aggregate * General aggregate limits shall apply per project ** Policy shall not exclude: wildfire exposure; or third-party action over claim ***Policy shall not include a Contractual Liability Limitation
Automobile Liability (Coverage must be written on ISO form CA 00 01 and must cover any auto including owned, hired, and non-owned autos)	\$1,000,000 combined single limit per accident
Umbrella Liability (Coverage must be at least as broad as the underlying coverage - General Liability, Automobile Liability, and Employers’ Liability)	\$3,000,000 each occurrence \$3,000,000 annual aggregate
Workers’ Compensation	<u>Workers’ Compensation</u> As required by the laws of the State where work is performed <u>Employers’ Liability</u> \$1,000,000 each accident \$1,000,000 policy limit bodily injury by disease \$1,000,000 each employee bodily injury by disease
Cyber, Network Security, Privacy and Electronic Media Liability	\$2,000,000 for each occurrence \$2,000,000 annual aggregate *Covering claims involving privacy violations (including alleged violations of any federal, state, local or foreign privacy protection laws and regulations), information theft, damage to or destruction of electronic information, intentional and/or unintentional release of confidential or private information, alteration of electronic information, extortion and network security. Coverage should address claims involving any professional services for which Contractor is engaged with MCE.
Professional Liability (if the Work involves providing professional services)	\$1,000,000 each claim \$2,000,000 annual aggregate * The retroactive date in the current and future policies must be prior to the commencement of all professional services. ** Where there is a project-specific policy, the policy shall provide excess coverage over such project-specific policy

4. Additional Coverage Requirements

The above-required insurance policies will have the following coverages and/or provisions.

- a. Additional Insured Endorsement. Except for workers' compensation, employer's liability, and professional liability, to the maximum extent permitted by law, all insurance coverages to be maintained by Contractor and Subcontractor must include an endorsement naming as Additional Insureds: Marin Clean Energy and its employees and officers and any counties and cities within MCE's service territory and their employees or officers that have a role in selecting the locations of Projects. The additional insured endorsement on the commercial general liability policy will include both "on-going operations" and liability arising from "your work/completed operations" (the equivalent of ISO additional insured endorsement ISO CG 20 10 10 01 and ISO CG 20 37 10 01;
- b. Primary/Non-contributory. Except for workers' compensation, employer's liability, professional liability, and riggers liability insurance, all insurance coverages to be maintained by Contractor and Subcontractor must be primary and non-contributory with respect to any insurance maintained by the Additional Insureds, such that any such other available insurance in force will be excess.
- c. Cancellation Notice. MCE must be provided a 30-day prior written notice of termination, reduction in coverage, or non-renewal in coverage and 10-day prior written notice of cancellation for non-payment.
- d. Waiver of Subrogation. All required coverages must be endorsed with a waiver of subrogation in favor of MCE, and their respective officers, directors, and employees for all Work performed by the Contractor or any Subcontractor.
- e. Per Occurrence Basis. All required coverage shall be payable on a per occurrence basis only, except Professional Liability Insurance, which may be provided on a claims-made basis consistent with the criteria noted therein.

5. Duration

All policies required herein must be maintained for five years after completion of the Work hereunder, or to the expiration of any applicable statute of repose, whichever is longer.

6. Deductibles

Contractor is solely responsible for payment of any policy premiums, self-insured retentions, or deductibles. Contractor may be required to demonstrate how any deductible or self-insured retention will be funded in the event of a claim. No Additional Insured person or entity will be responsible for payment of any premium, self-insured retention, or deductible associated with the policies required herein.

7. Insurance Carriers

The insurance carriers on the policies required by this Contractor Agreement must be authorized, licensed, and/or admitted in the jurisdiction where the Work is performed and, if applicable, where the Project is located, and must be rated A- or higher by AM Best or equivalent rating service.

8. Coverage Requirements for Subcontractors

Contractor shall require its Subcontractors to provide insurance that meets the requirements set forth herein.

9. Proof of Coverage and Certificates of Insurance

- a. Certificates of Insurance. Contractor must provide proof of all insurance required herein within three (3) days after the Effective Date of the Contractor Agreement. Contractor shall deliver an ACORD form certificate of insurance ("**COI**") evidencing the required coverages and including copies of the additional insured and waiver of subrogation policy endorsements.
- b. Submitting COIs. Contractor shall send COIs to contracts@mcecleanenergy.org.
- c. Renewal COIs. Renewal COIs are to be provided to MCE prior to the expiration of the required insurance policies.
- d. Approval by MCE. The COIs will be subject to approval of MCE, but failure of MCE to request such COI or other evidence of Contractor's compliance with insurance requirements, or failure of MCE to identify deficiencies from evidence that is provided, will in no way limit or relieve Contractor of its obligations to maintain such insurance. In the event a COI fails to comply with the requirements herein or becomes outdated, MCE may withhold payment of Program Funding, suspend performance of the Contractor Agreement, or take other appropriate action until an acceptable and properly dated COI is received by MCE.
- e. Policies. Certified copies of policies, including all policy endorsements, will be furnished by Contractor within fifteen (15) Days of written request by MCE.

ATTACHMENT (4)

Bond No. _____

**PAYMENT BOND
(LABOR AND MATERIALS)**

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS the Marin Clean Energy ("Public Agency"), State of California, has awarded to _____ ("Principal") a contract (the "Contract") to _____.

WHEREAS, under the terms of the Agreement, the Principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the Public Agency to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

NOW, THEREFORE, we, the undersigned Principal, and _____

(Name and address of Surety)

("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, are held and firmly bound unto the Public Agency and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the Agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the penal sum of _____ (\$_____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by Public Agency in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this Bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this Bond.

Upon expiration of the time within which the California Labor Commissioner may serve a civil wage and penalty assessment against the principal, any of its subcontractors, or both the principal and its subcontractors pursuant to Labor Code Section 1741, and upon expiration of the time within which a joint labor management committee may commence an action against the principal, any of its subcontractors, or both the principal and its subcontractors pursuant to Labor Code Section 1771.2, if the condition of this Bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or the specifications accompanying the same shall in any manner affect its obligations on this Bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

"Principal"

"Surety"

By: _____

By: _____

Its: _____

Its: _____

(Seal)

(Seal)

Note: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. IF CONTRACTOR IS A PARTNERSHIP, ALL PARTNERS MUST EXECUTE BOND. DATE OF BOND MUST NOT BE PRIOR TO DATE OF CONTRACT. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.

ATTACHMENT (5)
STATEMENT OF WORK

SERIOUS CONTROLS

City of Pinole

Pinole Youth Center 635 Tennet Ave Pinole, CA. 94965

& Pinole Tiny Tots / Swim Center 2450/2454 Simas Ave Pinole, CA. 94965

1. SCOPE OF SERVICES

This Scope defines the services to be provided for the design, permitting, interconnection, installation, commissioning, and long-term operation of two modular Battery Energy Storage Systems (BESS), integrated with restored photovoltaic (PV) systems, consistent with the City of Pinole RFP requirements and associated U.S. Department of Energy (DOE) and Marin Clean Energy (MCE) funding obligations.

All work will be executed in alignment with federal grant requirements, including Build America, Buy America (BABA), applicable DOE reporting obligations, and all state and local code requirements.

Task 1 – Project Initiation and Site Assessment

Milestone 1: Project Initiation

Serious Controls will initiate the project upon award and conduct detailed technical site assessments at the Youth Center and Tiny Tots / Swim Center facilities.

This task includes:

- Evaluation of existing electrical infrastructure
- Review of historical load profiles
- Assessment of photovoltaic system condition
- Inverter operability testing
- Available space and structural review
- Fire-life-safety siting considerations
- Interconnection constraints
- Resiliency load identification (critical load panels, outage objectives)

The assessment will confirm final system sizing, siting, and configuration for a two-unit modular BESS architecture and identify required PV repairs to restore safe and functional solar generation consistent with DOE project objectives.

Deliverables:

- Site Assessment Summary Report
- Confirmed Two-Unit BESS Configuration
- PV Condition and Repair Assessment
- Preliminary Resiliency Strategy Memo

Task 2 – Solar PV Repair and Restoration

Milestone 2: PV Restoration Complete

Solar Repair Cost Cap: Not-to-Exceed \$10,000

Serious Controls will perform limited repairs to restore functional operation of the existing PV systems. Repairs are limited to restoring existing capacity and safe operability and may include:

- Replacement of damaged PV modules
- Inverter repair or replacement
- Electrical corrections
- Balance-of-system corrections
- Re-commissioning and operational verification

Repairs exceeding the \$10,000 allowance will be documented and presented as an add-alternate for City approval.

Restored PV systems will be integrated into the BESS dispatch and resiliency strategy, consistent with the DOE project's intent.

Deliverables:

- Completed PV Repairs (within cost cap)
- PV Re-Commissioning Verification
- Documentation Confirming Restored Operation

Task 3 – BESS Final Sizing and Technology Selection

Milestone 3: Final System Definition

Using validated load data and restored PV capability, Serious Controls will finalize system sizing for a two-unit modular BESS configuration designed to provide:

- 4:00 PM – 9:00 PM peak demand reduction
- Demand charge mitigation
- Grid outage resiliency for identified critical loads
- Future demand response/grid services readiness

Each BESS unit will meet or exceed the RFP minimum energy and power requirements.

Battery technology selection will comply with:

- Build America, Buy America (BABA) domestic content requirements
(*Our BESS is 91% Domestic Content*)
- Applicable DOE funding criteria
- UL 9540 and UL 9540A testing requirements
- NFPA 855 and California Fire Code requirements

Deliverables:

- Final BESS Sizing Memorandum
- Technology Selection and Compliance Documentation
- Domestic Content (BABA) Certification Package

o

Task 4 – Engineering and Issued-for-Permit Design

Milestone 4: Issued-for-Permit (IFP) Package

Serious Controls will prepare complete, code-compliant engineering documents stamped by a California-licensed Professional Engineer.

Design package will include:

- Electrical single-line diagrams
- Structural anchoring design
- Fire-life-safety compliance (NFPA 855, UL 9540/9540A)
- Communications and controls architecture
- Resiliency load integration design
- Utility interconnection documentation
- Domestic content documentation support

Systems will be designed with open-protocol communications capability (e.g., Modbus TCP/IP and future OpenADR compatibility) to support potential future demand response or VPP participation, subject to City policy decisions.

Deliverables:

- Issued-for-Permit Drawings
- Fire-Life-Safety Documentation
- Communications & Controls Design
- Interconnection Application Package

Task 5 – Permitting, Environmental Review, and Federal Coordination

Milestone 5: Permit and NEPA Clearance

Serious Controls will lead all local permitting activities and coordinate with MCE and the U.S. Department of Energy to support required NEPA determinations.

Activities include:

- Permit submission and revisions
- Environmental documentation support
- DOE coordination
- Federal compliance documentation

No construction will commence until all required approvals are obtained. Deliverables:

- Permit Approvals
- NEPA Documentation Support
- Clearance Confirmation

Task 6 – Procurement and Equipment Delivery

Milestone 6: Equipment Delivered

Serious Controls will manage procurement and supply chain coordination to ensure:

- Compliance with BABA domestic content requirements
- Manufacturer certifications
- UL listings
- Federal funding compliance documentation

Deliverables:

- Procurement Schedule
- Manufacturer Certifications
- Domestic Content Compliance Documentation

Task 7 – Installation and Construction

Milestone 7: Installation Complete

Serious Controls will oversee the installation of:

- Restored PV components (as applicable)
- Two modular BESS units
- Electrical integration
- Communications systems
- Safety systems
- Structural anchoring

Installation will comply with all applicable federal, state, and local codes, including fire and building requirements.

Deliverables:

- Installed PV and BESS Systems
- Inspection Approvals

- Construction Records

Task 8 – Commissioning and Functional Testing

Milestone 8: System Commissioned

Serious Controls will commission all systems to verify:

- Safe operation
- Charge/discharge functionality
- Dispatch performance
- Resiliency operation during simulated outage
- Communications and controls validation
- Performance against peak reduction objectives

Deliverables:

- Commissioning & Functional Test Reports
- Resiliency Demonstration Documentation
- Operator Training Materials

Task 9 – Utility Interconnection and Permission to Operate

Milestone 9: Permission to Operate (PTO)

Serious Controls will coordinate interconnection with PG&E and complete all required activities to obtain Permission to Operate.

Deliverables:

- Final Interconnection Documentation
- PTO Confirmation

Task 10 – Operations, Maintenance, and Grant Compliance Support

Milestone 10: O&M Commencement

Following PTO, Serious Controls will provide ongoing Operations and Maintenance services, including:

- Remote system monitoring
- Preventative maintenance
- Warranty coordination
- Performance optimization
- Annual inspection support

Additionally, Serious Controls will support DOE and City grant compliance obligations, including:

- Performance data collection
- Quarterly reporting support
- Domestic content documentation tracking

- Support for federal audit documentation

Systems will remain designed and configured to be VPP-ready and capable of future demand response participation, subject to City policy decisions.

Deliverables:

- O&M Plan and Schedule
- Performance Monitoring Framework
- Grant Reporting Support Documentation

2. PROJECT SCHEDULE

Based on the scope of work described above in phases, the following timeline will be used for project installation. Please note that certain milestones depend on third-party approvals and actions, including PG&E's interconnection review and the issuance of a Permission to Operate (PTO). The schedule below reflects a typical installation timeline and assumes no delays related to third-party coordination or approvals.

Task 1	Task 2*	Task 3	Task 4&5**	Task 6&7***	Task 8	Task 9**	Task 10
2 weeks	2 weeks	1 weeks	3 weeks	4 weeks	1 weeks	4 weeks	On-Going
17 Week Time Line							

* The exact scope of work required for the solar repairs cannot be fully defined at this time. Consistent with the not-to-exceed cost structure, we will also establish a not-to-exceed labor allocation for this portion of the work. Once the detailed repair requirements are identified and confirmed, the scope, schedule, and associated costs can be revisited and more precisely defined.

** Certain phases of the project are subject to potential delays due to third-party review and approval timelines. Interconnection approvals, permitting, and the issuance of Permission to Operate (PTO) may extend the schedule depending on current processing backlogs at the City and PG&E. While we will proactively pursue parallel work streams where feasible to maintain project momentum, these third-party timelines are outside our direct control.

*** Project schedules may also be affected by manufacturer equipment availability and lead times. Upon award of the project, we will immediately coordinate with our manufacturing partners to confirm production schedules and take all reasonable steps to minimize equipment lead times and associated schedule impacts.

3. TECHNICAL SPECIFICATIONS

Battery Energy Storage System – Eos Zinc-Based Technology

Serious Controls proposes deploying an American-manufactured zinc-based Battery Energy Storage System utilizing Eos Energy Enterprises' technology. The Eos system is a non-lithium, aqueous zinc battery platform engineered for long-duration performance, enhanced safety, and high domestic content compliance, making it well-suited for DOE-funded municipal projects.

The proposed systems for the City of Pinole include:

- Youth Center: 100 kWh system

- Swim Center: 100 kWh system

The proposed Eos zinc-based battery technology provides:

- High domestic manufacturing content
- Reduced fire and thermal risk compared to lithium-ion systems
- Compliance with UL, NFPA, and California Fire Code requirements
- Long-duration discharge capability suitable for municipal peak reduction
- Compatibility with future grid and VPP participation

This technology aligns with the City of Pinole’s resiliency goals, DOE funding compliance requirements, and long-term operational safety priorities.

4. PRICING PROPOSAL

Task Item	Cost within \$340k Budget			Cost Over \$340k Budget			Total Cost
	Est. Hours (< \$340k budget)	Hourly Rate (< \$340k Budget)	Cost within \$340k Budget	Est. Hours (Over budget)	Hourly Rate (Over Budget)	Cost Exceeding \$340k Budget	
Permitting Tasks 1 , 3 - 6 in Scope	62	\$200	\$12,400				\$12,400
Installation & Commissioning Task 2, 7 & 8	670	\$155	\$103,850				\$103,850
PTO	80	\$200	\$16,000				\$16,000
Hardware Battery, Inverters, Transformers, Shipping	-	-	\$207,692	-	-		\$207,692
\$339,942							

After the site walk, we believe we can reduce installation hours and lower our hourly costs to better align with your financial requirements, while still providing BABA-compliant equipment and maintaining a not-to-exceed \$10,000 budget for the solar repairs.

ATTACHMENT (6)
Contractor Invoice Checklist

1. Invoice Document

- Subrecipient name
- Invoice number
- Invoice date
- Period of performance
- DOE Award Number (DE-EE0010819)
- Subaward/contract number
- Tasks billed (must match SOW)
- Total amount requested
- Federal share amount
- Cost share amount (if applicable)
- Cumulative totals (current + prior invoices)

2. Line-Item Cost Detail

- Labor
- Fringe
- Supplies
- Equipment
- Contractual
- Construction
- Other direct costs
- Indirect costs (if allowed)

3. Labor Documentation

- Timesheets w/ signature
- Supervisor approval
- Labor categories & rates
- Hours worked by date
- Payroll register
- Fringe calculation backup

4. Equipment & Materials Documentation

- Vendor invoices
- Proof of payment
- Serial numbers for equipment \geq \$5,000
- Manufacturer & model documentation
- Asset tag records
- Documentation for equipment \geq \$50,000
- Property record entries
- Location verification
- Buy America documentation

5. Cost Share Documentation

- Cost share commitment letter
- Cost share ledger/report
- Evidence of contributions
- Reconciliation
- Cumulative progress

6. Installation-Specific Documentation

- Installation Completion Certification
- Commissioning report
- Photos
- Final permit signoffs
- PTO documentation
- As-built drawings
- Delivery receipts
- Serial numbers cross-referenced
- Evidence work in U.S.

7. Buy America Documentation

- Manufacturer domestic content certification
- Supply chain documentation
- Contractor Buy America Certification

8. Required Certifications

- Cost Reasonableness Certification
- Allowable Cost Certification
- Prohibited Telecom Equipment Certification
- Export Control Certification
- U.S.-Work Certification
- Conflict of Interest Certification
- Debarment/SAM.gov Certification

9. Procurement Documentation

- Procurement method
- Cost/price analysis
- Debarment check (SAM.gov)
- Conflict of interest statement
- Sole-source justification (if used)
- Selection memo
- Contract with DOE flow-down terms

10. Proof of Payment

- Bank statement (redacted)
- Check image
- ACH confirmation
- Sub-ledger report

11. Cumulative Financial Reporting

- Current invoice total
- Prior invoice total
- Cumulative costs
- Remaining balance
- Federal vs. non-federal totals

RESOLUTION No. 2026-04

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY AMENDING RESOLUTION 2023-09 ACCEPTING CONGRESSIONALLY DIRECTED SPENDING PROJECT FROM THE GOLDEN FIELDS OFFICE OF THE U.S. DEPARTMENT OF ENERGY

WHEREAS, Marin Clean Energy (MCE) is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

WHEREAS, MCE members include the following communities: the County of Marin, the County of Contra Costa, the County of Napa, the County of Solano, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the City of Concord, the Town of Corte Madera, the Town of Danville, the City of El Cerrito, the Town of Fairfax, the City of Fairfield, the City of Hercules, the City of Lafayette, the City of Larkspur, the City of Martinez, the City of Mill Valley, the Town of Moraga, the City of Napa, the City of Novato, the City of Oakley, the City of Pinole, the City of Pittsburg, the City of Pleasant Hill, the City of San Ramon, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Vallejo, the City of Walnut Creek, and the Town of Yountville; and

WHEREAS, under Resolution 2023-09, the MCE Board of Directors approved MCE to receive an awarded grant under the U.S. Department of Energy (“DOE”) to install behind-the-meter battery energy storage paired with new or existing solar for at least 4 critical facilities or nonresidential customers that provide emergency services in MCE’s service area, in the amount for \$1,000,000 with a required match of 50% by MCE (“MCE Awarded Funds”). Under the MCE Awarded Funds, the DOE would provide \$500,000 and MCE would be required to contribute \$500,000 to total an award of \$1,000,000; and

WHEREAS, after approval of Resolution 2023-09, MCE staff conducted program outreach, stakeholder engagement, technical assistance, and project evaluation activities consistent with DOE requirements, to identify potential battery site hosts and only three of the fourteen received project applications demonstrated the ability to meet federal compliance requirements; and

WHEREAS, staff seeks to amend Resolution 2023-09 to use awarded funds to install behind-the-meter battery energy storage paired with new or existing solar for up to 3 non-profit or governmental customers that provide critical services in MCE’s service area; and

WHEREAS, the DOE may approve funding allocations for the MCE Awarded Funds, subject to the terms and conditions of the 2 CFR 200, the grant agreement, and any other requirements between DOE and MCE.

NOW, THEREFORE, BE IT RESOLVED, by the MCE Board of Directors Resolution 2023-09 is amended as follows:

1. All references to The Chief Executive Officer (“CEO”), shall also include their designee.
2. The CEO, or their designee, is hereby authorized and directed to receive the MCE Awarded Funds, in an amount not to exceed \$500,000 from the DOE and provide a match fund of \$500,000 by MCE, in accordance with all applicable rules and laws, and to use MCE Awarded Funds to install behind-the-meter battery energy storage paired with new or existing solar for up to 3 non-profit or governmental customers that provide critical services in MCE’s service area, subject to approval by the DOE.
3. Except as provided herein, all other resolved sections of Resolution 2023-09 remain in full force and effect.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 18 day of June, 2026, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin				
Contra Costa County				
County of Napa				
County of Solano				
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
City of Concord				
Town of Corte Madera				
Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Fairfield				
City of Hercules				
City of Lafayette				
City of Larkspur				
City of Martinez				
City of Mill Valley				

Town of Moraga				
City of Napa				
City of Novato				
City of Oakley				
City of Pinole				
City of Pittsburg				
City of Pleasant Hill				
City of San Ramon				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Vallejo				
City of Walnut Creek				
Town of Yountville				

CHAIR, MCE

Attest:

SECRETARY, MCE

RESOLUTION No. 2023-09

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY ACCEPTING CONGRESSIONALLY DIRECTED SPENDING PROJECT FROM THE GOLDEN FIELDS OFFICE OF THE U.S. DEPARTMENT OF ENERGY

WHEREAS, Marin Clean Energy (“MCE”) is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

WHEREAS, MCE members include the following communities: the County of Marin, the County of Contra Costa, the County of Napa, the County of Solano, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the City of Concord, the Town of Corte Madera, the Town of Danville, the City of El Cerrito, the Town of Fairfax, the City of Fairfield, the City of Lafayette, the City of Larkspur, the City of Martinez, the City of Mill Valley, the Town of Moraga, the City of Napa, the City of Novato, the City of Oakley, the City of Pinole, the City of Pittsburg, the City of Pleasant Hill, the City of San Ramon, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Vallejo, the City of Walnut Creek, and the Town of Yountville; and

WHEREAS, the Golden Field Office of the U.S. Department of Energy (“DOE”) is responsible for processing and administering an award for the Congressionally Directed Spending project identified for funding in the Energy and Water Development and Related Agencies Appropriations Act, 2023 as part of the Federal budget for Fiscal Year 2023 (“FY2023 Act”); and

WHEREAS, MCE has been awarded one grant under the FY2023 Act for energy projects in support of energy efficiency and renewable energy in the amount for \$1,000,000 with a required match of 50% by MCE (“MCE Awarded Funds”). For an award that requires matching funds, the DOE would provide \$500,000 and MCE would be required to contribute \$500,000 to total an award of \$1,000,000; and

WHEREAS, MCE intends to use the MCE Awarded Funds in furtherance of MCE’s existing efforts to provide financial and technical support to install behind-the-meter battery energy storage paired with new or existing solar for at least 4 critical facilities or nonresidential customers that provide emergency services in MCE’s service area; and

WHEREAS, the DOE may approve funding allocations for the MCE Awarded Funds, subject to the terms and conditions of the FY2023 Act requirements, the grant agreement, and any other any other requirements between DOE and MCE.

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

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

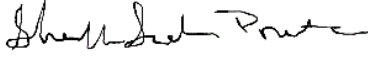
and federal statutes, rules, regulations, and laws, including without limitation all rules and laws regarding the FY2023 Act, as well as the grant agreement and any other requirements between DOE and MCE.

2. The Chief Executive Officer of MCE (“CEO”) is hereby authorized and directed to receive the MCE Awarded Funds, in an amount not to exceed \$500,000 from the DOE and provide a match fund of \$500,000 by MCE, in accordance with all applicable rules and laws.
3. The CEO hereby agrees to use the MCE Awarded Funds for eligible activities as approved by DOE and in accordance with all program requirements, and other rules and laws, as well as in a manner consistent and in compliance with the grant requirements.
4. The CEO is authorized to execute the necessary grant agreements and any subsequent or modifications thereto, as well as any other documents necessary to complete the receipt of the MCE Awarded Funds, as DOE may deem appropriate.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 17th day of August 2023, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin	X			
Contra Costa County				X
County of Napa	X			
County of Solano				X
City of American Canyon	X			
City of Belvedere				X
City of Benicia	X			
City of Calistoga	X			
City of Concord	X			
Town of Corte Madera	X			
Town of Danville	X			
City of El Cerrito	X			
Town of Fairfax	X			
City of Fairfield	X			
City of Lafayette				X
City of Larkspur				X
City of Martinez	X			
City of Mill Valley	X			
Town of Moraga	X			

City of Napa	X			
City of Novato				X
City of Oakley	X			
City of Pinole				X
City of Pittsburg	X			
City of Pleasant Hill	X			
City of San Ramon	X			
City of Richmond	X			
Town of Ross	X			
Town of San Anselmo	X			
City of San Pablo	X			
City of San Rafael	X			
City of Sausalito	X			
City of St. Helena	X			
Town of Tiburon	X			
City of Vallejo				X
City of Walnut Creek	X			
Town of Yountville	X			

DocuSigned by:

5185F15AECF0439...
CHAIR, MCE

Attest:

DocuSigned by:

A59878410EBC4E8...
SECRETARY, MCE



DRAFT

MCE Board of Directors Meeting
Thursday, June 18, 2026
6:30 p.m.

1125 Tamalpais Avenue
San Rafael, CA 94901

2300 Clayton Road, Suite 1500
Concord, CA, 94520

Public comments may be made in person or remotely via the details below.

Remote Public Meeting Participation

Video Conference: <https://t.ly/mlv5w>

Phone: Dial (669) 900-9128, Meeting ID: 890 0487 7785, Passcode: 525690

Materials related to this agenda are available for physical inspection at MCE's offices in San Rafael at 1125 Tamalpais Avenue, San Rafael, CA 94901 and in Concord at 2300 Clayton Road, Suite 1500, Concord, CA 94520.

DISABLED ACCOMMODATION: If you are a person with a disability who requires an accommodation or an alternative format, please contact MCE at (888) 632-3674 or ada-coordinator@mceCleanEnergy.org at least 72 hours before the meeting start time to ensure arrangements are made.

The Board of Directors may discuss and/or take action on any or all of the items listed on the agenda irrespective of how the items are described.

Agenda Page 1 of 2

1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
 - C.1. Approval of 5.21.26 Meeting Minutes

Agenda Page 2 of 2

- C.2. Proposed Second Amendment to Contract with Alcor Solutions
 - C.3. Proposed Resolution 2026-04 Amending Resolution 2023-09 Accepting Congressionally Directed Spending Project From the Golden Fields Office of the U.S. Department of Energy and Proposed Agreements with Serious Controls, LLC
 - 6. Proposed Resolution 2026-05 Authorizing Remote Participation at Meetings of the MCE Board and MCE Finance Committee (Discussion/Action)
 - 7. Contract with [Vendor] for Governance Assessment (Discussion/Action)
 - 8. Board & Staff Matters (Discussion)
 - 9. Adjourn
-

Informational Reports

- I.1. Approved Contracts for Energy Update
- I.2. Legislative and Regulatory Updates
- I.3. Bimonthly Customer Participation Reports



June 1, 2026

TO: MCE Executive Committee

FROM: Justine Parmelee, VP of Internal Operations
Linda Lye, Senior Legal Counsel

RE: Proposed Resolution 2026-05 Authorizing Remote Participation at Meetings of the MCE Board and MCE Finance Committee (Agenda Item #06)

ATTACHMENT: Resolution 2026-05 Authorizing Remote Participation at Meetings of the MCE Board and MCE Finance Committee

Dear Executive Committee Members:

Summary:

The Brown Act requires, among other things, that meeting locations of a legislative body be publicly noticed and accessible. A legislative body may meet by “teleconference,” provided that all teleconference locations are identified in the notice and agenda and accessible to the public.¹ Under certain circumstances, the Brown Act authorizes members of a legislative body to appear from a “remote” location, which need not be identified in the notice and agenda or be accessible to the public. Currently, MCE Directors can only participate remotely if a quorum of the Board participates from a *single* physical location, which rarely occurs, and certain other conditions apply.²

Senate Bill 707, effective January 1, 2026, revised and expanded the Brown Act’s teleconferencing provisions and added flexibility for members of a multijurisdictional body such as MCE, or an advisory committee of MCE, to appear remotely (subject to certain conditions).

Staff recommends that the Executive Committee recommend to the MCE Board of Directors adoption of a resolution that would provide MCE Directors with additional flexibility to participate from “remote” locations in meetings of the Board and Finance Committee (MCE’s only advisory committee).

¹ Government Code § 54953(b)(3): <https://law.justia.com/codes/california/code-gov/title-5/division-2/part-1/chapter-9/section-54953/>

² Government Code § 54953.8.3: <https://law.justia.com/codes/california/code-gov/title-5/division-2/part-1/chapter-9/section-54953-8-3/>

Remote Options for Multijurisdictional Bodies/MCE's Board and Finance Committee

MCE's Board and Finance Committee qualify as an eligible multijurisdictional body under Government Code § 54953.8.7³. As such, the Board may adopt a resolution providing Directors with flexibility to participate at meetings of the Board and Finance Committee from a "remote" location (i.e., a location that need not be noticed or physically accessible) up to two times per year, provided that the any Director appearing remotely:

- must be identified on the agenda,
- must use both audio and visual technology and keep their camera on for the duration of the meeting,
- must physically be more than 20 miles from a noticed location at the time they are exercising the remote option,
- and further provided that a quorum of the Board or Finance Committee must participate from one or more physical locations that are noticed, publicly accessible, and within the boundaries of MCE's service area.

Directors who receive compensation for their service on the MCE Board are not eligible to participate remotely under this provision. Currently, no MCE Board members receive compensation for their service.

Approving this resolution will provide the Board with greater flexibility to accommodate travel and geographic distance while preserving in-person public access and Brown Act transparency.

Fiscal Impacts:

None.

Recommendation:

Recommend to the Board of Directors adoption of proposed Resolution 2026-05 Authorizing Remote Participation at meetings of the MCE Board and MCE Finance Committee, as permitted by law.

³ California Government Code § 54953.8.7: <https://law.justia.com/codes/california/code-gov/title-5/division-2/part-1/chapter-9/section-54953-8-7/> The definition covers the MCE Board and its "advisory" bodies. MCE's Finance Committee is an advisory body because, unlike the Executive Committee or Technical Committee, does not have approval authority.

RESOLUTION No. 2026-05

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY AUTHORIZING REMOTE PARTICIPATION AT MEETINGS OF THE MCE BOARD AND MCE FINANCE COMMITTEE

WHEREAS, Marin Clean Energy (MCE) is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

WHEREAS, MCE members include the following communities: the County of Marin, the County of Contra Costa, the County of Napa, the County of Solano, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the City of Concord, the Town of Corte Madera, the Town of Danville, the City of El Cerrito, the Town of Fairfax, the City of Fairfield, the City of Hercules, the City of Lafayette, the City of Larkspur, the City of Martinez, the City of Mill Valley, the Town of Moraga, the City of Napa, the City of Novato, the City of Oakley, the City of Pinole, the City of Pittsburg, the City of Pleasant Hill, the City of San Ramon, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Vallejo, the City of Walnut Creek, and the Town of Yountville; and

WHEREAS, the Ralph M Brown Act (Brown Act), California Government Code § 54950, is written to protect and encourage the Public's access to public meetings and decision making by public entities in the State of California; and

WHEREAS, Senate Bill 707 significantly revised the Brown Act to modernize open meeting requirements, particularly related to teleconferencing and remote participation; and

WHEREAS, California Government Code § 54953.8.7 establishes a specific teleconferencing framework for eligible multijurisdictional bodies, including joint powers authorities such as MCE, and its advisory bodies; and

WHEREAS, the MCE Finance Committee, is an advisory body of the MCE Board; and

WHEREAS, California Government Code § 54953.8.7 allows the MCE Board to authorize by resolution remote participation in meetings of the MCE Board and MCE Finance Committee by members traveling from a location more than 20 miles from the meeting location and only when remote participation is identified on the agenda and conducted using both audio and visual technology; and

WHEREAS, because the MCE Board and its advisory committees meet once per month or less, statute limits individual Board and Finance Committee members to participate remotely to no more than two meetings per calendar year; and

NOW, THEREFORE, BE IT RESOLVED, by the MCE Board of Directors that it approves its members to participate remotely up to twice annually in meetings of the Board of Directors, and further approves members of the Finance Committee to participate remotely up to twice annually in meetings of the Finance Committee, provided that any Director appearing remotely must be identified on the agenda, must use both audio and visual technology, and must physically be more than 20 miles from a noticed location and further provided that a quorum of the Board or Finance Committee must participate from one or more physical locations that are noticed, publicly accessible and within the boundaries of MCE’s service area. Directors who receive compensation for their service on the MCE Board are not eligible to participate remotely.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 18th day of June 2026, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin				
Contra Costa County				
County of Napa				
County of Solano				
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
City of Concord				
Town of Corte Madera				
Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Fairfield				
City of Hercules				
City of Lafayette				
City of Larkspur				
City of Martinez				
City of Mill Valley				
Town of Moraga				
City of Napa				
City of Novato				
City of Oakley				

City of Pinole				
City of Pittsburg				
City of Pleasant Hill				
City of San Ramon				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Vallejo				
City of Walnut Creek				
Town of Yountville				

CHAIR, MCE

Attest:

SECRETARY, MCE



June 1, 2026

TO: MCE Executive Committee

FROM: Jessica Brooks, Lead Board Clerk and Executive Assistant
Tanya Lomas, Board Clerk
Justine Parmelee, VP of Internal Operations

RE: Agenda and Packet Management Technology: Challenges and Opportunities (Agenda Item #07)

Dear Executive Committee Members:

Summary:

MCE currently manages agenda and packet development in-house through coordinated efforts between MCE clerks and the web development team, a structure that provides flexibility, efficiency, and minimal cost but also presents certain limitations in functionality and user experience. Staff have reviewed the existing process and identified potential areas of focus to enhance efficiency, usability, and transparency across MCE's meeting management systems. These include third-party agenda management tools and electronic voting options. Staff are seeking a discussion with the Executive Committee to provide potential directions on next steps.

Fiscal Impacts:

None.

Recommendation:

Discussion only.