

# Community Venture Partners, Inc.

A Catalyst for Sustainable Solutions

## **The Marin County Community Service Contracts Program INVESTIGATIVE REPORT** By Community Venture Partners, Inc.

### **INTRODUCTION**

Beginning in early 2018, CVP submitted a series of Public Records Act (PRA) requests specifically focused on financial transactions between the County of Marin and its agencies and bicycle advocacy groups. This was the result of CVP's prior investigations, beginning in 2016, leading up to its filing of a [Writ of Mandate](#) challenging the Marin County Open Space District's ("MCOSD") decision to open the Bob Middagh Trail to mountain biking.

Our PRA investigation took more than 14 months, included a dozen Public Records Act requests, and involved reviewing more than 500 documents, records, accounting ledgers, emails and other communications. It was expanded to include any and all organizations that benefited from what the County calls its "Community Service Contracts Program." Most of the documents we requested initially were denied, with the County citing unsupportable exemptions, then slowly began being produced by the Office of County Counsel. However, after a stop-and-go beginning, the Office of County Counsel was very cooperative, though they themselves had significant difficulty in obtaining documents from various county agencies.

### **Purposes of our investigation**

The findings in this Report are *not intended to disparage the work of our county's nonprofit organizations* or to necessarily allege wrongdoing on their part, though that may have also occurred. It is common for nonprofits to maximize the funding they get from public agencies by lobbying and doing whatever is necessary. That's an unfortunate fact of life and the District Attorney can decide on the ethical questions this raises on a case by case basis. Some of these funding recipients have been performing beneficial services in mental health, housing, and conservation, though the majority of them are not. However, that is not the issue here.

What is at issue is the County's mischaracterization and accounting misclassification of these funding activities, and the illegal methods they have employed to determine who the beneficiaries are of public, taxpayer funds.

Our interest is in ensuring that Marin County handles public monies in a fair, equitable, and fully transparent manner. This Report raises serious questions about the conduct of the Marin County Board of Supervisors and the County Administrator, Matthew Hymel, and the County's record-keeping practices. This Report also raises significant public policy questions regarding the County's accounting practices, its priorities, and its lack of a public mandate to give away tens of millions of dollars in taxpayer funds at their sole discretion.

## Findings of our investigation

The preponderance of evidence found in the documents we received in response to our PRAs, indicates that for more than 15 years the County of Marin, under the direction and at the sole discretion of the Marin County Board of Supervisors and the County Administrator, in collaboration with funding recipients, have *knowingly and intentionally* engaged in highly irregular and potentially fraudulent funding and accounting practices, by which third-party nonprofit and for-profit organizations have received gifts of tens of millions of dollars of taxpayer monies under the guise of “community service contracts.” The ‘payments’ on these ‘contracts’ were and are, for all intents and purposes, outright gifts of taxpayer monies that have essentially been processed by the County and treated by the recipients as grants funding by the recipients and which have been disguised as ‘contracts’ in the County’s budgets and accounting.

The County’s contention that these agreements and disbursements of general funds are for “contracts for community services” is, in light of the evidence, indefensible. There was and is nothing remotely “contractual” about these agreements or the payments made to the recipients.

The evidence of our allegations is overwhelming.

- The decisions regarding who receives funding are completely arbitrary, subjective, and *at the sole discretion* of the Board of Supervisors and the County Administrator, without any public participation, whatsoever;
- There are no public notices or Request for Proposals or any other form of solicitation for competitive bids for the services contracted;
- There are no application forms or other discernable methods of applying for these ‘contracts’;
- There are no guidelines or voting procedures or stated criteria regarding selection of contract awardees;
- The *need* for the ‘services’ proposed in the ‘contracts’ are proposed by the recipients, not created by the County;
- The scope of work described in the ‘contracts for services’ generally matches the stated charitable missions and initiatives of each nonprofit recipient, and the contractual scope of that work is, in almost all cases, proposed and drafted by the recipients, not the County;
- The work described in the ‘contracts’ is work which the nonprofit recipients are already doing *with or without the County’s support*;
- The amounts paid to organizations, year after year, are often exactly the same large, round numbers -- something that is virtually impossible when there is competitive bidding by service providers. The pricing of bonafide bids always varies due to inflation, competition, etc.;
- The ‘contract’s’ payments are *made in full and in advance of the ‘services’ being performed* – something that is unheard of in legitimate contractual agreements for services;
- The County has not done any oversight, whatsoever, of the recipient’s activities and has relied solely on “self-reporting” of results by the recipients (with no measurable

deliverables) *a year after the monies have been disbursed* (a method commonly used by grantors and grantees), as the means of verification that the ‘services’ were rendered. There have been no independent verifications performed by the County;

What these facts describe is the very definition of “charitable grants” and “gifts” for “general support,” not contractual agreements for services. The total annual payouts on these contracts have averaged approximately \$1.8 million dollars per year, or \$27 million dollars over the past 15 years.<sup>1</sup>

There is significant evidence that the process by which these “contracts” have been approved, the methods by which these funds have been disbursed, and the accounting practices employed by the County have been intentionally concealed from the public to the point that in some instances, records are nonexistent. This has been done with the full knowledge and cooperation of the Marin County Board of Supervisors.

The amounts of money involved are far in excess of the much-maligned [“Community Service Grants” Fund](#), often referred to as the County’s “Slush Fund.” The evidence suggests that following the criticism of the Slush Fund by the Marin County Grand Jury in [March of 2001](#), the County shifted many of its payouts to nonprofits to this new ‘contracts for community services’ funding method, and in doing so was able to perpetuate their ability to give away taxpayer monies at their discretion. Our findings are supported by the documents and records referenced herein and provided as Exhibits in APPENDICES A and B.

### **Request of the Marin County District Attorney**

We respectfully request that the Marin County District Attorney undertake an in-depth investigation into the practices of the Marin County Community Service Contracts program and the County’s practice of using contracts for services agreements to give grants funding to local nonprofit organizations.

I submit these comments as an acknowledged expert in the issues raised. In my 45 year professional career, I have managed a wide variety of for-profit corporations and in the past 16 years, have founded and been the chief executive officer of three 501(c)(3) nonprofit organizations. CVP is advised on legal matters by the esteemed law firms of Wilson, Sonsini, Goodrich & Rosati or Palo Alto, and Adler Colvin of San Francisco.

Thank you in advance for your time and consideration.

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<sup>1</sup> Exhibit 19 04 15 19 – List of Community Service Contracts 2005 – 2018, 3 years missing data

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## SECTION I – THE COUNTY’S INCOMPREHENSIBLE COMMUNITY SERVICE CONTRACTS FUNDING PROCESS

In the normal course of the business of *contracting* for services with private, third-party providers, public agencies and their boards (not the recipients) determine what and if services are needed, and the scope of those services. They then solicit bids from service providers using Requests for Proposals or other forms of public notice, in order to ensure competitive pricing and the best outcome for the public. Finally, they select suitable consultants or contractors based on *published, predetermined criteria and guidelines*.

Similarly, in the nonprofit world of *grant-giving*, nonprofit foundation boards and administrators are responsible for *setting their public policy goals and areas of interest* they wish to fund. Based on those, they describe the types of recipients/organizations/initiatives *eligible to apply* for funding in accordance with *pre-set guidelines* for applicants to follow. This is followed by an application vetting process based on those guidelines, which results in an announcement of selected grantees. In its own way, this is also a competitive process.

In conducting the business of what the County of Marin calls its “Community Services Contracts” program, the County has not adhered to anything even close to either of these widely accepted practices. Not only are the funds being distributed as ‘payments on contracts’ clearly charitable grants, but they are being given out under the most liberal terms possible.

### **The terms “contract” and “grant” are used interchangeably**

The entire application and selection processes for community service contracts that Marin County has used for more than 15 years to solicit and select recipients, is more akin to what one might see in a private, closely-held, for-profit corporation. However, even in that instance, accounting for charitable grant’s expenditures (gifts) as “contracts for services” would be highly irregular and violate accepted accounting rules and IRS regulations.

Unlike the normal contractual methodologies described above, the County’s process to determine the scope of services needed, the timing and submission of proposals, and even the amount of the contract’s payment for the work appear to be entirely driven by the recipients of those contracts. The recipients of the funds even determine the form of the application submitted for funding.<sup>2</sup> We find this to be remarkable since even the much-maligned Community Service “Slush Fund” now has an application form and guidelines that are posted online.

County Administrator, Matthew Hymel, has confirmed to us in writing that the application, selection and funding process of the Marin County community service contracts program is completely discretionary<sup>3</sup> on his part, up to but not exceeding a \$50,000 funding limit, and is discretionary above that limit by the Board of Supervisors. This means that for the past two decades the County Administrator has needed only to prepare a letter of recommendation to the

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<sup>2</sup> Matthew Hymel, the Marin County Administrator, has confirmed that the County has no set application form for community service contractors to use to apply or submit proposals.

<sup>3</sup> Confirmed to CVP by Matthew Hymel, See Section III

Board of Supervisors, to approve these contracts, as an item on the consent calendar, i.e., without being an agenda item or topic of discussion at a public hearing.

For all practical purposes, this system is the equivalent of “write your own check” for nonprofits if they can curry favor with County Supervisors or county staff members.

While it may be perfectly legitimate for a County Administrator to have the discretion to enter into agreements for essential services (e.g., maintenance, security, parking, etc.) and to do so even without Board approval, within certain monetary limits<sup>4</sup>, the transactions we investigated do not fall under those categories of services.

The ‘work’ that is described in these ‘contracts for community services’ is, in almost all cases, clearly “charitable” in nature or some form of political advocacy, and payment for “services” *that the recipient organizations would be or have already been doing without the County’s financial support.* The ‘services’ rendered are typically performed with little or no oversight by the County after the letting of the contract and 100 percent payment in advance of doing the ‘work.’

Of equally great concern is that the County’s recordkeeping and accounting for these expenditures is highly irregular and, in many instances incomplete, with years of data missing. In addition, the accounting for tens of millions of dollars that the County has paid out over the past 15 years has been lumped together, without any breakdowns, details or other explanations in the Marin County Annual Budget under “Community Services,” leaving no way for anyone to decipher which organization received funding, for what, or in what amounts.

Finally, there is significant evidence that both the County and the recipients have always understood these funds to be “grants” and “contributions” by the County to the recipients, regardless of the indefensible paper trail created to make them appear to be contracts for services. However, since 2016, when the public began to question the County’s practices, the County has made a calculated public relations effort to affirm the legitimacy of these gifts as being payments for contracted services, notwithstanding all the points of fact made in this Report, which explain why they cannot be credibly classified as “contracts.”

The line between what are actually grants and what are actually contracts is blurred further by the fact that the accounting under the budget category of ‘community service contracts’ also contains payments to “sponsor” nonprofit events,<sup>5</sup> expense reimbursements, and even some legitimate contracts to agency service providers.<sup>6</sup> In short, the County’s accounting system is a mess and fails to make proper distinctions and commingles funds in violation of acceptable accounting standards.

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<sup>4</sup> Per Matthew Hymel, the Marin County Administrator currently has discretion up to \$50,000 in a single year.

<sup>5</sup> Exhibit 18 01 25 18 MCHWC Event Sponsorship

<sup>6</sup> Exhibit 18 01 25 18 MCHWC Event Sponsorship, Exhibit 18 09 21 18 Sustainable Marin Event, Exhibit 18 12 19 18 MEF Event, Exhibit 1810 08 18 Canal Welcome Event

## The atypical case of MCBC

As noted above, our investigation began with bicycle advocacy groups in Marin, of which the Marin County Bicycle Coalition (“MCBC”) is the largest and most involved in county affairs. The relationship between MCBC and Marin County is unlike that of any other nonprofit organization funded through the community service contracts program.

In all the other instances we were able to review from the documents we received, the day to day work undertaken by the recipients of community service contracts was “arms-length” and generally performed independent of Marin County agency involvement. In addition, the services provided by the majority of recipients were related to their demonstrable expertise, which qualified them to provide services that were politically neutral and for public benefit purposes. In other words, they were not political advocacy organizations.

Examples of these recipient organizations would include The California Film Institute, which runs the Rafael Theater and the Mill Valley Film Festival, Wildcare, which works in the area of animal rescue, The Marin Mammal Center, the Mountain Play Association, Marin Organic, the Marin Economic Forum, Marin Civic Center Art, Marin State Parks, the Human Rights Commission, and many others.

However, the service contracts between Marin County and the Marin Bicycle Coalition are an exception. MCBC’s efforts have been extensively inter-twined with county programs, public policy decisions and how the County sets its funding priorities. Because of this, we are concerned that this special relationship, which County Supervisors encouraged, may have had an undue influence on public policy that has impacted all Marin County residents. MCBC has been under contract for almost 20 years as a consultant and inter-agency liaison in the County to:

*improve local transportation facilities resulting in the reduction of congestion, greenhouse gas emissions and other air/water pollution, increasing mobility, improving health, and maximizing efficient use of the current roadway network.*

*assist in the design of bicycle and pedestrian facilities; serve on Technical Advisory Committees for County infrastructure projects; and comment on technical documents to ensure implementation of safe and functional designs for bicyclists and pedestrians.*

*identify grant opportunities for the County to pursue the fund pedestrian and bicycle projects; generate data for use in grant applications; assist the County in writing grant applications; and write letters of support for capital grant projects.*

There are several serious concerns about this. First, whether one is talking about hydrology, biology, traffic, housing, medicine or any other area of expertise, a ‘consultant’ or ‘advisor’ to a public agency must first and foremost be politically neutral in order to ensure that they bring an unbiased view to their recommendations and reports. This is what differentiates an ‘advisor’ from a ‘stakeholder.’ Secondly, a consultant must have demonstrable expertise in the area of their specialty for which they are being paid.

MCBC fails both of these tests.

Whereas it is unarguable that the California Film Institute, the Marin Mammal Center, and the Mountain Plan are not political advocacy endeavors, the Marin County Bicycle Coalition is not a politically neutral entity. It is by its own admission and federal nonprofit mission statement clearly an advocacy organization. Its bias is, in fact, the fundamental basis of its existence: to advocate for bicycle use<sup>7</sup>. This stands in stark contrast to the other funded groups that are presenting films or caring for animals or putting on plays. Yet, even in those instances, none of those groups have been contractually engaged to act as ‘advisors’ or ‘consultants’ to the County on public policy matters. Their work pretty much stands alone, which is not the case with MCBC.

Certainly, MCBC has every right to be an advocacy organization and to voice and lobby for their positions. That is not at issue. However, because they are a political advocacy organization, on this basis alone, MCBC should be disqualified to act as a consultant on public policy decisions about the use of public open space and the expenditure of taxpayer funds. In other words, it’s fine for them to advocate for what they want, just not on the taxpayer’s dime.

In addition, unlike many other community service contract recipients (the Marin Housing Authority, the Schurig Center for Brain Injury Recovery, Homeward Bound, Marin Economic Forum, etc.), MCBC has little demonstrable expertise in the majority of the “services” described in their agreements. Although the Executive Director and Policy and Planning Director of MCBC both have experience and educational background in planning, neither are *practicing, licensed professionals* (nor is anyone else at MCBC) in engineering, science, architecture, landscape design, horticulture, ecology, biology, or other professional disciplines.

Whereas, recipients such as Wildcare, the Marin City Health and Wellness Center, and The Marin Mammal Center, for example, are staffed with veterinarians and medical doctors and other degree and license holding individuals, who provide direct, qualified professional expertise, MCBC’s member’s main qualifications appear limited to advocating for bicycle use or holding meetings and events about increasing bicycle use. And even if this were not the case, many other individuals and organizations could bid for and perform their role if given a competitive chance.

It is simply irresponsible for the County to “hire” MCBC as their consultants about reducing “greenhouse gases” or “air and water pollution” or “infrastructure design,” or even “grant-writing,” as their contracts with the County state. There are literally hundreds of other, more qualified professionals in each of those areas, for the County to choose from, who would likely be extremely interesting in submitting proposals, except for the fact that the County does not in any way publicly solicit for such proposals or otherwise provide any type of public notice that such ‘contractual’ opportunities exist.

This is not a distinction without a difference or an academic discussion. The findings of our investigation suggest that the nature of the interactions between MCBC and county staff have at

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<sup>7</sup> The MCBC website notes, “Advocacy brings cyclist’s collective voice to life. We advocate vigorously for increased bicycle and pedestrian funding, interconnected routes, and policies to enable a great ride.”



times become so intermingled that it is often difficult to determine who is in charge of setting meeting agendas or determining which programs to pursue.

Again, this is not suggesting that MCBC is at fault, though there is little doubt they have either been complicit or woefully ignorant about the difference between grants and contracts. However, they do not pretend to be offering licensed, professional services of any kind on the website or in their literature. They are clear that their organization's role is advocacy and public education. But it's not MCBC's responsibility to its members to 'self-limit' its advocacy, in fact, just the opposite.

Any fault in all this must fall squarely on the shoulders of the Marin County Supervisors and the County's senior staff.

However, by allowing this breakdown of any line between MCBC's biased 'advisory' role and County's policy decision-making processes, as evidenced in the documents and emails we've reviewed, the County's negligence has had real-world consequences, particularly as it relates the management of our open space.

For example, MCBC was apparently paid to consult on and help write the *Marin County Open Space Roads and Trails Management Plan* (the "RTMP") and, in particular, on its submission "scoring" system to be used to vet publicly submitted project proposals. It is therefore curious that in the case of the proposals submitted for the Bob Middagh Trail in the Alto Bowl Preserve, the only proposal that "scored" for consideration -- out of the five submitted -- was the one submitted by MCBC.

## **SECTION II – RELEVANT CHRONOLOGY & BACKGROUND**

Since 2001, the County has been under scrutiny over the existence and operation of the [Community Service Fund -- the so-called "Supervisor's Slush Fund."](#) This fund, which gives away taxpayer monies in the form of grants to fund third-party, "community service" (mostly "nonprofit") activities at the discretion of the Marin County Board of Supervisors is unique in the State of California. The Marin County Grand Jury looked into the disbursement methods and accounting practices of the Community Service Grants Fund in [March of 2001](#), and again in [May of 2013](#).

In its first Report, the Marin Grand Jury criticized the Fund's operations and management. In response to that Report, the County Supervisors refused to substantially reform their discretionary funding methods, which gave them the ability to doll out "grants" of taxpayer funds to buy political support. In its second Report, the Marin Grand Jury evaluated if any changes had been made by Marin County since the first report in 2001.

In the Grand Jury's May of 2013 Report, they found,

*(1) there is a lack of knowledge of the CSF and the process for grant application throughout Marin County, (2) **multiple grants often are awarded to the same organization**, contrary to the stated criterion that grants should be for one time and/or*

*emergency purposes, (3) there is **an absence of consistent record keeping**, particularly of rejections, and most importantly, (4) the **individual supervisors have too much control** over grant disbursement, creating the potential for patronage and possible impropriety. [Emphasis added]*

*As a result of these Findings, the GJ report recommended: (1) **establishment of eligibility requirements and other criteria** for potential grant recipients, (2) **wide dissemination and availability** of grant criteria, (3) **elimination of direct control** over the grant process by Supervisors, and (4) **reduction in funding for the CSF**, due to County budgetary constraints. The report continued by stating: "If, however, these steps are not taken, the Grand Jury believes that it is time to eliminate the CSF from the County budget." [Emphasis added]*

The 2013 Grand Jury Report went on to say,

*Our review of the current operation of The Fund identified the following major concerns:*

- *the **failure of the Board of Supervisors to subject the anticipated disbursements from The Fund to the normal budgeting approval process**; [Emphasis added]*
- *a **questionable legal interpretation by County Officials** which allows the County to circumvent the prohibition of gifts or contributions of public funds to organizations and entities **without the requisite performance of comparable value-added services** to the benefit of the County; and [Emphasis added]*
- ***creation of a system** of disbursements which by the very nature of the process, **gives rise to a real or perceived political patronage** system beholden to members of the Board of Supervisors and its high level County personnel. [Emphasis added]*

In response, the County finally agreed to make changes in the operation and management of the Fund, but still refused to consider its elimination. Those commitments to new operational requirements included,

- *the **elimination of individual Supervisor sponsorship**, [Emphasis added]*
- *that the program is intended to **support small (\$1,000 - \$10,000) one-time programs or projects**, and [Emphasis added]*
- *that **organizations that receive County funds through other means** may only receive Community Service funds for a one-time project or an emergency need. [Emphasis added]*

A key finding in this report is that all of these requirements were simultaneously circumvented by the County's surreptitious use of 'community service contracts,' even while the County was assuring the Grand Jury and the public that it had reformed and changed its ways.

## Increased public scrutiny starting in 2016

The use of ‘service contracts’ to pay out millions of dollars to favored nonprofits has gone on for more than 15 years outside the view of the general public. However, starting in 2016, members of the public began to question the financial relationship between MCBC and Marin County. This was driven, in part, by the County’s push and MCBC’s aggressive lobbying (paid for by taxpayer funds) to create and implement the *Marin County Open Space Roads and Trails Management Plan*, which MCBC had played a key role in creating, and to open more single-track hiking trails in Marin Open Space to mountain biking, and in particular the Bob Middagh Trail in the Alto Bowl Preserve.

It appears that the public’s questioning about the possible existence of a second channel of funding to nonprofit groups (in addition to the ‘reformed’ slush fund) took almost everyone at the County by surprise.

On January 27, 2016, Marin resident Francine Millman wrote to Kristi Villareal, who worked for the County, with the following questions,<sup>8</sup>

*I was curious whether I could receive in some sort of report form **the donation amounts you gave me over the phone for the MCBC?** [Emphasis added]*

*Finally, I just thought of this last night – the funds any of these organizations receive – is it by Supervisor or just the generic ‘County Supervisors’? In other words, does it say who authorized these funds?*

Our research shows that it was clear that in Ms. Millman’s conversation with Ms. Villareal, Ms. Villareal’s understanding was that all the funds historically paid to MCBC had been “grants” (not payments for services under specified contracts). Ms. Villareal’s response was to contact Matthew Hymel on January 28<sup>th</sup> and say,

*I called Francine Millman... to respond to her questions about funding that the **County has given** to MCBC. She wanted to know more detail than I could provide. [Emphasis added]*

Notice she uses the term “given” and not funding that the County has *paid* to MCBC, which is how one would normally refer to payments for services.

Others also began to inquire. On April 4, 2016, Rick Fraites, representing the Community Marin Action Committee, wrote<sup>9</sup> to Matthew Hymel, saying,

*We are writing with regard to **a grant of \$30,000 that was awarded to MCBC** in current FY 2015-16. We are concerned that **the grant** appears to lack a defined scope of work. The normal process for **a grant of county funds** should include a description from the*

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<sup>8</sup> Exhibit 16 01 28 16\_Millman-Villareal-MCBC donations

<sup>9</sup> Exhibit 16 04 04 16\_Rick Fraites compliant MCBC Grant

*applicant describing the specific planned use of the funds, and a report upon completion of the work. We have been unable to locate that information.* [Emphasis added]

This is an important letter on several counts. First, there is no question in Mr. Fraites' mind that this was a "grant" (it appears he had attended the hearing when it was "awarded). Mr. Fraites is just arguing about the terms of the grant and brings up key points about there being no measurable outcomes and the inappropriateness of MCBC receiving this funding because of their advocacy.

Among those seeking clarification was also former Marin County Planning Commissioner Randy Greenberg of Tiburon. In her letter to Kate Sears on July 7, 2016, she wrote,<sup>10</sup>

*I would like to find out **the application process, funding source and contract content for the \$35,000.00 contract referred to in the attached 5/27/16 status report from the Marin County Bicycle Coalition to the County.*** [Emphasis added]

*My interest is threefold: (1) **transparency**, (2) **how many and which groups are funded in this manner**, and (3) **concern about possible county funding of advocacy for significant expansion of trails for mountain biking.*** [Emphasis added]

*Do you have any suggestions on how to find this information? Since this is a county contract, **the information should be available to the public.*** [Emphasis added]

Supervisor Sear's office referred her to Matthew Hymel's office, with whom Ms. Greenberg subsequently had a conversation. As a result, on July 28<sup>th</sup>, she reported back to Kate Sears's office as follows,<sup>11</sup>

*He [Mr. Hymel] was very responsive to our concerns (the funding is buried in the Quarterly Reports, **which the BOS gets months after funding is dispersed, essentially cutting the public out of the process.** The Quarterly reports list disbursements under \$50,000, which Hymel handles after general approval by the BOS).*

*He said in future "if" MCBC is funded, **their requests would appear on BOS agendas.** He agreed to make the contract more specific and require MCBC to specifically account for how the funds are spent.* [Emphasis added]

This exchange is remarkable because it comes 15 years after the Marin County Grand Jury criticized the County for its discretionary expenditures and lack of both transparency and public accountability, and it is one among many documents that evidence the inscrutable nature of the County's accounting methods. It is also important to note that Mr. Hymel's promise that "in the future... their requests would appear on the BOS agenda" was never followed through on.

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<sup>10</sup> Exhibit 16 07 07 16\_Greenberg-Sears--Funding Source for MCBC contract

<sup>11</sup> Exhibit 16 07 28 16\_Alden-Greenberg--MCBC Payments not disclosed to public

But even more remarkably, Mr. Hymel refers to MCBC's funding as "their requests." This is yet another confirmation of the fact that these 'contracts' were driven by requests for funds from the recipients and *not* because the County had identified a service needed.

In the midst of the investigation by former Planning Commissioner Randy Greenberg and the Community Marin Action Committee, Supervisor Rice wrote to County Administrator Matthew Hymel on July 27, 2016, as follows.

*Hi Matthew,*

*... spoke with Marin Group today per their "investigation" re **the \$30 k grant MCBC receives**. Can we talk some time tomorrow or Friday about both? Friday afternoon best for me. [Emphasis added]<sup>12</sup>*

It is affirmative that Supervisor's Rice's understanding here is that the \$30,000 MCBC is receiving is a "grant" not payment for services, in spite of fact that this funding had supposedly been presented and endorsed by her, according to Matthew Hymel, as a 'contract.'

Likewise, recipients, such as MCBC, also didn't seem to understand that the funds they had been receiving for so many years were not grants or how they were supposed to be accounting for the funds. On January 28, 2016, Matthew Hymel wrote to Kristi Villareal, regarding discussions she was having with MCBC on this subject, to try to correct 15 years of MCBC accounting.

Hymel wrote Villareal,<sup>13</sup> instructing her to tell MCBC,

*They should not list us as a donor. Listing county contracts as a source of income is fine, but it is not a donation.*

Randy Greenberg, this time representing the Community Marin Action Committee, wrote again on August 1, 2016, referring to her meeting with Matthew Hymel in July of 2016, this time specifically addressing Mr. Fraites's previous concerns,<sup>14</sup>

*We expressed our concerns that (1) the funding process for MCBC was **not readily available to the public**, (2) the funding Community Service Agreements **lacked specificity and accountability**, and (3) the provision of funds to a non-profit organization, one of whose functions is to advocate for increased bicycle access to off-road single track (i.e., "narrow") trails. [Emphasis added]*

But Ms. Greenberg was not the only member of the public to bring up the apparent incongruity of MCBC getting paid to carry out their advocacy mission on the public's dime. On October 1,

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<sup>12</sup> Exhibit 16 07 27 16\_Rice-Hymel re MCBC grants

<sup>13</sup> Exhibit 16 01 28 16\_MCBC calling contracts donations

<sup>14</sup> Exhibit 16 08 01 16\_Greenberg-Hymel--re MCBC concerns

2016, Sharial Good-Swan wrote to Supervisor Damon Connolly<sup>15</sup> (a big bicycle advocate), to note,

*A friend has turned up surprising research re MCBC finances. The Marin Board of Supervisors financial support for the Marin County Bicycle Coalition advocacy group, steadily growing since 2001-2, began to reach El Nino proportions in 2006-7 when the Supes gave \$40,000 from their discretionary funds.<sup>16</sup> And, as the table below shows, it's no stretch to say that most years since have also been El Nino years for MCBC, courtesy of the reigning Supes' so-called "slush" funds.*

Likewise, on October 1, 2016, resident Tiffany O'Hara reached out to Marin County Parks about the same concern, and received this response from Max Korten, at that time its Interim Director and Manager.<sup>17</sup>

*Hi Tiffany,*

*Thanks for your interest. As far as I know Marin County Parks does not have a role in the administration of **the Marin County Community Service Fund grant program** which you may be referring to. Here is the website for the fund:*

*<http://www.marincounty.org/depts/ad/service-fund-program-information>*

*Let me know if you have further questions.*

*Thanks so much, Max [Emphasis added]*

Here we see, once again, that even county staff, who are intimately involved in working with MCBC, have no idea how they are funded and are under the distinct impression that what funding they have been receiving from the County has been in the form of grants. This and other evidence shows that virtually everyone involved in disbursing or receiving these 'contracts' payments assumed the funds were grants, up until public scrutiny began in 2016, at which time Matthew Hymel began to create a cover story.

### **The County attempts to cover their tracks**

In response to these inquiries, Supervisor Steve Kinsey, who was instrumental in creating this 'service contracts' funding mechanism a decade before, writes to Matthew Hymel on October 2, 2016, in what appears to be an effort to come up with an agreed upon 'story' to deny the allegations being made that these funds have been illegitimately accounted for.

Supervisor Kinsey wrote,<sup>18</sup>

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<sup>15</sup> Exhibit 16 10 01 16\_Goodswan inquiry to Connolly about MCBC grants

<sup>16</sup> In actuality, MCBC had received as much as \$50,000 in previous years.

<sup>17</sup> Exhibit 16 10 01 16\_Ohara-Korten--MCBC funding as grants

<sup>18</sup> Exhibit 16 10 02 16 - Kinsey-Hymel -- cover story discussion

*Matthew,*

*It appears that we will be challenged on our MCBC contributions. Please consider whether there are other non-departmental contributions to MCL, Audubon, Horse Council, etc. In addition, I know we have made capital contributions for open space purchases and Max should be able to help us identify those. (I.E.- Sky Ranch, Green property, Bucks Landing)  
SK [Emphasis added]*

What is so remarkable here is that Supervisor Kinsey inadvertently admits that the ‘service contracts’ payments are in fact “contributions.” Adding fuel to the fire, it appears that Supervisor Kinsey made a speech at the Marin County Open Space hearing on October 4, 2016, during which he tried to defend all the reasons why the County had “donated” large amounts of money to MCBC over the years. In response, other attendees wrote to the County in protest.

Finally, on October 28, 2016, in response to increasing inquiries from Marin residents and due to escalating internal confusion, Matthew Hymel send an email<sup>19</sup> to the Marin Board of Supervisors, in which he attempts to create a false narrative about ‘contracts’ to try to get the Board of Supervisors and county staff on the same page in their conversations with the public, even though they have all been referring to the funds as ‘grants,’ internally, for more than a decade.

Mr. Hymel wrote,

*You may be getting emails about a public information request concerning County contracts with the Marin County Bike Coalition over the past 10 years. Here’s what I sent earlier this week [an email to a resident denying that funds to MCBC were grants].  
[Note for clarification added]*

*It seems as if they were alleging that these contracts were entered into under the old Community Services program and being directed by individual Supervisors. I shared with them that this was not the case, but their claims may persist. -mh*

Hymel’s ‘story’ is a fabrication, though he’s technically correct that these grants were not from the “old Community Services program,” they were now under the guise of the Community Services Contracts program. However, the preponderance of evidence noted in this Report suggests that the community’s allegations are exactly what had been going on at the County for more than a decade: creating nonsensical ‘contracts’ to justify continuing to give out grants to their favored nonprofits on a discretionary basis.

Documents show that the Supervisors were willing participants in steering these discretionary ‘contract’ funds toward their favored organizations, exactly as they had been doing with the Community Service Grants Fund’s money, but now for much larger amounts. In fact, in many

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<sup>19</sup> Exhibit 16 10 28 16\_Hymel-Board of Supervisors – ‘clarification’ narrative

cases, it is obvious from the evidence that the “recommendation” of the Supervisors was the only reason these most of these ‘contracts’ were undertaken.<sup>20</sup>

Documents show that the County Supervisors and the recipients clearly understood the so-called ‘contracts’ to be grant funding that could be influenced at their discretion. On February 12, 2014, Andy Peri, then the Advocacy Director of MCBC, wrote to Supervisor Kate Sears and Supervisor Steve Kinsey, saying,

*Dear Kate and Steve,*

*I would like to request a meeting to discuss **MCBC's recent emails requesting a grant of Community Service Funds from the Board of Supervisors**. I spoke with Steve and he recommended that me, my Executive Director Kim Baenisch and you sit down to discuss the request and MCBC's needs in more detail. [Emphasis added]*

*Thank you so much!  
Andy*

Notice again MCBC refers to their funding request as a “grant,” not a contract for services.<sup>21</sup> Likewise, follow up correspondence between Supervisor Kate Sears and Matthew Hymel on March 18, 2014,<sup>22</sup> clearly indicate that Supervisor Sears literally dictated the list of ‘contracts’ to be let for the 2014-2015 fiscal year. And on Apr 24, 2014, at 5:27 PM, "Hymel, Matthew" wrote back saying, “I’ll take care of it.-mh”

This was followed some time afterward by Mr. Hymel sending Sears ‘his final contracts’ list, which matched hers exactly (date uncertain).<sup>23</sup>

### **The unique history of payments to MCBC**

Our investigation began looking into financial transactions between the County and bicycle advocacy groups, so as a result, we have more information on the MCBC / County relationship than for other recipients. Aside from our comments about their political access and their professional qualifications, noted above, their ability to obtain funding year after year with little or no effort, and no competition, was not unique.

It’s hard to blame nonprofit organizations who were receiving these funds for the County’s subterfuge, since the methods they were allowed to use to solicit for and obtain funding were pretty much the same as how one secures a grant, except for the signing of a piece of paper that called it a “contract.”

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<sup>20</sup> Exhibit 14 03 18 14\_Sears-Hymel -- Sears Funding list

<sup>21</sup> MCBC received a contract for \$30,000 in 2014; Exhibit 14 03 27 14\_MCBC-Sears--30k contract request

<sup>22</sup> Exhibit 14 03 18 14\_Sears-Hymel -- Sears Funding list

<sup>23</sup> Exhibit 15 00 00 15\_Hymel-Sears--Final Funding Items for 2014-15



Over the last 14 years, the County has paid out approximately \$500,000 to MCBC under the Community Services Contracts Program.<sup>24</sup> At the same time, MCBC has also received occasional “grants” from the Community Services Grants Program. For example, on September 29, 2009, MCBC received a grant of \$5,000<sup>25</sup>. On September 23, 2009, six days prior, MCBC had signed a ‘contract’ in the amount of \$40,000 for identical ‘services.’<sup>26</sup> MCBC also received a \$5,000 “slush fund” grant in 2011, while also being awarded a \$40,000 ‘contract’ for the same purposes.

The County Counsel’s office denied the existence of this “double-dipping,” in writing until we showed them the evidence found in the documents they themselves had provided. In addition, this is not confined to MCBC. The records of Community Service Grants shows that other agencies have also received funding from both sources for the same “work” in different years.

During this same time period, MCBC was also billing other Marin County agencies for smaller amounts of fees and expenses (e.g., approximately \$1,700 per year for bicycle “valet services” at the County Fair, etc.). But more significantly, during these same years, MCBC was also simultaneously billing the Transportation Authority of Marin (TAM) for services that in some instances were overlapping or very similar to the ‘bicycle promotion and advocacy services’ they were being paid by the County to perform.

From 2013 to 2018, MCBC billed TAM over \$56,000 for such services. And from 2005 to 2018 MCBC billed TAM approximately \$4 million for consulting services and direct expenses (gas, coffee, supplies, etc.), through subcontract agreements with other TAM service contractors.

While it is true that the majority of their activities included promotion, marketing, and coordinating various “Safe Routes to Schools” programs, their ‘services’ also appear to be related to promoting and lobbying for bicycle use in Marin, in general, and participating in promotional events around the County. MCBC members were paid hourly (up to \$75 per hour) and reimbursed for all associated expenses.

Similar to the situation at Marin County, the vast majority of the payments did not show up anywhere in the TAM Annual Budget as being paid to MCBC, where the general public would be made aware of these expenditures. The majority of the MCBC payments were made through an intermediary, pass-through contractual relationship with Parisi Associates (copies of all MCBC billings to TAM are available upon request).

We did not have time to fully investigate the nature of all the contracts and activities between MCBC and TAM. However, the reason we bring this up is that there is clear evidence that Marin County officials were well aware of this potential duplication of ‘services’ and payments.

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<sup>24</sup> In and of itself that amount is not extraordinary: The Marin Economic Council received close to \$2 million during that time.

<sup>25</sup> Exhibit 09 09 29 09 MCBC Community Service Fund Grant

<sup>26</sup> Exhibit 08 09 23 09\_Marin County-MCBC--Approval of Contract for Services 40k

In fact, CVP's submission of a Public Records Act request to TAM was only undertaken because our Marin County PRA produced a number of TAM internal accounting documents noting these TAM contracts and payments to MCBC. This evidence of awareness of MCBC's service contracts with TAM, by our County Supervisors and our County Administrator, apparently did not diminish their zeal to fund everything MCBC requested of them, every year.

On being questioned about this, the County's legal representative said they had no idea why those documents were in the possession of County Supervisors and the County Administrator.

### SECTION III – DISCUSSION & SUPPORTING EVIDENCE

**1. Lack of public process or criteria:** Marin County has had no discernible methodology, logical process, or predetermined criteria or guidelines for selection of contract awards and made no credible distinction between payments for services or gifts of funds to nonprofit organizations.

As previously stated and as admitted by the County, the County has no formal process in place for third-party, nonprofit organizations to apply for community service contracts. This is because the County does not determine the need for the services, rather it is the recipients that propose the scope of work they want to be paid to do. After almost a year of reviewing County documents and records, in March of 2019, we asked County Administrator Matthew Hymel the following questions regarding County procedures:

“Are there formal procedures that your office/the County uses to receive or process proposals for services received from outside, third-party organizations/ service providers that are seeking to obtain contracts? If so, what are they and are those instructions available to the public?”

Mr. Hymel responded,

*We have a formal, on-line application process for the community services grants and public hearings to allocate the community services grants two times each year. Many service requests are directed to the relevant County departments for review in their respective budgets. Since some services do not fit neatly into one departmental budget, we do have a non-departmental budget for services contracts that have a countywide benefit. For example, the Marin Conservation District, Marin Economic Forum and the Marin Promise partnership has been funded in the non-departmental budget for several years.*

This response is quite strange on a number of levels. Mr. Hymel was well aware that we were one year into our investigation and that our questions were *specifically* about the “Community Service Contracts Program,” *not* the online “Community Service Grants Fund.” Yet, he cannot seem to help himself from conflating the two, which evidences the comingling of these programs in his mind, by lumping both together, indistinguishably, in his answer. It is either that or he is intentionally trying to avoid our question.

In addition, his claim that these funds are for “partnership” arrangements is nonsensical. There is absolutely no evidence that any of the community service contract agreements have been “partnerships” in the legal sense of the word. None of the agencies that are funded by ‘contracts’ are any different from the ones funded by ‘grants,’ other than the grants program now has a \$10,000 cap and a one time limit since the so-called ‘reforms’ of 2016.

One cannot escape the feeling that when communicating with county officials they are either completely ignorant of the actual, legal meaning of the terminology they use, or they are just in the habit of throwing out important sounding words in the hopes that it will continue to obfuscate their behavior and satisfy an ignorant public.

I followed up his response by saying,

“I am not asking about the community service grants program or its process, which is for “one time grants of under \$10,000.” I am only asking about contracts for services. Is there an application form for service contracts, similar to the form available to apply for community service grants? If so, can you please provide me a copy?”

My Hymel finally responded,

*There is not an application form for these service contracts.* [Emphasis added]

We then asked,

“What are the procedures your office uses to receive and process annual “recommendation” lists or “suggestions” from County supervisors, regarding which organizations should be offered contracts for their services?”

Mr. Hymel responded,

*We receive budget requests from a number of sources, including departments and non-profit organizations during the **budget preparation season**. During the budget season, Supervisors will often express support for various initiatives and organizations at public meetings such as our spring budget workshops.* [Emphasis added]

This answer does not correlate with the facts. In reviewing email correspondence, we found no “season” related to when and how Supervisors made “recommendations”-- which consisted of lobbying behind the scenes and lists of organizations and amounts to be given, sometimes years in advance.

We followed up again by asking,

“Why is the breakdown of annual service contracts (which we’ve asked the County Counsel’s office to provide but have not yet received) not available to the general public in the County’s annual budget publications? This omission has been confirmed to us by the County Counsel, who was also unable to find any specific information regarding

specific amounts, dates or terms of any community service contracts in any published annual budget materials.”

Mr. Hymel responded,

*There is no formal document that lists in one place the various annual service contracts awarded. However, my office keeps a running list of these annual service contracts for internal purposes and will release it along with the other documents you have requested pursuant to the Public Records Act. [Emphasis added]*

Mr. Hymel’s claim of keeping a record turned out to be questionable. In fact, as confirmed to us by the Office of the Marin County Counsel, his office was unable to provide *any record whatsoever for 3 out of the past 15 years* of spending, with file copies of ‘contracts’ missing in many cases.

When asked about this, Deputy County Counsel Sarah Anker replied,

*The lack of lists for FY 05-06, 08-09 and 09-10 was not meant to imply that there were no contracts those years. Mr. Hymel’s office does not have lists for those years.*

We then asked Mr. Hymel,

“Have any of the services provided by any of the recipients of these contract for services (including MBCB and all others) been subject to publicly noticed Request for Proposals, or any other form of public competitive bidding, since 2005?”

Mr. Hymel responded,

*As stated previously, the community services program is a competitive grant program. Other professional services contracts are executed consistent with Government Code 31000 and based on a variety of factors, including past performance and anticipated public benefits the services provider will provide to the County. [Emphasis added]*

This response is non-responsive and again nonsensical. Once again, we are clearly asking about the “contracts” program, yet Mr. Hymel continues to respond about the “grants program,” which contradicts his own claim that the ‘grants’ program and the ‘contracts’ program are separate. Also, our question was about “competitive bidding” for *contracts* and he responds by explaining the online “competition” for grants. It is no wonder the county staff, the public, and the grants recipients themselves don’t know the difference between a contract and a grant.

In the end, after repeated requests, Mr. Hymel failed to directly answer any of our questions and failed produce any evidence of funding guidelines or performance criteria or any other kinds of formal rules or procedures that the County followed or that are made available to the general public, or any evidence to show that the payments made to organizations under ‘contract’ were anything but grants of general support funds.

**2. Irregular accounting practices:** The accounting of the sources of the funding paid to nonprofit organizations under the guise of “service contracts” is unavailable to the public and is so complex that even the County Counsel’s office was unable to decipher it.

On January 4, 2019, in response to our repeated questioning about where the funds for these millions of dollars of contracts were coming from, Sarah Anker of the Office of the County Counsel wrote,

*As I had mentioned to you on the phone, there are different sub-programs within the Non-Departmental budget that community service professional services contracts are funded through, including: (1) Countywide Operations, and (2) Community Services Program.*

*The Proposed Budget document does not distinguish these specific subprograms as the county budget is allocated at the program level, not the sub-program level. All of the money that is provided through these sub-programs comes from the general fund.*  
[Emphasis added]

The Office of the County Counsel also confirmed to us that there was no record of what budget line item or what agency each contract had been paid out of, only that they were all shown as a part of the lump sum of expenses under “Community Services.” On its face, this fails to comply with any normally accepted accounting practices.

**3. Charitable gifts mischaracterized as contracts:** The activities included as “services” in contacts with private nonprofit organizations were virtually identical to the organization’s mission and their ongoing activities and initiatives, which would have been undertaken or were already being undertaken by those organizations whether or not they received a “contract” to do so, year after year. This is the very definition of a “grant of funds for general support.”

Consider the following comparisons of the stated missions and activities of some of the nonprofit recipients of community service contracts and the description of services found in their contract agreements.

#### The California Film Institute

Its website currently says,

*The Christopher B. Smith Rafael Film Center “exhibits independent documentary and narrative films, classics, retrospectives, features, international works and hosts special events with filmmakers from around the world year-round.” CFI offers “educational programs, 100 free annual screenings for school groups and their families, filmmaking workshops and a year-long cinema appreciation curriculum, CFI Education touches the lives of over 6,500 children annually through a broad range of activities”*

*The Mill Valley Film Festival screens “over 200 innovative US and international films for over 60,000 film lovers. MVFF has established an impressive track record for launching new films and new filmmakers, and has earned a reputation as a filmmakers’*

*festival by offering a high-profile, prestigious, non-competitive environment for celebrating the best in independent and world cinema.”*

The 2018 CFI community service contract says,<sup>27</sup>

*One-time funds will be used to partially support the California Film Institute's (CFI) core programs: the Christopher B. Smith Rafael Film Center which provides the community with access to premieres, informative documentaries, and renowned programming for children and families; CFI Education which offers free arts education programs to 8,000 students ages 13-18 and their teachers; the Mill Valley Film Festival offering audiences an opportunity to see small-budget films from around the world that may not be released in mainstream theaters; the DocLands Documentary Film Festival launched in May 2017 to showcase nonfiction films in a variety of genres and with diverse content; and CFI Releasing, a developing national nonprofit film distribution initiative.*

Other than semantics, these descriptions are virtually identical. This is primarily due to the fact that the nonprofit organizations wrote the descriptions of services that appeared in their contracts, themselves, which were then communicated to the County in unsolicited “proposals” that they submitted when they wanted funding.

Please also note that the phrase “One-time funds” appears on every CFI ‘contract’ for every year they have been funded. And the contract’s “scope of work” is also identical year after year as is often the total amount funded. Finally, like all of the other recipient’s ‘contracts,’ this one only asks that the recipient self-report the outcomes.

### Wildcare

Its website currently says,

*WildCare’s mission is to advocate for wildlife for a sustainable world, and we actively pursue this mission through nature education, wildlife medicine, advocacy and community outreach.*

The 2018 Wildcare community service contract says,<sup>28</sup>

*Funds will be used to partially offset the costs of WildCare programs and services, which provide critical wildlife treatment and environmental education services In Marin County.*

Again, other than semantics, the organization’s mission description and the contract’s scope of work is virtually identical and appear, unchanged, on every Wildcare ‘contract’ for every year they have been funded, year after year, as is mostly also true for the total amount funded.

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<sup>27</sup> Exhibit 18 09 27 18\_2018 ND California Film Institute

<sup>28</sup> Exhibit 18 04 09 18\_2018 ND WildCare

Note that in both of these cases the scope of work is extremely broad and open-ended to the point that the recipient can pretty much do anything they want within their nonprofit “mission.” This definition of “scope of work” is unheard of in the world of contracts, but is very common for general support philanthropic grants.

### MCBC

The scope of services in the MCBC contracts appear more complex on the surface but are equally broad and essentially unchanged year after year. For example, in his June 10, 2006 letter of recommendation for approval of the contract for services between the County of Marin and the Marin County Bicycle Coalition (“MCBC”), County Administrator Matthew Hymel writes,

*This agreement will provide \$40,000 for program support of the Marin County Bicycle Coalition to: 1) Identify grant opportunities for the County to pursue funding for pedestrian and bicycle projects; 2) Assist and support County goals identified in the Marin County Pedestrian and Bicycle Master Plan and; 3) Partner with the County on infrastructure projects that benefit the unincorporated areas of the County.<sup>29</sup>*

This essentially matches what MCBC’s request letter stated.

On July 11, 2007, MCBC’s request changes the format and embellishes slightly and so Hymel writes,<sup>30</sup>

*This agreement will provide \$40,000 to support the programs of the Marin County Bicycle Coalition (MCBC), a non-profit organization. Services to be provided for the benefit of Marin residents include, but are not limited to the following:*

- 1) Assistance and support to the County goals and projects identified in the Marin County Pedestrian and Bicycle Master Plan;*
- 2) Project Funding: identifying grant opportunities for the County to pursue for funding pedestrian and bicycle projects. Generating data for use in grant applications. Assisting the County in writing grant applications. Writing letters of support for capital grant projects;*
- 3) MCBC's partnership with the County of Marin to work on infrastructure projects that benefit the unincorporated areas of Marin County, provides increased safety for bicycling by local residents and visitors, and ensures that cyclist input is included in the design of the facilities.*

On September 9, 2008, MCBC adds MCBC’s basic mission / marketing materials and rewords the format slightly, so Hymel writes,<sup>31</sup>

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<sup>29</sup> Exhibit 06 10 10 06\_Hymel -- BOS to MCBC contract 40k

<sup>30</sup> Exhibit 07 11 20 07\_Hymel--BOS to MCBC contract 40k

<sup>31</sup> Exhibit 08 09 23 08\_Hymel -- BOS to MCBC contract 40k

*This agreement will provide funds in the amount of \$40,000 to support the programs of the Marin County Bicycle Coalition (MCBC). MCBC continues to improve local transportation facilities resulting in the reduction of congestion, greenhouse gas emissions and other air/water pollution, increasing mobility, improving health, and maximizing efficient use of the current roadway network. It has helped to increase bicycling in Marin 66% since 1999. For the past several years, MCBC has helped the County of Marin implement bicycling projects in the County's unincorporated areas in two ways:*

*Marin County Pedestrian and Bicycle Master Plan will assist in the design of bicycle and pedestrian facilities; serve on Technical Advisory Committees for County infrastructure projects; and comment on technical documents to ensure implementation of safe and functional designs for bicyclists and pedestrians*

*Project Funding will identify grant opportunities for the County to pursue the fund pedestrian and bicycle projects; generate data for use in grant applications; assist the County in writing grant applications; and write letters of support for capital grant projects.*

The September 29, 2009 letter has similar minor rewording changes.<sup>32</sup>

*This agreement will provide \$40,000 to support the programs of the Marin County Bicycle Coalition (MCBC). MCBC continues to improve local transportation facilities resulting in the reduction of congestion, greenhouse gas emissions and other air/water pollution, increasing mobility, improving health and maximizing efficient use of the current roadway network. It has helped to increase bicycling in Marin 66% since 1999. For the past several years, MCBC has helped the County of Marin implement bicycling projects in the County's unincorporated areas and is now defined in the following three ways:*

- 1) Bicycle and Pedestrian Design: provide technical assistance on project design related to bicycle and pedestrian facilities for consideration or under construction as part of Marin County Bicycle and Pedestrian Master Plan;*
- 2) Coordination with Other Agencies: help to facilitate one-on-one and multi-agency discussions that will result in the study of, design, funding, and implementation of bicycle and pedestrian facilities included in the Marin County Bicycle and Pedestrian Master Plan;*
- 3) Leveraging Additional Funding: assist with the identification and acquisition of project funding, and help ensure the availability and retention of allocated project funding.*

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<sup>32</sup> Exhibit 09 09 29 09\_Hymel --BOS to MCBC contract 40k



This pattern by MCBC of ‘writing their own ticket’ repeats itself year after year. On August of 2010, Kim Baenisch, Executive Director of MCBC, writes to the Office of the County Administrator requesting a contract for services that mimics the past contracts.<sup>33</sup>

*The Marin County Bicycle Coalition (MCBC) is writing to request a \$35,000 contract for the 2010-11 fiscal year, as a result of the Board of Supervisors' approval of their 2010-11 fiscal year budget at their July meeting... Our countywide work occurs in the following three ways: [Emphasis added]*

- *Bicycle and Pedestrian Design - provide technical assistance on project design related to bicycle and pedestrian facilities for consideration or under construction as part of the Marin County Bicycle and Pedestrian Master Plan.*
- *Coordination with Other Agencies - help to facilitate one-on-one and multi-agency discussions that will result in the study of, design, funding, and implementation of bicycle and pedestrian facilities included in the Marin County Bicycle and Pedestrian Master Plan.*
- *Leveraging Additional Funding - assist with the identification and acquisition of project funding, and help ensure the availability and retention of allocated project funding.*

The County then copied and pasted this “scope of work” into its ‘contract.’ The evidence shows this was the method used by almost all nonprofit recipients of funding (gifts). They created their own proposals for services, proposed their own scope of work, submitted that to the County as a “request” for a “contract” and payment, and were then “hired” at the discretion of the County Administrator: a process that was guided by “suggestions” from individual County Supervisors.

In the case of MCBC, email correspondence and other evidence suggest that MCBC contract’s contents were generated by MCBC and / or resulted during private discussions with the County Administrator or a County Supervisor, without a transparent or competitive public process as would typically be the case for contracts for services.<sup>34</sup>

**4. Lack of public disclosure:** The existence of these contracts for services and payments to private, third-party organizations have been concealed from the public to the fullest extent possible.

When the Marin County Grand Jury examined the operations and practices of the County’s *Community Service Fund* in 2001 and 2013, this parallel operation of entering into Community Service Contracts escaped their scrutiny. However, the Grand Jury may be forgiven their oversight, because as explained above, unlike the Community Service Grants Fund, the distribution of these funds is not specifically disclosed or documented in any of the County’s Annual Budgets or on the County’s website.

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<sup>33</sup> Exhibit 10 08 23 10\_MCBC request for 35k

<sup>34</sup> Exhibit 14 03 18 14\_Sears-Hymel -- Sears Funding List

These expenditures were not even noted in a separate budget spending category. Instead, they have been included within a catch-all line budget category called, “Community Services.” It is, therefore, unlikely that these expenditures would even have been discovered by an independent accountant unless they were specifically directed to look for them.

There is also evidence that following the public scrutiny of the Community Service Contracts funding in 2016, the County started to off-load costs by having agreements shifted to other County (budget line item) agencies. For example, MCBC contracts for services started to be with the Department of Public Works (DPW) instead of coming out of general funds. Correspondence shows that this practice had been used in the past by Supervisor Kinsey, to “find funding” for his pet projects.

**5. Circumventing Grand Jury criticism:** The “community service contracts” funding scheme allowed the County circumvent its own rules regarding grants of funding to nonprofit organizations, following the criticism by the Marin County Civil Grand Jury.

The projects, initiatives, and services funded through the award of contracts for services are virtually identical to those that have historically been funded by the Community Service Grants Fund program (i.e., to further the initiatives and programs local nonprofit organizations are undertaking of their own volition). However, because they have been categorized as “contracts for services” instead of gifts, they have been able to exceed the “slush fund’s” stipulated \$10,000, one-time funding limit and could continue to be granted on a purely discretionary basis up to \$50,000, annually without limits.

**6. Arbitrary funding amounts:** The amounts of these ‘contracts’ were arbitrary and simply reflected the amounts the “applicant” requested, untested by any actual cost analysis or comparisons to market rates for the proposed services.

After reviewing hundreds of documents, records, emails, and correspondence we found no evidence whatsoever that the amounts of the contracts between Marin County and MCBC were based on any type of cost analysis, bidding, or other kind of cost breakdown / estimating methodology. The amounts appear to be solely derived from unsubstantiated, large round numbers (e.g., \$30,000, \$40,000, \$50,000, etc.) found in the “requests” submitted by MCBC.

**7. Failure to separate public and private interests:** Over the past decade MCBC’s role has become increasingly integrated into the workings of County business.

What one can see from the wording of the agreements in #3 above and from other evidence we’ve reviewed is that MCBC’s role over time became more and more integrated within the staffing structure of the County.

It is very curious why our highly-compensated county staff needs any outside help from MCBC to “facilitate one-on-one and multi-agency discussions that will result in the study of, design, funding, and implementation of bicycle and pedestrian facilities included in the Marin County Bicycle and Pedestrian Master Plan.” Certainly, the County has adequate staff for that and no

one at MCBC has any technical design or engineering credentials that add any value to the County's work.

This 'too close' relationship has woven its way into many County activities related to parks, open space, and public access and management issues, to the point that MCBC has essentially been acting as staff or as a Supervisor's personal assistant.

For example, in anticipation of County officials, including Supervisor Sears, meeting with the Scott's Valley Homeowners Association, in the County's push to "sell" the public on the benefits of opening the Bob Middagh Trail to mountain biking, on March 29, 2016, Tom Boss, the Off Roads and Events Director at MCBC writes to Kate Sears to ask,<sup>35</sup>

*Hi Kate,  
Did you want to take the lead on setting up a meeting of Scott Valley residents to discuss the Bob Middagh trail?  
Thanks, Tom*

We see this kind of assumption of county staff duties by MCBC staff as a common occurrence.

**8. Lobbying and political influence:** The process used by the County of Marin to engage in contracts for services with third-party organizations was influenced by lobbying, political access, and the personal preferences of individual staff members and County Supervisors rather than being based on their merits or the interests of Marin County taxpayers.

The following is a typical example of this. On March 27, 2014, Kim Baenisch, Executive Director of MCBC sent this letter to Supervisor Kate Sears, which.<sup>36</sup>

*The Marin County Bicycle Coalition (MCBC) is writing to request a \$30,000 contract with the County of Marin for the 2014-15 fiscal year. Our work with the County has annually required additional Community Service Funds, so this year's contract request reflects a total of the essential funding to complete our basic contractual work. MCBC has been an instrumental County of Marin consultant for the past several years, helping implement the Marin County Bicycle and Pedestrian Master Plan.*

*Our countywide work occurs in the following three ways:*

- Bicycle and Pedestrian Design - Provide technical assistance on project design related to County roadway and bicycle and pedestrian facilities as part of helping to implement the Marin County Bicycle and Pedestrian Master Plan.*
- Coordination with OUIer Agencies - Facilitate one-on-one and multiagency coordination to support the study of, design, funding, and implementation of bicycle and pedestrian facilities included in the Marin County Bicycle and Pedestrian Master Plan.*

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<sup>35</sup> Exhibit 16 03 29 16\_Boss-Sears--County Alto Bowl Meeting

<sup>36</sup> Exhibit 14 03 27 14\_MCBC-Sears--30k contract request

- *Leveraging Additional Funding - Assist with the identification and acquisition of project funding, and help ensure the availability and retention of allocated project funding.*

Curiously, Kate Sears had created a funding list that included that \$30,000 payment to MCBC, weeks before, which she'd sent to Matthew Hymel to recommend the funding of \$30,000 to MCBC through a 'service contract.' It appears then that Sears and MCBC had already agreed on their strategy and contract amount, so MCBC's request letter was just to backfill the file.<sup>37</sup> It is also not a coincidence that the wording in this proposal subsequently became the scope of work described in the actual contract.

It is obvious from the record of the evidence that Supervisor Sears has played a central role in directing funding in the form of contracts, at her discretion, to recipients. Consider this thread between Jenny Choi, Management and Budget Analyst, County of Marin, and Leslie Alden, assistant to Supervisor Sears.<sup>38</sup>

On March 10, 2015, Jenny Choi writes,

*Here's what I had on Kate's set-aside memo for 14-15. I added the rollovers below. Those agencies never got their requests in. Let me know if you want to discuss further.*

The same day, Leslie Alden responds, saying,

*Jenny, these look like carry-overs from FY 13-14 – and **I contacted all of them and told them to submit letters requesting the funds.** Are you telling me that none of them did? This seems unlikely, but I suppose it's possible. **Before I go back to any of them – or to Kate to see if she wants to redirect unrequested/unused funds,** I thought I'd better double back to you and make sure we're all on the same page. [Emphasis added]*

This is a remarkable exchange for several reasons. First, because it is an admission that Kate Sears was directing funding at a very specific level and in personally targeted ways, and secondly because it indicates the proposal letters submitted by the funding recipients were after the decision was made by Supervisor Sears to fund them. Not only is this a completely opaque process, but it can only happen in a grants-giving situation. It would be unheard of in a competitive contract bidding situation.

Or, consider this exchange between Kate Sears and her staff, who are obviously having a side conversation (for approval) with officers of MCBC.

On April 19, 2012, Sears pings her staff, saying,

*I think I requested \$30,000 for MCBC, perhaps I should cut it back to \$25,000 . . .*

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<sup>37</sup> Exhibit 14 03 27 14\_MCBC-Sears-Hymel--2014-2015 funding list

<sup>38</sup> Exhibit 15 03 10 15\_Alden-Choi--Sears funding priorities and carryovers

Leslie Alden writes back,

*Sure! \$25 K sounds like it'd make them happy.*

We must ask ourselves, does this honestly sound like a contractual negotiation? Obviously not. But this discretionary funding relationship has been in place for a long time. Supervisors have long weighed-in and made sure that MCBC and others got what they were promised.

On November 10, 2015, Supervisor Arnold did just that when she wrote to Matthew Hymel to ask,<sup>39</sup>

*Matthew,  
Have we given the bike people their \$40 000 yet?*

Notice that she says, have we “given” them “their \$40,000” yet, not ‘have we *paid* them the money we owe’ or ‘made the payment on their contract,’ or other such phrases that might typically be used in describing payments for work on contract.

Or consider that on August 4, 2010, Kim Baenisch wrote the following to Supervisor Charles McGlashan, Kate Sears’ predecessor,<sup>40</sup>

*Charles,  
  
I understand that the County finished its budget hearings last week so I wanted to check with you on **what amount you were able to suggest for MCBC's contract** for the new fiscal year. Thank you **for making this ask** on our behalf - we are very grateful for it.  
Kim*

Again, does this sound like a competitive negotiation? Why would she be thanking him for “making this ask” on behalf of MCBC? An “ask” is a term commonly used in nonprofit grants giving. In a contractual situation, one might say something like, “for endorsing our bid.”

More remarkably, McGlashan responds as if he’s the one paying them and says,

*Hi Kim,  
  
I'll have the check when back at the office on Monday (Or, Maureen can you ask Mathew to confirm my recollection? - he has a copy of my memo). I recall it being \$30K or \$35K. I think this will result in a loss from last year since I won't be able to back fill much of anything from the D3 account as this was cut significantly this year too.*

--C

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<sup>39</sup> Exhibit 15 11 20 15\_Arnold-Hymel - 40k

<sup>40</sup> Exhibit 10 08 04 10 - McGlashan-Baenisch MCBC County contract amount

We wish we had the opportunity to inquire what “back fill much of it from the D3 account” means.

Similarly, the hands-on assistance from County Supervisors in crafting of MCBC’s so-called contracts, smacks of favoritism and shows how MCBC benefitted from ongoing insider access. MCBC, more than most other ‘contract’ (grant) recipients under the community service contracts program, seem to have enjoyed special access to county staff and all the County Supervisors. Some examples are as follows:

On February 1, 2017, Jim Elias, Executive Director of MCBC wrote to Supervisor Sears about a meeting they subsequently took, saying,<sup>41</sup>

*Hi Kate & Maureen (Parton),*

*I was hoping that we could schedule a meeting with Kate in the coming weeks. Tom Boss, Policy and Planning Director Bjorn Gripenburg and I would like to learn more about Kate's direction for 2017, and discuss MCBC's ambitions for the year. Perhaps you could suggest a few possible times when you'd be available.*

*Best, Jim  
Jim Elias, Executive Director  
Marin County Bicycle Coalition*

Similarly, on February 21, 2017, he followed up after a meeting with Supervisor Damon Connolly about the proposals MCBC were going to submit to the County for funding, saying,

*Damon & Chris,*

*Thanks again for a productive session this morning. Following talking with you guys, we ran into Katie Rice and briefly discussed MCBC's county contract with her. She filled me in on some things that informed my thinking about next steps. Rather than scheduling another meeting now, we'll work through our proposal a bit more, then get back to you. I really appreciate your support on this.*

*Best, Jim*

Again, we question how many other organizations enjoy such close coaching and guidance from our County Supervisors, who are elected to represent all our interests. This series of conversations that Mr. Elias had in early 2017 also begins to smack of seriatim-like meetings<sup>42</sup> between elected officials, by means of knowingly using an intermediary.

Equally interesting is that although Supervisor Connolly is well-known to be a huge MCBC supporter, in response to our PRAs, he responded by essentially contending that in his entire

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<sup>41</sup> Exhibit 17 02 01 17\_Elias-Multiple--MCBC-Sears discussions

<sup>42</sup> Exhibit 17 02 21 17\_Elias-Multiple--Seriatim like County meetings

tenure as a county official, *he had only one email, text or other types of correspondence or written communications with MCBC or any of its officers or members.*

This claim defies credulity.

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