



## Request for Proposals Workforce Education and Training Issued December 2020

MCE, a California Joint Powers Authority (JPA), is seeking proposals from interested vendors who have experience with ratepayer-funded energy efficiency and/or workforce education and training programs in the residential sector, specifically related to designing and implementing workforce development curriculum or related programs.

### I. ABOUT MCE

With offices in San Rafael and Concord, MCE is a Community Choice Aggregation public agency that focuses on reducing energy-related greenhouse gas emissions by providing electricity customers with 50-100% renewable energy and groundbreaking energy efficiency, demand response, and energy storage programs. MCE determines the source and cost of the energy and PG&E continues to manage the transmission and distribution of the energy. MCE is a public, not-for-profit JPA. Members of the agency include: The County of Marin and its towns and cities; the County of Napa and its towns and cities; the County of Contra Costa and its cities of Concord, Danville, El Cerrito, Lafayette, Martinez, Moraga, Oakley, Pinole, Pittsburg, Richmond, San Pablo, San Ramon and Walnut Creek; and the County of Solano and the cities of Benicia and Vallejo.

### II. PROJECT BACKGROUND

In May 2018, the California Public Utilities Commission ("CPUC") approved MCE's Energy Efficiency Business Plan ("Business Plan").<sup>1</sup> As part of the Business Plan, MCE proposed a Workforce Education and Training program ("WE&T Program" or "Program") to reduce barriers to participation in such programs, provide access to training and career pathways for underrepresented populations, and ensure a trained workforce to support the implementation of the rest of MCE's energy efficiency programs.

MCE has invested more than \$770,000 in workforce development initiatives since it launched these programs in 2012, including 4,400 job hours, the installation of 171 new residential solar systems, the installation of energy and water saving measures in 1,800 multifamily units, and over 328 youth and adult training hours.

The Program began in 2019 with the core goals of identifying gaps in the market to influence future program design, finding creative solutions to identified barriers to participation for underrepresented populations in WE&T programs, and providing a skilled labor force to help facilitate market transformation.

### III. PURPOSE OF THIS RFP

MCE is creating a list of qualified training organizations to train and support job seekers to enter the workforce development pipeline throughout MCE's service area. Vendors submitting successful proposals will be added to MCE's partner list for the WE&T programs. Subject to the

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<sup>1</sup> MCE's Energy Efficiency Business Plan is available here: <https://www.mcecleanenergy.org/wp-content/uploads/2019/02/MCE-Energy-Efficiency-Business-Plan.pdf>.

conditions provided herein, MCE is soliciting proposals for the training component of its WE&T Program.

In responding to this RFP, all vendors are required to adhere to all of MCE's requirements provided herein.

#### IV. SCOPE OF SERVICES

MCE's overall workforce development strategy is geared towards creating meaningful career paths. MCE is working to establish relationships with labor organizations and local businesses to ensure there is a potential career pathway into the energy industry for Program participants. MCE will sponsor, support, and leverage workforce training for workforce professionals and job seekers. There will be an emphasis on partners that train participants with the goal of building a comprehensive energy industry skillset for Program participants.

MCE is looking for qualified program partners capable of performing the following scope of services:

- Offer curriculum for a workforce education and training program relevant to the energy efficiency industry or to high-performance building in alignment with MCE's mission.
- Address industry-identified barriers to participation in workforce education and training programs that support ratepayer-funded energy efficiency programs.
- Facilitate access to and serve hard to reach or disadvantaged workers as defined by the CPUC.<sup>2</sup>
- Train cohorts of job-seekers to be ready to complete MCE's on-the-job trainee program.<sup>3</sup>
- Perform marketing and outreach to Program participants.
- Report to MCE on achieving Program goals and metrics.
- Implement curriculum in the near term within the constraints of COVID-19.

#### V. MINIMUM QUALIFICATIONS

- Demonstrated experience implementing and/or developing workforce education and training programs that incorporate addressing barriers to program participation.
- Demonstrated experience implementing goal-achieving programs that are aligned with MCE's goals and mission.
- Existing relationships with customer(s), contractor(s), and other stakeholder groups within MCE's [service area](#).
- Demonstrated experience implementing community outreach to facilitate participation in workforce education and training programs.
- Understanding of the CPUC policies and reporting requirements for ratepayer-funded programs (See Attachment A for program reporting metrics).
- Demonstrated experience with cost-effective budget management and an efficient use of resources.

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<sup>2</sup> The CPUC's definition of "disadvantaged worker" is available here: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M234/K071/234071190.PDF> at p.79.

<sup>3</sup> More information about the Program is available here: <https://www.mcecleanenergy.org/contractors/>.

## VI. CONTENT OF RESPONSE

Interested vendors must submit the following documents to be added to MCE's list of qualified vendors:

- a. Cover letter with the following information:
  1. Legal business name, address, telephone number, and business type (corporation, limited partnership, individual, etc.).
  2. Name of vendor's contact with respect to this RFP and their telephone number and email address.
  3. A signature of an authorized individual associated with the vendor.
- b. Qualifications and experience, not to exceed three (3) pages:
  1. A brief summary of vendor's history and background.
  2. A brief summary of vendor's anticipated adaptations to programs and capacity due to COVID-19.
  3. Identification of relevant licenses and certifications.
  4. A list of 2-3 clients served in the last five years to be used as references. Please include scope of work, dates of contract, contract amount, contact person, contact telephone number, and contact email address.
- c. Proposal:
  1. Opportunity description. A description of near-term workforce training opportunities and a timeline which can be implemented safely during COVID-19, including the number of disadvantaged workers expected to be trained or offered follow-up support.
  2. Cost breakdown. MCE is interested in contracting with multiple qualified vendors to implement strategies in order to serve the entirety of MCE's service area within its available budget (MCE's anticipated budget is \$50,000-\$100,000 per selected vendor). Please provide a full breakdown of costs associated with the scope of services, such as a high-level summary of estimated pricing on a per person or per task basis.
- d. (Optional) Completed [Supplier Diversity Questionnaire](#): Please note, your response will have no impact on your contract status or eligibility to work with MCE in accordance with state law.

## VII. KEY DATES, DEADLINES AND SUBMISSION REQUIREMENTS

- a. *Questions*: Any questions relating to the content of this RFP must be submitted to MCE's Contracts Manager at [contracts@mcecleanenergy.org](mailto:contracts@mcecleanenergy.org).
- b. *Submission Requirements*: To be eligible for consideration, all responses must be submitted via the following Egnyte upload link in either PDF or .docx (Word) file format:

<https://mea.egnyte.com/ul/z9745tDM1l>

Respondents must fill in the two required fields as follows before uploading documents:

Name: Please list Company Name

Email Address: List email address of the contact submitting the response.

Please leave the optional third field requesting company name blank; company name should be listed in the first required field titled "Name".

- c. *Submission Deadline:* Subject to the General Terms and Conditions below, MCE is accepting submissions on an ongoing, rolling basis. MCE may close this RFP at any time in its sole discretion.

## VIII. EVALUATION CRITERIA

- a. Completeness of Submission
- b. Minimum Qualifications Met (see section V above)
- c. Number of potential job trainees anticipated to meet the CPUC's disadvantaged worker criteria
- d. How COVID-19 safety protocols will be addressed in training program
- e. Timeline for training job seekers
- f. Associated costs compared to MCE's anticipated budget

## IX. GENERAL TERMS AND CONDITIONS

- a. *MCE's Reserved Rights.* MCE may, at its sole discretion: withdraw this Request for Proposals at any time, and/or reject any or all proposals submitted without awarding a contract. Respondents are solely responsible for any costs or expenses incurred in connection with the preparation and submittal of a proposal.
- b. *Public Records.* All documents submitted in response to this Request will become the property of MCE upon submittal, and will be subject to the provisions of the California Public Records Act and any other applicable disclosure laws. Upon submission, all proposals shall be treated as confidential until the selection process is complete. Once a contract is awarded, all proposals shall be deemed public record. MCE is required to comply with the California Public Records Act as it relates to the treatment of any information marked "confidential". Respondents requesting that portions of the submittal should be exempt from disclosure must clearly identify those portions with the word "Confidential" printed on the lower right-hand corner of the page. Each page shall be clearly marked and separable from the proposal in order to facilitate public inspection of the non-confidential portion of the proposal. MCE will consider a respondent's request for an exemption from disclosure; however, if MCE receives a request for documents under the California Public Records Act, MCE will make a decision based upon applicable laws. Respondents should not over-designate material as confidential, and any requests or assertions by a respondent that the entire submittal or significant portions thereof are exempt from disclosure will not be honored.
- c. *No Guarantee of Contract.* MCE makes no guarantee that a vendor submitting documents under this solicitation will result in a contract. The successful vendor, if any, will enter into an agreement for services based on MCE's Standard Form Agreement, attached hereto as Attachment B for informational purposes only. The terms included in the attached standard form are subject to change based on the scope of work agreed to by MCE and the selected vendor.
- d. *Insurance.* Selected vendors shall provide proof of insurance coverage meeting or exceeding the following minimum requirements prior to contracting with MCE: Commercial General Liability (\$2,000,000 per occurrence, \$4,000,000 aggregate for bodily injury and property damage), Motor Vehicle Liability Insurance (\$1,000,000), Workers' Compensation and Employer's Liability Insurance (per statute), and Professional Liability Insurance (\$1,000,000), as applicable.
- e. *Genuine Response.* By submitting a response to this RFP, the Respondent ensures: the submission is genuine, and not sham or collusive, nor made in the interest or on behalf of

any person not named therein; the submitting firm has not directly or indirectly induced or solicited any other submitting firm to put in a sham bid, or any other person, firm or corporation to refrain from submitting a submission; and the submitting firm has not in any manner sought by collusion to secure for themselves an advantage over any other submitting firm.

## X. QUESTIONS

To promote accuracy and consistency of information provided to all participants, questions will only be accepted via email submitted to the Contracts Manager at [contracts@mcecleanenergy.org](mailto:contracts@mcecleanenergy.org) and the subject line of the email must read “MCE Workforce, Education, and Training RFP Question”.

MCE will provide a written response to the questions submitted via email. MCE reserves the right to combine similar questions, rephrase questions, or decline to answer questions at its sole discretion.

All questions must be submitted through the above process. No questions will be answered over the telephone or in person. Respondents may not have any contact regarding this procurement with any MCE official or staff from the time of issuance of this solicitation until the award of contract, other than through the above process for submitting questions. Any contact in violation of these provisions will be grounds for disqualification.

**Thank you for your interest!**

## Attachment A

| <u>Workforce Education and Training</u> |  |                                  |
|---|--|----------------------------------|
| Common Problem                          | Final Common Metric or Indicator   | Category:<br>Metric or Indicator |
| Expanding WE&T Reach via Collaborations | Number of partnerships by sector (complete “partnership” defined by curriculum developed jointly + agreement)  | Metric                           |
| Penetration of Training                 | Number of participants by sector   | Metric                           |
|   | Percent of participation relative to eligible target population for curriculum   | Metric                           |
| Diversity of Participants               | Percent of disadvantaged participants trained (ID by zip code)   | Metric                           |
|   | Percent of incentive dollars spent on measures verified to have been installed by contractors with a demonstrated commitment to provide career pathways to disadvantaged workers | Metric                           |
|   | Number of energy efficiency projects related to the WE&T training on which a participant has been employed for 12 months after receiving the training                            | Indicator                        |

## ATTACHMENT B

### MARIN CLEAN ENERGY STANDARD SHORT FORM CONTRACT

### (FIRST) AGREEMENT BY AND BETWEEN MARIN CLEAN ENERGY AND (CONTRACTOR)

**THIS (FIRST) AGREEMENT** ("Agreement") is made and entered into on [Date] by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and [CONTRACTOR name], [a [state] [corporate form]] with principal address at: [address] (hereinafter referred to as "Contractor") (each, a "Party," and, together, the "Parties").

#### RECITALS:

**WHEREAS**, MCE desires to retain Contractor to provide the services described in **Exhibit A** attached hereto and by this reference made a part hereof ("Services");

**WHEREAS**, Contractor desires to provide the Services to MCE;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### 1. **SCOPE OF SERVICES:**

Contractor agrees to provide all of the Services in accordance with the terms and conditions of this Agreement. "Services" shall also include any other work performed by Contractor pursuant to this Agreement.

#### 2. **FEES AND PAYMENT SCHEDULE; INVOICING:**

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

#### 3. **MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the Services to be provided herein exceed the maximum sum of \$[ ],000.

#### 4. **TERM OF AGREEMENT:**

This Agreement shall commence on [Date] ("Effective Date") and shall terminate on [Date], unless earlier terminated pursuant to the terms and conditions set forth in Section 12.

#### 5. **REPRESENTATIONS; WARRANTIES; COVENANTS:**

**5.1. CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor represents, warrants and covenants that (a) [it is a [corporation/limited liability company] duly organized, validly existing and in good standing under the laws of the State of [insert state of organization]], (b) it has full power and authority and all regulatory authorizations required to execute, deliver and perform its obligations under this Agreement and all exhibits and addenda and to engage in the business it presently conducts and contemplates conducting, (c) it is 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 its 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, (d) it is qualified and competent to render the Services and possesses the requisite expertise to perform its obligations hereunder, (e) the execution, delivery and performance of this Agreement and all exhibits and addenda hereto are within its powers and do not violate the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, (f) this Agreement and each exhibit and addendum constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, and (g) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

## ATTACHMENT B

- 5.2. COMPLIANCE WITH APPLICABLE LAW:** At all times during the Term and the performance of the Services, Contractor shall comply with all applicable federal, state and local laws, regulations, ordinances and resolutions ("Applicable Law")
- 5.3. LICENSING.** At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all required permits, licenses, certificates and registrations required for the operation of its business and the performance of the Services. Contractor shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.
- 5.4. NONDISCRIMINATORY EMPLOYMENT:** Contractor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, gender identity, age or condition of disability. Contractor understands and agrees that Contractor is bound by and shall comply with the nondiscrimination mandates of all federal, state, and local statutes, regulations, and ordinances.
- 5.5. ASSIGNMENT OF PERSONNEL.** The Contractor shall not substitute any personnel for those specifically named in its proposal, if applicable, unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

### **6. INSURANCE:**

At all times during the Term and the performance of the Services, Contractor shall maintain the insurance coverages set forth below. All such insurance coverage shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, directors, officers, and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of Services. Certificate(s) of insurance must be current as of the Effective Date, and shall remain in full force and effect through the Term. If scheduled to lapse prior to termination date, certificate(s) of insurance must be automatically updated before final payment may be made to Contractor. Each certificate of insurance shall provide for thirty (30) days' advance written notice to MCE of any cancellation or reduction in coverage. Insurance coverages shall be payable on a per occurrence basis only, except those required by Section 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing in this Section 6 shall be construed as a limitation on Contractor's indemnification obligations in Section 16 of this Agreement.

Should Contractor fail to provide and maintain the insurance required by this Agreement, in addition to any other available remedies at law or in equity, MCE may suspend payment to the Contractor for any Services provided during any period of time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required insurance coverage.

- 6.1. GENERAL LIABILITY.** The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than **[one million dollars (\$1,000,000)/two million dollars (\$2,000,000)] with a [two million dollars (\$2,000,000)/four million dollar (\$4,000,000)]** aggregate limit. "Marin Clean Energy" shall be named as an additional insured on the commercial general liability policy and the certificate of insurance shall include an additional endorsement page (see sample form: ISO - CG 20 10 11 85).
- 6.2. AUTO LIABILITY (REQUIRED IF CHECKED ☐).** Where the Services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said Services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000).
- 6.3. WORKERS' COMPENSATION.** The Contractor acknowledges that the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, it shall comply with this requirement and a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of Services.
- 6.4. PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☐).** Contractor shall maintain professional liability insurance with a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that Contractor has segregated amounts in a special insurance reserve fund, or that Contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon. Coverages required by this subsection may be provided on a claims-made basis with a "Retroactive Date" prior to the Effective Date. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond termination of this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form



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with a "retroactive date" prior to the Effective Date, Contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after termination of this Agreement.

### 7. RESERVED

### 8. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior, written approval of MCE, except for any subcontract work expressly identified herein in Exhibit A. If Contractor hires a subcontractor under this Agreement (a "Subcontractor"), Subcontractor shall be bound by all applicable terms and conditions of this Agreement, and Contractor shall ensure the following:

- 8.1. Subcontractor shall comply with the following terms of this Agreement: Sections 9, 10, Exhibit A.
- 8.2. Subcontractor shall provide, maintain and be bound by the representations, warranties and covenants of Contractor contained in Section 5 hereof at all times during the Term of such subcontract and its provision of Services.
- 8.3. Subcontractor shall comply with the terms of Section 6 above, including, but not limited to providing and maintaining insurance coverage(s) identical to what is required of Contractor under this Agreement, and shall name MCE as an additional insured under such policies. Contractor shall collect, maintain, and promptly forward to MCE current evidence of such insurance provided by its Subcontractor. Such evidence of insurance shall be included in the records and is therefore subject to audit as described in Section 9 hereof.
- 8.4. Subcontractor shall be contractually obligated to indemnify the MCE Parties (as defined in Section 17 hereof) pursuant to the terms and conditions of Section 17 hereof.
- 8.5. Subcontractors shall not be permitted to further subcontract any obligations under this Agreement.

Contractor shall be solely responsible for ensuring its Subcontractors' compliance with the terms and conditions of this Agreement made applicable above and to collect and maintain all documentation and current evidence of such compliance. Upon request by MCE, Contractor shall promptly forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the Parties shall create any legal or contractual relationship between MCE and any Subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor's obligation to pay its Subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any monies to any Subcontractor.

### 9. RETENTION OF RECORDS AND AUDIT PROVISION:

Contractor shall keep and maintain on a current basis full and complete records and documentation pertaining to this Agreement and the Services, whether stored electronically or otherwise, including, but not limited to, valuation records, accounting records, documents supporting all invoices, employees' time sheets, receipts and expenses, and all customer documentation and correspondence (the "Records"). MCE shall have the right, during regular business hours, to review and audit all Records during the Term and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written request from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

### 10. DATA, CONFIDENTIALITY AND INTELLECTUAL PROPERTY:

#### 10.1. OWNERSHIP AND USE RIGHTS.

- a) **MCE Data.** Unless otherwise expressly agreed to in writing by the Parties, MCE shall retain all of its rights, title and interest in MCE's Data. "MCE Data" shall mean all data or information provided by or on behalf of MCE, including but not limited to, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to Contractor as MCE may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Contractor. MCE Data shall also include all data and materials provided by or made available to Contractor by MCE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors.
- b) **Intellectual Property.** Unless otherwise expressly agreed to in writing by the Parties, any and all materials, information, or other intellectual property created, prepared, accumulated or developed by Contractor or any Contractor Party under this Agreement ("Intellectual Property"), including finished and unfinished inventions, processes, templates, documents,

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drawings, computer programs, designs, calculations, valuations, 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 owned by MCE on behalf and for the benefit of MCE's respective customers. MCE shall have the exclusive right to use Intellectual Property in its sole discretion and without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide Intellectual Property to MCE or to any party MCE may designate upon written request. Contractor may keep one file reference copy of Intellectual Property prepared for MCE solely for legal purposes and if otherwise agreed to in writing by MCE. In addition, Contractor may keep one copy of Intellectual Property if otherwise agreed to in writing by MCE.

- c) **Intellectual Property shall be owned by MCE upon its creation.** Contractor agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Intellectual Property.
- d) **Contractor's Pre-Existing Materials.** If, and to the extent Contractor retains any preexisting ownership rights ("Contractor's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, Contractor hereby grants MCE on behalf of its customers and the CPUC for governmental and regulatory purposes an irrevocable, assignable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted 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 Contractor or any Contractor Party for the sole purpose of using such Intellectual Property for the conduct of MCE's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Intellectual Property must be expressly disclosed to MCE prior to performing any Services under this Agreement. Any such Pre-Existing Material that is modified by work under this Agreement is owned by MCE.

**10.2. EQUITABLE RELIEF.** Each Party acknowledges that a breach of this Section 9 would cause irreparable harm and significant damages to the other Party, the degree of which may be difficult to ascertain. Accordingly, each Party agrees that MCE shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of MCE Data, in addition to any other rights and remedies that it may have at law or otherwise; and Contractor shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of Contractor's Pre-Existing Materials, in addition to any other rights and remedies that it may have at law or otherwise.

### **11. FORCE MAJEURE:**

A Party shall be excused for failure to perform its obligations under this Agreement if such obligations are prevented by an event of Force Majeure (as defined below), but only for so long as and to the extent that the Party claiming Force Majeure ("Claiming Party") is actually so prevented from performing and provided that (a) the Claiming Party gives written notice and full particulars of such Force Majeure to the other Party (the "Affected Party") promptly after the occurrence of the event relied on, (b) such notice includes an estimate of the expected duration and probable impact on the performance of the Claiming Party's obligations under this Agreement, (c) the Claiming Party furnishes timely regular reports regarding the status of the Force Majeure, including updates with respect to the data included in Section 10 above during the continuation of the delay in the Claiming Party's performance, (d) the suspension of such obligations sought by Claiming Party is of no greater scope and of no longer duration than is required by the Force Majeure, (e) no obligation or liability of either Party which became due or arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the Force Majeure; (f) the Claiming Party shall exercise commercially reasonable efforts to mitigate or limit the interference, impairment and losses to the Affected Party; (g) when the Claiming Party is able to resume performance of the affected obligations under this Agreement, the Claiming Party shall give the Affected Party written notice to that effect and promptly shall resume performance under this Agreement. "Force Majeure" shall mean acts of God such as floods, earthquakes, fires, orders or decrees by a governmental authority, civil or military disturbances, wars, riots, terrorism or threats of terrorism, utility power shutoffs, strikes, labor disputes, pandemic, or other forces over which the responsible Party has no control and which are not caused by an act or omission of such Party.

### **12. TERMINATION:**

**12.1.** If the Contractor fails to provide in any manner the Services required under this Agreement, otherwise fails to comply with the terms of this Agreement, violates any Applicable Law, makes an assignment of any general arrangement for the benefit of creditors, files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it, otherwise becomes bankrupt or insolvent (however evidenced), or becomes unable to pay its debts as they fall due, then MCE may terminate this Agreement by giving five (5) business days' written notice to Contractor.

**12.2.** Either Party hereto may terminate this Agreement for any reason by giving thirty (30) calendar days' written notice to the other Party. Notice of termination shall be by written notice to the other Party and be sent by registered mail or by email to the email address listed in Section 18.

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- 12.3.** In the event of termination not the fault of the Contractor, the Contractor shall be paid for Services performed up to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s). Notwithstanding anything contained in this Section 12, in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Agreement. Contractor shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 14. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12, Contractor shall have delivered to MCE any and all Intellectual Property (as defined in Section 10.6(b)) prepared for MCE before the effective date of such termination.
- 12.4.** MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.
- 12.5.** Without limiting the foregoing, if either Party's activities hereunder become subject to law or regulation of any kind, which renders the activity illegal, unenforceable, or which imposes additional costs on such Party for which the parties cannot mutually agree upon an acceptable price modification, then such Party shall at such time have the right to terminate this Agreement upon written notice to the other Party with respect to the illegal, unenforceable, or uneconomic provisions only, and the remaining provisions will remain in full force and effect.
- 12.6.** Upon termination of this Agreement for any reason, Contractor shall and shall cause each Contractor Party to bring the Services to an orderly conclusion as directed by MCE and shall return all MCE Data (as defined in Section 10.1 below) and Intellectual Property to MCE.
- 12.7.** Notwithstanding the foregoing, this Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such order or directive.
- 12.8.** Notwithstanding any provision herein to the contrary, Sections 2, 3, 8.4, 9, 10, 12, 15, 16, 17, 18, 19, 20, 21, 22, 24, and Exhibit B of this Agreement shall survive the termination or expiration of this Agreement.

### **13. ASSIGNMENT:**

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

### **14. AMENDMENT; NO WAIVER:**

This Agreement may be amended or modified only by written agreement of the Parties. Failure of either Party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

### **15. DISPUTES:**

Either Party may give the other Party written notice of any dispute which has not been resolved at a working level. Any dispute that cannot be resolved between Contractor's contract representative and MCE's contract representative by good faith negotiation efforts shall be referred to Legal Counsel of MCE and an officer of Contractor for resolution. Within 20 calendar days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If MCE and Contractor cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and Contractor shall have the right to pursue all rights and remedies that may be available at law or in equity. All negotiations and any mediation agreed to by the Parties are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.

### **16. JURISDICTION AND VENUE:**

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

### **17. INDEMNIFICATION:**

To the fullest extent permitted by Applicable Law, Contractor shall indemnify, defend, and hold MCE and its employees, officers, directors, representatives, and agents ("MCE Parties"), harmless from and against any and all actions, claims, liabilities, losses, costs, damages, and expenses (including, but not limited to, litigation costs, attorney's fees and costs, physical damage to or loss of tangible property, and injury or death of any person) arising out of, resulting from, or caused by: a) the negligence, recklessness, intentional misconduct, fraud of all Contractor Parties; b) the failure of a Contractor Party to comply with the provisions of this Agreement or Applicable Law; or c) any defect in design, workmanship, or materials carried out or employed by any Contractor Party.

## ATTACHMENT B

### 18. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.). Pursuant to MCE's Joint Powers Agreement, MCE is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations, and liabilities accruing and arising out of this Agreement. No Contractor Party shall have rights and nor shall any Contractor Party make any claims, take any actions, or assert any remedies against any of MCE's constituent members in connection with this Agreement.

### 19. INVOICES; NOTICES:

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

Email Address: invoices@mcecleanenergy.org

All other notices shall be given to MCE at the following location:

Contract Manager: Troy Nordquist

MCE Address: 1125 Tamalpais Avenue

San Rafael, CA 94901

Email Address: contracts@mcecleanenergy.org

Telephone No.: (925) 378-6767

Notices shall be given to Contractor at the following address:

Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

### 20. ENTIRE AGREEMENT; ACKNOWLEDGMENT OF EXHIBITS:

This Agreement along with the attached Exhibits marked below constitutes the entire Agreement between the Parties. In the event of a conflict between the terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement shall govern.

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

### 21. SEVERABILITY:

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

## ATTACHMENT B

### 22. **INDEPENDENT CONTRACTOR:**

Contractor is an independent contractor to MCE hereunder. Nothing in this Agreement shall establish any relationship of partnership, joint venture, employment or franchise between MCE and any Contractor Party. Neither MCE nor any Contractor Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided for herein.

### 23. **TIME:**

Time is of the essence in this Agreement and each and all of its provisions.

### 24. **THIRD PARTY BENEFICIARIES:**

The Parties agree that there are no third-party beneficiaries to this Agreement either express or implied.

### 25. **FURTHER ACTIONS:**

The Parties agree to take all such further actions and to execute such additional documents as may be reasonably necessary to effectuate the purposes of this Agreement.

### 26. **PREPARATION OF AGREEMENT:**

This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and this Agreement shall not be construed against either Party as a result of the manner in which this Agreement was prepared, negotiated or executed.

### 27. **COUNTERPARTS:**

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

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

#### **APPROVED BY**

**Marin Clean Energy:**

**CONTRACTOR:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chairperson

Date: \_\_\_\_\_

#### **MODIFICATIONS TO STANDARD SHORT FORM**

☐ **Standard Short Form Content Has Been Modified**

**List sections affected:** \_\_\_\_\_

**Approved by MCE Counsel:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**ATTACHMENT B  
EXHIBIT A  
SCOPE OF SERVICES**

Contractor shall provide the following Services under the Agreement as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

**EXHIBIT B  
FEES AND PAYMENT SCHEDULE**

For Services provided under this Agreement, MCE shall pay Contractor in accordance with the amount(s) and the payment schedule as specified below:

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