



**AGENDA
COMMUNITY ADVISORY COMMITTEE MEETING
TUESDAY, July 24, 2018
1:00 PM**

50 Santa Rosa Avenue, Fifth Floor, Santa Rosa, California

- I. CALL TO ORDER**
- II. PUBLIC COMMENT ON MATTERS NOT LISTED ON THE AGENDA**

(Comments are restricted to matters within the Committee jurisdiction. The Committee will hear public comments at this time for up to thirty minutes. Please be brief and limit comments to three minutes.)
- III. COMMUNITY ADVISORY COMMITTEE CONSENT CALENDAR**
 - 1. Approve minutes from the June 25, 2018 meeting
- IV. COMMUNITY ADVISORY COMMITTEE REGULAR CALENDAR**
 - 2. Receive operations report and provide input as appropriate
 - 3. Receive legislative and regulatory updates and provide input as appropriate.
 - 4. Review and recommend contract with EHDD for Architectural and Engineering services.
 - 5. Review and recommend lease agreement between SCP and Kushins & Langendorf for office space for The Energy Marketplace
 - 6. Review and recommend contract between SCP and the Sonoma County Water Agency for energy education programs.
 - 7. Review and provide feedback on the draft 2018 Integrated Resource Plan.

V. COMMITTEE MEMBER ANNOUNCEMENTS

VI. ADJOURN

DISABLED ACCOMMODATION: If you have a disability which requires an accommodation, an alternative format, or requires another person to assist you while attending this meeting, please contact the Clerk of the Board at (707) 978-3467, as soon as possible to ensure arrangements for accommodation.

COMMONLY USED ACRONYMS/TERMS TO KNOW

CAC	Community Advisory Committee
CAISO	California Independent Systems Operator
CAM	Cost Allocation Mechanism
CCA	Community Choice Aggregation
CEC	California Energy Commission
CleanStart	SCP's default electric service
CPUC	California Public Utility Commission
DER	Distributed Energy Resource
ERRA	Energy Resource Recovery Account
EverGreen	SCP's 100% renewable, 100% local energy service
Geothermal	A locally-available, low-carbon baseload renewable resource
GHG	Greenhouse gas
GRC	General Rate Case
IOU	Investor Owned Utility (e.g., PG&E)
IRP	Integrated Resource Plan
JPA	Joint Powers Authority
MW	Megawatt (Power = how fast energy is being used at one moment)
MWh	Megawatt-hour (Energy = how much energy is used over time)
NEM	Net Energy Metering
NetGreen	SCP's net energy metering program which gives its customers financial credit for generating electricity.
PCIA	Power Charge Indifference Adjustment (<i>This fee is intended to ensure that customers who switch to SCP pay for certain costs related to energy commitments made by PG&E prior to their switch.</i>)
ProFIT	SCP's "Feed in Tariff" program for larger local renewable energy producers
PV	Photovoltaics for making electric energy from sunlight
REC	Renewable Energy Credit - used to track all renewable energy for compliance in California.
SCP	Sonoma Clean Power
TOU	Time of Use, used to refer to rates that differ by time of day and by season



**MINUTES
COMMUNITY ADVISORY COMMITTEE MEETING
Monday, June 25, 2018**

50 Santa Rosa Avenue, Fifth Floor, Santa Rosa, California

I. CALL TO ORDER

The meeting was called to order by Chair Dowd at 1:01 P.M.

Committee Members Present: Quinlan, Chaban, Baldwin, Mattinson, Dowd, Brophy, Nicholls, and Como

Staff Present: Geof Syphers, Chief Executive Office and Stephanie Reynolds, Director of Internal Operations

II. PUBLIC COMMENT ON ITEMS NOT LISTED ON THE AGENDA

CM Mattinson requested viewing the draft minutes earlier, especially prior to Board meetings where a CAC recommendation is to be presented.

III. COMMUNITY ADVISORY COMMITTEE REGULAR CALENDAR

1. Review and approve the May 24, 2018 CAC meeting minutes.

Public Comment: None

Motion to approve the May 24, 2018 meeting minutes by CM Nicholls.

Seconded: CM Brophy

Motion approved: 6-0-2 (Mattinson, Baldwin abstaining)

2. Receive Operations Report

Stephanie Reynolds, Director of Internal Operations, introduced new Programs Intern Clayton Hutcheson. She announced Jessica Mullan as the new General Counsel for SCP.

The annual PGE - SCP Joint-rate mailer was mailed out to residents and businesses in SCP's service territory. Copies of the mailers were

provided for review. It was noted that the numbers presented for EverGreen did not show any solar, but 100% geothermal energy because the ProFIT projects in Petaluma did not begin producing solar energy for SCP until 2018.

SCP closed escrow on the office building at 431 E Street and are currently in the process of reviewing Requests for Qualifications (RFQ) for architectural and engineering design services.

CM Quinlan asked about the mechanism for paying for the building. CEO Syphers stated SCP is using current fiscal year income to pay for the building in full without a loan. Budget adjustment for the expenditure was approved by the Board at the June meeting.

Director Reynolds stated SCP's e-newsletter, Clean Power Quarterly, was recently updated and distributed. The \$1 million in wildfire recovery donations distributed by the SCP Board Ad Hoc Committee have been completed and recipients will be reported at the next meeting. Drive EV 3.0 will be launching August 1. Contracts with dealerships are still being finalized. At the July 12th board meeting, the SCP brand update will be released. The Sonoma County Water Agency education program has ended, along with the school year. The response to the program is very positive and SCP anticipates continuing the program into the next school year. Annual NEM cash outs for SCP customers has been completed with over \$638,000 paid back to customers this year and over \$2 million since 2015 when the program began.

CM Wells arrived at 1:16 PM

Director Reynolds stated SCP is in the process of leasing a storefront property in downtown Santa Rosa for the Energy Storefront which is one of the primary projects funded by the CEC Lead Locally grant.

CEO Syphers stated students from the Mike Hauser Academy came to our office for two days. The upcoming 9th grade students learned about what SCP does, what types of jobs are available in the energy field and did energy-related lessons.

An updated Strategic Action Plan (SAP) for SCP Programs was provided. SCP Syphers clarified the difference between the SAP, which is a program planning document, and the Integrated Resource Plan (IRP), which is a comprehensive planning document including power supply and reliability.

CEO Syphers also updated the committee on legislative issues, including: SB1088, SB 237, SB 100 and AB 813. CM Brophy asked about oppositions from CCAs for AB 813. CEO Syphers stated that no CCA has opposed, 4 have not taken a position and CalCCA has taken a support position.

Chair Dowd asked if CalCCA opposes SB 237. CEO Syphers stated that CCAs are concerned, but that TURN is leading the opposition.

CM Como asked for clarification on how CalCCA represents all 18 CCAs positions. CEO Syphers stated that CalCCA bylaws are such that the trade association's positions do not necessarily represent the positions of any specific member.

Chair Dowd stated strong support for Mike Hauser Academy.

Public Comment: None

3. Review and recommend contract between Electric Motor Werks and SCP for residential EV charger program

Programs Manager Rachel Kuykendall introduced a contract extension for administration of the EV charger program. Changes to the contract include limitations that will help avoid abuse of the program, including a limit of one charger per customer, unless approved by SCP Programs Director and paying 50% of the cost of the charger up front and the other 50% after the charger is installed in the SCP service territory.

CM Chaban asked how chargers are tracked. PM Kuykendall responded that chargers have an identifying number that can be tracked once connected to Wi-Fi.

CM Como asked about installation cost and shortage of contractors. PM Kuykendall stated installation costs vary widely because of different scenarios. On the SCP website, there is a reference list from the County of licensed electrical contractors. Staff has not been hearing comments on a shortage of electricians.

CM Mattinson asked how the shift of incentive will work. PM Kuykendall stated that it would be 50/50 split to ensure they get activated, customer pays half the price upfront and the other half will be credited back once activated.

CM Quinlan asked anticipated impact on deterring people from getting chargers. PM Kuykendall stated that was discussed and why staff agreed that half of the costs up front was appropriate.

CM Chaban asked about incentives for activation. PM Kuykendall stated that incentives are available through GridSavvy. CM Mattinson asked if GridSavvy has started implementing demand response. PM Kuykendall stated that in about a month we should be able to dispatch to customers, Olivine is currently testing process.

Public Comment:

Mike Turgeon, EverGreen Customer, asked for clarification on dispatch through GridSavvy and success. PM Kuykendall stated that GridSavvy allows for control when chargers are being used to balance out energy peaks and valleys on the grid. About 350 customers are ready to be deployed.

Chris Mayra, SCP Customer, expressed worry towards success of programs because of Trump administration. PM Kuykendall stated that SCP programs are doing really well.

CM Brophy asked about rationale of flat rate for consultant in the contract. PM Kuykendall responded that the equipment is incentivized separately and there is a flat rate for eMotorWerks for technical assistance, \$70,000 goes towards the chargers and \$45,000 to eMotorWerks for program implementation.

CM Chaban stated that his biggest confusion was getting an email from GridSavvy instead of SCP because it seemed like a phishing email. PM Kuykendall explained the current process and welcomes any recommendations.

Motion to approve recommendation for contract between Electric MotorWerks and SCP for residential EV charger program by CM Mattinson

Second: CM Nicholls

Motion approved: 9-0-0

IV. COMMITTEE MEMBER ANNOUNCEMENTS

Chair Dowd wished everyone a happy 4th of July.

V. ADJOURNMENT by Chair Dowd at 2:05 P.M.

Respectfully Submitted,

Stephanie Reynolds
Director of Internal Operations



Staff Report – Item 02

To: Sonoma Clean Power Authority Community Advisory Committee
From: Stephanie Reynolds, Director of Internal Operations
Geof Syphers, CEO
Issue: Receive Operations Report
Date: July 24, 2018

TEAM MEMBER UPDATE

We have formally welcomed new General Counsel Jessica Mullan. Jessica will be a full-time employee and has the benefit of an extended orientation with Steve Shupe, who will be working on an as-needed basis.

BRAND REFINEMENT UPDATE

Some CAC members attended the brand presentation at the last board meeting. For the benefit of the rest of the CAC and public, a brief update is also provided here.

After more than four years of serving customers, SCP has updated its initial brand story and identity. SCP retained a local advertising agency to assist us with evolving our brand identity and messaging, to better reflect the Agency SCP is today. SCP has moved beyond being “just” an electricity provider, and has accepted the community’s desire to focus on fighting climate change by reducing greenhouse gas emissions through programs related transportation, building heating, etc.

Our updated brand identity was developed:

- in part, in response to feedback that the public lacked clarity about who we are/what we do
- to better reflect our service territory, which now includes Mendocino County

- to provide flexibility for us as we develop new programs going forward
- to clarify how what we do benefits customers in their everyday lives

Although we now serve Mendocino County, the Agency's name remains Sonoma Clean Power.

The updated logo mark was created to be simple, stand alone, and differentiate from the 17 other CCA logos. First impressions of it range from the feel of sun and water, movement, natural beauty and topography of our service territory, which includes the coast, mountains and the natural beauty and resources within Sonoma and Mendocino counties, a pencil, or veering from the path. Regardless of first impression, the plan is to gradually and steadily build the brand over time through telling our SCP story.

The Agency's website remains sonomacleanpower.org

The public will see a new logo mark and a new look/feel to our website, marketing messages and materials beginning August 1st.

431 E St UPDATE

Cordel Stillman is heading up the renovation work for the building to create a zero-carbon building that houses SCP's offices and board room, and also showcases deeply energy efficient and sustainable technology and practices. Eleven design teams provided qualifications on June 14. From those applicants, a shortlist of three teams were selected for in-person interviews, and EHDD's team was selected as the frontrunner to negotiate a final scope and budget. That contract will be discussed in further detail under Item #4.

As a project calendar is developed, a better estimate of the expected time for renovation will be provided. A preliminary estimate is approximately two years from the date a design team contract is executed.

CITIZENS' CLIMATE LOBBY PRESENTATION AT SCP

On July 12th, representatives from the Citizens' Climate Lobby presented information on a "Carbon Fee and Dividend" program. They are asking SCP's Board of Directors to pass a resolution supporting the program. Some of our member cities, Santa Rosa, Petaluma, and Cotati, have already passed similar resolutions. The SCP resolution will be agendized for the August Board of Directors meeting.

Staff believes that the efforts are consistent with SCP's adopted Legislative Platform Section 3:

Climate and Renewable Sources Support the decrease in use of fossil sources of electricity by all available means, including through increasing use of renewable energy in the Renewable Portfolio Standard, load management, storage and improved reliance on existing hydropower. Support accurate reporting and labeling of greenhouse gas emissions, and oppose efforts to mischaracterize emissions.

The Board asked staff to prepare a resolution in support of Carbon Fee and Dividend for consideration at the next board meeting.

PROGRAM UPDATES

ProFIT

On July 17, a ribbon-cutting ceremony and celebration was held at the Lavo Ranch in West Petaluma. This solar array came online and began providing clean energy to SCP customers in April of this year. SCP's Board Chair Dan Hamburg, as well as Petaluma Mayor David Glass were both present to thank Coldwell Solar and the SCP staff involved in making this project a success. SCP Board Alternate Dave King of Petaluma and representatives from Congressman Huffman's office as well as the offices of Senators Dodd and McGuire also attended.

A second ProFIT project was completed in Eastern Petaluma. Four other ProFIT projects are in development in Sonoma and Mendocino Counties.

Drive EverGreen 3.0

The Drive EV 3.0 program is on track to begin on August 1, 2018. We have entered into contracts with 6 dealers to provide discounts and apply SCP's incentive to purchases and leases. They include Ford, Chevrolet, Nissan, Kia, BMW and Chrysler. Promotional materials are being prepared and SCP staff will be attending many events as the program commences.

Energy Education Program

The Energy Education Program was, in staff's opinion, a rousing success. Over 10,000 students were reached by the various programs that were run in schools throughout Sonoma and Mendocino Counties.

A report on the program is available on SCP's website. A contract to continue the program for an additional two years is included in this month's Agenda as #6.

Do-It-Yourself Energy and Water Saving Toolkits

The Do-It-Yourself Energy and Water Saving Toolkits continue to be popular with library patrons. Training for Mendocino librarians was recently completed, kits delivered and the response has been enthusiastic.

Workplace Charging Pilot Program

Staff has completed the preliminary assessment of five locations. Detailed assessments with site visits are planned for the near future.

EVSE Infrastructure

SCP is planning to shift from vehicle incentives to charging stations in 2019. Staff is exploring a possible program for each of SCP's participating cities, town and counties to install fast chargers (also known as "Level 3" or "DCFC" for direct current fast charge). It is prudent to begin working towards this goal later in 2018 due to the long lead times involved in site selection, interconnection, ADA issues, etc.

Advanced Energy Rebuild

The program is live and 100 applications have been received. Many more are reportedly in the process of being prepared, and heat pump water heater suppliers have reported a noticeable increase in the volume of product being shipped to local distributors. Educational forums for industry workers have been held and will continue with six more scheduled in July. SCP also sponsored a discount for energy consultants looking to earn the Certified Energy Analyst certification, which is required for the program. A total of 10 people sat for the exam in late June.

Lead Locally (CEC Grant)

The CEC has scheduled a grant kick-off meeting on July 30th. Staff have reviewed 12 potential Energy Marketplace locations have agendized a proposed 3-year lease for consideration at this Community Advisory Committee meeting. If recommended, it will be presented to the Board of Directors on August 2.

Non-Profit Electric Mobility

Staff is working on more leads, currently working with interested non-profits. Three cars have been incentivized to date.

WILDFIRE RELIEF EFFORTS

The SCP Board Ad Hoc Committee on Fire Relief completed allocations of the \$1 Million approved for donations following the October 2017 wildfires. Attached is a list of the donations made by SCP and approved the Ad Hoc Committee.

MONTHLY COMPILED FINANCIAL STATEMENTS

The summer rate season has come in to effect in May, a period where aggregate rates are more than in the winter season. The year-to-date growth in net position is above projections due primarily to lower than anticipated operating costs. Year-to-date operating revenues reached 156,326,000.

Electricity sales (as reported on the Statement of Revenues, Expenses and Changes in Net Assets) is being offset by our estimate of uncollectible accounts, which is currently set at approximately 0.5% of electricity sales. As historical data is gathered on the collection patterns specific to SCP customers, this rate will be revisited and adjusted as necessary. Note that the accounts receivable line on the Statement of Net Position is presented net of allowance for uncollectibles.

SCP continues to procure electricity from multiple sources. Included in these purchases is energy that is being re-sold to other resellers. Net position reached a positive \$74,856,000, which indicates healthy growth as SCP continues to make progress towards its reserve goals. Of this net position, approximately \$42,381,000 and \$7,479,000 is considered set aside for operating and project reserves, respectively.

Overall, other operating expenses continued near or slightly below planned levels for the year.

BUDGETARY COMPARISON SCHEDULE

The accompanying budgetary comparison includes the 2017/18 budget approved by the Board of Directors in May 2017, and amended in June 2018.

The budget is formatted to make comparisons for both the annual and the year-to-date perspective. The first column, 2017/18 YTD Budget, allocates the Board approved annual budget at expected levels throughout the year with consideration for the timing of additional customers, usage volumes, staffing needs etc. This column represents our best estimates and this granular approach was not part of the Board approved budget.

Revenue from electricity sales to customers is under the year-to-date budget by approximately 1%.

The cost of electricity is also slightly under budget-to-date by less than 1%. Variation in this account is typically due to fluctuating market cost of energy on open position purchases.

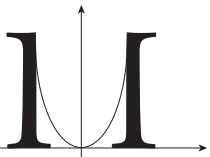
Major operating categories of Data Management fees and PG&E Service fees, which are tied to the customer account totals, are closely aligned to the annual budgeted amount.

In addition to the items mentioned above, SCP continues its trend of remaining near or under budget for most of its operating expenses.

The SCP Board Ad Hoc Committee on Fire Relief allocated the following donations from the budget approved by the SCP Board of Directors:

COMMUNITY FOUNDATION OF MENDOCINO COUNTY	\$20,000
REDWOOD EMPIRE FOOD BANK	\$20,000
REDWOOD CREDIT UNION COMMUNITY FUND	\$100,000
CONSERVATION ACTION FUND FOR EDUCATION (watershed protection)	\$50,000
RUSSIAN RIVERKEEPER (volunteer fire erosion control)	\$50,000
OCCIDENTAL ARTS & ECOLOGY CENTER (watershed protection)	\$50,000
UNITED WAY OF THE WINE COUNTRY (Provide reimbursement to neighborhood recovery efforts)	\$52,000
SONOMA ECOLOGY CENTER, INC (watershed recovery)	\$50,000
SONOMA COUNTY INDIAN HEALTH PROJECT, INC.	\$50,000
COMMONWEAL/SO CO RISES (Services regarding gathering community voice to create a more equitable and resilient Sonoma County)	\$10,000
COMMUNITY FOUNDATION SONOMA COUNTY (Sonoma Secure Families Fund)	\$50,000
COUNTY OF MENDOCINO (Mendocino Recovery Projects - Watershed protection projects)	\$35,550
COUNTY OF MENDOCINO (Mendocino County Technical Assistance - Project development and grant writing for hazard mitigation)	\$14,450
COUNTY OF MENDOCINO (Redwood Valley District Specific Projects - Technical Assistance for grant writing and project management)	\$100,000
COMMUNITY CHILD CARE COUNCIL OF SONOMA (Fire Relief - 4Cs Opportunity to expand access to infant/toddler care in Sonoma County grant)	\$20,000
HABITAT FOR HUMANITY OF SONOMA COUNTY (Donation for Rise Up Project/Rebuilding Mark West Area sound wall and fencing)	\$200,000
SONOMA COMMUNITY CENTER (Donation to reduce ceramic, painting, and printmaking classes costs to fire victims)	\$20,000

SONOMA VALLEY MENTORING ALLIANCE (Donation to promote resiliency and recovery to youth in the Sonoma Valley)	\$33,000
LandPaths (Recovering with Nature: Camp and Community Meal and Heal events)	\$40,000
SONOMA VALLEY COMMUNITY COMMUNICATIONS (Grant for Fire Losses/main radio communication hub for Sonoma Valley during fires)	\$15,000
Total bill credits to emergency evacuation centers which opened and incurred higher-than-usual energy costs from 24-hour operations	\$17,200



ACCOUNTANTS' COMPILATION REPORT

Management
Sonoma Clean Power Authority

Management is responsible for the accompanying financial statements of Sonoma Clean Power Authority (a California Joint Powers Authority) which comprise the statement of net position as of May 31, 2018, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

Management has elected to omit substantially all of the disclosures required by accounting principles generally accepted in the United States of America. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, the financial statements are not designed for those who are not informed about such matters.

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

Maher Accountancy

San Rafael, CA
June 28, 2018



**SONOMA CLEAN POWER AUTHORITY
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
July 1, 2017 through May 31, 2018**

	2017/18 YTD		2017/18 YTD	YTD	2017/18	2017/18
	Amended	2017/18 YTD	Budget	Actual/	Amended	Budget
	Budget	Actual	Variance	Budget	Budget	Budget
			(Under) Over	%		Remaining
REVENUE AND OTHER SOURCES:						
Revenue - Electricity (net of allowance) *	\$ 157,184,652	\$ 155,373,854	\$ (1,810,798)	99%	\$ 173,796,000	\$ 18,422,146
Revenue - Evergreen Premium (net of allowance)	354,533	397,610	43,077	112%	392,000	(5,610)
Revenue - Electricity sales for resale **	-	531,950	531,950	-	-	(531,950)
Revenue - Interest income	435,417	492,618	57,201	113%	475,000	(17,618)
Total revenue and other sources	<u>157,974,602</u>	<u>156,818,472</u>	<u>(1,156,130)</u>	<u>99%</u>	<u>174,663,000</u>	<u>17,844,528</u>
EXPENDITURES AND OTHER USES:						
CURRENT EXPENDITURES						
Cost of energy and scheduling	129,677,124	129,037,387	(639,737)	100%	142,643,000	13,605,613
Data management	2,957,167	2,875,916	(81,251)	97%	3,226,000	350,084
Service fees- PG&E	1,131,167	1,034,484	(96,683)	91%	1,234,000	199,516
Personnel	3,052,500	2,709,817	(342,683)	89%	3,330,000	620,183
Outreach and communications	871,750	824,746	(47,004)	95%	951,000	126,254
Customer service	434,500	220,814	(213,686)	51%	474,000	253,186
Legal	339,167	248,497	(90,670)	73%	370,000	121,503
Accounting and auditing	177,833	135,265	(42,568)	76%	194,000	58,735
Technical consultants	343,750	304,626	(39,124)	89%	375,000	70,374
Legislative consultants	151,250	78,649	(72,601)	52%	165,000	86,351
Other consultants	59,583	44,596	(14,987)	75%	65,000	20,404
Program implementation and development	5,500,000	2,947,863	(2,552,137)	54%	6,000,000	3,052,137
General and administration	715,000	712,028	(2,972)	100%	780,000	67,972
Fire relief donations	892,500	637,000	(255,500)	71%	1,000,000	363,000
Total current expenditures	<u>146,303,291</u>	<u>141,811,688</u>	<u>(4,491,603)</u>	<u>97%</u>	<u>160,807,000</u>	<u>18,995,312</u>
OTHER USES						
Collateral deposit payments	2,000,000	620,867	(1,379,133)	31%	2,000,000	1,379,133
Capital outlay	150,333	69,590	(80,743)	46%	3,364,000	3,294,410
Total expenditures, Other Uses and Debt Service	<u>148,453,624</u>	<u>142,502,145</u>	<u>(5,951,479)</u>	<u>96%</u>	<u>166,171,000</u>	<u>23,668,855</u>
Net increase (decrease) in available fund balance	<u>\$ 9,520,978</u>	<u>\$ 14,316,327</u>	<u>\$ 4,795,349</u>	<u>150%</u>	<u>\$ 8,492,000</u>	<u>\$ (5,824,327)</u>

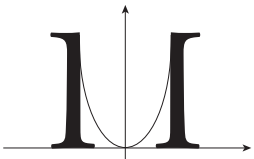
* Represents sales of approximately 2,259,000 MWh for 2017/18 YTD actual.

** Electricity sales for resale represents sales to other utilities.

RESERVES	Balance
Operating Cash Reserve	\$ 42,380,937
Program Cash Reserve	7,478,989
	<u>\$ 49,859,926</u>

SONOMA CLEAN POWER AUTHORITY
OPERATING FUND
BUDGET RECONCILIATION TO STATEMENT OF
REVENUES, EXPENSES AND CHANGES IN NET POSITION
July 1, 2017 through May 31, 2018

Net increase (decrease) in available fund balance per budgetary comparison schedule:	\$ 14,316,327
Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position:	
Subtract depreciation expense	(55,083)
Add back capital asset acquisitions	69,590
Add back collateral deposits	620,867
Change in net position	<u>\$ 14,951,701</u>



ACCOUNTANTS' COMPILATION REPORT

Management
Marin Clean Energy

Management is responsible for the accompanying financial statements of Marin Clean Energy (a California Joint Powers Authority) which comprise the statement of net position as of May 31, 2018, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

Management has elected to omit substantially all of the disclosures required by accounting principles generally accepted in the United States of America. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, the financial statements are not designed for those who are not informed about such matters.

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

Maher Accountancy

San Rafael, CA
June 28 2018



SONOMA CLEAN POWER AUTHORITY

STATEMENT OF NET POSITION

As of May 31, 2018

ASSETS

Current assets	
Cash and cash equivalents	\$ 45,307,066
Investment in Sonoma County Pooled Investment Fund	15,114,038
Accounts receivable, net of allowance	15,902,781
Other receivables	115,900
Accrued revenue	9,019,423
Prepaid expenses	117,343
Deposits	589,865
Total current assets	<u>86,166,416</u>
Noncurrent assets	
Capital assets, net of depreciation	212,582
Deposits	4,114,666
Total noncurrent assets	<u>4,327,248</u>
Total assets	<u>90,493,664</u>

LIABILITIES

Current liabilities	
Accounts payable	1,086,339
Accrued cost of electricity	13,153,721
Advance from grantors	500,000
Other accrued liabilities	344,321
User taxes and energy surcharges due to other governments	402,938
Total current liabilities	<u>15,487,319</u>
Noncurrent liabilities	
Supplier security deposits	<u>150,000</u>
Total liabilities	<u>15,637,319</u>

NET POSITION

Net investment in capital assets	212,582
Unrestricted	<u>74,643,763</u>
Total net position	<u>\$ 74,856,345</u>

SONOMA CLEAN POWER AUTHORITY
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
July 1, 2017 through May 31, 2018

OPERATING REVENUES

Electricity sales, net	\$ 155,373,854
Evergreen electricity premium	397,610
Electricity sales for resale	531,950
Liquidated damages	22,440
Total operating revenues	<u>156,325,854</u>

OPERATING EXPENSES

Cost of electricity	129,037,387
Staff compensation	2,709,817
Data manager	2,875,916
Service fees - PG&E	1,034,484
Consultants and other professional fees	1,647,752
Legal	248,497
Communications	1,177,313
General and administration	725,119
Program rebates and incentives	1,718,403
Depreciation	55,083
Total operating expenses	<u>141,229,771</u>
Operating income	<u>15,096,083</u>

NONOPERATING REVENUES (EXPENSES)

Interest income	492,618
Charitable contributions	(637,000)
Total nonoperating revenues (expenses)	<u>(144,382)</u>

CHANGE IN NET POSITION

	14,951,701
Net position at beginning of period	<u>59,904,644</u>
Net position at end of period	<u>\$ 74,856,345</u>

SONOMA CLEAN POWER AUTHORITY

STATEMENT OF CASH FLOWS

July 1, 2017 through May 31, 2018

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from electricity sales	\$ 155,146,309
Receipts from electricity sales for resale	630,227
Receipts from grantors	500,000
Receipts from supplier for security deposits	2,325,000
Tax and surcharge receipts from customers	2,118,093
Payments to purchase electricity	(127,373,788)
Payments for staff compensation	(2,737,361)
Payments for data manager	(2,616,088)
Payments for service fees - PG&E	(956,281)
Payments for consultants and other professional fees	(1,931,040)
Payments for legal services	(254,340)
Payments for communications	(1,190,456)
Payments for general and administration	(778,196)
Payments for program rebates and incentives	(1,818,403)
Return of security deposits to suppliers	(4,650,000)
Tax and surcharge payments to other governments	(2,175,737)
Deposits and collateral paid	(620,867)
Payments for charitable contributions	(637,000)
Net cash provided (used) by operating activities	<u>12,980,072</u>

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Acquisition of capital assets	<u>(85,468)</u>
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CASH FLOWS FROM INVESTING ACTIVITIES

Proceeds from certificate of deposit	7,028,428
Interest income received	462,618
Net cash provided (used) by investing activities	<u>7,491,046</u>

Net change in cash and cash equivalents (including County Pooled Investment Fund)	20,385,650
Cash and cash equivalents at beginning of year	40,035,454
Cash and cash equivalents at end of year	<u>\$ 60,421,104</u>

Reconciliation to the Statement of Net Position

Cash and cash equivalents	\$ 45,307,066
Investment in Sonoma County Pooled Investment Fund	15,114,038
Cash and cash equivalents	<u>\$ 60,421,104</u>

SONOMA CLEAN POWER AUTHORITY
STATEMENT OF CASH FLOWS (continued)
July 1, 2017 through May 31, 2018

**RECONCILIATION OF OPERATING INCOME TO NET
CASH PROVIDED BY OPERATING ACTIVITIES**

Operating income	\$ 15,096,083
Adjustments to reconcile operating income to net cash provided (used) by operating activities	
Depreciation expense	55,083
Revenue reduced for uncollectible accounts	782,769
Charitable contributions considered an operating activity for cash flow purposes only	(637,000)
(Increase) decrease in net accounts receivable	(1,069,569)
(Increase) decrease in other receivables	98,277
(Increase) decrease in accrued revenue	(325,943)
(Increase) decrease in prepaid expenses	(70,552)
(Increase) decrease in current deposits	(713,511)
Increase (decrease) in accounts payable	351,097
Increase (decrease) in accrued cost of electricity	1,388,934
Increase (decrease) in advance from grantors	500,000
Increase (decrease) in accrued liabilities	(80,540)
Increase (decrease) in user taxes and energy surcharges due to other governments	(70,056)
Increase (decrease) in supplier security deposits	(2,325,000)
Net cash provided (used) by operating activities	<u>\$ 12,980,072</u>



Staff Report – Item 03

To: Sonoma Clean Power Authority Community Advisory Committee

From: Geof Syphers, CEO
 Katherine Brandenburg, Lobbyist
 Kate Kelly/Director, Public Affairs & Marketing
 Neal Reardon, Director, Regulatory Affairs

Issue: Legislative and Regulatory Updates

Date: July 24, 2018

Late July through August is the busiest season in Sacramento, and significant new bills are likely to emerge from the new fire liability conference committee, changes to the grid regionalization bill (AB 813) and likely others.

<p>AB 813 (Holden D) Amended: 6/12/2018 Multistate regional transmission system organization: membership. Location: Senate Appropriations</p>	<p>Would prohibit a California electrical transmission facility owner, a retail seller of electricity, or a local publicly owned electric utility from joining a multistate regional transmission system organization, as defined, unless the bylaws or other organizational documents that govern the organization, and the organization's operations, meet Federal Energy Regulatory Commission requirements and other specified requirements. The bill would require a California transmission owner, retail seller, or local publicly owned electric utility, before joining a multistate regional transmission system organization, to submit the bylaws and other organizational documents that govern the multistate regional transmission system organization to the State Energy Resources Conservation and Development Commission for review.</p>	<p>Support as currently amended (June 12) (Letter Sent)</p>
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<p>AB 893 (Garcia, Eduardo D) Amended: 6/20/2018 California Renewables Portfolio Standard Program. Location: Senate Appropriations</p>	<p>Would require, no later than December 31, 2021, each retail seller of electricity and each local publicly owned electric utility to procure a proportionate share, as determined by the PUC, in consultation with the State Energy Resources Conservation and Development Commission, of electricity products from a statewide total of 3,500 megawatts of geothermal generation capacity, as specified. The bill would require, no later than December 31, 2019, each retail seller to file with the PUC a plan for complying with this procurement requirement, as specified.</p>	<p>Oppose</p>
<p>AB 1745 (Ting D) Vehicles: Clean Cars 2040 Act. Location: Assembly Dead</p>	<p>Would, commencing January 1, 2040, prohibit the Department of Motor Vehicles from accepting an application for original registration of a motor vehicle unless the vehicle is a zero emissions vehicle, as defined. The bill would exempt from that prohibition, a commercial vehicle with a gross vehicle weight rating of 10,001 pounds or more, and a vehicle brought into the state from outside of the state for original registration, as specified.</p>	<p>Support (Letter Sent)</p>

<p>AB 1912 (Rodriguez D) Amended: 6/20/2018 Public employees' retirement: joint powers agreements: liability. Location: Senate Judiciary</p>	<p>The Joint Exercise of Powers Act generally authorizes 2 or more public agencies, by agreement, to jointly exercise any common power. Under the act, if an agency is not one or more of the parties to the agreement but is a public entity, commission, or board constituted pursuant to the agreement, the debts, liabilities, and obligations of the agency are the debts, liabilities, and obligations of the parties to the agreement, unless the agreement specifies otherwise. The act also authorizes a party to a joint powers agreement to separately contract for, or assume responsibilities for, specific debts, liabilities, or obligations of the agency. This bill would eliminate that authorization, and would specify that if an agency established by a joint powers agreement participates in, or contracts with, a public retirement system, member agencies, both current and former to the agreement, would be required, upon termination or a decision to dissolve or cease operations of the agency, to mutually agree as to the apportionment of the agency's retirement obligations among themselves, within 60 calendar days, provided that the agreement equals the total retirement liability of the agency.</p>	<p>Neutral</p> <p>Author took CalCCA amendments</p>
<p>AB 2127 (Ting D) Amended: 4/16/2018 Electric vehicle charging infrastructure: assessment. Location: Senate Appropriations</p>	<p>Would require the Energy Commission, working with the State Air Resources Board and the PUC, to prepare and biennially update a statewide assessment of the electric vehicle charging infrastructure needed to support the levels of electric vehicle adoption required for the state to meet its goals of putting at least 5 million zero-emission vehicles on California roads by 2030 and of reducing emissions of greenhouse gases to 40% below 1990 levels by 2030. The bill would require the Energy Commission to regularly seek data and input from stakeholders relating to electric vehicle charging infrastructure.</p>	<p>Support</p>

<p>AB 2208 (Aguiar-Curry D) Amended: 4/19/2018 California Renewables Portfolio Standard Program: local publicly owned electric utilities: electrical corporations: geothermal, biogas, and biomass energy resources. Location: Assembly Dead</p>	<p>The California Renewables Portfolio Standard Program requires the Public Utilities Commission to establish a renewables portfolio standard requiring all retail sellers to procure a minimum quantity of electricity products from eligible renewable energy resources so that the total number of kilowatt-hours of those products sold to their retail end-use customers achieves 25% of retail sales by December 31, 2016, then incrementally increases for specified compliance periods to 33% of retail sales by December 31, 2020, 40% by December 31, 2024, 45% by December 31, 2027, and 50% by December 31, 2030. This bill would require that not less than an unspecified percentage of the incremental procurement requirements for each compliance period be satisfied with geothermal, biogas, or biomass energy resources procured on or after July 1, 2017, until either an unspecified percentage of the total electricity products procured to satisfy the overall procurement requirements are from those energy resources or December 31, 2030, whichever occurs first.</p>	<p>Oppose Unless Amended (Letter Sent)</p>
<p>AB 2693 (Wood D) Amended: 6/20/2018 Public Utilities Commission: telecommunications service: natural disasters: reports. Location: Senate Appropriations</p>	<p>Would, upon the declaration of a state of emergency or a local emergency by the Governor, require the Public Utilities Commission to collect specified information from telecommunications service providers relating to the provider's efforts and resources used to restore telecommunications service outages caused by, and to repair or replace related network infrastructure or facilities that were damaged as a result of, the emergency or a natural disaster.</p>	<p>Recommend Removal of Opposition Amended on June 2 to refer to telecommunications</p>
<p>AB 2726 (Levine D) Amended: 5/2/2018 California Global Warming Solutions Act of 2006: consumption-based accounting. Location: Assembly Dead</p>	<p>The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. This bill would require the state board to establish and maintain an inventory of emissions of greenhouse gases on a consumption-based accounting basis, as specified.</p>	<p>Neutral</p>

<p>SB 100 (De Le n D) Amended: 6/27/2018 California Renewables Portfolio Standard Program: emissions of greenhouse gases. Location: Assembly U. & E. Hearing Date: 7/3/2018</p>	<p>The Legislature has found and declared that its intent in implementing the California Renewables Portfolio Standard Program requires the PUC is to attain, among other targets for sale of eligible renewable resources, the target of 50% of total retail sales of electricity by December 31, 2030. This bill would revise the above-described legislative findings and declarations to state that the goal of the program is to achieve that 50% renewable resources target by December 31, 2026, and to achieve a 60% target by December 31, 2030.</p>	<p>Support</p>
<p>SB 237 (Hertzberg D) Amended: 6/13/2018 Electricity: direct transactions. Location: Assembly Appropriations</p>	<p>Current law expressly requires the Public Utilities Commission to authorize direct transactions for nonresidential end-use customers, subject to an annual maximum allowable total kilowatt-hour limit established, as specified, for each electrical corporation, to be achieved following a now completed 3-to 5-year phase-in period. This bill would require the commission to adopt and implement a 2nd phase-in period for expanding direct transactions over a period of not more than 3 years, so that by the end of the 3-year period all nonresidential end-use customers may acquire electric service from other providers in each electrical corporation's distribution service territory.</p>	<p>TBD Opposition from TURN, Sierra Club and others.</p>
<p>SB 827 (Wiener D) Amended: 4/9/2018 Planning and zoning: transit-rich housing bonus. Location: Senate Dead</p>	<p>Would require a local government to grant a development proponent of a transit-rich housing project a housing bonus if that development at the time of submittal meets specified planning standards.</p>	<p>na</p>

<p>SB 1014 (Skinner D) Amended: 6/27/2018 California Clean Miles Standard and Incentive Program: zero-emission vehicles. Location: Assembly Appropriations</p>	<p>Would require, by January 1, 2020, that the State Air Resources Board establish a baseline for emissions of greenhouse gases for vehicles used on the online-enabled applications or platforms by transportation network companies on a per-passenger-mile basis. The bill would require, by January 1, 2021, that the state board establish, and the commission implement, annual targets and goals starting in 2023 for the reduction under that baseline for emissions of greenhouse gases per passenger mile driven on behalf of a transportation network company. The bill would require that the targets and goals meet specified requirements.</p>	<p>Support (Letter Sent)</p>
<p>SB 1088 (Dodd D) Amended: 6/12/2018 Safety, reliability, and resiliency planning: general rate case cycle. Location: Assembly Appropriations</p>	<p>The California Emergency Services Act, among other things, establishes the Office of Emergency Services for the purpose of mitigating the effects of natural, manmade, or war-caused emergencies and makes findings and declarations relating to ensuring that preparation within the state will be adequate to deal with those emergencies. This bill would require the office, in consultation with specified public entities, by September 30, 2019, to adopt standards for reducing risks from a major event, as defined.</p>	<p>Oppose Unless Amended (Letter Sent)</p>
<p>SB 1136 (Hertzberg D) Amended: 6/11/2018 Electricity: load-serving entities: resource adequacy requirements. Location: Assembly Appropriations</p>	<p>Current law requires the Public Utilities Commission, in consultation with the Independent System Operator, to establish resource adequacy requirements for all load-serving entities, as defined, in accordance with specified objectives, including that the resource adequacy requirements facilitate development of new generating capacity and retention of existing generating capacity that is economic and needed. This bill would revise this objective to require that the resource adequacy requirements also facilitate development of new nongenerating and hybrid capacity and retention of existing nongenerating and hybrid capacity that is economic and needed.</p>	<p>Closely Monitor</p>

<p>SB 1339 (Stern D) Amended: 6/11/2018 Electricity: microgrids: tariffs. Location: Assembly Appropriations</p>	<p>Would require the Public Utilities Commission, as part of a specified rulemaking, to consider the role of microgrids in providing grid resiliency and to establish a tariff for each electrical corporation for the use of microgrids to provide electrical grid resiliency. The bill would require the commission (1) to direct each electrical corporation to file an advice letter implementing the tariff, (2) to approve an advice letter only if it minimizes costs and maximizes benefits to all ratepayers and meets the requirements of the rulemaking, and (3) to approve, reject, or modify each advice letter before January 1, 2020.</p>	<p>Back Up CalCCA's Efforts</p>
<p>SB 1347 (Stern D) Amended: 5/10/2018 Energy storage systems: procurement. Location: Assembly Appropriations</p>	<p>Would, by January 1, 2020, require the Public Utilities Commission, in addition to the requirements described above, to direct electrical corporations, community choice aggregators, electric service providers, and certain electrical cooperatives (collectively, load-serving entities) to procure their proportionate share of a total of 2,000 megawatts, in aggregate, of energy storage systems and would authorize the commission to direct the load-serving entities to procure additional energy storage system capacity, as specified. The bill would authorize the electrical corporations to own and operate a certain percentage of these energy storage systems, measured by capacity, if certain conditions are met.</p>	<p>Back Up CalCCA's Efforts</p>
<p>SB 1399 (Wiener D) Amended: 5/1/2018 Renewable energy: shared renewable energy tariffs. Location: Senate Dead</p>	<p>Would require the Public Utilities Commission to require each large electrical corporation to establish a tariff or tariffs that provide for bill credits for electricity generated by eligible renewable generating facilities and exported to the electrical grid to be credited to electrical accounts of nonresidential customers of the corporations. The bill would require the commission to ensure that the credits reflect the full value of the electricity from the eligible renewable generating facilities and the credits are established using the same methodology that is used to determine credits under the standard contract or tariff for eligible customer-generators.</p>	<p>Back Up CalCCA's Efforts</p>

Regulatory Update

Power Charge Indifference Adjustment (PCIA)

On June 1st parties to the PCIA Proceeding submitted opening briefs summarizing their legal conclusions and policy recommendations. CalCCA's brief focused on 1) strategies like securitization and voluntary buy-down of contract payments to reduce costs for all customers, and, 2) a quarterly auction to extract the most value possible and to reduce the amount of costs and contracts under litigation. The Joint Utilities continued to advocate for a forced allocation of all non-GHG emitting resources, the "green allocation mechanism" or "GAM".

On June 15th, parties filed reply briefs to opine on those filed two weeks earlier. The IOUs argued that their proposal is the only one that can be implemented quickly, and the only one that truly preserves customer indifference by dividing costs and attributes between all customers. CalCCA noted that the utility proposal is not supported by law - which allows for assignment of *net unavoidable costs*, not *products* - would disrupt the market by requiring short-term energy transactions, and does nothing to address the underlying problem of above-market costs.

CalCCA and individual CCAs, including Sonoma Clean Power, have held ex-parte meetings with multiple Commissioner's offices and Energy Division staff. SCP staff showed that the utilities proposal to forcibly allocate renewable energy credits and capacity to existing CCAs would push our portfolio to over 75% RPS in 2020, over double the 33% required. The results for MCE are even more dire: they would be forced over 100% RPS from 2024 onwards.

The Assigned Judge estimated issuing a Proposed Decision in July, and Final Oral Arguments are scheduled for August 2nd.

CPUC White Paper on Customer Choice

CPUC staff issued a white paper on the Customer Choice it dubbed "The Green Book". This paper poses a series of questions, the essence of which is: how customer choice affects the State's ability to achieve its goal of affordably decarbonizing the electric sector while ensuring reliability. Though the recent focus has been on CCAs, Direct Access customers and those taking service from on-site generation impact utility load as well. The paper raises the specter of another energy crisis, with President Picker cautioning that "The last time California looked at [retail] choice, it had a plan, however flawed. Now... we do not have a plan."

The CPUC hosted an *en banc* meeting on June 22nd to discuss the customer choice topics in their paper. All five CPUC Commissioners, as well as three California Energy Commissioners were present. Unlike last year's *en banc*,

CalCCA was successful in ensuring that CCA representatives were allowed to speak on most of the panels, creating a more balanced discussion.

Deb Emerson represented CCAs on one of the most important panels of the day - ensuring grid reliability. Despite an adversarial environment she articulated that the supply of capacity to maintain a reliable grid is decreasing due to plant retirements, which would happen with or without CCAs in the market. In addition, Deb highlighted that to date every CCA has been compliant with Resource Adequacy rules to ensure reliability, but that other entities - including an IOU - have filed waivers when they were unable to meet compliance obligations.



Staff Report – Item 04

To: Sonoma Clean Power Authority Board of Directors

From: Cordel Stillman, Director of Programs
Geof Syphers, CEO

Issue: Review and recommend contract for Architect for Building Renovation

Date: July 24, 2018

Requested Committee Action:

Review and recommend action regarding a contract with EHDD to perform design and other services for the renovation of 431 E Street.

Background:

Following a competitive selection process, SCP has selected EHDD, an architectural firm based in San Francisco to perform design and other services for the renovation of the building SCP has purchased for its new headquarters.

The selection process began with a Request for Qualifications (RFQ) that was sent to a large number of architectural firms as well as advertised on the SCP website. 11 teams responded to the RFQ. After an initial screening of Statements of Qualification, three firms were selected to interview with SCP staff. Interviews were held the week of June 25th and EHDD was selected based on their broad experience in retrofitting existing buildings to a high level of energy efficiency, their experience with local government contracting and their project management experience.

The contract before the Committee covers the initial phase of architectural design. EHDD has provided SCP with a fixed fee that will take the project through the end of schematic design only. At the end of the schematic design phase, both SCP and EHDD will have a relatively firm idea of the scope of the project as well as what the design and construction budget will be. At

that time, staff will bring a contract forward for the remainder of design and other support activities. Schematic design is expected to take three months to complete.

The contract is still in draft form. Any changes to the draft contract are anticipated to involve only minor revisions and will be subject to review and approval by the General Counsel.

PROFESSIONAL SERVICES AGREEMENT FOR

THE SONOMA CLEAN POWER AUTHORITY

With

**ESHERICK HOMSEY DODGE AND DAVIS,
ARCHITECTS, A PROFESSIONAL CORPORATION**

for the

SONOMA CLEAN POWER AUTHORITY HEADQUARTERS

*NOTE TO DRAFTERS (5/25/2018):
THIS CONTRACT FORM IS TO BE USED FOR PROFESSIONAL SERVICES
PROVIDED BY THE FOLLOWING ENTITIES:
ARCHITECTURAL,
ENGINEERING,
LAND SURVEYING,
ENVIRONMENTAL,
CONSTRUCTION MANAGEMENT*

APPENDICES INCLUDED:

APPENDIX A (Scope of Services)

APPENDIX B (Compensation Schedule), including:

EXHIBIT B1 (Fixed Fees for Base Services)

EXHIBIT B2 (Hourly Rates)

APPENDIX C (Insurance)

SONOMA CLEAN POWER AUTHORITY

AGREEMENT BETWEEN THE SONOMA CLEAN POWER AUTHORITY AND ESHERICK HOMSEY DODGE AND DAVIS, ARCHITECTS, A PROFESSIONAL CORPORATION

This Agreement is made this _____ day of _____, 2018 (“Effective Date”), in the City of Santa Rosa, State of California, by and between Esherick Homsey Dodge and Davis, Architects, A Professional Corporation, located at 500 Treat Avenue, Suite 201, San Francisco, California 94110, a Professional Corporation hereinafter referred to as “Consultant” and the Sonoma Clean Power Authority located at 50 Santa Rosa Avenue, 5th Floor, Santa Rosa, California 95404, a California Joint Powers Authority, hereinafter referred to as “SCPA”. SCPA and Consultant may be individually referred to as a “Party” or collectively as “Parties”.

AGREEMENT

1 Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

- | | |
|-----------------------|--|
| Agreement | This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, Appendices “A,” “B,” (including Exhibits “B1” and “B2”) and “C,” attached hereto. |
| Consultant | Esherick Homsey Dodge and Davis, Architects, a Professional Corporation |
| SCPA | Sonoma Clean Power Authority. |
| Project | SCPA’s Headquarters project as further described in Appendix “A,” Scope of Services. |
| Services | All work, labor, materials, and services required in order to perform under the terms and conditions of this Agreement, including architectural, engineering, coordination, administrative services, and other related services as set forth in Appendix “A”, “Scope of Services”. |
| Subconsultants | Consultant’s consultants, and subconsultants, including:

Point Energy Innovations (Mechanical, Electrical, Plumbing)
Reed Gilliland (Landscape Architect)
ZFA (Structural Engineering)
RGD Acoustics (AV and Acoustical Consulting – narrative |

only)
BKF Engineers (Civil Engineering)
TBD Consultants (Cost Estimating)
Integrated Design Lab (Daylighting)

2 Term of Agreement

Unless terminated earlier in accordance with sections 13 and 14 of this Agreement, the term of this Agreement (“Term”) shall begin on the Effective Date and shall end when all work comprising the Services is deemed performed under this Agreement or no later than six (6) months from the Effective Date, whichever is shorter.

3 Services Consultant Agrees to Perform

- 3.1 Scope of Services. Consultant shall perform all Services described in Appendix “A,” “Scope of Services,” attached hereto and incorporated by reference as though fully set forth herein.
- 3.2 Milestone Schedule. Consultant shall complete all Services required by this Agreement within the times specified in the Milestone Schedule in Appendix “A”. Consultant agrees that the Milestone Schedule includes reasonable allowances for completion of the Services, including all time required for SCPA’s review and approval of deliverables and for approval of the deliverables by all authorities having jurisdiction over the Project and the Services. Consultant shall achieve its scheduled milestones (as shown on the Milestone Schedule).
- 3.3 Progress Under the Agreement. Should the progress of the Services under this Agreement at any time fall behind schedule for any reason other than excusable delays, Consultant shall apply such additional personnel, subcontractors and any other resources as necessary to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement.

4 Compensation

- 4.3 SCPA shall pay Consultant compensation in accordance with the terms established in Appendix “B,” Compensation Schedule.
- 4.4 Monthly Payment. SCPA shall pay Consultant in monthly payments on or before the last day of each month for Services properly invoiced by the Consultant which have been properly performed as of the last day of the immediately preceding month and are due under Appendix “B.”
- 4.5 Deliverables Required. In conformance with the requirements in Appendix “B” and paragraph 4.4, SCPA shall not incur any charges under this Agreement, nor shall any payments become due to Consultant for any payment period on the Project, unless SCPA has received the deliverables required under the terms of Appendix “A” for the monthly payment period, if any deliverables are required and SCPA reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where Consultant

has partially completed one or more deliverables due during a monthly payment period, and if Consultant demonstrates diligent progress thereon, then SCPA shall make a partial progress payment to Consultant in conformance with the requirements in Appendix “B” and paragraph 4.4.

- 4.6 Questioned Amounts. SCPA will not withhold an entire payment if a questioned amount is involved but will issue payment in the amount of the total invoice less any questioned amount(s). SCPA will make payment for questioned amount(s) upon SCPA’s receipt of any requested documentation verifying the claimed amount(s) in a form acceptable to SCPA and SCPA’s determination that the amount is due under the terms of this Agreement.
- 4.7 Final Payment. Final payment will be made by SCPA to Consultant when all Services required under this Agreement have been completed to the reasonable satisfaction of SCPA including, without limitation, Consultant’s transmittal of all deliverables to SCPA required by Appendix “A.”
- 4.8 Invoices. Invoices furnished by Consultant under this Agreement must be in a form acceptable to SCPA, including being compliant with all applicable requirements set forth in Appendix “B”. All amounts paid by SCPA to Consultant shall be subject to audit by SCPA. Payment shall be made by SCPA to Consultant at the address stated hereinabove.
- 4.9 Set Off for Errors and Omissions. Consultant is solely responsible for costs, including increases in the cost of work or Services arising from or caused by Consultant’s errors and omissions, breaches of this Agreement, breach of the standard of care, delays or other acts or omissions which caused SCPA monetary damages, including, but not limited to, the costs of corrections of such errors and omissions, any change order markup costs or costs arising from delay caused by the errors and omissions or unreasonably delay in correcting the errors and omissions. Upon 10 days written notice to Consultant, SCPA may set off such costs against payments due Consultant under this Agreement. Upon receipt of SCPA’s notice to set off against payments Consultant may request, within five (5) business days of the notice to set off from SCPA, a meeting between SCPA and Consultant pursuant to section 24 of this Agreement. Where such a meeting is requested by Consultant, the Parties agree to schedule such meeting within ten (10) business days of the date of Consultant’s request for such a meeting, unless the time period is extended by mutual agreement of the Parties. SCPA and Consultant agree to meet and confer in good faith to discuss the set off.

5 Maximum Costs, Change in Services

- 5.1 Not-to-Exceed Amount. SCPA’s obligation hereunder shall not at any time exceed the amount set forth as a Not-to-Exceed Amount (“NTE”) set forth in Exhibit “B”. This dollar amount is not a guarantee that SCPA will pay that full amount to Consultant, but is merely a limit of potential SCPA expenditures under the Agreement.
- 5.2 Authority to Request Services. Except as may be provided by applicable law governing emergency conditions, SCPA has not authorized its employees,

officers and agents to request Consultant to perform Services or to provide materials, equipment and supplies that would result in Consultant performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in the Agreement unless the SCPA amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.

5.3 No Compensation for Services beyond the Scope. SCPA shall not reimburse Consultant for Services, materials, equipment or supplies provided by Consultant beyond the scope of the Services, materials, equipment, and supplies agreed upon in the Agreement. Failure of Consultant to secure written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment of compensation amounts or time to perform Services due to such unauthorized work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization from SCPA.

5.4 Requests for Changes in Services.

5.4.1 Consultant, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Consultant shall require its Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Consultant's price proposals.

5.4.2 Consultant and its Subconsultants shall, upon request by SCPA, permit inspection of all original unaltered Agreement bid estimates, Subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.

5.4.3 Changes in the Services and/or extensions of the Agreement time granted in SCPA's sole discretion thereof shall not in any way otherwise release Consultant's representations and agreements pursuant to this Agreement.

6 Qualified Personnel

6.1 Project Manager. For purposes of this Agreement, except for notices specified under Section 17 below, SCPA shall direct all communications to Consultant through Brad Jacobson, Associate Principal, EHDD, 500 Treat Avenue, Suite 201, San Francisco, CA 94110, b.jacobson@ehdd.com, (415) 321-6330; and Consultant shall direct all communications to SCPA through SCPA's Project Manager, Cordell Stillman, Director of Programs, 50 Santa Rosa Avenue, Santa Rosa CA 95404, cstillman@sonomacleanpower.org, (707) 890-8486.

6.2 Assigned Personnel.

6.2.1 Services under this Agreement shall be performed only by competent

personnel under the supervision of and/or in the employment of Consultant. In the event that at any time, SCPA in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform Services under this Agreement, Consultant shall remove such person or person(s) immediately upon receiving written notice from SCPA, but all personnel, including those assigned at SCPA's request, shall be supervised by Consultant.

6.2.2 Consultant agrees that all professional personnel assigned to the Project will be listed in its proposal, Exhibit 1 to Appendix "A" and/or identified as part of the Consultant's Team set forth in Appendix "A" attached hereto and by this reference incorporated herein, and that the listed personnel will be considered key personnel ("Key Personnel") and continue their assignments on the Project during the entire term of this Agreement.

6.2.3 Consultant recognizes that such Key Personnel were a material inducement to SCPA to enter into the Agreement, and without whose services SCPA would not have entered into the Agreement. Consultant shall not remove, replace, substitute or otherwise change any key personnel without the prior written consent of SCPA. In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements. Any costs associated with the reassignment of any personnel, including Key Personnel shall be borne exclusively by Consultant.

6.2.4 Consultant agrees that should the above Key Personnel not continue their assignments on the Project during the entire term of this Agreement; then Consultant shall not charge SCPA for the cost of training or "bringing up to speed" replacement personnel. SCPA may condition its reasonable approval of substitution personnel upon a reasonable transition period wherein new personnel will learn the Project and get up to speed at Consultant's cost.

7. Representations and Warranties; Covenants

7.1 Review of Appendices. Consultant represents that it has reviewed Appendix "A", "Scope of Services", and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the Compensation Schedule established in Appendix "B", Compensation Schedule, and within the times specified in the Milestone Schedule set forth in Appendix "A".

7.2 Licensing/Permitting. Consultant represents that it is qualified to perform the Services and that it possesses the necessary licenses and/or permits required to perform the Services or will obtain such licenses and/or permits prior to the time such licenses and/or permits are required. Consultant also represents that it has requisite knowledge of all applicable building codes, laws, regulations,

and ordinances.

7.3 Qualifications; Performance of Work and Warranty.

7.3.1 Consultant represents that it and its subconsultants have requisite expertise and experience in architectural or engineering services similar to those intended for the Project.

7.3.2 Consultant agrees that the Services shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality (“Standard of Care”); provided, however, that the Standard of Care shall be consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope and complexity of this specific Project (including its contracting mode and energy efficiency and sustainability requirements)

7.3.3 Consultant agrees that for a period of one year after the completion of the Services or at the final acceptance of the construction resulting from the Services, whichever is later, it will re-perform or replace any part or all of the Services reasonably deemed by SCPA to be defective and/or not meeting the above Standard of Care.

Upon receipt of SCPA’s written notice deeming the Consultant’s Services to be defective and/or not meeting above Standard of Care, the Parties agree to meet pursuant to section 24 of this Agreement. The Parties agree to schedule such a meeting within ten (10) business days of the date of the SCPA notice, unless the time period is extended by mutual agreement of the Parties. SCPA and Consultant agree to meet and confer in good faith to discuss SCPA’s demand to re-perform or replace any part or all of the Services.

7.4 No Suspension or Debarment. Consultant represents that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also represents that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform SCPA.

7.5 Payment Not a Waiver. The granting of any progress payment by SCPA, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of SCPA or any other governmental entity, shall in no way waive or limit the obligations in this Section 7 or lessen the liability of Consultant to re-perform or replace defective Services or Services not meeting the Standard of Care to the extent required by Section 7.3 above, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment,

inspection, review or approval.

8 Indemnification and General Liability

8.1 To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8) Consultant agrees to indemnify hold harmless and defend SCPA, its officers, departments, officials, agents, representatives, and employees (collectively “Indemnitees”), from and against any and all claims, damages, injuries (including, injury to or death of an employee of Consultant or its Subconsultants), expenses, disabilities or liabilities of every kind, nature and description (including, without limitation, incidental special and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that may arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant; provided, however, that in no event shall the cost to defend charged to Consultant exceed Consultant’s proportionate percentage of fault. Notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Consultant shall meet and confer with other parties regarding unpaid defense costs. Consultant’s obligations under this Section 8 apply whether or not there is concurrent negligence on SCPA’s part, but to the extent required by law, excluding liability due to SCPA’s conduct, including SCPA’s sole negligence, active negligence or willful misconduct.

The Parties also acknowledge that this Agreement is subject to California Civil Code 2782.8 as amended and effective January 1, 2018.

8.2 Consultant shall place in its subconsulting and/or subcontractor agreements and cause its subconsultants and/or subcontractors to agree to indemnities and insurance obligations in favor of SCPA and other Indemnitees in the form and substance of those contained in this Agreement. Consultant shall require all subconsultants and/or subcontractors to comply with all indemnification and insurance requirements of this Agreement, including, without limitation, Exhibit “C”. Consultant shall verify subconsultant’s compliance.

9 Liability of SCPA

9.1 Liability Limited to Payment of Compensation. Except as provided in Appendix “A,” Services to be provided by Consultant, and Appendix “C,” Insurance, SCPA’s obligations under this Agreement shall be limited to the payment of the compensation provided for in Sections 3, 4 and 5 of this Agreement.

9.2 Damages. Notwithstanding any other provision of this Agreement, in no event shall SCPA be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement to the extent not arising from SCPA’s sole negligence, active negligence or willful misconduct.

- 9.3 Consultant's Use of Equipment. SCPA shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented or loaned to Consultant by SCPA to the extent not caused by the sole negligence, active negligence or willful misconduct of SCPA. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless SCPA from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its employees, SCPA employees or third parties, or to property belonging to any of the above.
- 9.4 No Waiver. Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which SCPA may have under this Agreement or any applicable law. All rights and remedies of SCPA, whether under this Agreement or other applicable law, shall be cumulative.

10 Independent Contractor; Payment of Taxes and Other Expenses

- 10.1 Independent Contractor Status. Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Consultant performs the Services required of Consultant by the terms of this Agreement. Consultant shall be liable for the acts and omissions of its subconsultants, its employees, and its agents.
- 10.2 No Agency, Employment or Joint Venture. Nothing contained herein shall be construed as creating employment, agency or joint venture relationship between SCPA and Consultant. Consultant acknowledges that neither it nor any of its employees or agents shall, for any purpose whatsoever, be deemed to be SCPA employees, and shall not be entitled to receive any benefits conferred on SCPA employees, including without limitation workers' compensation, pension, health, insurance or other benefits. In the event SCPA exercises its right to terminate this Agreement pursuant to sections 13 or 14, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.
- 10.3 Taxes. Consultant shall be solely responsible for payment of any required taxes, including California sales and use taxes, City of Santa Rosa and/or County of Sonoma business taxes and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto. Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold SCPA harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case SCPA is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish SCPA with proof of payment of taxes on these earnings.

10.4 Direction to Consultant. Consultant shall be available as much as reasonably possible to SCPA staff during the SCPA's normal working hours or as otherwise requested by SCPA. Terms of this Agreement referring to direction from SCPA shall be construed as providing for direction as to policy and the result of Consultant's Services only and not as to the means by which such a result is obtained.

11 Insurance. Prior to execution of this Contract, Consultant shall furnish to SCPA satisfactory proof that it maintains the insurance required by this Agreement as set forth in Appendix C "Insurance," which is attached and made a part of this Agreement. In the event Consultant fails to maintain any required insurance, SCPA may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due Consultant under this Agreement (or, at SCPA's discretion, Consultant shall promptly reimburse SCPA for such expense.)

12 Suspension of Services

12.1 SCPA may, without cause, order Consultant to suspend, delay or interrupt ("Suspend" or "Suspension") Services pursuant to this Agreement, in whole or in part, for such periods of time as SCPA may determine in its sole discretion. SCPA shall deliver to Consultant written notice of the extent of the Suspension at least seven (7) calendar days before the commencement thereof. Where SCPA Suspends Services, SCPA agrees to coordinate with Consultant to adjust the Milestones Schedule and other dates as reasonably needed.

12.2 Notwithstanding anything to the contrary contained in this Section, no compensation shall be made to the extent that a Suspension is, was or would have been for a cause for which Consultant is responsible.

13 Demand for Assurance. If at any time SCPA believes Consultant may not be adequately performing its obligations under this Agreement, that Consultant may fail to complete the Services as required by this Agreement, has provided written notice of observed deficiencies in Consultant's performance, or has other reasonable grounds for insecurity arise with respect to Consultant's performance, SCPA may request from Consultant prompt written assurances of performance and a written plan to correct the observed deficiencies in Consultant's performance. Consultant shall provide such written assurances and written plan within ten (10) calendar days of receipt of written request. Consultant acknowledges and agrees that any failure to provide written assurances and a written plan to correct observed deficiencies, in the required time, is a material breach under this Agreement. SCPA's acceptance of any improper delivery, service, or payment does not prejudice SCPA's right to demand adequate assurance of future performance, and does not limit SCPA's rights to terminate the Agreement pursuant to section 14.

14 Termination of Agreement

14.1 For Cause. Consultant shall be in default of this Agreement ("Default") and SCPA may, in addition to any other legal or equitable remedies available to SCPA, terminate Consultant's right to proceed under the Agreement, for cause:

- 14.1.1 Should Consultant make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition for bankruptcy, be adjudged a bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Consultant in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Consultant or of all or any substantial part of the properties of Consultant, or if Consultant, its directors or shareholders, take action to dissolve or liquidate Consultant; or
- 14.1.2 Should Consultant commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of written notice from SCPA to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of ten (10) calendar days, Consultant must provide SCPA within the ten (10) day period a written plan acceptable to SCPA to cure said breach, and then diligently commence and continue such cure according to the written plan); or
- 14.1.3 Should Consultant violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project or Services and does not cure such violation within ten (10) days of the date of the notice from SCPA to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of ten (10) calendar days, Consultant must provide SCPA within the ten (10) day period a written plan to cure said violation acceptable to SCPA, and then diligently commence and continue performance of such cure according to the written plan.)
- 14.1.4 In the event of termination by SCPA as provided herein for cause:
- (a) Subject to the terms and conditions set forth throughout this Agreement, SCPA shall compensate Consultant for Services delivered to SCPA prior to the date of notice of termination as determined in accordance with the Agreement, but SCPA shall not compensate Consultant for its costs in terminating the Services or any cancellation charges owed to third parties.
 - (b) Consultant shall deliver to SCPA possession of all tangible

aspects of the Services in their then condition, including but not limited to, all copies (electronic and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with vendors and Subconsultants, and all other documentation associated with the Project, and all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period, but only when SCPA has paid Consultant in full for all services rendered and invoiced, excluding disputed sums withheld by SCPA pursuant to section 4.6 (Questioned Amounts) and/or section 4.9 (Set off for errors and omissions).

- (c) Consultant shall remain fully liable for the failure of any defective and/or negligent Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the Agreement. The provisions of this Section shall not be interpreted to diminish any right which SCPA may have to claim and recover damages for any breach of this Agreement, but rather, Consultant shall compensate SCPA for all loss, cost, damage, expense, and/or liability suffered by SCPA as a result of such termination and failure to comply with the Agreement.

14.1.5 In the event a termination for cause is determined to have been made wrongfully, or without cause, then the termination shall be treated as a termination for convenience, and Consultant shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Consultant.

14.2 For Convenience.

14.2.1 SCPA may terminate performance of the Services under the Agreement in accordance with this Section in whole, or from time to time in part, whenever SCPA shall determine that termination is in the SCPA's best interests. Termination shall be effected by SCPA delivering to Consultant, at least seven (7) calendar days prior to the effective date of the termination, a Notice of Termination specifying the extent to which performance of the Services under the Agreement is terminated.

14.2.2 If the termination for convenience hereunder is partial, before the settlement of the terminated portion of this Agreement, Consultant may file with SCPA a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement which is not terminated. SCPA may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of SCPA and Consultant to agree

upon amount or amounts to be paid to Consultant for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit SCPA's rights and remedies at law.

14.3 Obligations upon Receipt of Notice of Termination.

14.3.1 After receipt of a Notice of Termination, whether for cause or for convenience, and except as otherwise directed by SCPA, Consultant shall:

- (a) Stop Services under the Agreement on the date and to the extent specified in the Notice of Termination;
- (b) Place no further orders or subcontracts (including agreements with Subconsultants) for materials, Services, or facilities except as necessary to complete the portion of the Services under the Agreement which is not terminated;
- (c) Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;
- (d) Assign to SCPA in the manner, at times, and to the extent directed by SCPA, all right, title, and interest of Consultant under orders and subcontracts so terminated. SCPA shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
- (e) Settle all outstanding liabilities, and all claims arising out of such termination of orders and subcontracts, with approval or ratification of SCPA to the extent SCPA may require. SCPA's approval or ratification shall be final for purposes of this clause;
- (f) If Consultant has been paid in full for all services rendered (excluding disputed sums withheld by SCPA pursuant to section 4.6 (Questioned Amounts) and/or section 4.9 (Set off for errors and omissions)), Consultant shall transfer title and possession to SCPA, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by SCPA, completed and uncompleted designs and specifications, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination (including mockups and model(s)), completed or partially completed plans, drawings, information, in whatever form (i.e., hard-copy and electronic), all intellectual property rights (including without limitation, to the extent applicable, all licenses and copyright, trademark

and patent rights) and all other property and property rights which, if the Agreement had been completed, would have been required to be furnished to SCPA; and

- (g) Complete performance of any part of the Services which were not terminated by the Notice of Termination.

14.4 Termination Claim Process.

14.4.1 After receiving a Notice of Termination, Consultant shall submit to SCPA a termination claim, in the form and with the certification SCPA prescribes. The claim shall be submitted promptly but in no event later than three months from the effective date of the termination, unless one or more extensions in writing are granted by SCPA upon Consultant's written request made within such 3-month period or authorized extension. However, if SCPA determines that facts justify such action, it may receive and act upon any such termination claim at any time after such 3-month period or extension. If Consultant fails to submit the termination claim within the time allowed, SCPA may determine, on the basis of information available to it, the amount, if any, due to Consultant because of the termination. SCPA shall then pay to Consultant the amount so determined.

14.4.2 Subject to provisions of Section 14.4, Consultant and SCPA may agree upon the whole or part of the amount or amounts to be paid to Consultant because of any termination of Services under this Section. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Consultant shall be paid the agreed amount.

14.4.3 If Consultant and SCPA fail, under Section 14.4.2, to agree on the whole amount to be paid to Consultant because of termination of Services under this Section, then Consultant's entitlement to compensation for Services specified in the Agreement which is performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of:

- (a) Reasonable value of Consultant's Services performed prior to Notice of Termination, based on Consultant's entitlement to compensation under Appendix "B," "Compensation Schedule"; and
- (b) Reasonable cost to Consultant of handling material returned to vendors, delivered to SCPA or otherwise disposed of as directed by SCPA.

Such amount or amounts shall not exceed the total Agreement price

as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by defective and/or negligently performed Services, the cost of materials to be retained by Consultant, amounts realized by the sale of materials, and for other appropriate credits against the cost of Services. Such amount or amounts may include profit, but not in excess of 10 percent of Consultant's total costs of performing the Services.

When, in reasonable opinion of SCPA, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective and/or negligently performed Services (including having to re-perform Services), reasonable cost to be allowed will be the estimated reasonable cost of performing Services in compliance with the requirements of Agreement and excessive actual cost shall be disallowed.

14.5 Miscellaneous Provisions Related to Termination.

14.5.1 Except as provided in this Agreement, in no event shall SCPA be liable for costs incurred by Consultant (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgement interest, or any other expense which is not reasonable or authorized under Section 14.5.

14.5.2 In arriving at amount due Consultant under this Section 14, SCPA may deduct:

- (a) All unliquidated advance or other payments on account theretofore made to Consultant, applicable to the terminated portion of Agreement, and
- (b) Any substantiated claim which SCPA may have against Consultant in connection with this Agreement.

14.5.3 Notwithstanding any provision in this Agreement, Consultant retains the right, upon five (5) days written notice, to either discontinue its services or withhold its Instruments of Service where payment has not been received from SCPA for any invoiced fees for services rendered within ninety (90) days of its invoice, excluding disputed sums withheld by SCPA pursuant to section 4.6 (Questioned Amounts) and/or section 4.9 (Set off for errors and omissions).

15 **Conflicts of Interest/Other Agreements**

- 15.1 Consultant represents that it is familiar with Section 1090 and Section 87100, *et seq.*, of the Government Code of the State of California and that it does not know of any facts that constitute a violation of said sections.
- 15.2 Consultant represents that it has completely disclosed to SCPA all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of SCPA, or other officer, agent or employee of SCPA or any department presently has or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute a ground for termination of this Agreement by SCPA for cause. Consultant agrees to comply with all conflict of interest codes adopted by the SCPA of Alameda and their reporting requirements.
- 15.3 Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with the SCPA that Consultant has no present, and will have no future, conflict of interest between providing the SCPA the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the SCPA, as determined in the reasonable judgment of the SCPA. The provisions of this Section 15 shall remain fully effective indefinitely after termination of Services to the SCPA hereunder.
- 15.4 If requested to do so by SCPA, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with SCPA disclosing Consultant's or such other person's financial interests.

16 Proprietary or Confidential Information of SCPA; Publicity

- 16.1 Proprietary or Confidential Information. Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by SCPA and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to SCPA. Consultant agrees that all information disclosed by SCPA and specifically identified as confidential to Consultant shall be held in strict confidence and used only in the performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the SCPA's interests where such confidential information could be used adversely to the SCPA's interests. Consultant agrees to notify the SCPA immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with this Agreement.

- 16.2 Publicity. Any publicity or press releases with respect to the Project or Services shall be under the SCPA's sole discretion and control. Consultant shall not discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without SCPA's prior written consent. Consultant shall have the right, however, without SCPA's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.
- 16.3 The provisions of this Section 16 shall remain fully effective indefinitely after termination of Services to the SCPA hereunder.
- 16.4 Conflicts of Interest. Notwithstanding any provision in this Agreement, and in accordance with Codes of Professional Conduct (Title 16, California Code of Regulations Section 400, et. Seq.) SCPA acknowledges that when Consultant provides professional services for two or more clients on a project or related projects, Consultant has the legal obligation to disclose in writing to those clients the Consultant's relationship to those clients. Should all or portions of those projects be sold or acquired by others, SCPA acknowledges that Consultant may provide services to prospective buyers or new owners and that additional disclosure need not be provided. SCPA also acknowledges that Consultant is providing services or may in the future provide services to others in the Project area, and that additional disclosure need not be provided.

17 Notice to the Parties

- 17.1 Notices. All notices (including requests, demands, approvals or other communications) under this Agreement shall be in writing.

17.1.1 Method of Delivery. Notice shall be sufficiently given for all purposes as follows:

- (a) When personally delivered to the recipient, notice is effective on delivery.
- (b) When mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery.
- (c) When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
- (d) When delivered by overnight delivery service, including Federal Express, and United Parcel Service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
- (e) When sent by email to the last email address of the recipient known to the party giving notice, notice is effective on

receipt as long as (1) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (2) the receiving party delivers a written confirmation of receipt. Any notice given by email shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a nonbusiness day.

17.1.2 Refused, Unclaimed or Undeliverable Notices. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

17.1.3 Addresses. Addresses for the purpose of giving notice are set forth below. Either party may change its address or other aspects of its contact information by giving the other party notice of the change in any manner permitted by this paragraph 17.

To SCPA: Cordell Stillman, Director of Programs
50 Santa Rosa Avenue
Santa Rosa, CA 95404
cstillman@sonomacleanpower.org

To Consultant: Brad Jacobson, Associate Principal
EHDD
500 Treat Avenue, Suite 201
San Francisco CA 94110
b.jacobson@ehdd.com

17.1.4 Change of Recipient or Address. Either party may, by written notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

18 Ownership of Results/Work for Hire

18.1 Any interest (including, but not limited to, property interests and copyright interests) of Consultant or its Subconsultants, in drawings, plans, specifications, studies, reports, memoranda, computational sheets or other documents (including but not limited to, electronic media) prepared by Consultant or its Subconsultants in connection with Services to be performed under this Agreement shall become the property of and will be transmitted to SCPA at the conclusion of this Agreement and only upon full and final payment of all undisputed invoices for all work performed by Consultant, excluding disputed sums withheld by SCPA pursuant to section 4.6

(Questioned Amounts) and/or section 4.9 (Set off for errors and omissions). The Consultant may, however, retain one copy for its files.

18.2 Notwithstanding the foregoing, in the normal course of the Consultant's activities, Consultant shall have an unrestricted right to reuse its standard construction drawings, details, specifications and other related documents, including the right to retain electronic data or other reproducible copies thereof, and the right to reuse portions or the information contained in them which is incidental to the overall design of the Project.

19 Audit and Inspection Records

19.1 Consultant shall maintain all drawings, specifications, calculations, cost estimates, quantity takeoffs, statements of construction costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, electronic media and documents of any sort prepared by or furnished to Consultant during the course of performing the Services and providing services with respect to the Project, for a period of at least five (5) years (or to the extent required by law, whichever is longer) following final completion and acceptance of the Project. All such records (except for materials subject to the attorney-client privilege, if any) shall be available to SCPA, and SCPA's authorized agents, officers, and employees, upon request at reasonable times and places. Monthly records of Consultant's personnel costs, Consultant costs, and reimbursable expenses pertaining to both Basic Services and Additional Services shall be kept on a generally recognized accounting basis, and shall be available to SCPA, and SCPA's authorized agents, officers, and employees, upon request at reasonable times and places. Consultant shall not destroy any Project records until after advising SCPA and allowing SCPA to accept and store the records.

19.2 Consultant agrees to maintain full and adequate records in accordance with SCPA requirements to show actual costs incurred by Consultant in its performance of this Agreement, and to make available to SCPA during business hours accurate ledgers, books of accounts, invoices, vouchers, cancelled checks, and accounting and other books, records and documents evidencing or relating to all expenditures and disbursements charged to SCPA or relative to Consultant's activities under this Agreement. The consultant will furnish to SCPA, its authorized agents, officers and employees such other evidence or information as SCPA may request with regard to any such expenditure or disbursement charged by Consultant. Consultant will permit SCPA, and SCPA's authorized agents, officers, and employees, to audit, examine and make copies, excerpts and transcripts from such items, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement

19.3 Consultant shall maintain all items described in Sections 19.1 and 19.2 above in an accessible location and condition for a period of not less than five (5) years after final completion and acceptance of the Project or until after final audit has been resolved, whichever is later. If such items are not kept and maintained by Consultant within a radius of fifty (50) miles from SCPA's

headquarters, Consultant shall, upon SCPA's request and at Consultant's sole cost and expense, make such items available to SCPA, and SCPA's authorized agents, officers, and employees, for inspection at a location within said fifty (50) mile radius or Consultant shall pay SCPA its reasonable and necessary costs incurred in inspecting Consultant's books and records, including, but not limited to, travel, lodging and subsistence costs. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon SCPA by this Section.

19.4 The rights and obligations established pursuant to this Section shall be specifically enforceable and survive termination of this Agreement.

20 Subcontracting/Assignment/SCPA Employees

20.1 Consultant and SCPA agree that Consultant's unique talents, knowledge, and experience form a basis for this Agreement and that the services to be performed by Consultant under this Agreement are personal in character. Therefore, Consultant shall not subcontract, assign, transfer or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by SCPA in a written instrument executed and approved by the SCPA in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.

20.2 Consultant shall use the subconsultants for the scopes of work listed in its Statement of Qualifications and Proposal (exhibits to Appendix "A"), below and shall not substitute Subconsultants unless approved by a written instrument executed and approved by the SCPA in writing.

20.3 To the extent Consultant is permitted by SCPA in writing to subcontract, assign or subcontract any portion of this Agreement or any duties or obligations hereunder; Consultant shall comply with all applicable prompt payment laws and regulations (including, without limitation, California Civil Code Section California §3321. Consultant shall remain fully liable and responsible for all acts and omissions of its Subconsultants in connection with the Services or the Project as if it engaged in the acts and omissions directly.

20.4 Consultant shall not employ or engage, or attempt to employ or engage, any person who is or was employed by SCPA or any department thereof at any time that this Agreement is in effect, during the term of this Agreement and for a period of two years after the termination of this Agreement or the completion of the Services, without the written consent of SCPA.

21 Non-Discrimination, Equal Employment Opportunity and Business Practices

Consultant shall not discriminate against any employee or applicant for employment, nor against any Subconsultant or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (as defined below) or veteran's status. To the extent applicable, Consultant shall comply with all federal, state and local laws (including, without limitation, SCPA ordinances, rules and regulations) regarding non-

discrimination, equal employment opportunity, affirmative action, and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.

22 Drug-Free Workplace Policy

Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on SCPA premises. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents or assigns shall be deemed a material breach of this Agreement.

23 Compliance with Americans with Disabilities Act

Consultant acknowledges that, pursuant to the Americans with Disabilities Act (“ADA”) and other similar state accessibility laws and statutes (“Accessibility Laws”), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the Standard of Care established under this Agreement regarding the ADA and any and all other applicable federal, state and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement, and further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this Agreement.

SCPA acknowledges and understands, however, that the Accessibility Laws are subject to various and possibly contradictory interpretation. Furthermore, compliance may involve factors beyond the control of the Consultant including SCPA’s use and operation of the completed project. Consultant shall not be responsible for any inaccessibility issues caused by SCPA’s use and operation of the completed project.

24 Disputes.

24.1. Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the SCPA CEO or his designee, and a principal of the Consultant who shall attempt, in good faith, to resolve the dispute. Such referral may be initiated by written request from either Party. A meeting between the SCPA representative, and principal of the Consultant shall then be scheduled within ten (10) business days of the request, unless such time is extended by mutual agreement of the Parties.

24.2. Provided that SCPA continues to compensate Consultant in accordance with this Agreement, Consultant shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow Consultant to discontinue Services during the course of any dispute, and Consultant’s failure to continue Services during any and all disputes shall be considered a material breach of this Agreement, except in the case of SCPA’s non-payment for Services exceeding ninety (90) days where such non-payment is not pursuant to section 4.6 (Questioned Amounts) and/or section 4.9 (Set offs for Errors and Omissions) of

this Agreement. Consultant agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement, including but not limited to, the time to complete the Services. The consultant also agrees that should Consultant discontinue Services due to a dispute or disputes, SCPA may terminate this Agreement for cause as provided herein.

- 24.3. This dispute provision is not intended to nor shall it be construed to change any time periods for filing a claim or action specified by California Government Code section 900 *et seq.*

25 Agreement Made in California; Venue

- 25.1. This Agreement shall be deemed to have been executed in the City of Santa Rosa, County of Sonoma. The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules.
- 25.2. The venue for all litigation relative to the formation, interpretation, and performance of this Agreement shall be in the County of Sonoma. Consultant waives California Code of Civil Procedure §394.

26 Compliance with Laws

- 26.1 Consultant represents that it will comply with all applicable federal, state and local laws, codes, regulations, statutes, policies, permits and any other conditions (collectively, "Laws") in the performance of the Services, regardless of whether such Laws are specifically stated in this Agreement and regardless of whether such Laws are in effect on the date hereof. Consultant shall comply with all security requirements imposed by authorities with jurisdiction over the Project, and will provide all information, work histories and/or verifications as requested by such authorities for security clearances or compliance.
- 26.2 Consultant further represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable Laws, consistent with the Standard of Care in this Agreement. To the extent there is a conflicting Law, Consultant shall perform its Services applying the more stringent requirement.

27 Construction.

- 27.1 All section and paragraph captions are for reference only and shall not be considered in construing this Agreement. Each signatory to this Agreement for Consultant shall have joint and several responsibility and liability to perform the terms of this Agreement.
- 27.2 Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of SCPA. The words "approval," "acceptable," "satisfactory," or words of like import, shall mean approved by, or acceptable to, or satisfactory to SCPA, unless otherwise indicated by the context.

27.3 Each Party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

28 Miscellaneous

28.1 Statute of Limitations. As between the Parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by SCPA of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This section shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall be as defined by law. However, the applicable statutes of repose, California Code of Civil Procedure Sections §§337.1 and 337.15, shall continue to apply.

28.2 Severability. Any provisions or portion thereof of this Agreement, which is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.

28.3 Waiver. Either Party's waiver of any breach, or the omission or failure of either Party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

28.4 Entire Agreement; Modifications of Agreement. The Agreement, and any written modification to the Agreement shall represent the entire and integrated Agreement between the Parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the Parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior

negotiations, representations or agreements, either written or oral, express or implied, which relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.

- 28.5 Amendment. This Agreement may not be modified or otherwise amended or changed, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of both SCPA and Consultant.
- 28.6 Time of the Essence. Time is and shall be of the essence in the performance of this Agreement and every provision hereof.
- 28.7 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 28.8 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the Parties hereto, with no intent to benefit any non-signator third parties.
- 28.9 Controlling Provisions. In the event of any conflict between the terms of this Agreement and the Appendices hereto, the Agreement shall control.
- 28.10 Professional Seal. Where applicable in the determination of SCPA, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 28.11 Survival. All express representations, waivers, indemnifications, errors/omissions provisions, limitations of liability and other obligations arising prior to termination or otherwise included in this Agreement will survive its expiration, completion or termination for any reason.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

CONSULTANT
Esherick Homsey Dodge and Davis,
Architects, A Professional Corporation

SCPA
Sonoma Clean Power Authority

By: _____
Duncan Ballash, Principal &
President

By: _____
Geof Syphers, Chief Executive Officer

APPROVED AS TO FORM

By: _____
General Counsel

END OF DOCUMENT

**APPENDIX A
SCOPE OF SERVICES**

This is an appendix attached to, and made a part of and incorporated by reference with the Agreement as follows:

1. Base Services.

1.1 SONOMA CLEAN POWER AUTHORITY HEADQUARTERS

Consultant agrees to provide engineering, architectural, design, and other related support services for SCPA’s renovation of a 14,400+/- sf office building and surrounding property in downtown Santa Rosa. The building will serve as SCPA’s headquarters and include a showcase of zero-carbon technologies, including heat pumps, solar photovoltaic parking structure with batteries and electric vehicle charging, induction cooktops, and advanced efficiency measures like integrated LED daylighting controls and possibly mixed-mode HVAC with operable windows.

The subject property is located at 431 E Street, Santa Rosa CA (APN: 009-055-013-000) and 426 Beaver Street, Santa Rosa CA (APN: 009-055-004-000).

The target date for move-in is August 2020.

1.2 Consultant Team

Consultant’s team consists of the following subconsultants:

Point Energy Innovations	Mechanical, Electrical, Plumbing (MEP)
Reed Gilliland	Landscape Architect
ZFA	Structural Engineering
RGD Acoustics	AV and Acoustical Consulting – narrative only
BKF Engineers	Civil Engineering
TBD Consultants	Cost Estimating
Integrated Design Lab	Daylighting

Consultant shall provide architectural services, and is the prime consultant, with the other consultants listed above serving as subconsultants.

Project Manager:

Principal in charge: Brad Jacobson, Associate Principal, EHDD, 500 Treat Avenue, Suite 201, San Francisco, CA 94110, b.jacobson@ehdd.com, (415) 321-6330.

Project Manager: Amy Fashimpar, EHDD, 500 Treat Avenue, Suite 201, San Francisco, CA 94110, a.fashimpar@ehdd.com, (415) 321-6329.

In future phases the following services may be added: signage + wayfinding; architectural specifications; food service design; architectural lighting; fire alarm; photovoltaic system design (performance specifications only); telecommunications and security (performance

specifications only), fire protection (performance specifications only), furniture design (FF&E).

1.3 Scope of Project – Schematic Design Phase

1.3.1 Tasks

- (a) Validation of client-provided program requirements and refinement of project vision and goals;
- (b) Development of 3D REVIT model of existing building and site;
- (c) Development of concept design options for interior space planning and scope of modifications/additions;
- (d) Development of floor plans through test fits confirming all program spaces and sizes, locations adjacencies and support/back of house spaces;
- (e) Development/refinement of exterior design including confirmation of materials, openings, signage locations and preliminary details for confirmation of cost and zoning/planning code requirements;
- (f) Preliminary ceiling and sectional concepts;
- (g) Preliminary selection and description of all major building materials and assemblies to convey design intent and establish parameters for pricing;
- (h) Preliminary code analysis and egress/accessibility plans;
- (i) Planning/zoning analysis, preliminary project review meeting, and determination of site permit requirements;
- (j) Sustainability options, goal-setting, and basis of design narrative, including energy modeling to set targets;
- (k) Preliminary coordination and collaboration with consultant team, including confirmation of all program space requirements and development of design criteria and preliminary options for all building systems and infrastructure. Basis of design narratives and preliminary drawings to be provided for 100% schematic design;
- (l) 100% schematic design architectural documents to include: (i) floor plans, demolition plans, conceptual furniture plans, building sections and elevations; (ii) basis of design narratives describing architectural design and sustainability goals/features; (iii) preliminary building code analysis and egress plans;
- (m) Final program space allocation summary;
- (n) Establishment of project budget through benchmarking studies of local construction market; identification of “value add” items and associated costs;
- (o) Review end phase cost estimate by Cost Estimator and develop value engineering options upon request by SCPA.

1.3.2 Exclusions: The following services are excluded from Base Services, and may be added by SCPA as Additional Services in accordance with the procedures set forth in section 3 of this Appendix “A”, at the rates set forth in Exhibit “B-2” (“Hourly Rates”):

- (a) Significant programming beyond a confirmation of program provided in this Appendix “A” or SCPA’s Request for Qualifications for the Project;
- (b) Professional renderings and/or physical models;
- (c) Meetings beyond those specifically enumerated in section 1.3.3 of this

- Appendix “A”; excluding those meetings necessary to comply with section 2.3.2 of this Appendix “A”;
- (d) Additional consultants beyond those listed in section 1.2 of this Appendix.

1.3.3 Meetings and Presentations

Duration	Approximately two (2) months
Meetings	<ul style="list-style-type: none"> • Three (3) in-person client team meetings including Consultant and appropriate subconsultants as necessary • Design team meetings as needed, online or in-person • One (1) cost review meeting with Consultant, including key subconsultants for cost estimating and other areas as appropriate
Presentations	Two (2) Public Meetings (e.g. Board of Directors Meeting, Community Meeting)

Unless otherwise noted above, all meetings shall be held at SCPA offices or the Project Site, subject to change based on mutual agreement of the Parties.

1.4 Consultant’s Milestone Schedule

1.4.1 Month 1

- (a) *Client Team Meeting No. 1*: Kickoff meeting (Consultant + Point Energy Innovations); program confirmation and goal setting.
- (b) Confirmation of Program
- (c) REVIT Model Build
- (d) Initial Test Fits, Site Plan, and Renovation Concepts
- (e) Development of baseline budget (cost to renovate existing building to Class A – office standards based on current Title 24 requirements)
- (f) *Client Team Meeting No. 2*: Present Program, Concepts and Baseline Budget (Consultant + Point Energy Innovation + Reed Gilliland)

1.4.2 Month 2

- (a) Selection and development of schematic plan and section
- (b) Narrative Development of envelope, daylighting, comfort and MEP strategies
- (c) *Client Team Meeting No. 3*: Present two (2) refined options with cost estimates; select schematic design approach.
- (d) Issuance of Plan Backgrounds
- (e) Issuance of draft 100% Schematic Design drawings and narrative
- (f) Preparation and submittal of cost estimate based on 100% Schematic Design documents
- (g) *Client Team Meeting No. 4*: Final Cost Review (possibly by videoconference, upon consent from SCPA)
- (h) Issuance of final 100% Schematic Design drawings and narrative and final cost estimates.

1.5 Deliverables

1.5.1 Design presentations, including 2D drawings and 3D sketches to convey design intent

1.5.2 100% Schematic Design Drawings and Narratives

1.6 Preliminary Field Investigation. Project team members to visit the site to gather field information sufficient to develop Project deliverables.

1.7 Cost Estimates. The consultant will provide a baseline budget, cost estimates for refined options to be considered by SCPA and a cost estimate at 100% schematic design to assist the SCPA in any necessary adjustment, if necessary, to the scope of work or to the cost estimate.

1.8 Revisions. Consultant agrees to prepare revisions to the documents during the Schematic Design phase as part of its Base Services; provided, however, that revisions that are inconsistent with written approvals previously given by SCPA may be considered Additional Services.

2. General Requirements

2.1 Personnel and Subconsultants. Consultant shall use only the personnel and subconsultants identified in this Appendix in performing the Services.

2.2 General Criteria Governing Consultant's Service.

2.2.1 Plans, material specifications, design calculations, site data and any cost estimates required to be prepared by Consultant shall be prepared by licensed personnel or personnel under the direction of licensed personnel. As required by the California Code of Regulations, "Responsible Charge" for such Services shall be with a Registered Architect or Engineer licensed in the State of California.

2.2.2 The Project shall be developed and designed to meet all applicable and the most current codes, laws, regulations, and professional standards. Certain exceptions are possible, but only when the SCPA grants a written exemption to a specific standard or regulation.

2.2.3 Consultant shall review existing SCPA data, reports, plans, and other information regarding the site, and perform field investigations as necessary to become familiar with the site. Consultant shall review the information provided by the SCPA concerning existing conditions (including but not limited to existing utilities and structures) and inform SCPA if further investigations of existing conditions as are necessary for Consultant to perform the Services. Consultant shall also reasonably rely on the information provided by SCPA. Consultant shall review supplied design information and advise SCPA of its adequacy for Consultant's work and advise SCPA of any further design or other services necessary to complete the Project.

2.2.4 Unless otherwise permitted in writing by SCPA, Consultant shall not specify or recommend unique, innovative, proprietary or sole source equipment, systems or materials. In the event Consultant requests to specify or recommend a proprietary or sole source design or equipment, Consultant shall provide SCPA with a written evaluation of whether all periodic maintenance and replacement of parts, equipment or systems, can normally be performed and without excessive cost or time. SCPA will consider such evaluation in making its decision.

2.3 General Scope of Consultant's Services

2.3.1 Consultant's services shall include professional services within the scope of Consultant's professional discipline (including Consultant's team's professional disciplines) necessary to accomplish the tasks defined throughout this Appendix. Consultant shall have adequate personnel, facilities, equipment and supplies to complete Consultant's Services.

2.3.2 Performance of Services will require Consultant to work with, meet with, and attend meetings with SCPA staff, with other governmental agencies, and with such other consultants as Consultant determines necessary, to the extent necessary for performance of Consultant's duties under this Agreement (including, but not limited to, Consultant's express duties of coordination with other consultants).

2.3.3 Consultant shall engage appropriate specialty subconsultants as are necessary for proper completion of Consultant's Services in accordance with the scope of work specified herein and utilizing the subconsultants as specified section 1.2 of this Appendix "A", at the sole expense of Consultant. Consultant's contracts with its subconsultants (and their contracts with their subconsultants) shall incorporate this Agreement by reference to the extent not inconsistent with the subconsultant's scope of work. Consultant shall secure SCPA's approval for any subconsultants not listed in this Appendix. Consultant shall require each of its subconsultants to execute agreements containing a standard of care and indemnity provisions coextensive with those in this Agreement and which will indemnify and hold SCPA harmless from any negligent errors or omissions of the Subconsultants.

2.3.4 Consultant shall provide SCPA with written evaluations, when applicable, of the effect of any and all governmental and private regulations, licenses, patents, permits, and any other type of applicable restriction and associated requirements on the Services and its incorporation into the Project, including but not limited to, all requirements imposed by the Office of Statewide Health Planning & Development (OSHPD), Division of State Architect, Regional Water Quality Control Board, California Uniform Building Code and California Regulations (including but not limited to Title 24). Consultant may incorporate these written evaluations into its deliverables as expository of the report and design solutions provided.

2.4 Coordination of Services with the Project, SCPA's Consultant Team, and SCPA Staff

- 2.4.1 Consultant shall coordinate its Services with the services of all engineering disciplines and subconsultants involved in completing the Project. The objective of this coordination shall be the development of a comprehensive and workable design for the site work portion of the Project and preliminary design for the balance of the Project, with consistency in engineering standards, anticipated construction details, materials specifications, and approaches, to secure practical, consistent and economic design solutions. Consultant shall immediately advise SCPA in writing if any SCPA staff or consultant fails in any manner to coordinate its work with Consultant, and the nature of the non-compliance. SCPA will have a responsibility to then enforce compliance.
- 2.4.2 Consultant shall provide appropriate safety training for Consultant's personnel. Consultant shall review and train Consultant's personnel in appropriate safety procedures for work in the Project construction area. Consultant shall require all personnel under Consultant's direction to wear white hard hats when entering the construction area, and any other safety equipment such as orange vests and appropriate shoes, ear and eye protection whenever these precautions are required by OSHA safety standards. Consultant shall provide all safety equipment for Consultant's personnel.

2.5 Deliverables and Completion Dates Required Under This Agreement

Required deliverables are discussed in Section 1.5 of this Appendix "A". Each deliverable shall be reviewed with representatives of the SCPA. The SCPA shall make a reasonable determination of the acceptability of the deliverables. Consultant shall promptly correct deficiencies that SCPA reasonably identifies in the deliverables and shall promptly make modifications to conform with Project requirements and modifications to achieve acceptability of deliverables to SCPA, and the cost thereof is included in the fee for Basic Services. If Consultant should disagree with SCPA's determination, Consultant shall make the changes requested by SCPA under a reservation of rights to request additional compensation and shall submit separate supporting documentation for the additional charge.

2.6 Monthly Progress Update

With each request for payment, Consultant shall provide SCPA with a written Monthly Progress Update. The Monthly Progress Update shall cover the Consultant's percent complete for each phase of the work as outlined in the "Monthly Billing Breakdown" in accordance with Appendix B, section 2. If applicable, the Monthly Progress Update shall identify any actions and approvals needed, and any problems in performing the Services (whether by Consultant, SCPA or any third party) of which Consultant becomes aware.

3. Additional Services

All Services identified in the Agreement, including but not limited to the Agreement form, the other appendices, and in the foregoing sections of this Appendix A are "Base Services." The SCPA may request Consultant to provide services in addition to Base Services, referred to hereafter as (Additional Services). Additional Services must be authorized by SCPA in writing prior to performance. Consultant shall be compensated for Additional Services as provided herein unless the parties agree on lump sum compensation for particular work activities.

Under no circumstances shall Additional Services be deemed to include work or services necessary because of Consultant's defective and/or negligent errors, or omissions in Consultant's work product. All such services shall be performed at no cost to SCPA, including, but not limited to, any required corrections or revisions to reports, drawings or specifications that are a result of any defective and/or negligent errors or omissions by Consultant. Nor shall Additional Services include work performed prior to written notice and written agreement upon the Additional Services.

END OF APPENDIX A

APPENDIX B

COMPENSATION SCHEDULE

1 Amount of Compensation for Services of Consultant.

- 1.1 Excluding Additional Services only, the amount of compensation to be paid to Consultant for all services under this Agreement shall not exceed One Hundred Ninety-Five Thousand, Five Hundred and Fifty-One dollars (\$195,551.⁰⁰) referred to hereafter as the Not-To-Exceed Amount (“NTE”). Total compensation due Consultant shall be the actual amount invoiced based upon the Consultant’s hourly billing, which may be less than the NTE amount. Reimbursable Expenses are included in the NTE. The NTE also includes within its scope the scope of all subconsultants and their reimbursables, and shall constitute full compensation for the Services.
- 1.2 “Reimbursable Expenses” means job-related expenses directly incurred by Consultant in the performance of services provided under the Agreement. Reimbursable expenses include mail and overnight delivery services, reproduction of reports, drawings, specifications, photographs and similar. Normal travel expenses to and from the site and/or for meetings with SCPA under the Agreement are Reimbursable Expenses. Any Reimbursable Expenses exceeding the value of Five Hundred dollars (\$500.⁰⁰) and/or Out-of-State travel in connection with the project shall be approved in advance, in writing by SCPA. Reimbursable expenses will be billed at cost plus 10%. Reimbursable Expenses shall not exceed Four thousand, eight hundred and twenty-five dollars (\$4,825.⁰⁰)
- 1.3 Compensation for Base Services will be on a fixed fee basis, as set forth in Exhibit “B-1” (“Fixed Fees for Base Services”) attached to this Appendix “B”.
- 1.4 Additional Services, if any are engaged in accordance with the procedures set forth in section 3 of Appendix “A”, will be compensated at the rates set forth in Exhibit “B-2” (“Hourly Rates”) attached to this Appendix “B”.

2 Monthly Billing Breakdown

- 2.1 SCPA shall make monthly payments to Consultant in accordance with approved Monthly Billing Breakdown, which shall be submitted by Consultant for SCPA’s approval prior to the first monthly invoice. The “Monthly Billing Breakdown” shall itemize separate categories for each consultant, each design and construction phase, along with a project schedule defining the timeline and cost for each category.
- 2.2 All invoices must include:
 - 2.2.1 Purchase Order Number;
 - 2.2.2 Project Name;
 - 2.2.3 Project Address;
 - 2.2.4 SCPA’s Project Number;
 - 2.2.5 Project Manager Name;
 - 2.2.6 Description of service performed;
 - 2.2.7 Date range of services performed;
 - 2.2.8 Invoices, receipts, or other reasonably requested documentation related to Reimbursable Expenses; and
 - 2.2.9 Sent electronically to: cstillman@sonomacleanpower.org or via mail to Sonoma Clean Power, ATTN: Cordel Stillman, 50 Santa Rosa Avenue, 5th Floor, Santa Rosa CA 95404.

3 Methods of Payment to Consultant

3.1 For Basic Services on the Project. Consultant shall submit monthly invoices in accordance with the approved “Monthly Billing Breakdown” specifying the percentage complete for each billing category and itemized reimbursable expenses supported by invoices and appropriate backup documentation. Each invoice shall report on Consultant’s total billings.

3.2 For Additional Services. In the event Additional Services are authorized, SCPA shall pay Consultant for Additional Services, as defined below, as follows:

3.2.1 General. For Additional Services of Consultant’s professional staff engaged directly on the Project, on the basis of a lump sum amount negotiated between the parties, or, at SCPA’s option, based on hourly rates per Consultant’s Billing schedule with an agreed Not-to-Exceed amount.

3.2.2 Subconsultants. For Additional Services of Subconsultants employed by Consultant to render Additional Services, the amount, billed to Consultant plus 10%, therefore.

3.2.3 For Additional services on an hourly basis, Consultant agrees that all Subconsultant billing will be limited to a not-to-exceed amount upon prior written approval of the SCPA.

END OF APPENDIX B

EXHIBIT "B-1"
FIXED FEES FOR BASE SERVICES

compensation summary for client



PROJECT NAME:

Sonoma Clean Power HQ Renovation

DATE:

[180705]

JOB NO.

18044

1.0 BASE SERVICES

	Ph 3 Schem	Ph 4 Design Dev	Ph 5 Const Doc	Ph 6 Bidding	Ph 7 C A	Ph 8 Post CA	Total
Architectural EHDD	\$ 101,730	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 101,730
Structural ZFA	\$ 9,900	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,900
MEP Engineering POINT ENERGY INNOVATIONS	\$ 37,087	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 37,087
Landscape Architecture REED GILLILAND	\$ 8,910	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,910
Cost Estimating TBD CONSULTANTS	\$ 13,024	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 13,024
Basic Professional Services Fee	\$ 170,651	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 170,651

1.1 Special Consultants

	Ph 3 Schem	Ph 4 Design Dev	Ph 5 Const Doc	Ph 6 Bidding	Ph 7 C A	Ph 8 Post CA	Total
Civil Engineering BKF ENGINEERS	\$ 4,840	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,840
Acoustics / Noise Control RGD ACOUSTICS	\$ 5,280	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,280
Daylighting INTEGRATED DESIGN LAB	\$ 5,775	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,775
Audiovisual RGD ACOUSTICS	\$ 4,180	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,180
Special Consultants Fees	\$ 20,075	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 20,075

Subtotal All Consultants	\$ 88,996	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 88,996
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1.2 Total Base A/E Design Fee	\$ 190,726	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 190,726
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1.3 Estimated Reimbursables	\$ 4,825	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,825
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1.4 TOTAL COST BASE SERVICES	\$ 195,551	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 195,551
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EXHIBI "B-2"
HOURLY RATES

1. Architectural Services will be billed at the following hourly rates:

Principal	\$ 300 per hour
Associate Principal	\$ 265 per hour
Director of Interior Design	\$ 275 per hour
Director of Construction Administration	\$ 275 per hour
Director of Project Management	\$ 275 per hour
Senior Project Manager/Architect IV	\$ 210 per hour
Project Manager/Architect III	\$ 190 per hour
Architect II	\$ 170 per hour
Architect I	\$ 150 per hour
Designer IV	\$ 170 per hour
Designer III	\$ 150 per hour
Designer II	\$ 135 per hour
Designer I	\$ 115 per hour
Interior Designer IV	\$ 210 per hour
Interior Designer III	\$ 190 per hour
Interior Designer II	\$ 170 per hour
Interior Designer I	\$ 150 per hour
Graphic Designer	\$ 145 per hour
Contract Administrator	\$ 135 per hour
Construction Administrator	\$ 110 per hour
Project Assistant	\$ 95 per hour
Intern	\$ 90 per hour

2. Reimbursable and consultant costs shall be billed at cost plus 10% and include the following:
- Cost of printing or duplication of drawings, CADD plotting, specifications, reports and cost estimates;
 - Lodging, subsistence and out-of-pocket expenses for authorized travel in connection with the work;
 - Airfare, car rental, and local travel when applicable at mileage rates per current IRS guidelines, plus tolls and parking fees;
 - Postage, express mail, messenger and delivery charges;
 - Cost of models, special renderings, photography, special process printing, special printed reports or publications;
 - Fees for consultants retained with approval of the client.

Our invoices for the above will be billed monthly and are due upon presentment. Unpaid amounts accrue interest at the maximum legal rate from the 45th day following the date of the invoice.

The billing rates shown above are for the time spent on the project. The rates are subject to annual increase averaging 5%.

APPENDIX C INSURANCE

- A. Consultant is required to maintain at all times during the performance of this Agreement the following insurance coverage:
1. Workers' Compensation Employers' Liability limits of \$1,000,000 each occurrence, \$1,000,000 per disease, and \$1,000,000 each employee. Consultant's Workers' Compensation Insurance policy shall contain a Waiver of Subrogation. In the event Consultant is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California. Employers' Liability Coverage endorsement shall specify as entity and endorsement holder the SCPA, its Board of Supervisors, the individual members thereof, and all SCPA officers, agents, employees, and volunteers.
 2. Occurrence-based Commercial General Liability Insurance or Business Owners Policy with limits of \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, and \$2,000,000 Aggregate. This liability insurance shall include but shall not be limited to protection against claims arising from bodily and personal injury (including death resulting therefrom) and damage to property resulting from Consultant's or subcontractor's or subconsultant's operations.
 3. Occurrence-based Comprehensive or Business Owners Automobile Liability Insurance with limits not less than \$1 million each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.
 4. Professional Liability Insurance with limits not less than \$1,000,000 each claim and \$2,000,000 in the aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement, with deductible amounts reasonably acceptable to the SCPA. Acceptance of Consultant's Insurance by SCPA shall not relieve or decrease the liability of Consultant hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Consultant.
- B. General Liability and Automobile Liability Insurance policies shall be endorsed to provide the following:
1. Name as Additional Insured SCPA, its Board of Supervisors, the individual members thereof, and all SCPA officers, agents, employees, and volunteers.
 2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, but the addition of one or more entities shall not affect the insurer's limit of liability.
- C. All policies shall be endorsed to provide thirty (30) days advance written notice to SCPA of cancellation, and certificates of all policies and endorsements shall be mailed to SCPA as provided in the Agreement per paragraph 17.1.3.
- D. SCPA may, at its sole option, terminate this Agreement on 15 days' notice to Consultant (but during such 15 day period Consultant has the opportunity to cure the default), in the event of any lapse of required insurance coverage. SCPA may, at its option, secure sufficient insurance coverage to replace any required insurance coverage which has lapsed, and Consultant hereby acknowledges its liability to reimburse SCPA for all costs associated with such replacement insurance coverage.

- E. Insurance shall be maintained through an insurer and with deductible amounts acceptable to SCPA. Should any of the required insurance be provided under a claims-made form, Consultant shall maintain such coverage continuously or be ordinarily renewed throughout the term of this Agreement, without lapse, and shall provide a discovery period for a period of three years beyond the Agreement expiration, to the effect that, should occurrences during the Agreement term give rise to claims made within four-years after expiration of the Agreement, such claims shall be covered by such claims-made policies.
- F. Certificates of insurance, in form and with insurers satisfactory to SCPA, evidencing all coverages above shall be furnished to SCPA before commencing any operation under this Agreement, with complete copies of policies promptly upon SCPA request.
- G. Approval of the insurance by SCPA shall not relieve or decrease the liability of Consultant hereunder.
- H. If Consultant is an association or partnership, the association or partnership shall be insured by any one of the following methods:
 - 1. Separate insurance policies issued with the association or partnership as named insured.
 - 2. All insurance policies required by this Agreement of one of the participants to include the association or partnership as named insured.
 - 3. The association or partnership must be a named insured on all of the policies required by this Agreement.
- I. If Consultant maintains higher limits than the minimums specified herein, SCPA is entitled to coverage for the higher limits maintained by Consultant.

END OF APPENDIX C



Staff Report – Item 05

To: Sonoma Clean Power Authority Community Advisory Committee

From: Chad Asay, Programs Manager
Rachel Kuykendall, Programs Manager

Issue: California Energy Commission EPIC Grant 17-304- Recommend lease for Energy Marketplace

Date: July 24, 2018

Requested Committee Action

Provide recommendation to the Board of Directors regarding the execution of a three-year lease with Kushins & Langendorf to implement The Energy Marketplace and for the EPIC Grant 17-304 and associated requirements.

Background

On November 30th, 2017, SCP applied for EPIC Grant 17-304 to provide just over \$9.8 million in funding for programmatic strategies that could lead to a doubling of energy efficiency savings in existing buildings over a three-year period. The team’s proposal focused on a series of applied research projects evaluating emerging technologies such as phase-change materials, heat-pump water heaters, and advanced lighting controls in commercial buildings. The bulk of the grant’s budget would go towards building out a physical Energy Marketplace, which would be a storefront offering energy products, training, and contractor referrals. The marketplace will feature emerging technologies and established energy savings items that SCP customers could see, test, and directly buy. Additionally, the Marketplace would feature a series of technology-related training sessions for building inspectors, contactors, consumers, and energy consultants.

In June, the SCPA Board of Directors approved a contract with the California Energy Commission, including match funding of \$3 million.

After thorough review of 12 locations, SCP staff recommend entering into a lease for 741 4th Street. This commercial space is approximately 9,435 +/- Sq. Ft. The term of the lease will commence September 1, 2018 and run for three

years, with an additional three 36-month options to extend the term of the lease. The lease rate for this space will be:

1. Year one a base rent rate of \$11,000 per month,
2. Year two of \$11,500 per month,
3. Year 3 of \$12,000 per month.

In addition to the lease rate, SCP will be responsible to pay its proportionate share of the Common Area Maintenance, Triple Net expenses and a deposit. Lessor shall provide SCP a Tenant Improvement Allowance in the form of a waiver of a total of eleven months of Base Rent.

Staff is seeking the Committee's recommendation to the Board of Directors to approve the Energy Marketplace Lease of 741 4th Street Santa Rosa, California for the total amount of \$371,208 for the period of September 1, 2018 through August 31, 2021. The lease is still in the process of legal review, but the budget and dates will not change. Any changes to the draft lease are anticipated to involve only minor revisions and will be subject to review and approval by General Counsel.



DRAFT
AIR COMMERCIAL REAL ESTATE ASSOCIATION

STANDARD MULTI-TENANT SHOPPING CENTER LEASE - NET

1. Basic Provisions ("Basic Provisions").

1.1 Parties: This Lease ("Lease"), dated for reference purposes only July 16, 2018, is made by and between Kushins & Langendorf ("Lessor") and Sonoma Clean Power Authority ("Lessee")

1.2 Premises: That certain portion of the Shopping Center (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 741 Fourth Street, located in the City of Santa Rosa, County of Sonoma, State of CA, with zip code 95404, as outlined on Exhibit A attached hereto ("Premises") and generally described as (describe briefly the nature of the Premises): retail space

In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, exterior walls or utility raceways of the building containing the Premises ("Building") or to any other buildings in the Shopping Center. The Premises and the Building are situated within the Shopping Center known as NA. The Premises, the Building, the Common Areas and all other buildings and improvements within said Shopping Center, together with the land upon which they are located, are herein collectively referred to as the "Shopping Center." (See also Paragraph 2)

1.3 Term: three (3) years and zero (0) months ("Original Term") commencing September 1, 2018 ("Commencement Date") and ending August 31, 2021 ("Expiration Date"). (See also Paragraph 3)

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

1.5 Base Rent: \$11,000.00 per month ("Base Rent"), payable on the first day of each month commencing August 1, 2019. (See also Paragraph 4)

[X] If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 61

1.6 Percentage Rent Rate: none percent (0%) of Gross Sales. Percentage Rent shall be due and payable in accordance with the provisions of the Percentage Rent Addendum, if any, attached hereto and made a part hereof, and Paragraph 4 hereof.

1.7 Lessee's Share of Common Area Operating Expenses: fifty-nine percent (59.0%) ("Lessee's Share"). In the event that that size of the Premises and/or the Shopping Center are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.8 Merchants' Association Annual Dues: \$ none per year ("Merchants' Association Dues"). Lessee shall pay Merchants' Association Dues and/or become a member of the Merchants' Association in accordance with the provisions of the Merchants' Association Addendum, if any, attached hereto.

1.9 Base Rent and Other Monies Paid Upon Execution:

- (a) Base Rent: \$0.00 for the period
(b) Common Area Operating Expenses: \$1,728.00 for the period 9/1/18 to 9/30/18
(c) Security Deposit: \$16,000.00 ("Security Deposit"). (See also Paragraph 5)
(d) Merchants' Association Dues: \$ for the period
(e) Other: \$ for
(f) Total Due Upon Execution of this Lease: \$17,728.00

1.10 Agreed Use: retail, educational, showroom center for energy efficient technologies (See also Paragraph 6)

1.11 Agreed Trade Name: Sonoma Clean Power (See also Paragraph 6)

1.12 Insuring Party. Lessor is the "Insuring Party". (See also Paragraph 8)

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

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

- [X] Cornish & Carey commercial Inc., Newmark Cornish & Carey represents Lessor exclusively ("Lessor's Broker");
[X] North Bay Property Advisors represents Lessee exclusively ("Lessee's Broker"); or
[] represents both Lessor and Lessee ("Dual Agency").

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

1.14 Guarantor. The obligations of the Lessee under this Lease are to be guaranteed by ("Guarantor"). (See also Paragraph 37)

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

- [X] an addendum consisting of Paragraphs 51 through 62
[X] a site plan marked Exhibit A, depicting the Premises;

- a site plan marked Exhibit B, depicting the Shopping Center;
- a current set of Rules and Regulations for the Shopping Center; Exhibit D;
- a current set of the Sign Criteria for the Shopping Center;
- a work letter; Exhibit C
- other (specify): _____

2. Premises.

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

2.2 **Condition.** Also see Paragraph 54. Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within 30 days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date and that the structural elements of the roof, bearing walls and foundation of the Premises shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Premises. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls). Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

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

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

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

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

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

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

2.6 **Vehicle Parking.** Lessee shall not use and shall not permit its employees to use any parking spaces in the Shopping Center except for parking by vehicles that are no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Lessee shall permit its employees to only occupy those parking spaces, if any, as depicted as employee parking spaces on the Shopping Center site plan. Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

- (a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.
- (b) Lessee shall not service or store any vehicles in the Common Areas.
- (c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 **Common Areas - Definition.** The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Shopping Center and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Shopping Center and their respective employees,

suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Shopping Center. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas, nor the right to display merchandise or conduct sales in the Common Areas. Any such storage, display or sales shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, as exercised in Lessor's sole discretion, which consent may be revoked at any time. In the event that any unauthorized storage or displays shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Shopping Center and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Shopping Center.

2.10 **Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes or additions to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, elevations, landscaped areas, signage, walkways and utility raceways;

(b) To use and close temporarily any of the Common Areas for the purpose of maintaining, repairing and altering the Shopping Center, so long as reasonable access to the Premises remains available, and to close temporarily any of the Common Areas to whatever extent is required in the opinion of Lessor's counsel to prevent a dedication of or the accrual of any rights of any persons or of the public to any of the Common Areas;

(c) To designate other land outside the boundaries of the Shopping Center to be a part of the Common Areas or to be entitled to use the Common Areas on a reciprocal basis;

(d) To add additional buildings and improvements to the Common Areas; and

(e) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Shopping Center as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

2.11 **Common Areas - Promotional Events; Sidewalk Sales.** Lessor reserves the right, from time to time, in Lessor's sole discretion, to utilize portions of the Common Areas for promotional events, which may include but shall not be limited to entertainment. Lessor further reserves the right, in Lessor's sole discretion, to permit any one or more tenants of the Shopping Center to conduct the display and/or sale of merchandise from the sidewalks immediately adjacent to such tenants' respective premises.

2.12 **Common Areas - Remodeling.** At any time during the Term, Lessor may remodel or expand, in any manner, the existing Shopping Center, which work may include, without limitation, the addition of shops and/or new buildings to the Shopping Center (collectively, "**Remodeled Center**"). If Lessor deems it necessary for construction personnel to enter the Premises in order to construct the Remodeled Center, Lessor shall give Lessee no less than 60 days prior notice and Lessee shall allow such entry. Lessor shall use reasonable efforts to complete any work affecting the Premises in an efficient manner so as not to interfere unreasonably with Lessee's business. Lessee shall not be entitled to any damages for any inconvenience or any disruption to Lessee's business caused by such work; provided, however, the Base Rent paid by Lessee for the period of the inconvenience shall be abated in proportion to the degree that Lessee's use of the Premises is impaired. Lessor shall have the right to use portions of the Premises to accommodate any structures required for the Remodeled Center, provided that if as a result thereof there is a permanent decrease in the floor area of the Premises of 3% or more, there shall be a proportionate downward adjustment of Base Rent and Lessee's Share.

3. Term.

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

3.2 **Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If an Early Possession Date has been specified in Paragraph 1.4, the Parties intend that Lessee shall have access to the Premises as of the Early Possession Date for purposes of preparing and fixturing the Premises for the conduct of Lessee's business. If Lessee totally or partially occupies the Premises prior to the Commencement Date for any reason (and for purposes hereof, "occupancy" shall include, without limitation, Lessee's entry onto the Premises for purposes of preparing and fixturing the Premises for business), the obligation to pay Base Rent and Percentage Rent shall be abated for the period of such early possession. All other terms of this Lease (including but not limited to Lessee's obligations to carry insurance and to maintain the Premises) shall be in effect during such period, except that Lessee's obligation to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums shall only be in effect prior to the Commencement Date if Lessee has opened for business in the Premises prior to the Commencement Date. Any such Early Possession shall not affect the Expiration Date.

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

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

4. Rent.

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

4.2 **Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent and, if applicable, Percentage Rent, Lessee's Share (as specified in Paragraph 1.7) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "Common Area Operating Expenses" are defined, for purposes of this Lease, as all costs incurred by Lessor relating to the ownership and operation of the Shopping Center, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition, and replacement as reasonably necessary, of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, parking lot striping, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire detection and/or sprinkler systems.

(dd) Common electrical, plumbing and other utilities servicing any building in the Shopping Center and/or

the Common Areas.

(ee) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) The cost of trash disposal, pest control services, property management (including, but not be limited to, a

property management fee to Lessor equal to 5% of Base Rent and Percentage Rent), security services, and the costs of any environmental inspections.

- (iv) Reserves set aside for equipment, maintenance, repair and replacement of Common Areas.
- (v) Real Property Taxes (as defined in Paragraph 10).
- (vi) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.
- (vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.
- (viii) Auditors', accountants' and attorneys' fees and costs related to the operation of the Shopping Center.
- (ix) The cost of any capital improvement to the Building or the Shopping Center not covered under the provisions of Paragraph 2.3; provided, however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month.
- (x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a

Common Area Operating Expense.

(b) If Lessor determines that the method of proration of any item included within Common Area Operating Expenses is inequitable, Lessor may prorate such item on the basis of usage or other equitable considerations. Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Premises, the Building or to any other premises or building in the Shopping Center or to the operation, repair and maintenance thereof shall be allocated entirely to such premises or building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to any premises or building or to the operation, repair and maintenance thereof shall be equitably allocated by Lessor to all buildings in the Shopping Center.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Shopping Center already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) If there are one or more Major Tenants (as hereinafter defined) within the Shopping Center, then at Lessor's sole option, the amount to be reimbursed by such Major Tenants to Lessor for all or a portion of the Common Area Operating Expenses may be determined by alternative equitable methods (e.g., a Major Tenant may pay directly for its own security), and the actual amount paid by such Major Tenants shall be credited against the Common Area Operating Expenses allocated to other tenants of the Shopping Center; provided, however, that in such event the rentable area of the buildings leased to such Major Tenants shall be excluded from the rentable area of the Shopping Center for purposes of determining Lessee's Share of Common Area Operating Expenses for those specific items, notwithstanding the percentage set forth in Paragraph 1.7. As used herein, the term "Major Tenant" shall mean a tenant leasing at least 15,000 square feet of rentable area within the Shopping Center.

(f) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

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

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use.**

6.1 **Use.**

(a) **Agreed Use; Agreed Trade Name.** Lessee shall use and occupy the Premises only for the Agreed Use, and for no other purpose, and Lessee shall operate at the Premises only under the Agreed Trade Name and under no other trade name. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvement on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises, and/or is not in conflict with or incompatible with the existing or proposed uses (whether or not exclusive) of other occupants of the Shopping Center. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Trade Name, so long as the same is not in conflict with or incompatible with the nature and character of the Shopping Center or other existing or proposed uses of other occupants of the Shopping Center. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use and/or Agreed Trade Name.

(b) **Continuous Operation.** Lessee shall continuously (i) operate and conduct the Agreed Use under the Agreed Trade Name within the entire Premises in a reputable manner and in conformity with industry standards of practice prevailing in the field of business among merchants engaged in the same or similar business in the city in which the Premises are located, (ii) staff the Premises with sufficient sales personnel, stock the Premises with adequate merchandise and exercise sound business practices so as to maximize Gross Sales for the benefit of Lessor. At a minimum, Lessee shall keep the Premises continuously open for business Monday through Friday from 9:00 a.m. to 6:00 p.m., Saturday from 9:00 a.m. to 6:00 p.m., and Sunday from 10:00 a.m. to 6:00 p.m. If Lessee fails to comply with the requirements of this Paragraph 6.1(b), then in addition to any and all other rights and remedies of Lessor, Lessee shall pay to Lessor an amount equal to 1/15th of the Base Rent for each day or portion thereof that Lessee fails to so comply. Such sum shall be in addition to, and not a part of, the Base Rent otherwise due under this Lease.

(c) **Violations of Exclusive Use Rights.** Lessee acknowledges that Lessor may grant, or may have previously granted, exclusive use rights to other tenants of the Shopping Center and agrees that a material consideration to Lessor in entering into this Lease is Lessee's covenant to limit its use of the Premises to the Agreed Use under the Agreed Trade Name as set forth above. Lessee's violation of exclusive use rights granted to other tenants of the Shopping Center will result in Lessor suffering irreparable harm and, therefore, in addition to all other rights and remedies available to Lessor, Lessor may seek to enjoin Lessee's breach of such covenant and Lessee shall be liable for any damages incurred or sustained by Lessor to such other tenants whose exclusive use rights are breached by Lessee. In no event shall Lessor be liable to Lessee for any failure of any other tenants of the Shopping Center to operate their businesses, or for any loss or damage that may be occasioned by or through the acts or omissions of other tenants or third parties.

(d) **Other Tenancies.** Lessor, at its sole discretion, reserves the absolute right to establish procedures to control other tenancies in the Shopping Center. Regardless of whether any specific tenants are shown on any site plan attached hereto, Lessee does not rely on

that fact, nor does Lessor represent that any specific tenant or number or type of tenants shall or shall not during the Term occupy any portion of the Shopping Center, nor does Lessee rely on any other tenant operating its business in the Shopping Center at any particular time or times. Further, no conduct by any tenant, subtenant or other occupant of, or any customer of, or any supplier to or use of any portion of the Shopping Center shall constitute an eviction, constructive or otherwise, of Lessee from the Premises, and Lessee hereby waives any and all claims that it might otherwise have against Lessor by reason thereof.

6.2 Hazardous Substances.

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

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

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

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

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which are suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

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

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

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

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

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

7.1 Lessee's Obligations.

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items

which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

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

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

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 Utility Installations; Trade Fixtures; Alterations.

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

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

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

7.4 Ownership; Removal; Surrender; and Restoration.

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

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

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

8. Insurance; Indemnity.

8.1 **Payment of Premiums.** The cost of the premiums for the insurance policies required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), shall be a Common Area Operating Expense. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar

insurance carried by Lessor, whose insurance shall be considered excess insurance only.

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

8.3 Property Insurance - Building, Improvements and Rental Value.

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

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

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Shopping Center if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

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

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

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

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

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

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

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

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

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Shopping Center, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

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

9. Damage or Destruction.

9.1 Definitions.

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

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

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

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

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

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

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

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

9.6 **Damage to Shopping Center.** In the event of any damage or destruction to other portions of the Building or to any other buildings in the Shopping Center, whether insured or uninsured (and whether or not there is also damage or destruction to the Premises), which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction, Lessor may either (i) repair such damage or destruction as soon as reasonably possible without expense to Lessee, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage or destruction. Such termination shall be effective 60 days following the date of such notice.

9.7 **Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Base Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value Insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

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

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

10. **Real Property Taxes.**

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

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Shopping Center, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Shopping Center by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request, or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

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

11. **Utilities and Services.** Also see Paragraph 59. Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. To the extent any such utilities and/or services are not separately metered, Lessee shall pay Lessee's Share thereof in accordance with Paragraph 4.2. Notwithstanding the provisions of Paragraph 4.2, if at any time in

Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. Assignment and Subletting.

12.1 Lessor's Consent Required.

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

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

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

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent and Percentage Rent Rate to 110% of the Base Rent and Percentage Rent Rate then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

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

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

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

12.2 Terms and Conditions Applicable to Assignment and Subletting.

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Default; Breach; Remedies.

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

(a) The vacating or abandonment of the Premises. Lessee shall be deemed to have vacated the Premises if Lessee ceases to continuously operate its business in the Premises for a period of 5 consecutive days.

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

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

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested

subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

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

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

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

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

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

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

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

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

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

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor.

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

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

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Premises, or more than 25% of the parking spaces situated within the parking area, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided,

however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees.

15.1 Additional Commission. In addition to the payments owed pursuant to Paragraph 1.13 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Shopping Center, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Lessor's Brokers only a fee in accordance with the fee schedule of the Lessor's Brokers in effect at the time the Lease was executed.

15.2 Assumption of Obligations. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.13, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

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

16. Estoppel Certificates.

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

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrances may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks, and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

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

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

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

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

20. Limitation on Liability. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

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

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

23. Notices.

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

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

24. Waivers.

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

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

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

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

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

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

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

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

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

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

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent and Percentage Rent Rate shall be increased to 150% of the Base Rent and Percentage Rent Rate applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent, which consent shall be granted or denied at Lessor's sole discretion.

34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. All signs must comply with all Applicable Requirements. Lessee shall not place, construct, or maintain on the glass panes or supports of the show windows of the Premises, the doors, exterior walls or the roof of the Building, or anywhere else within the Shopping Center outside of the Premises, or on any interior portions of the Premises that are visible from the exterior of the Premises, any signs, advertisements, names, insignia,

trademarks, descriptive material or any other items without Lessor's prior written consent, which consent shall be granted or denied at Lessor's sole discretion. Lessor shall designate the size, shape, color, design, and location of all exterior sign(s) to be installed by Lessee, and Lessee shall, at Lessee's sole cost and expense, fabricate, construct and install all such sign(s) in full compliance with Lessor's designation and in accordance with the Sign Criteria for the Shopping Center attached hereto, if any. Lessee agrees to submit plans and specifications for Lessee's sign(s) for Lessor's written approval within 30 days after the full execution hereof and to install such sign(s) prior to opening for business at the Premises. Lessor, at Lessee's cost, may remove any item placed, constructed or maintained in, upon or about the Premises or Shopping Center which does not comply with this paragraph. In the event there is a pole, pylon or monument sign for the Shopping Center, Lessor shall have the right, but not the obligation, to install lettering designating Lessee's business on such sign, at Lessee's expense, with Lessor's approval of location, size, style and color. All signs that are permanently attached to the Premises or Building shall become the property of Lessor at the expiration or earlier termination hereof; provided, however, that Lessee shall promptly remove all such signs if Lessor so elects, and Lessee shall promptly repair all damage caused by such removal. Lessee shall not place, construct or maintain in, upon or about the Premises any search lights, flashing lights, loudspeakers, phonographs or other visual or audio media.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. In those express instances where consent is within the sole discretion of a party, the party shall have no obligation to adhere to a standard of reasonableness. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

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

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

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

39. **Options.** If Lessee is granted any option, as defined below, then the following provisions shall apply.

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

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

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

39.4 **Effect of Default on Options.**

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

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

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

40. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. While Lessor does not assume any responsibility to provide any security measures or any liability for failure to provide security measures or for any inadequacy thereof, Lessor shall have the authority to institute or continue such security measures as Lessor in its sole discretion deems necessary or appropriate from time to time, the cost and expenses of which shall be considered Common Area Operating Expenses. To the degree directed by Lessor, Lessee shall coordinate its security measures at the Premises with the security measures instituted by Lessor, if any.

41. **Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the replotting of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42. **Building Planning.** Lessor shall have the right at any time or times, upon giving Lessee not less than 60 days prior written notice, to provide and furnish Lessee with space of comparable visibility located elsewhere within any of the buildings within the Shopping Center and to move Lessee into such new space, provided that the usable area of such new space is not less than the usable area of the Premises and provided that all of Lessee's reasonable out-of-pocket moving expenses (including but not limited to the cost of moving Lessee's personal property, the cost of reprinting Lessee's stationery or other business materials with the new address, and the cost to relocate and reinstall tenant improvements and Lessee's telecommunications and computer equipment) shall be paid by Lessor, and provided further that Lessor shall construct at Lessor's expense such improvements to such new space as shall be necessary to place it in a condition that is substantially comparable to the Premises. Except as provided in the immediately preceding sentence, Lessor shall have no obligation to improve such space or pay any other expenses incurred by Lessee as a result of such relocation. On such relocation, the terms and conditions of this Lease shall remain in full force and effect, including but not limited to the Base Rent payable hereunder and Lessee's Share (even if the usable area of such relocated Premises is in excess of the usable area of the Premises), except that the Premises shall be in such new location. Upon Lessor's request, the Parties shall execute an amendment to this Lease in form required by Lessor confirming the relocation of the Premises to such new location. If the new space does not meet with Lessee's approval, which approval Lessee shall give or withhold in accordance with Paragraph 36, Lessee shall have the right to cancel this Lease by giving Lessor written notice thereof within 15 days of receipt of Lessor's notification of its intent to relocate Lessee. Lessee's failure to give such notice within such 15 day period shall be deemed Lessee's approval of the new space. If timely notice is given by Lessee, then this Lease shall terminate unless Lessor rescinds Lessor's prior notice of its intent to relocate Lessee within 10 days after Lessor's receipt of Lessee's notice of cancellation.

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

44. **Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf.

Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

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

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

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

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

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

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

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

50. **Accessibility; Americans with Disabilities Act.**

(a) The Premises: have not undergone an inspection by a Certified Access Specialist (CASp). have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.

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

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

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

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

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

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

Executed at: _____ Executed at: Santa Rosa, CA
On: August, 2018 On: August, 2018

By LESSOR: Kushins & Langendorf By LESSEE: Sonoma Clean Power Authority

By: _____ By: _____
Name Printed: Donald Langendorf Name Printed: Geof Syphers
Title: Managing Partner Title: Chief Executive Officer

By: _____ By: _____
Name Printed: _____ Name Printed: _____
Title: _____ Title: _____

Address: c/o Empire Property Services Address: 50 Santa Rosa Avenue, Fifth Floor
PO Box 455, Santa Rosa, CA 95402-0455 Santa Rosa CA 95404
Telephone: (707) 538-0331 Telephone: (855) 202-2139
Facsimile: (707) 978-3252 Facsimile: ()
Email: eps@sonic.net Email: _____
Email: _____ Email: _____
Federal ID No. 94-1705402 Federal ID No. _____

BROKER: Conish & Carey Commercial Inc. BROKER: Commercial Investment Real Estate Inc
dba North Bay Property Advisors

Attn: Barry Palma CCIM Attn: Nick Abbott
Title: Senior Managing Director Title: _____

Address: 2455 Bennett Valley Road Ste C200 Address: 2777 Cleveland Avenue #110
Santa Rosa CA 95404 Santa Rosa CA 95403
Telephone: (707) 583-8400 Telephone: (707) 523-2700
Facsimile: (707) 583-8499 Facsimile: ()

Email: bpalma@newmarkccarey.com Email: _____
Federal ID No.: _____ Federal ID No.: _____

Broker/Agent BRE License #: 00901364 Broker/Agent BRE License #: 01525482

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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Lease Addendum

Dated: July 16, 2018
Lessor: Kushins & Langendorf
Lessee: Sonoma Clean Power Authority
Premises: 741 Fourth Street, Santa Rosa, CA 95404

In the event of any conflict between a provision of this Amendment and the provisions of the Lease, this Amendment shall control.

51 All notices and payments shall be made payable to **Kushins & Langendorf** and delivered as follows until otherwise notified in writing by Lessor: Kushins & Langendorf, c/o Empire Property Services, P. O. Box 455, Santa Rosa, CA 95402-0455.

52 Signs - All signs must be prior approved in writing by Lessor and by the City of Santa Rosa. Lessee shall abide by all city ordinances, and obtain any required permits. No other sign, picture, advertisement or notice may be inscribed, printed or affixed on or to any part of the outside or inside of the building that will be visible from the outside of the building. Lessee shall perform any sign installation in accordance with all city ordinances and permits. In order to ensure sign compliance, lessee shall use the Lessor's sign vendor, Freedom Graphics (707 546-8895), or other vendor as approved in writing by Lessor.

53 Permits - Lessee will obtain a use permit, a waste water discharge permit, and any other permit necessary for Lessee to conduct business at the Premises from the appropriate agency or municipality within ninety (90) days of full execution of this Lease. Lessee shall use due diligence in pursuing such permits, and pay all costs associated with them. Lessee shall have the responsibility to maintain any use permit, and to comply with all terms and conditions of said use permit during the term of the Lease.

54 Condition of Premises - Lessee accepts the Premises "As Is, Where is" condition. Lessor acknowledges that the main sewer waste line will be replaced, and the two, heating, ventilation and air conditioning (HVAC) units require replacement. Lessor will replace the waste line in the same or similar position as original, retaining only those lateral connections that are necessary for Lessee's plans for plumbing fixtures. Main waste line extension and additional lateral waste lines will be at Lessee's sole cost and expense. Lessor shall replace the existing gas/electric package HVAC units with similar capacity building standard units. If, in consultation with Lessee, Lessee desires HVAC units with alternative specifications, and said specifications increase the cost over the building standard units, Lessee agrees to pay the increased cost of the non-building standard units. As per paragraph 2 of the Lease, Lessor agrees to warrant the performance and operation of the replaced main waste line (not including extensions or new laterals installed by Lessee), and the new, building standard HVAC units. Non-building standard HVAC units installed at the request of Lessee shall not be warranted under paragraph 2. Due to Lessee's intended modifications of the Premises and building systems, as summarized in paragraph 56, below, Lessee agrees to assume the Premises in status as defined by paragraph 2.5, Lessee as Prior Occupant, as if Lessee had been in possession as of the Commencement Date or Early Possession Date, whichever occurs sooner. Therefore, the warranties made by Lessor in Paragraph 2 shall be of no force or effect for other components of the Premises other than the waste line and HVAC units detailed above. Lessee shall be responsible for any necessary corrective work.

55 Tenant Improvements - All improvements shall be at Lessee's sole expense. All Utility Installations and Alterations, as defined by paragraph 7.3(a) of the Lease, shall be performed in accordance with paragraphs 7.3 and 7.4 and all subparagraphs therein of the Lease.

56 Tenant Improvements - Lessor is not doing any tenant improvements. Lessee is accepting the Premises "AS IS." Lessee may install their own improvements subject to the terms of the Lease form, and the following conditions:

Lessee has stated that Lessee intends to upgrade the electrical system, water heater, bathrooms, flooring, lighting, and ceiling. Lessee also intends to create four offices, a classroom, storage rooms, a demonstration kitchen in front/right corner, and a design planning room. Lessor acknowledges the proposed intended changes, and, subject to the prior review and approval provisions of the Lease, agrees to allow said intended improvements.

Lessee may improve the Premises as needed at Lessee's sole cost and expense with prior written permission of Lessor. Lessee shall obtain Lessor's written approval on said improvements prior to work being started. All improvements shall be performed by contractors or vendors approved by Lessor, and said work shall be done to code and by qualified tradesmen. Lessee is required to see that appropriate building permits are obtained.

Any of Lessee's construction that requires attachment to the building structure will have to be approved by Lessor's engineer and/or architect to ensure the integrity of the structural elements of the building. Lessee

shall be responsible for all costs of any such approvals, including, but not limited to, any administrative costs by management, and shall promptly reimburse Lessor for said costs. Lessor, at Lessor's sole discretion, may require any attachments to the structure to be performed by Lessor's contractor(s) at Lessee's expense. Lessee will be required to obtain a separate building permit for Lessee's work, with separate interior plan submittal as said work would be at Lessee's sole expense, responsibility and liability.

In the alternative, Lessee may agree to have Lessor's contractor(s) complete Lessee's work at Lessee's expense. Lessee would have to contract separately with Lessor's vendor for said work.

57

Tenant Improvements to be Performed Only by Licensed Contractor(s); Performance Bond Required - All work required in the construction of tenant improvements shall be performed only by competent contractors licensed under the laws of California and shall be performed in accordance with written contract(s) between Lessee and the contractor(s). Each contractor engaged by Lessee to perform any services for construction of tenant improvements, including any Lessee who holds a valid California contractor's license for the work to be performed, shall furnish to the Lessee, who shall deliver copies to Lessor, evidence of licensing and at the contractor's own expense at the time of entering a contract with Lessee for those services, a bond issued by a corporate surety authorized to issue surety insurance in California in an amount equal to 100 percent of the contract price payable under the contract securing the faithful performance by the contractor of its contract with Lessee.

58

Engineering - Lessor, at Lessee's expense, shall retain the services of a structural engineer of Lessor's choosing to design and supervise all Utility Installations, Alterations and other tenant improvements Lessee wishes to undertake at the Premises. Lessee shall reimburse Lessor for the services of the engineer within ten (10) days of presentation of each invoice to Lessee.

59

Utilities - As per Lease form; including, but not limited to, any cable, IT, network cabling, etc. As additional consideration, Lessee shall provide Lessor with connection and service to Lessee's internet service, without charge, for use in building control systems and weather station. Lessee agrees to assume existing alarm system operated and installed by All Guard Alarm, including, but not limited to the cost of maintenance and monitoring. Lessee shall obtain an alarm permit from the City of Santa Rosa.

60

Confidentiality Clause - From and after the date of lease negotiations were entered into and throughout the Term of this Lease, or any extension thereof, the Lessee shall not disclose any of the terms, covenants, conditions or agreements set forth in the letters of intent or in this Lease or any amendments hereto, nor provide such correspondence, this Lease, any amendments hereto or any copies of the same, nor any other information (oral, written or electronic) which is communicated by or on behalf of Lessee or on behalf of Lessor (collectively, "Confidential Information"), to any person including, without limitation, any brokers, any other tenants in the Building/Shopping Center or any affiliates, agents or employees of such tenants or brokers, except as set forth herein, without Lessor's written consent or except as ordered by a court with appropriate authority provided Lessee seeks available protective orders. Lessee hereby acknowledges that the disclosure of the foregoing to any third party would cause material damage to Lessor, and Lessee agrees to indemnify, save and hold Lessor harmless from and against any and all damages suffered by Lessor which are attributable to any disclosure by Lessee in violation of the terms of this provision. Notwithstanding the foregoing, Lessee may disclose the terms of this Lease to those of its employees, partners, consultants, attorneys, accountants, current or potential mortgagees or purchasers of the Property who have a reasonable need for such Confidential Information and who agree to be bound by the terms of this Section and Lessee may disclose the terms of this Lease to employees, partners, consultants, attorneys, accountants, current or potential lenders, assigns, or subtenants who agree to be so bound.

actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, i.e., the one that is NOT the closest to the actual MRV.

2) When determining MRV, the Lessor, Lessee and Consultants shall consider the terms of comparable market transactions which shall include, but no limited to, rent, rental adjustments, abated rent, lease term and financial condition of tenants.

3) Notwithstanding the foregoing, the new Base Rent shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and

2) the first month of each Market Rental Value term shall become the new 'Base Month' for the purpose of calculating any further Adjustments.

III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):	The New Base Rent shall be:
September 1, 2019 _____	\$11,500.00 _____
September 1, 2020 _____	\$12,000.00 _____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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OPTION(S) TO EXTEND STANDARD LEASE ADDENDUM

Dated July 16, 2018

By and Between (Lessor) Kushins & Langendorf

By and Between (Lessee) Sonoma Clean Power Authority

Address of Premises: 741 Fourth Street
Santa Rosa CA 95404

Paragraph 62

A. OPTION(S) TO EXTEND:

Lessor hereby grants to Lessee the option to extend the term of this Lease for three (3) additional thirty-six (36) month period(s) commencing when the prior term expires upon each and all of the following terms and conditions:

(i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least 9 but not more than 12 months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.

(ii) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease, are conditions of this Option.

(iii) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.

(iv) This Option is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and without the intention of thereafter assigning or subletting.

(v) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below:
(Check Method(s) to be Used and Fill in Appropriately)

I. Cost of Living Adjustment(s) (COLA)

a. On (Fill in COLA Dates): On the first day of the annual anniversary month of the Commencement Date

the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): CPI W (Urban Wage Earners and Clerical Workers) or CPI U (All Urban Consumers), for (Fill in Urban Area):

San Francisco-Oakland-San Jose

All Items (1982-1984 = 100), herein referred to as "CPI".

b. The monthly Base Rent payable in accordance with paragraph A.i.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.i.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): the first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or (Fill in Other "Base Month"):

June

The sum so calculated shall constitute the new monthly Base Rent hereunder, but in no event, shall any such new monthly Base Rent be less than three percent (3%) increase of the Base Rent payable for the month immediately preceding the rent adjustment. In the event that the CPI is not published for the month specified above, the CPI published for the next month following the specified month shall be used. Lessor's failure to request payment of any or all rent adjustments shall not constitute a waiver of the right to any adjustment provided for in the Lease or this Addendum.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

II. Market Rental Value Adjustment(s) (MRV)

a. On (Fill in MRV Adjustment Date(s)) _____

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached, within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

INITIALS

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(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an independent third party appraiser or broker ("**Consultant**" - check one) of their choice to act as an arbitrator (Note: the parties may not select either of the Brokers that was involved in negotiating the Lease). The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, ie. the one that is NOT the closest to the actual MRV.

2) When determining MRV, the Lessor, Lessee and Consultants shall consider the terms of comparable market transactions which shall include, but not limited to, rent, rental adjustments, abated rent, lease term and financial condition of tenants.

3) Notwithstanding the foregoing, the new Base Rent shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and

2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):

The New Base Rent shall be:

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IV. Initial Term Adjustments.

The formula used to calculate adjustments to the Base Rate during the original Term of the Lease shall continue to be used during the extended term.

B. NOTICE:

Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE:

~~The Lessor's Brokers only shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease or if applicable, paragraph 9 of the Sublease.~~

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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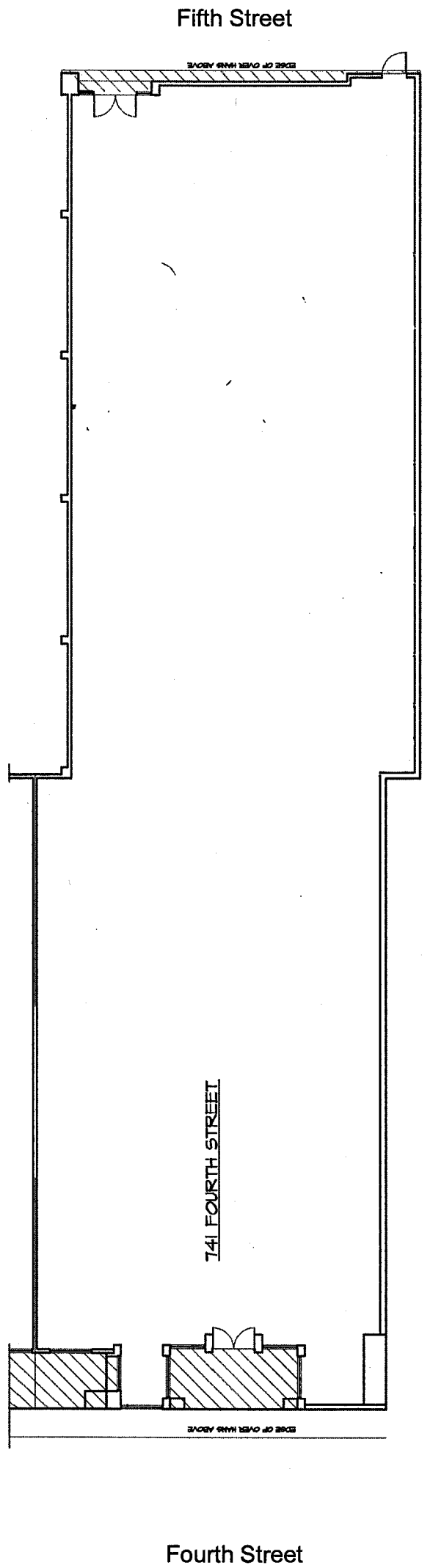
INITIALS

INITIALS

EXHIBIT A

741 Fourth Street
Santa Rosa CA

9,600 ± square feet



Initials

Initials

EXHIBIT "C"
WORK LETTER

Condition of Premises - Lessee accepts the Premises "As-Is, Where Is" condition.

I. Lessor's Work at Lessor's Expense, If Any

A. Any work and equipment which Lessor installs or constructs in the Premises at the request of Lessee, shall be paid for by Lessee within thirty (30) days after receipt of a bill therefore. Said bill will be inclusive of Lessor's direct cost.

B. Lessor shall perform Lessor's Work with new materials in a good and workmanlike manner, using contractors licensed in California to perform such work, and in conformity with all applicable laws, building codes, regulations and ordinances. Lessor hereby warrants Lessor's Work against defects for a period of one (1) year from the date Lessor delivers possession of the Premises to Lessee (the "Warranty Period"), and during such Warranty Period Lessor shall repair or replace such defective items at Lessor's sole cost and expense. At the expiration of the Warranty Period, Lessor shall assign to Lessee any manufacturer's warranties on products or materials used in the Premises, if any.

II. Lessee's Work at Lessee's Expense

A. General.

1. All work required to complete and place the Premises in finished condition for opening of business (except for Lessor's Work) shall be performed by Lessee at Lessee's sole cost and expense with all due diligence, which work shall hereinafter be referred to as Lessee's Work. Lessee's Work shall include, without limitation, installation of alterations, improvements and equipment particular to Lessee's use of the Premises.

2. The project is being developed under the jurisdiction of the City of Santa Rosa, State of California, and uniform building codes. All design and construction work shall comply with all applicable statutes, ordinances, regulations, laws and codes, and Lessor's design criteria for Lessee's Work previously delivered to Lessee.

3. All permits, licenses and approvals for Lessee's Work shall be obtained by Lessee or its contractor prior to the commencement of construction and shall be posted in a prominent place within the Premises as required by the agency issuing the permit. Lessee shall provide a copy of the "finalized" permits as well as a paper and electronic copy of the "as built" plans.

4. Lessor's written approval shall be obtained by Lessee prior to the undertaking of any construction work which deviates from Lessee's Working Drawings and specifications, as approved by Lessor, or the undertaking of any modifications whatsoever to Lessor's Building shell and/or utilities and other work not explicitly shown on said Working Drawings and specifications or included as Lessor's Work in this Exhibit C. Lessor's approval of the foregoing shall not constitute the assumption of any responsibility by Lessor for the accuracy or sufficiency thereof, and Lessee shall be solely responsible therefor. Except expressly set forth herein, Lessor's consent to any submittal by Lessee under this Exhibit C shall not be unreasonably withheld or delayed.

5. All contractors engaged by Lessee shall be bondable, licensed contractors, possessing good labor relations, capable of performing quality workmanship and working in harmony with Lessor's general contractor and other contractors on the job. All work shall be coordinated with the general project work.

6. Where conflict exists between building codes, utility regulations, statutes, ordinances, other regulatory requirements and Lessor's requirements, as set forth herein, the more stringent of the requirements shall govern.

7. Lessee shall inspect, verify and coordinate all field conditions pertaining to the Premises from time to time prior to the start of its store design work, through its construction, including its fixturing and merchandising. Lessee shall advise Lessor immediately of any discrepancies with respect to Lessor's drawings. Any adjustments to the work arising from field conditions, not apparent on Lessee's drawings and other building documents, shall require the prior written approval of Lessor.

8. Lessor reserves the right to require changes in Lessee's Work (except for deletions of Lessee's interior layout of public space, without Lessee's consent in its sole discretion) when necessary by reason of code requirements or building facility necessity, field conditions, or directives of governmental authorities having jurisdiction over the Premises, or directives of Lessor's insurance underwriters.

9. Provided Lessee does not interfere with Lessor's Work, Lessee shall have access to the Premises to begin Lessee's Work upon receiving Lessor's prior approval.

B. Public Safety - Lessee shall confine the construction work to within the Premises as much as possible and shall work in an orderly manner removing trash and debris from the project on a daily basis. At no time will pipes, wires, boards or other construction materials cross public areas where harm could be caused to the public. The requirements of Occupational Safety and Health Administration (OSHA) prepared by the Department of Labor will govern. If Lessee fails to comply with these requirements, Lessor will cause remedial action as deemed necessary by Lessor to protect the public. All costs of said remedial action shall be charged to Lessee and shall become Lessee's responsibility.

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C. Lessee Damage to Construction - Lessee will be required to furnish the necessary ramps, coverings, etc., to protect Lessor's facilities and adjoining premises from damage. All costs to repair damage to Lessor's facilities and to adjoining premises will be at the expense of Lessee. Actual repair work may be accomplished by Lessor at Lessor's option.

D. Turnover of Premises to Lessee by Lessor - Lessee shall be responsible for:

1. HVAC - It shall be the responsibility of Lessee pay for heating and/or cooling, if used, during the installation of Lessee's Work.

2. Electrical/Water/Utilities, Etc. - Lessee's permanent electric service, where possible, shall be used to provide power for Lessee's Work. Meters shall be installed prior to Lessee's Work, and Lessee shall, pay for service and water and all utilities consumed. Work performed with temporary electric service will be at Lessee's expense.

E. Drawings and Specifications.

1. Within thirty (30) days after the Effective Date of this Lease, Lessee shall prepare and submit to Lessor for approval an interior completion plan, design drawings, working drawings and specifications necessary to complete Lessee's Work under this Exhibit C. Within ten (10) days after receipt of such Drawings and Specifications, Lessor shall return to Lessee such Drawings and Specifications with its suggested modifications and/or approval except that Lessor shall have no right to request Lessee to reduce its public space areas without Lessee's prior consent, which may be given or withheld at Lessee's sole discretion. If, upon receipt of Lessor's modified Drawings and Specifications, Lessee wishes to take exception thereto, Lessee may do so within ten (10) days from the date on which Lessee receives Lessor's modified Drawings and Specifications. Unless such action is taken by Lessee, it will be deemed that all modifications made by Lessor on the Drawings and Specifications are acceptable to and adopted by Lessee.

2. If Drawings and Specifications are returned to Lessee with modifications, said Drawings and Specifications shall be revised by Lessee and resubmitted to Lessor for approval within ten (10) days of their receipt by Lessee.

3. Upon Lessor's approval in all respects of all such Drawings and Specifications, Lessee shall cause Lessee's Work to be completed and installed or such installations or alterations to be performed, as the case may be, in accordance with the Drawings and Specifications approved by Lessor, and no substantial deviation from said Drawings and Specifications shall be made without Lessor's prior written approval. Lessee shall obtain all necessary permits in connection with the installation of such Lessee improvements and the performance of such work prior to the commencement of any work.

4. If Lessee's Work entails any structural changes to the Premises, Lessee shall submit detailed structural plans, and Lessor's review of such plans shall be at Lessee's expense, provided that such expense shall not exceed One Thousand Dollars (\$1,000.00) for Lessor's review, however this limitation does not apply to the cost of architects, engineers and other construction professionals, the cost of which shall be paid by Lessee. Moreover, Lessee shall not be permitted to commence any Lessee's Work until all plans applicable thereto have been approved in writing by Lessor.

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5. At any time during the Lease Term, any and all modifications to the Premises requiring alterations to the architectural, mechanical, electrical, fire protection or structural systems will require Lessee to supply detailed Working Drawings and appropriate calculations covering those modifications to Lessor for written approval. Interior painting, wall covering, carpeting and placement of movable trade fixtures are considered normal maintenance items and do not require Lessor approvals, but otherwise meet the requirements of this Exhibit. All other alterations require Lessor's written approval.

6. Lessor's approval or inspection of any of Lessee's plans, shop drawings, etc., so submitted is made for identification purposes only and neither Lessor, nor its agents, servants or employees shall have any liability in any respect to any inadequacies, deficiencies, errors or omissions or non-complying features contained in any or all of Lessee's preliminary plans or final plans or Lessor's comments in respect to same.

F. Lessee Improvements.

All work to be performed by Lessee is herein referred to as Lessee's Work. Without limiting the generality of the foregoing, the term Lessee's Work includes the following:

1. Storefront - Lessee shall furnish and install at its cost all additional storefront construction not provided by Lessor per Exhibit C to this Lease including, but not limited to, application of finish and decorating material on the interior side of the storefront.

2. Floors - Lessee shall furnish and install all interior floor coverings and finishes and be responsible for preparation of floor surfaces. All exposed concrete floors shall have a sealant applied. Carpeting and/or other quality floors, such as glazed or unglazed pavers or wood parquet, shall be used in all public areas except in such instances where other types of floor covering materials are specifically approved by Lessor. Additional restroom(s), kitchen(s) and storage areas shall have thresholds at the doors in such a manner as will not permit the passage of water or other liquids to the adjacent Lessee space.

3. Walls - Lessee shall furnish and install all partitions and doors other than for restrooms and all interior wall finish materials including, but not limited to, Lessee's sales area, stock area, restroom, fitting rooms, etc. Inasmuch as Lessor's demising walls have not been designed for Lessee's superimposed fixture loads and/or any unusual wall decor, Lessee shall structurally reinforce the existing walls as required and approved by Lessor, to accommodate any additional superimposed loading required by Lessee's design. Any combustible materials applied to the demising partitions shall receive a U.L. labeled

fire retardant coating. Lessee spaces with unusual sound and/or odor problems shall have sound and odor absorbent wall installed and in such a manner which will not permit the passage of sound and/or odors through the wall(s) to the adjacent space(s).

4. Ceilings - Lessee shall furnish and install all additional interior ceiling finish materials not provided by Lessor.
5. Utilities - Lessor shall provide separate metering of applicable utilities for the Premises in accordance with local utility requirements. Lessee shall make provision for all telephone service equipment within the Premises in accordance with local utility requirements. Lessee shall be responsible for speaker wires for any stereo system and/or phone system. Lessee's utility service requirements in excess of that provided by Lessor shall be furnished and installed by Lessor's contractor at Lessee's expense.
6. Special Equipment - Lessee shall provide for Lessor's installation at Lessee's cost any and all additional mechanical equipment, curbs, supports, etc., including, but not limited to, swamp cooler or additional HVAC, additional plumbing, elevators, conveyors, etc. related to the operation of Lessee's business, and located within the Premises. Lessee shall provide fire extinguishers as required by code.
7. Fixtures and Furniture - Lessee shall furnish and install all new furniture, trade fixtures, shelving and other work necessary for its operation within the Premises.
8. Material and Warranties - Lessee shall use only new, first-class materials in the completion of Lessee's Work. All work and equipment shall be warranted for a minimum of one (1) year from installation and shall comply with all applicable codes.
9. Roof Work - Lessee agrees that all venting, opening, sealing, waterproofing or any altering of the roof shall be performed by Lessor's roofing contractor at Lessee's expense and that, when completed, Lessee shall furnish to Lessor a certificate from Lessor's roofing contractor that all such alterations approved by Lessor have been completed in accordance with the plans and specifications therefore approved by Lessor.
10. Kitchen Areas - All kitchen areas shall have installed proper range hoods and insulated exhaust ducts. Waste lines shall have grease interceptors, make-up air system, fire extinguishing system for all cooking exhaust hoods and fire extinguishers. All kitchen exhaust fans shall be of upblast type.
11. Storefront Sign - All signs shall be in accordance with applicable law and be prior approved in writing by Lessor.
12. Other Work - Lessee shall be responsible for all other work that is not listed as Lessor's Work.

G. Insurance

Lessee shall secure, pay for and maintain or cause its contractor(s) to secure, pay for and maintain during Lessee's Work construction, fixturing and merchandising of the Premises, including any modification performed by Lessee during the Lease Term, the following insurance in the following amounts, which shall be endorsed in all policies to include Lessor and its beneficiaries, employees and agents as insured parties, and which shall provide in all policies that Lessor shall be given thirty (30) days prior written notice of any alteration or termination of coverage in the amounts as set forth below, and such insurance as may from time to time be required from city, county, state or federal laws, codes, regulations or authorities, together with such other insurance as is reasonably necessary or appropriate under the circumstances:

1. Lessee and Lessee's general contractor and subcontractor(s) required minimum coverages and limits of liability:
 - (a) Comprehensive General Liability Insurance (including Contractor's Protective Liability) with a combined single limit (bodily injury and property damage) of not less than Two Million Dollars (\$2,000,000.00) per occurrence and in the aggregate. Such insurance shall provide for explosion, collapse and underground coverage and contractual liability coverage and shall insure the general contractor and/or subcontractors against any and all claims for personal injury, including death resulting therefrom, and damage to the property of others and arising from his operations under the contract, whether such operations are performed by the general contractor, subcontractors or any of their subcontractors, or by anyone directly or indirectly employed by any of them. Such insurance policy shall include Lessor named as additional insured. Such insurance shall be primary and Lessor's insurance shall be excess insurance only.
 2. All such insurance policies required under this Exhibit, except as noted above, shall include Lessor, Lessor's agents and beneficiaries, Lessor's on-site representatives, Lessor's architect, and Lessor's general contractor, as additional insureds; except Worker's Compensation Insurance, which shall contain an endorsement waiving all rights of subrogation against Lessor, Lessor's architect and Lessor's general contractor, Lessor's agents and beneficiaries. Lessor's liability insurance shall name Lessee as an additional insured and contain an endorsement waiving all rights of subrogation against Lessee.
 3. The insurance required under this Exhibit shall be in addition to any and all insurance required to be provided by Lessee pursuant to the Lease.

H. Structural and Roof Repairs

1. Structural Repairs - Lessee shall use Lessor's engineer and contractor at Lessee's expense for any structural work that is required.

2. Roof Penetration - Lessee shall be responsible for any work done to or on the roof. Lessee shall use Lessor's roofing contractor and complete required work to roof in a quality workmanlike manner so as to continue the roof warranty.

I. At Completion of Lessee's Work

Lessee will provide Lessor with the following within thirty (30) days following store opening:

1. A Certificate of Occupancy (C of O); provided, however if final C of O is not available, Lessee shall provide a Temporary Certificate of Occupancy (Temporary C of O). Lessee shall provide Lessor with a final C of O as soon as the same becomes available.
2. Unconditional Waivers of Liens in such form as may be required by Lessor from all persons performing labor and/or supplying materials in connection with such work showing that all parties have been paid in full in accordance with statutory requirements.
3. Submission by Lessee to Lessor of detailed breakdown of Lessee's final and total construction costs, together with receipted invoices showing payment thereof.
4. Submission by Lessee to Lessor of copies of warranties for not less than one (1) year against defects in workmanship, materials and equipment as required in this Exhibit.
5. Submission by Lessee of a statement wherein Lessee agrees to indemnify Lessor against any and all liens against the Premises or any claims by any materials suppliers, contractors, or subcontractors.
6. Lessee shall have reimbursed Lessor for the cost of Lessee's Work done for Lessee by Lessor, the cost of temporary power and of trash removal, and all other sums owed by Lessee to Lessor pursuant to the Lease and Exhibits.
7. Lessee shall furnish a copy of the License to do Business.
8. Lessee shall execute an Estoppel Letter which will be prepared by Lessor.
9. As-Built copies of Lessee's final plans and specifications of all permanent Lessee Work performed, and final signed-off building permit shall be provided to Lessor in paper and electronic form.

EXHIBIT "D"
RULES AND REGULATIONS

In the event of any conflict between the provision of these Rules and Regulations and the provisions of the Lease, this Amendment shall control. Lessor hereby establishes the following rules and regulations for the safety, care and cleanliness of (i) the store areas (hereinafter referred to as the "Premises") of any Lessee or Lessees of Lessor's Shopping Center (hereinafter referred to as the "Lessee"); (ii) the common area; and (iii) Lessor's Shopping Center in general, or for the preservation of good order:

A. FOR THE PREMISES AREAS:

1. All floor areas of the demised premises (including vestibules, entrances, and air returns), doors, fixtures, windows, and plate glass shall be maintained in a clean, safe and good condition.
2. **Trash:** Lessee shall contract with the approved hauler designated by the City of Santa Rosa for trash removal. Where a common dumpster enclosure and container is present, Lessee shall cooperate with, and enter into an agreement with Lessees of the Shopping Center and other Property Owners/Lessees or adjacent properties to share the waste disposal dumpsters and service in the enclosure on city property alongside of the premises. Where a common dumpster enclosure and container is not present, Lessee shall independently arrange for such service. All trash, refuse and waste materials shall be stored in adequate containers provided by waster hauler or Lessee and be regularly removed from the premises. These containers shall not be visible to the general public, unless in an enclosed area or area approved by Lessor, or the City of Santa Rosa as the case may be, and shall not constitute a health or fire hazard, or a nuisance to any other tenant of the Shopping Center/Building. In the event that any lessee/tenant shall fail to remedy such a health or fire hazard or nuisance within three (3) days after written notice by Lessor, Lessor may remedy and/or correct such health or fire hazard or nuisance at the expense of the lessees/tenants involved. Said expense may include all administrative and management costs of remedying the hazard. Lessee shall pay such costs within ten (10) days of receipt of invoice, or shall be deemed in default of the Lease.
3. No portion of the demised premises shall be used for lodging purposes.
4. Sidewalks, walkways, common area corridors and the like, shall not be used to display, store, or place any merchandise, equipment or devices, except in connection with sidewalk sales held with Lessor's prior written approval. The roof or attic areas of the Shopping Center shall not be used for the storage of merchandise or equipment.
5. No public telephone, shoeshine stand, refreshment, vending or other coin operated machine shall be installed or placed on the sidewalk, or walkway area adjacent to the Premises or on the common areas without Lessor's prior written approval, in each instance.
6. No person or persons shall use the Premises, or any part thereof, for conducting therein a second-hand store, auction, distress or fire sale or bankruptcy sale, or "going-out-of-business" sale or "lost our lease" sale, without Lessor's prior written consent.
7. No portion of the Premises shall be used for the storage of any merchandise, materials or other properties, other than those reasonably necessary for the operation of a Lessee's business. Lessor may, from time to time, inspect the demised premises to insure compliance with the foregoing provisions.
8. Except for professionally prepared signs, Lessee shall not black out or otherwise obstruct the windows of the Premises, without Lessor's prior written consent.
9. If a Lessee provides its customers with the use of shopping carts and/or baskets, such Lessee shall be responsible for causing said carts and/or baskets to be stored only in areas designated by Lessor. If such Lessee fails to routinely collect and store said carts as necessary (at least twice on a daily basis), Lessor may assume the responsibility of same and may bill the Lessee involved on an estimated monthly basis for such service, plus any administrative costs incurred.

B. FOR THE COMMON AREAS:

1. All Lessees, their authorized representatives and invitees shall use any roadway, walkway, entry, hallway, or mall (including the enclosed mall, if any) only for ingress and egress from the stores in the Shopping Center. Use of the common areas shall be in an orderly manner in accordance with directional or other signs or guides. Roadways shall not be used at a speed in excess of ten (10) miles per hour and shall not be used for parking or stopping, except for the immediate loading or unloading of passengers. Walkways and malls (including the enclosed mall, if any) shall be used only for pedestrian travel.
2. No person shall use any utility area or truck loading area reserved for use in conducting business, except for the specific purpose for which permission to use these areas has been given.

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3. No employee shall use any area for motor vehicle parking except the area specifically designated for employee parking for the particular period of time the use of to be made. No Lessee shall designate an area for employee parking except the area designated in writing by Lessor.

4. Without the prior written consent of Lessor, no person shall use any of the common areas for: (a) Vending, peddling or soliciting orders for sale or distributing of any merchandise, device, service, periodical, book, pamphlet, or other matter; (b) Exhibiting any non-professional sign, placard, banner, notice or other written material; (c) Distributing any circular, booklet, handbill, placard, or other material; (d) Soliciting membership in any organization, group, or association, or soliciting contributions for any purpose; (e) Parading, patrolling, picketing, demonstrating, or engaging in conduct that might interfere with the use of the common areas or be detrimental to any of the business establishments in Lessor's Shopping Center; (f) Using the common areas for any purpose when none of the business establishments in Lessor's Shopping Center are open for business; (g) Discarding any paper, glass, or extraneous matter of any kind, except in designated receptacles; (h) Except for normal and customary sound devices for Lessee's drive-through facilities, using a sound-making device that is grossly annoying or unpleasant to the general public; or (i) Damaging any sign, light standard, or fixture, landscaping material or other improvement or property within Lessor's Shopping Center.

The above listing of specific prohibitions is not intended to be exclusive, but is intended to indicate the manner in which the right to use the common areas solely as a means of access and convenience in shopping at the business establishments in Lessor's Shopping Center is limited and controlled by Lessor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

LESSOR: Kushins & Langendorf

LESSEE: Sonoma Clean Power Authority

By: Donald Langendorf
Its: Managing Partner

By: Geof Syphers
Its: CEO

By:
Its:

By:
Its:

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Date: July 17, 2018

Lessor: Kushins & Langendorf

Subject Property: 741 Fourth St. Santa Rosa Ca.
95404

Lessee: Sonoma Clean Power Authority

Brokers: Newmark Cornish & Carey and
North Bay Property Advisors

Various laws, regulations and policies require us to disclose the following information:

1. Alquist-Priolo Notification; Alquist-Priolo Special Earthquake Studies Zone Act:

The Property described above is or may be situated in a “Special Study Zone” as designated under the Alquist-Priolo Special Studies Zone Act, Sections 2621-2630, inclusive, of the California Public Resources Code; and, as such, the construction or development on the Property of any structure for human occupancy may be subject to the findings of a geologic report prepared by a geologist registered in the State of California, unless such report is waived by the city or county under the terms of that act. No representations on the subject are made by Lessor or by Cornish & Carey Commercial Newmark Knight Frank, or its agents or employees, and the Lessee should make his/her/its own inquiry or investigation.

2. Notification re: National Flood Insurance Program:

The Property is or may be located in a Special Flood Hazard Area on United States Department of Housing and Urban Development (H.U.D.) “Special Flood Zone Area Maps”. Federal law requires that as a condition of obtaining federally related financing on most properties located in “flood zones”, banks, savings and loan associations, and some insurance lenders require flood insurance be carried where the property, real or personal, is security for a loan. This requirement is mandated by the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973. Cities or counties may have adopted building or zoning restrictions, or other measures which could affect the value of the property. Lessee should contact the city or county in which the property is located to determine any such restrictions. The extent of coverage available in this area and the cost of this coverage may vary, and for further information, Lessee should consult a lender or insurance carrier.

3. Hazardous Wastes of Substances and Underground Storage Tanks:

Comprehensive federal and state laws and regulations have been enacted in the past several years in an effort to control the use, storage, handling, clean-up, removal and disposal of hazardous wastes or substances. Some of these laws and regulations (such as, for example, the Comprehensive Environmental Response Compensation and Liability Act [CERCLA]) provide for broad liability on the part

of owners, tenants or other users of the property for clean-up costs and damages regardless of fault. Other laws and regulations set standards for the handling of asbestos, and establish requirements for the use, modification, abandonment, and closure of underground storage tanks.

It is not practical or possible to list all such laws and regulations in this Notice. Therefore, Lessors and Lessees are urged to consult legal counsel to determine their respective rights and liabilities with respect to the issues described in this Notice, as well as all other aspects of the proposed transaction. If hazardous wastes or substances have been, or are going to be used, stored, handled or disposed of on the Property, or if the Property has or may have underground storage tanks, it is essential that legal and technical advice be obtained to determine, among other things, the nature of permits and approvals which have been obtained or may be required; the estimated costs and expenses associated with the use, storage, handling, clean-up, disposal or removal of hazardous wastes or substances; and the nature and extent of contractual provisions necessary or desirable in this transaction. Broker recommends expert assistance and site investigation to determine past uses of the property, which may provide valuable information as to the likelihood of hazardous wastes or substances, or underground storage tanks, being on the Property.

Lessor agrees to disclose to Broker and to Lessee any and all information which he/she/it has regarding present and future zoning and environmental matters affecting the Property and regarding the condition of the Property, including, but not limited to structural, mechanical and soils conditions, the presence and location of asbestos, PCB transformers, other toxic, hazardous or contaminated substances, and underground storage tanks, in, on, or about the Property.

Broker has conducted no investigation regarding the subject matter hereof, except as may be contained in separate written document signed by Broker. Broker makes no representations concerning the existence or nonexistence of hazardous wastes or substances, or underground storage tanks, in, on, or about the Property. Lessee should contact a professional, such as a civil engineer, industrial hygienist or other persons with experience in these matters, to advise on these matters.

The term "hazardous wastes or substances" is used herein in its very broadest sense and includes, but is not limited to, petroleum based products, paints and solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonium compounds, asbestos, PCBs and other chemical products. Hazardous wastes or substances and underground storage tanks may be present on all types of real property. This Notice is intended to apply to any transaction involving any type of real property, whether improved or unimproved.

4. The Americans With Disabilities Act:

Please be advised that an owner or tenant of real property may be subject to the Americans with Disabilities Act (the ADA). The Act requires owners and tenants of "public accommodations" to remove barriers to access by disabled persons and provide auxiliary aids and services for hearing, vision or speech impaired persons. You are advised to consult your attorney with respect to the application of this Act to the Property. Cornish & Carey Commercial Newmark Knight Frank cannot give you legal advice on this Act or its requirements.

5. Broker Disclosure:

The parties hereby expressly acknowledges that Broker has made no independent determination or investigation regarding, but not limited to, the following: present or future use of the Property; environmental matters affecting the Property; the condition of the Property, including, but not limited to structural, mechanical and soils conditions, as well as issues surrounding hazardous wastes or substances as set out above; violations of the Occupational Safety and Health Act or any other federal, state, county or municipal laws, ordinances, or statutes; measurements of land and/or buildings. Lessee agrees to make its own investigation and determination regarding such items.

6. Broker Representation (Dual Agency)

←CHECK IF APPLICABLE. Lessor and Lessee acknowledge that Broker is the agent of both Lessor and Lessee. Lessor and Lessee hereby consent to such dual representation and waive any possible conflict of interest arising out of such dual agency. A dual agency is obligated to disclose to both parties all material facts or confidential information that could affect Lessor's or Lessee's decision to enter into the transaction. Broker, however, will not disclose to Lessee the price that Lessor is willing to accept, nor to Lessor the price that Lessee is willing to pay, without the express permission of the other party.

Receipt of a copy of this Notice and Agreement is hereby acknowledged.

Acknowledged and Agreed:

Lessor:

Lessor: Kushins & Langendorf

Broker: Newmark Cornish & Carey
2455 Bennett Valley Road, Ste C-200
Santa Rosa CA 95404

By: _____

By: _____

Barry Palma CA RE Lic # 00901364

Date: _____

Date: _____

Lessee: Sonoma Clean Power Authority

Broker: North Bay Property Advisors 2777
Cleveland Ave Santa Rosa CA 95403

By: _____

By: _____

Nick Abbott CA RE Lic # 01525482

Date: _____

Date: _____

CONSULT YOUR ADVISORS: NO REPRESENTATION OR RECOMMENDATION IS MADE BY CORNISH & CAREY COMMERCIAL DBA NEWMARK CORNISH & CAREY OR ITS AGENTS OR EMPLOYEES AS TO THE LEGAL EFFECT, INTERPRETATION, OR ECONOMIC CONSEQUENCES OF THE NATIONAL FLOOD INSURANCE PROGRAM AND RELATED LEGISLATION, NOR OF OTHER LEGISLATION REFERRED TO HEREIN. THESE ARE QUESTIONS THAT YOU SHOULD ADDRESS WITH YOUR CONSULTANTS AND ADVISORS.

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS

(As required by the California Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller.

To the Buyer and the Seller: (a) Diligent exercise of reasonable skill and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.

To the Buyer and the Seller: (a) Diligent exercise of reasonable skill and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations **to both the Seller and the Buyer:** (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer. (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction.

This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the California Civil Code contained on the following page. Read it carefully.

I ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CALIFORNIA CIVIL CODE ON THE FOLLOWING PAGE.

BUYER SELLER

By: _____

_____ Date

Its: _____

Agent: **Cornish & Carey Commercial., a California Corporation dba Newmark Cornish & Carey**

BRE License Number 00832933

By: _____
Barry Palma

BRE License Number **00901364**

July 18, 2018
Date

CALIFORNIA CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24
(Section 2079.16 appears on pages 1 and 2)

2079.13. As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings: (a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (f) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (h) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (i) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (j) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent which becomes the contract for the sale of the real property upon acceptance by the seller. (k) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property which constitutes or is improved with one to four dwelling units, any Commercial Real Property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (l) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (m) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (n) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. (o) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (p) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14. Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgment of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgment of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgment of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.17(a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller. (c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

(Name of Listing Agent)

is the agent of (check one):
 the seller exclusively; or
 both the buyer and seller.

DO NOT SIGN OR COMPLETE THIS SECTION – EXAMPLE ONLY

Name of Selling Agent if not the same as the Listing Agent

is the agent of (check one):
 the buyer exclusively; or
 the seller exclusively; or
 both the buyer and seller.

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18. No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19. The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20. Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21. A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22. Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23. A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24. Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

CONFIRMATION OF REAL ESTATE AGENCY RELATIONSHIPS

The real estate relationships described below are hereby confirmed, as of July 17, 2018, in connection with the following:

The purchase and sale of the real property located at

The lease of the real property located at 741 Fourth St. Santa Rosa Ca. 95404

Other: DESCRIBE ASSIGNMENT OR TRANSACTION

Cornish & Carey Commercial., a California Corporation dba Newmark Cornish & Carey (Agent for Seller):

is the agent of (check one):

the seller exclusively; or

both the buyer and seller.

North Bay Property Advisors (Agent for Buyer):

is the agent of (check one):

LEAVE BLANK IF SELLING AGENT IS THE SAME AS LISTING AGENT.
IF NOT, INSERT NAME OF SELLING AGENT, OR "NONE" IF THERE IS NO SELLING AGENT

the buyer exclusively; or

the seller exclusively, or

both the buyer and seller.

I/WE ACKNOWLEDGE RECEIPT OF THE FOREGOING AND HEREBY CONFIRM AND CONSENT TO THE SAME.

Kushins & Langendorf

BUYER SELLER

By: _____

_____ Date

Its: _____

Sonoma Clean Power Authority

BUYER SELLER

By: _____

_____ Date

Its: _____

Agent: **Cornish & Carey Commercial., a California Corporation dba Newmark Cornish & Carey**

BRE License Number 00832933

By: _____
Nick Abbott
Salesperson or Broker-Associate

BRE License Number **01525482**

July 17, 2018
Date



Staff Report – Item 06

To: Sonoma Clean Power Authority Community Advisory Committee
From: Cordel Stillman, Director of Programs
Rachel Kuykendall, Program Manager
Issue: Recommend contract for continuation of Energy Education Program
Date: July 24, 2018

Requested Committee Action

Provide recommendation to the Board of Directors regarding a contract with the Sonoma County Water Agency to continue an education program

Background

Through the last academic year, SCP contracted with the Sonoma County Water Agency (Water Agency) to design and implement an energy education program. The opportunity to leverage the Water Agency's existing staff, classrooms, relationships with the County's schools, and curriculum development skills was attractive to SCP staff because it allowed relatively quick deployment of a school program with modest management requirements. An informal survey of local school teachers found that the Water Agency's program is widely considered the best in the region.

Attached to this item is a report on the Water Agency's activities for the duration of the contract period. The report shows that well over 10,000 students in Sonoma and Mendocino counties were reached by the various educational programs that were provided by this program. Reports from teachers are very positive, and staff feel the program has exceeded expectations.

SCP staff are therefore recommending that we continue the program for an additional two years. The contract before you maintains the existing funding level of \$275,000 per year. The second year of the contract (again \$275,000) will be contingent on the SCP Board of Directors approval of the fiscal year 2019/2020 budget. Staff are also requesting that the contract effective date

be July 1, 2018 as Water Agency staff have been incurring expenses in preparation for the next academic year.

AGREEMENT FOR ENERGY EDUCATION PROGRAM

This Agreement for Professional Services (“Agreement”), dated as of July 1, 2018 (“Effective Date”) is made by and between the Sonoma Clean Power Authority (“SCPA”), a California joint powers authority, and the Sonoma County Water Agency (“Water Agency”), a body corporate and politic of the State of California. SCPA and Water Agency may be individually referred to as a “Party” or collectively as “Parties.”

1. **Scope of Services:** Water Agency agrees to provide any and all of the services as described in Exhibit A.
2. **Performance Standard:** Water Agency warrants that it possesses the necessary training, experience and skill to competently and professionally provide the services described in Exhibit A.
3. **Staffing and Coordination:** Water Agency shall cooperate, and closely coordinate, with SCPA staff in providing all services under this Agreement. Ryan Pedrotti (Key Staff) is deemed by SCPA to be a key person whose services were a material inducement to enter into this Agreement. Key Staff shall oversee and manage all services performed by Water Agency.
4. **Payment:** Water Agency shall submit one invoice for each calendar month in which services are performed. Invoices shall be signed by Key Staff, include copies of receipts for pre-approved reimbursable expenses, and contain the following detail for each billable entry:
 - a. Date
 - b. Detailed description of work performed and person(s) involved
 - c. Time spent in 1/10th hour increments

Upon receipt of properly prepared invoicing, SCPA shall pay Water Agency within 30 calendar days for services provided in accordance with this Agreement, applying the following rates:

- a. Water Agency shall be paid current weighted labor rates, including overhead, for Water Agency staff performing work under this Agreement plus actual costs of applicable materials. Weighted labor rates as of May 1, 2018, are listed in Exhibit A (Scope of Work). Rates are subject to change.
- b. Reimbursable expenses must be pre-approved by SCPA.

In no event shall the amount payable for services performed during the term of this Agreement exceed \$275,000.

5. **Term of the Agreement:** The initial term of this Agreement shall be from the Effective Date to June 30, 2019, unless terminated pursuant to Section 6 or amended by a written, executed amendment to the Agreement. Water Agency understands and agrees that funding for costs under this Agreement after July 1, 2019, is subject to approval by SCPA’s

Board of Directors of a budget including such funding, and that SCPA may terminate this Agreement pursuant to Section 6 below if such funding is not approved.

6. **Termination:** Notwithstanding any other provision of this Agreement, at any time and without cause, the Parties shall have the unequivocal right to terminate this Agreement by giving thirty (30) calendar days written notice to the other Party. Notwithstanding any other provision of this Agreement, should Water Agency fail to perform any of its obligations or violate any of the terms of this Agreement (Termination for Cause), SCPA may, upon providing Water Agency written notice stating the reason for termination, immediately terminate this Agreement. In the event of termination, Water Agency, within fourteen (14) calendar days following the date of termination, shall deliver to SCPA all materials and work product subject to Section 16 and shall submit to SCPA a final invoice for all outstanding payments.
7. **Indemnification:** Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party or its agents, employees, contractors, subcontractors, or invitees. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefit acts, or other employee benefit acts.
8. **Insurance:** Water Agency shall maintain insurance and/or self-insurance as described below unless such insurance has been expressly waived in writing by SCPA.
 - a. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California, and Employers Liability with minimum limits of \$1,000,000 per accident; \$1,000,000 disease per employee; \$1,000,000 disease per policy.
 - b. Commercial General Liability Insurance with Minimum Limits: \$1,000,000 per occurrence; \$2,000,000 general aggregate; \$2,000,000 products/completed operations aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Water Agency maintains higher limits than the specified minimum limits, SCPA requires and shall be entitled to coverage for the higher limits maintained by Water Agency.
 1. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. Deductibles or self-insured retention that exceeds \$25,000 must be approved in advance by SCPA. Water Agency is responsible for any deductible or self-insured retention and shall fund it upon SCPA's written request, regardless of whether Water Agency has a claim against the insurance or is named as a party in any action involving SCPA.

2. SCPA shall be an additional insured for liability arising out of operations by, or on behalf of, the Water Agency in the performance of this Agreement.
 3. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
 4. The policy shall cover inter-insured suits between the additional insureds and Water Agency and include a "separation of insureds" or "severability" clause which treats each insured separately.
- c. Automobile Liability Insurance with Minimum Limit of \$1,000,000 combined single limit per accident. Automobile Insurance shall apply to all owned autos. If Water Agency currently owns no autos, Water Agency agrees to obtain such insurance should any autos be acquired during the term of this Agreement. Automobile Insurance shall apply to hired and non-owned autos.
 - d. Professional Liability/Errors and Omissions Insurance with Minimum Limit of \$1,000,000 per claim or per occurrence. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by SCPA. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
 - e. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A: VII.
 - f. The Certificate of Insurance must include the following reference: Sonoma Clean Power Authority.
 - g. All required Evidence of Insurance shall be submitted to SCPA within 3 business days of the Effective Date. Water Agency agrees to maintain current Evidence of Insurance on file with SCPA for the entire term of this Agreement.
 - h. The name and address for Additional Insured endorsements and Certificates of Insurance is: Sonoma Clean Power Authority, Attn: Contract Administration, 50 Santa Rosa Avenue, Fifth Floor, Santa Rosa, CA, 95404.
 - i. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) business days before expiration or other termination of the existing policy.

- j. Water Agency shall provide SCPA immediate written notice if:
 - 1. Any of the required insurance policies are terminated;
 - 2. The limits of any of the required policies are reduced; or
 - 3. The deductible or self-insured retention is increased.
 - k. Upon written request, certified copies of required insurance policies must be provided within thirty (30) calendar days.
 - l. Water Agency's indemnity and other obligations shall not be limited by these insurance requirements.
9. **Status of Water Agency:** Water Agency, in performing the services under this Agreement, shall act as an independent contractor and shall control the work and the manner in which it is performed. At no time shall Water Agency work as an agent or employee of SCPA and at no time shall Water Agency be entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits SCPA provides its employees. In the event SCPA exercises its right to terminate this Agreement pursuant to Section 6, Water Agency expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.
10. **No Suspension or Debarment:** Water Agency warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any state or federal department or agency. Water Agency also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration.
11. **Taxes:** Water Agency agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement. Water Agency shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Water Agency agrees to indemnify and hold SCPA harmless from any liability which it may incur to the United States or to any US State as a consequence of Water Agency's failure to pay, when due, all such taxes and obligations. In the event SCPA is audited for compliance regarding any withholding or other applicable taxes, Water Agency agrees to, in a timely fashion, furnish SCPA with proof of payment of taxes on these earnings.
12. **Records Maintenance:** Water Agency shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to SCPA for inspection at any reasonable time. Water Agency shall maintain such records for a period of five (5) years following the expiration or termination of this Agreement.
13. **Conflict of Interest:** Water Agency warrants that it presently has no interest, and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with Water Agency's performance under this Agreement. Water Agency further warrants that

in the performance of this Agreement no person having any such interests shall be assigned by Water Agency to perform work under this agreement nor be given access to the information described in Section 16. Water Agency shall comply with any and all applicable California Fair Political Practices Act requirements.

14. **Statutory Compliance:** Water Agency shall comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement.
15. **Nondiscrimination:** Without limiting any other provision of this Agreement, Water Agency shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by reference.
16. **Confidentiality, Ownership and Disclosure of Work Product:** All information obtained by Water Agency under this Agreement shall be deemed confidential (“Confidential Information”). Unless SCPA provides written permission, Water Agency is compelled by a court of law or regulatory agency, the California Public Records Act, or Water Agency obtained Confidential Information from a source or sources other than SCPA, Water Agency shall not share Confidential Information with any other person or entity outside of SCPA staff and SCPA authorized representatives. Water Agency further agrees to execute non-disclosure agreements related to protecting Confidential Information as requested by SCPA. Provisions related to Confidential Information shall survive expiration or termination of the Agreement for a period of five (5) years. All reports, original drawings, graphics, plans, studies, and other data or documents (“Documents”), in whatever form or format, produced by Water Agency or Water Agency’s subcontractors, Water Agency, and other agents within the term and scope of this Agreement shall be the property of SCPA. SCPA shall be entitled to immediate possession of such Documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Water Agency shall promptly deliver to SCPA all such Documents, which have not already been provided to SCPA in such form or format, as SCPA deems appropriate. Such Documents shall be and will remain the property of SCPA without restriction or limitation.
17. **Assignment and Delegation:** Parties shall not assign, delegate, sublet, or transfer any interest in, or duty under, this Agreement without the prior written consent of the other.
18. **Written Communications:** All written communications, including notices, bills and payments, may be made via electronic mail or to the following addresses:

Water Agency	SCPA
Project Manager: Ryan Pedrotti 404 Aviation Boulevard Santa Rosa, CA 95403-9019 Phone: 707-521-6209 Email: Ryan.pedrotti@scwa.ca.gov	Contact: Cordel Stillman 50 Santa Rosa Avenue, 5 th Floor Santa Rosa, CA 95404 Phone: 707 890-8486 Email: CStillman@sonomacleanpower.org
Remit payments to:	Remit invoices to:
Justin Adalio Same address as above	Same address as above

19. **No Waiver of Breach:** The waiver by either party of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.
20. **Construction:** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The Parties agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated. The Parties acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one Party in favor of the other. Parties acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
21. **Consent:** Wherever in this Agreement the consent or approval of one Party is required to an act of the other Party, such consent or approval shall not be unreasonably withheld or delayed.
22. **No Third Party Beneficiaries:** Nothing contained in this Agreement shall be construed to create, and the Parties do not intend to create, any rights in third parties.
23. **Applicable Law and Forum:** This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement, or for the breach of this Agreement, shall be brought and tried in Santa Rosa, California, or the forum nearest to the city of Santa Rosa, in the County of Sonoma.
24. **Exhibits:** In the event of a conflict between the body of this Agreement and any Exhibits or attachments, the language in the body of this Agreement shall prevail.

25. **Captions:** The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

26. **Merger:** This writing is intended both as the final expression of the Agreement between the Parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to California Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both Parties.

27. **Survival of Terms:** All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

28. **Time of Essence:** Time is and shall be of the essence of this Agreement and every provision within this Agreement.

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By signing below, the signatories warrant that each has authority to execute this Agreement on behalf of their respective Parties, and that this Agreement is effective as of the Effective Date.

Reviewed as to funds:

TW 17/18-125

By: _____
Water Agency Division Manager -
Administrative Services

Approved as to form:

Approved as to form:

By: _____
Adam Brand, Deputy County Counsel

By: _____
General Counsel

Sonoma County Water Agency

Sonoma Clean Power Authority, a California
joint powers authority

By: _____
Grant Davis
General Manager

By: _____
Geof Syphers
Chief Executive Officer

Authorized per Water Agency's Board of
Directors Action on August 14, 2018

Date: _____

Date: _____

Exhibit A

Scope of Work

1. Market energy education programs in 2018-2019 water education brochure. Develop additional flyer for schools outside Water Agency education service area.
2. Implement and refine fourth grade classroom program: Renewable Energy-Be Part of the Climate Change Solution!
3. Incorporate climate change and energy efficiency into ZunZun assembly program.
4. Conduct Climate Literacy and Understanding Global Climate Change teacher workshop.
5. Implement and refine third grade classroom program, which covers the water energy nexus and how an increase in greenhouse gases lead to climate change.
6. Add energy efficiency theme to third-to-sixth grade poster contest. Sonoma Clean Power and energy information will be featured in the 2019 calendar.
7. Implement careers in the water and energy industry program. Explore job shadow opportunities.
8. Incorporate water/energy nexus into fifth grade classroom and field trip program.
9. Develop giveaway items exploring the water and energy nexus.
10. Develop end of year report.

Services under this Agreement shall be billed at the following hourly rates:

- Water Education Program Manager: (PM) \$174.55
- Water Education Senior Program Specialist (SR PS): \$143.34
- Water Education Program Specialist: (PS) \$133.81
- Water Education Resource Technician II: (TECH II) \$48.04
- Water Education Resource Technician I: (TECH I) \$44.04

1. Market energy education programs in existing water education brochure

The Water Agency will distribute a brochure to every teacher in its service area highlighting the programs SCPA offers. Energy education programs will be included in this brochure. A flyer will be created and distributed to schools outside the Water Agency service area and within the SCPA service area. Webpages for energy education programs will be created and maintained on the Water Agency education program website.

Brochure development:

Sr. PS 80 hours at \$143.34= \$11,500

Material costs for printing one page flyer for Sonoma and Mendocino counties outside Water Agency service area: \$2,500

Total: \$14,000

2. Implement and refine fourth grade classroom program: Renewable Energy-Be Part of the Climate Change Solution!

The fourth grade program aims to visit at least 1,500 students in the 2018/2019 school year and will cover the following content:

- Students learn that electricity is generated from different sources and that renewable sources such as solar, wind, and geothermal are choices that will reduce our impact on Earth's changing climate.
- Students make scientific observations and ask questions to help them build their understanding of the concepts.
- Students learn that there are things we can all do to reduce the use of fossil fuels like saving water, walking to school, and changing a light bulb.

Water Agency is working to develop supplemental curriculum to enhance this lesson so students can bring information to their parents and take steps at home.

Supplemental curriculum includes an at home water and energy audit and field trip opportunities to local Green Businesses (Amy's Kitchen was the destination in 2018).

Program and supplemental curriculum development, assessment, and evaluation:

SR PS 50 hours at \$143.34= \$7,200

PM 20 hours at \$174.55 = \$3,250

PS 70 hours at \$133.81 = \$9,500

Implementation and training:

PS 300 hours at \$133.81= \$40,000

TECH 300 hours at 44.04 = \$13,000

Materials and transportation= \$30,000

Materials may include light bulbs, showerheads, solar panels, and energy efficient handouts and lesson materials for visual aids. Transportation may include contracted bus service to transport students to field trip site.

Total: \$102,950

3. Incorporate climate change and energy efficiency into ZunZun assembly program

Water Agency contracts with ZunZun, a multilingual, musical assembly program, to provide assemblies for 10,000 K-6 students annually. Each year Water Agency meets with ZunZun to develop the content for the upcoming assembly program and concepts such as energy efficiency, climate change, and fuel switching will be included in the program.

30 performances for \$34,250 (half the content in the 45 minute presentation will be energy-related: energy efficiency, climate change, etc. SCPA will pay one-half of total cost of 25 performances.

Total: \$17,125

4. Conduct Climate Literacy and Understanding Global Change teacher workshop

Partner with the Center for Climate Protection and UC Berkeley to offer a teacher workshop. Understanding Global Change is a workshop developed by the UC Berkeley Museum of Paleontology to help teachers implement curriculum covering climate and global change. The focus of the content is how the climate is intricately linked to all living things and natural cycles on the globe, the carbon and water cycles included. A Water Agency educator has been trained on how to implement the workshop for teachers in the Water Agency and SCPA service areas. Teachers who participate in the workshop gain access to online resources and lesson plans.

Workshop preparation, marketing, and implementation:

SR. PS 100 hours at \$143.34 = \$14,500

TECH 40 hours at \$44.04 = \$1,700

Total: \$16,200

5. Implement and refine third grade classroom program, which covers the water energy nexus and how an increase in greenhouse gases lead to climate change.

Water Agency's third grade program consists of two lessons, the first covering storm drain pollution and water conservation and the second covering energy. Annually, Water Agency visits 2,500 students with this program and is looking to develop supplemental curriculum. Lesson two objectives include:

- It takes energy (electricity) to get water to your home/school. (water energy nexus)
- The difference between renewable energy sources and non-renewable energy sources.
- Difference between weather and climate.
- Climate Change means the planet is getting warmer because of more greenhouse gases.
- Personal choices to reduce greenhouse gas emissions can help mitigate climate change.

Program and supplemental curriculum development, assessment, and evaluation:

SR PS 100 hours at \$143.34 = \$14,400

PS 100 hours at \$133.81 = \$13,400

PM 20 hours at \$174.55 = \$3,500

Implementation and training:

SR PS 120 hours at \$143.34 = \$17,250

TECH 200 hours at \$44.04 = \$8,500

Materials = \$10,000.

Materials may include light bulbs, showerheads, solar panels, and energy efficient handouts and lesson materials for visual aids.

Total: \$67,000

6. Add energy efficiency theme to third to sixth grade poster contest. Sonoma Clean Power and energy information will be featured in the 2019 calendar.

Each year Water Agency conducts a poster contest for over 3,000 third and fourth grade students. Water Agency would like to expand the contest to include fifth and sixth grade and have specific themes for each grade. For example, the fourth grade theme would be Saving Water, Saves Energy. This theme would supplement the existing fourth grade classroom program. Winning poster are made into Water Agency's Water Awareness Calendar that is distributed to over 5,000 teachers and students throughout Sonoma and Marin counties. This distribution can be expanded into SCPA's service area as well.

Calendar and poster contest development and management:

SR PS 100 hours at \$143.34 = \$14,400

Materials (poster paper and an expansion of calendars purchased): \$7,600

Total: \$22,000

7. Add energy careers to careers in water industry presentation. Explore job shadow opportunities

Currently, Water Agency has a presentation geared at high school and college students exploring careers in the water industry. The presentation highlights a few careers and has students work through real world scenarios someone in this position may encounter. A job shadow opportunity is available as well. Water Agency will highlight careers in the energy industry and coordinate job shadows with SCPA staff. The Energy Saves Schools Program is a great resource to expose high school students to STEM careers and how students can make a tangible difference in their energy usage. Water Agency will explore hosting an outdoor summer academy for middle and high school students at the Westside Water Education Center. Students will conduct citizen science

projects where they explore the topics of water quality, drinking water treatment, the water and energy nexus, renewable energy projects, and the impacts of climate change on our region.

Program development:

PS 50 hours at \$133.81 = \$6,700

Program Implementation:

PS 50 hours at \$133.81 = \$6,700

Total: \$13,400

8. Incorporate water/energy nexus into fifth grade classroom and field trip program.

Water Agency's existing fifth grade program reaches 3,500 students annually through a classroom visit and field trip. Water Agency will introduce the connection between water and energy during the classroom visit. During the field trip students will visit the collector well that pulls their drinking water from 100 feet below the Earth's surface.

Program development:

PS 50 hours at \$133.81 = \$6,700

Program Implementation:

PS 50 hours at \$133.81 = \$6,700

TECH 200 hours at \$44.04 = \$8,500

Total: \$21,900

9. Develop giveaway items exploring the water and energy nexus.

Water Agency will redesign the ruler currently given away to roughly 15,000 students annually to explain how saving water saves energy and include the Water Agency and SCPA logos. Water Agency currently gives away magnetic clips to third grade teachers when delivering a lesson in their classroom (the clip holds our Water Agency's informational packet together). Water Agency will redesign the clip to say "Saving Water Saves Energy" and have both logos on it. Water Agency will give this item away to teachers in Water Agency's classroom programs: Kindergarten, third, fourth, and fifth grades.

Materials (half the cost of rulers and magnetic clips): \$2,200

Material development:

PS 10 hours at \$133.81 = \$1,300

Total: \$3,500

10. Develop end-of-year report

The report will detail programs implemented, content covered, number of students/classes/schools visited and will be provided to SCPA by June, 30 2019. It will include teachers trained and number of ZunZun performances.

Program evaluation report:

PM 20 hours at \$174.55 = \$3,500

Grand total: \$275,000

Fiscal Year 18/19	CERTIFICATE OF SELF-INSURANCE	Issue Date 7/1/18
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COVERED ENTITIES: County of Sonoma Sonoma County Agriculture Preservation and Open Space District Sonoma County Community Development Commission Sonoma County Fair and Exposition, Inc. Sonoma County Water Agency 575 ADMINISTRATION DR., 116-C SANTA ROSA, CA 5403-2881	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BELOW. THIS CERTIFICATE OF COVERAGE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE COVERED ENTITIES AND THE CERTIFICATE HOLDER.
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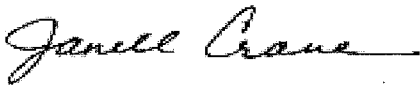

COVERAGE	EFFECTIVE DATE	EXPIRATION DATE	LIMITS
General Liability	July 1, 2018	July 1, 2019	\$1,000,000 per occurrence, no aggregate; self-insured
Automobile Liability	July 1, 2018	July 1, 2019	\$1,000,000 per occurrence; self-insured
Workers' Compensation	July 1, 2018	July 1, 2019	Statutory Limits: \$300,000 permissibly self-insured; excess coverage through California State Association of Counties Excess Insurance Authority
Public Officials Errors and Omissions Liability	July 1, 2018	July 1, 2019	\$1,000,000 per wrongful act; no aggregate; self-insured
Property	March 31, 2018	March 31, 2019	Replacement cost value

Description of Operations/Locations/Vehicles/Special Items:

As Regards Agreement for Energy Education Program TW 17/18-125, July 1, 2018 to June 30, 2019

The Certificate Holder is an additional covered party to the extent required by the indemnification provisions of the above referenced contract. This shall apply to claims, costs, injuries or damages but only in proportion to and to the extent such claims, costs, injuries or damages are caused by or result from the negligent acts or omissions of the Covered Entities shown on this certificate.

The Covered Entities agree to waive recovery rights against the Certificate Holder with respect to the above referenced contract if required in writing in the contract.

Certificate Holder Sonoma Clean Power Authority Attn: Contract Administration 50 Old Courthouse Sq. Ste. 605 Santa Rosa, CA 95404	AUTHORIZED REPRESENTATIVE   County of Sonoma Risk Manager 575 Administration Drive, Suite 116C Santa Rosa, CA 95403
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Final Report to Sonoma Clean Power For Services Provided in 2017-2018

Energy Education Classroom Presentations

1. 3rd Grade-*Water and Energy*

Content

The third grade program has been in place for many years and consists of two, one-hour classroom visits. The first lesson focuses on where our drinking water comes from, water conservation, and storm drain pollution. Beginning in 2018, the second lesson was changed to cover renewable energy and climate change. The new lesson focuses on the connection between water use and the energy needed to pump and move it. Through hands on activities with coal and solar panels, students learn about nonrenewable and renewable forms of energy and the connection to the human enhanced greenhouse effect and global warming. Time is spent at the conclusion of the lesson discussing ways to save water and energy at home. Students received cotton backpacks with the SCP logo on the back.

Schools Scheduled

This program is only available to schools within the Water Agency's service area. **Thirty-one schools received the lesson with a total of 1,775 students.**

Table 1. Classes visited for the 3rd Grade-*Water and Energy* Program

County	Town or City	# of Schools	# of Classes	# of Students
Sonoma	Santa Rosa	14	35	777
	Rohnert Park	3	7	183
	Cotati	1	2	55
	Petaluma	5	8	196
	Sonoma	3	9	179
	Windsor	2	10	241
	Novato	1	3	75
	Penngrove	1	2	59
	Kenwood	1	1	20
TOTAL		31	77	1775

2. 4th Grade–Renewable Energy-Be Part of the Climate Change Solution!

Content

In this new 75-minute classroom presentation, students learned that electricity is generated from different sources of energy and that some are renewable and others are nonrenewable. Students handled a piece of coal to illicit curiosity and conversation about fossil fuels and the connection between their combustion and the release of carbon dioxide into the atmosphere. Graphics were used to illustrate the greenhouse gas effect and the impacts of rampant greenhouse gas emissions on global temperatures. Students learned that a warming earth is connected to sea level rise, more frequent and extreme weather events and changes to the abundance and distribution of plants and animals. Students learned that renewable sources of electricity generation include solar, wind, hydroelectric, and geothermal. Students worked outside in small groups to connect a solar panel to a motorized fan. Students experimented with different materials to help understand how the electrical output of solar panels changes under cloudy conditions, at night, and with reflection. The lesson concluded with a conversation about the steps students can take to reduce the use of fossil fuels like saving water, walking to school, using less plastic, changing a light bulb, and monitoring the temperature inside their refrigerator.

The 4th grade lesson was designed to provide content aligned with the Next Generation Science Standards (NGSS)-a set of standards adopted by the State of California to improve science education for all students. The two subject areas within NGSS that this lesson supports are 1. Energy and 2. Earth and Human Activity. There are also specific Scientific and Engineering Practices that were integrated into the lesson such as: asking questions, developing and using models, planning and carrying out investigations, and constructing explanations.

At the conclusion of the lesson, all students received cotton backpacks with the SCP logo. A subset of students also received 9W LED lightbulbs, refrigerator thermometers with SCP logo, low-water use showerheads, faucet aerators, flow rate bags and dye –tablets for toilet leak detection as part of a take-home water and energy audit that is still in development.

Prior to each lesson, teachers received a confirmation email along with a 3-page document providing information about Sonoma Clean Power, goals of the lesson, a brief overview of the topics covered during the lesson and links to videos and websites related to renewable energy, climate change, and electricity.

Outreach

In August 2017, the 4th grade presentation was advertised in our **Water Education Program Brochure 2017-2018**. Two-thousand, seven-hundred and forty-six brochures were mailed to 190 schools within the Water Agency's Service Area. In addition, a flier highlighting energy

education programs was mailed to 88 schools outside of the Water Agency’s Service Area in Sonoma County and Mendocino County. Emails were sent to all 4th grade teachers in Sonoma and Mendocino Counties with information about the class presentation and a link to sign up. The program was listed on the Water Agency’s website within the Water Education section.

Schools Scheduled

Eighteen schools were visited between January and May 2018, four were located in Mendocino County and fourteen in Sonoma County. A summary of the location and numbers of students is detailed in Table 2 below.

Table 2. Classes visited for the 4th Grade–Renewable Energy-Be Part of the Climate Change Solution! Program

County	Town or City	# of Schools	# of Classes	# of Students
Sonoma	Santa Rosa	8	16	466
	Rohnert Park	1	1	22
	Petaluma	1	6	151
	Cotati	1	1	60
	Windsor	1	7	208
	Cloverdale	1	4	112
	Occidental	1	1	30
Subtotal		14	36	1049
Mendocino	Boonville	1	2	39
	Fort Bragg	1	4	112
	Mendocino	1	2	60
	Potter Valley	1	3	69
Subtotal		4	11	280
TOTAL		18	47	1329

Evaluations

Following the lesson, teachers received an email thanking them for their participation and a link to an online evaluation form. Thirty-three out of forty-seven teachers responded. The evaluations were all positive. There was consensus the hands on activities was the part they liked most and it was suggested the lesson be broken into two visits or one longer presentation. All but one respondent were “absolutely” interested in a repeat visit next year. Here is a quote from one evaluator, “The program was excellent. One of the best I have ever had in my classroom in 22 years of teaching. However, it is a long lesson-my suggestion is to have the lesson in two 45 minute periods over two days...it would give us more time for the solar experiments and for closure of the lesson.”

Field Trip

As part of the 4th grade program, two classes (**60 students**) from Kawana Springs Elementary School were chosen to participate in a field trip to the Sonoma County Landfill followed by a vegetarian lunch at Amy's Drive-Thru. Students learned about the connection between the landfill and greenhouse gas emissions, the importance of recycling, composting, plastic pollution, and the use of landfill gas to generate electricity. Amy's Drive-Thru was chosen as a destination to expose students to a local fast-food restaurant who is operating with climate change in mind and reducing its greenhouse gas emissions in a number of different ways including the use of renewable energy to power its business.

3. Water Awareness Poster Contest

The Water Agency and the Sonoma-Marin Saving Water Partnership host an annual art contest for students in grades 3-6 and the winning artwork is printed in a Water Awareness Calendar and distributed to all teachers within the Water Agency's Service Area. Teachers sign up and receive blank poster boards that students use to create a colorful work of art and slogan encouraging water conservation. This year we added an energy-related theme for 4th graders, ***Save Water to Save Energy!*** *Twenty-three* fourth grade teachers from 15 schools with a total of 548 students participated. The artwork of two fourth grade students was chosen for the calendar and is included as a separate attachment.

4. Teacher Workshop-Climate Literacy and Understanding Global Change

On December 1, 2017 the Water Agency hosted a teacher workshop on climate change at our Westside Education Center. **Twenty-five teachers attended.** Half of the teachers were from local area high schools and the rest were from middle and elementary schools. A few participants were informal educators from local non-profit organizations like LandPaths and Sonoma Ecology Center. Jessica Bean from UC Berkeley shared resources about the greenhouse effect and datasets explaining the causes of global change, and demonstrated how to support student understanding of complex processes through the use of Earth system models for activities, discussions, and assessments. Amy Jolly, from the Center for Climate Protection focused on involving students in solutions to climate change and incorporating STEM projects.

5. ZunZun Musical Assembly Program

Zunzun is a musical assembly that uses humor and music in a lively, interactive show that teaches elementary school students about water conservation, storm drain pollution, climate change, and where local drinking water comes from. During the 2017-2018 school year, the

Water Agency requested topics related to energy and climate change be added to the content of their shows.

Table 3. Schools visited by the ZunZun musical assembly program.

County	Town or City	# of Schools	# of Assemblies	# of Students
Sonoma	Santa Rosa	10	15	4152
	Rohnert Park	3	5	1029
	Petaluma	4	4	1200
	Cotati	1	1	450
	Sonoma	2	3	412
	Windsor	2	4	951
Subtotal		22	32	8194
Mendocino	Fort Bragg	2	4	887
	Potter Valley	1	1	170
Subtotal		3	5	1057
TOTAL		25	37	9251

6. Job Shadow

During the 2017-2018 school year, two students participated in the job shadow program with a focus on energy related work. Each student shadowed Hannah Salafia, an engineer in the Energy Resources section of the Water Agency. Students observed the activities involved in her typical day at work.

Outreach

The job shadow program was advertised in the ***Water Education Program Brochure 2017-2018***. Two-thousand, seven-hundred and forty-six brochures were mailed to 190 schools within the Water Agency’s Service Area. In addition, a flier highlighting the energy education programs was mailed to 88 schools outside of the Water Agency’s Service Area in Sonoma County and in Mendocino County. The program was listed on the Water Agency’s website within the Water Education section.

7. Cartoon Map of Renewable Energy Projects in SCP Service Area

The Water Agency worked with an artist to develop a cartoon map of Sonoma and Mendocino Counties highlighting renewable energy projects in the region. The map is complete and SCP is in the process of printing the map so it can be used as a giveaway at

outreach events and for the Water Education Program to distribute to classrooms teachers through our materials program.



Staff Report – Item 07

To: Sonoma Clean Power Authority Community Advisory Committee

From: CB Hall, Compliance Analyst
Rebecca Simonson, Power Services Manager
Rachel Kuykendall, Program Manager
Deb Emerson, Director of Power Services
Neal Reardon, Regulatory Affairs Directors
CEO Geof Syphers

Issue: Provide feedback on SCP’s Draft 2018 Integrated Resource Plan

Date: July 24, 2018

Requested Committee Action

Provide input on the draft Integrated Resource Plan.

Background

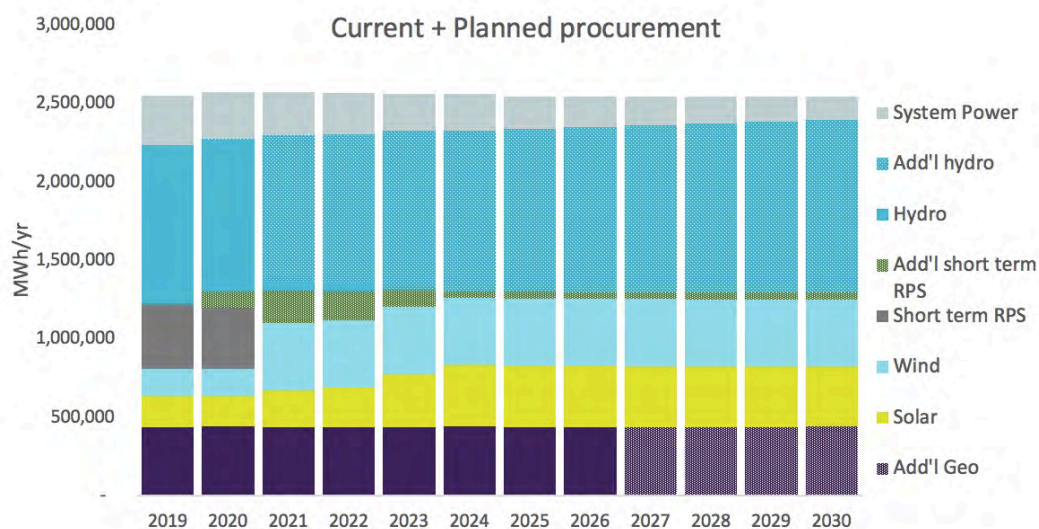
This IRP is the next evolution of SCP’s resource planning process, following work between 2015 and early 2018 by staff with the Business Operations Committee and later with an ad hoc committee of the Community Advisory Committee. Its content builds on that earlier work, and includes more description of how SCP can support statewide planning processes.

This IRP identifies the necessary resources to serve customer needs through 2030. It differs from the CPUC’s requested IRP under D.18-02-018 in that it contains SCP’s best available information on actual load and generation, and important information about SCP’s goals and vision. SCP staff plans to share a draft with SCP’s Board of Directors on August 2nd and once again in September, before posting a final version on its website.

A few highlights from SCP’s 2018 IRP include the following:

1. SCP is on track to reach its own ambitious greenhouse gas (GHG) emissions intensity target of 75 lbs CO₂e/MWh (0.034 MT CO₂e/MWh)

by 2030, and 50% qualifying renewable sources by 2020, ten years ahead of California requirements. The chart below shows SCP's current resources (i.e., resources under contract or in active negotiation) as well as SCP's planned resources (i.e., additional resources that SCP plans to procure through 2030).



- While a low-carbon mix of power sources is essential, the use of electricity to displace gasoline in cars and natural gas in buildings (sometimes called “electrification” or “fuel shifting”) should be prioritized at an even higher level in California
- CCAs working with their local public agencies have the potential to make the deployment of electric vehicle charging infrastructure less expensive, better utilized, and more accessible to disadvantaged communities and vulnerable populations.
- SCP coordinates its work on climate change with the Regional Climate Protection Authority, local transportation agencies, water agencies, open space districts and each of our member cities, town and counties. It is unreasonable to expect an IOU to interact so closely with every local public agency, but such coordination of the energy impacts of land use planning or the locational value of electric vehicle charging for low-income customers is critical.
- SCP seeks to support and supplement the existing customer programs offered by local agencies and PG&E by delivering forward-thinking programs that are not allowed under CPUC rules (e.g., fuel substitution) or are not appropriate for an IOU to deliver (e.g., short duration, experimental, fast-paced, or targeted to specific neighborhoods or industry).

- SCP seeks to invest in local electric sources and reliability services, use local professional services, donate to local charities and generally seeks to invest its reserves in local funds and banks.

Questions for the Committee to consider:

1. Does the Committee continue to agree that requesting the CPUC use this IRP for all statewide planning makes sense (rather than the compliance filing of Appendix A)?
2. Does the Committee find the IRP complete, clear, and useful for planning purposes?
3. Does the Committee agree that the content of the IRP is consistent with SCP's joint powers authority?
4. Does the Committee agree that going beyond the traditional IRP scope is appropriate, including identifying how SCP and other electricity providers should support statewide efforts to "maintain affordability and reliability while solving the climate crisis?"



DRAFT 2018 Integrated Resource Plan



Submitted for review to the SCP Community Advisory Committee July 24, 2018

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1. Executive Summary

Sonoma Clean Power Authority (SCP) is a public power provider operating as a community choice aggregator (CCA) and the default electricity provider for Sonoma and Mendocino Counties. SCP exists to provide broad public benefits relating to affordability, reliability, climate change and sustainability, coordination with local agencies, customer programs, and to support the local economy.

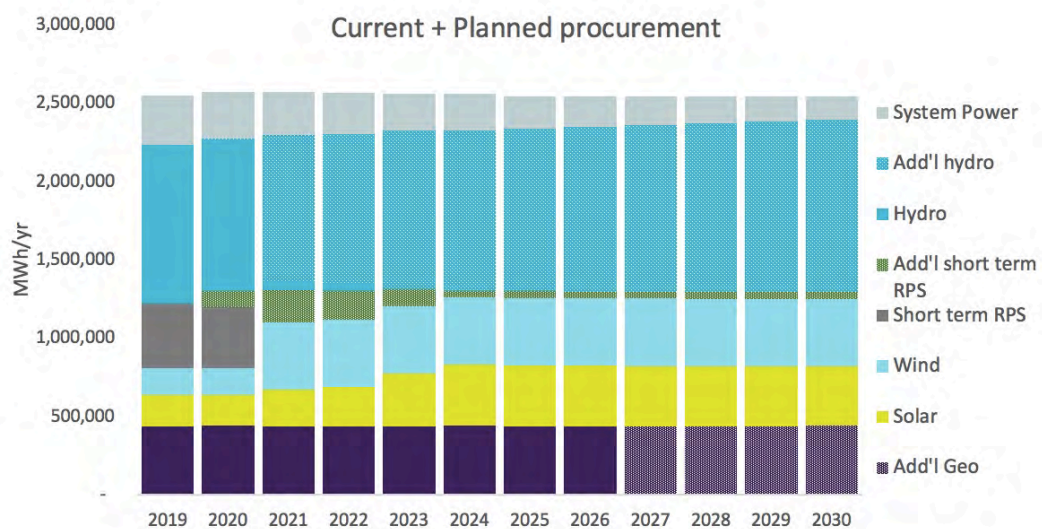
This Integrated Resource Plan (IRP) identifies the necessary resources to serve customer needs through 2030. It differs from the CPUC's requested IRP under D.18-02-018 in that it contains SCP's best available information on actual load and generation, and important information about SCP's goals and vision. SCP's Board of Directors has directed staff to file the CPUC's mandated compliance IRP (see Appendix A), however the Board requests that all statewide planning be based on the more accurate information contained in *this* IRP. More detail on the differences can be found in Appendix A. Many thanks to Community Advisory Committee and its ad hoc group for working with staff on early versions of the IRP.

Important conclusions from SCP's planning process include:

1. While a low-carbon mix of power sources is essential, the use of electricity to displace gasoline in cars and natural gas in buildings (sometimes called "electrification" or "fuel shifting") should be prioritized at an even higher level in California. SCP is working to facilitate the reduction of total greenhouse gas (GHG) emissions across all sectors, for example with programs to rebuild burned homes with 24/7 renewable sources and no natural gas, bulk discounts on electric vehicles, and construction of an "Energy Store" where customers can purchase zero carbon technologies.
2. Near-term grid reliability will require multi-year local resource adequacy (RA) obligations and upfront procurement of resources with local market power.
3. Energy affordability through 2030 will require deep customer engagement to reduce expensive and high-GHG evening energy usage, and to use smart-grid devices to avoid costly utility investments.
4. Concerns over the financial ability of CCAs to contract for new resources appears to be unfounded, and in any case, hasn't impacted SCP's ability to procure resources.
5. CCAs working with their local public agencies have the potential to make the deployment of electric vehicle charging infrastructure less expensive, better utilized, and more accessible to disadvantaged communities and vulnerable populations.
6. Solutions to system reliability will accelerate dramatically when the actual smart meter data is used for all customers and public access is provided to all real-time distribution grid data.
7. As illustrated by the following chart, SCP's load over the next twelve years is projected to increase slightly. Moving from left to right, the 2018 "Base" year load increases from population and rebuilding after the fires by the amount in the yellow bar. Efficiency decreases load by a similar amount. Behind-the-Meter solar further decreases load, and electric vehicles increase it to arrive at the 2030 year forecast.



8. SCP’s peak load is expected in September and is forecast to decline slightly from 580 MW in 2017 to 558 MW in 2030 and is forecasted to shift further into the evening, as electric vehicles are returning to residences to be charged.
9. SCP is on track to reach its own ambitious greenhouse gas (GHG) emissions intensity target of 75 lbs CO₂e/MWh (0.034 MT CO₂e/MWh) by 2030, and 50% qualifying renewable sources by 2020, ten years ahead of California requirements. In 2017, SCP’s estimated emissions (not yet third-party verified) totaled 134 lbs CO₂e/MWh (0.06 MT CO₂e/MWh), and SCP’s qualifying renewable sources totaled 45%. The chart below shows SCP’s current resources (i.e., resources under contract or in active negotiation) as well as SCP’s planned resources (i.e., additional resources that SCP plans to procure through 2030).



CCAs are rapidly establishing themselves as renewable energy providers, sources for cutting edge programs in carbon reduction and sustainability, and trusted local community partners across California. SCP plays an important role in the governance of the statewide CCA association, CalCCA. SCP's CEO currently serves as the Legislative Liaison and Vice President of the organization, and SCP's regulatory, compliance, marketing and power services staff serve on key committees. CalCCA is playing a key role in sharing best practices, educating lawmakers about this new form of public power and encouraging new CCAs to better manage risks and evolve quickly.

2. Introduction to Sonoma Clean Power

A. Purpose

The Sonoma Clean Power Authority (SCP) is a public agency created in 2012 to provide broad public benefits in energy, climate and the economy. As a Community Choice Aggregator or “CCA,” it provides public benefit investments and programs, and is the default electricity provider to customers in Sonoma and Mendocino Counties. SCP was created to provide customers with stable, affordable rates while working to solve the climate crisis. SCP’s goals include:

1. *Rate stability and affordability.* SCP seeks to reduce the volatility of customer electric bills through conservative contracting (i.e., managed risk), diverse portfolios of sources and suppliers, and rate-setting practices to reduce the frequency and magnitude of large swings in customer costs. SCP seeks improved affordability through competitive supply negotiations, accurate load forecasting and scheduling, low overhead costs, and through advocacy at California’s regulatory agencies.
2. *Accelerate Climate Solutions.* SCP seeks to use its staff, finances, Board and Community Advisory Committee, and its close relationships with local public agencies to create rapid solutions to climate change in all sectors. This means that while SCP is not primarily responsible for greenhouse gas emissions in transportation and land use, for example, it still has an obligation to aid those sectors whenever it has the capacity to do so.
3. *Coordination with Local Agencies.* SCP coordinates its work on climate change with the Regional Climate Protection Authority, local transportation agencies, water agencies, open space districts and each of our member cities, town and counties. It is unreasonable to expect an IOU to interact so closely with every local public agency, but such coordination of the energy impacts of land use planning or the locational value of electric vehicle charging for low-income customers is critical.
4. *Customer Programs.* SCP seeks to support and supplement the existing customer programs offered by local agencies and PG&E by delivering forward-thinking programs that are not allowed under CPUC rules (e.g., fuel substitution) or are not appropriate for an IOU to deliver (e.g., short duration, experimental, fast-paced, or targeted to specific neighborhoods or industry).
5. *Local Investment.* SCP seeks to invest in local electric sources and reliability services, use local professional services, donate to local charities and generally seeks to invest its reserves in local funds and banks.

B. Service

SCP began serving customers in May 2014 and today serves a population of about 525,000 people with 223,000 electric accounts across Sonoma and Mendocino counties. In aggregate, 86% of SCP’s accounts are residential, accounting for approximately 50% of its load.

Community Programs

As part of its mission to reduce GHG emissions across all sectors and supply electricity to Sonoma and Mendocino counties, SCP offers its customers programs related to clean transportation and energy efficiency. Near-term, short-term and long-term program goals are defined in a Strategic Action Plan that is regularly updated, and is included in this document as Exhibit B. Load impacts and accomplishments of these customer programs are described in Chapter 7.

Community Engagement

The creation of SCP was spearheaded by local community groups, local government, environmental activists, local labor and businesses. As a result, SCP is closely connected with its community. SCP participates in more than 100 public events in its territory each year, sponsors dozens of non-profits, and many SCP employees serve on local boards and committees. SCP also engages in a leadership role in the community where appropriate, such as responding to local needs following the 2017 firestorm.

Immediately following the October 2017 fires, SCP lent staff to the County of Sonoma to manage the protection of creeks and watersheds and committed \$1 million to relief efforts. More importantly, however, SCP began hosting a conversation among fire survivors, developers, city and county staff, and other stakeholders about how to rebuild homes to be more energy efficient, more affordable, and climate smart. Out of that dialog, the Advanced Energy Rebuild program was born.

For the Advanced Energy Rebuild, SCP recruited PG&E and BAAQMD to partner on a joint program to incentivize rebuilding homes with deep energy efficiency, EV charging, onsite renewable energy with storage, and bonuses for building all-electric with no natural gas connection for rebuilt buildings and homes. A rebuilt home that doesn't use any natural gas can earn up to \$17,500.

SCP is also demonstrating how the "community solar" option in the 2020 Title 24 code could be expanded for the 2022 Title 24 update. The proposed code improvement will be tested in the Advanced Energy Rebuild and will allow two refinements: (1) a clarification that the intent was to promote local RPS-eligible renewables and not solar alone; and (2) a recognition of the growing importance of connecting real-time supply and real-time load with storage or baseload renewable supply from local sources, such as SCP's EverGreen option. Customers are able to pre-purchase a 20-year commitment to local, renewable 24/7 energy.

Customer Supply Options

SCP offers its customers two supply options. The default service is *CleanStart*, which provided customers in 2017 with 45% renewable power and an additional 42% from large hydro. SCP's 100% renewable option is *EverGreen*, currently priced at a premium of 2.5 cents per kWh, coming from qualifying renewable sources located entirely inside SCP's territory and designed to closely match the real-time profile of customer demand. SCP also offers *NetGreen*, a net energy metering program which allows customers to offset their consumption of SCP-supplied power (whether *CleanStart* or *EverGreen*) with customer-owned renewable energy.

SCP customers have the choice to opt out of SCP's default service and buy energy from PG&E. As of June 30, 2018, SCP serves 87% of its eligible customers. All SCP customers remain PG&E delivery customers. While SCP provides energy generation, customer programs and customer service, it does not deliver or meter the physical power, nor does it distribute customer bills. PG&E is the only option for

delivery and metering, and SCP partners with PG&E for billing services. All of SCP’s customers receive one consolidated bill from PG&E that includes both the SCP generation charges and PG&E’s delivery charges. PG&E also charges SCP customers for their share of the above-market procurement costs incurred by PG&E while such customers were bundled PG&E customers. This charge, called the “Power Charge Indifference Adjustment,” is required by California law to ensure that neither bundled utility customers nor CCA customers are financially harmed by the existence of community choice programs.

Customer Service

SCP has a Customer Service team devoted to helping its customers, which include residential, commercial, industrial and agricultural accounts. The Customer Service team’s primary operational capabilities are:

- Navigating and interpreting billing issues with both in-house and third-party call centers
- Industry-specific engagements, such as the Economic Development Board, Farm Bureau, Winegrape Commission, etc.
- Facilitating SCP program participation: DriveEV, Demand Charge Reduction Program, Technical Assistance and Auditing Program, DIY Toolkits, etc.
- Interfacing directly with the California Public Utilities Commission (CPUC) and PG&E on a range of co-ventures (Time-of-Use Pilot Program, Residential Rate Reform, CCA/PG&E Joint Rate Mailers, etc.).

C. Governance

SCP is a joint powers authority governed by an eleven-member Board of Directors consisting of officials appointed by its members from the Counties of Sonoma and Mendocino, the Cities of Willits, Point Arena, Fort Bragg, Cloverdale, Sebastopol, Santa Rosa, Sonoma, Cotati, Rohnert Park, Petaluma and the Town of Windsor. The Board of Directors oversees a Community Advisory Committee to review important decisions and provide advice to the Board.

CCAs are variously referred to as a “Community Choice Aggregator,” “Retail Electric Provider,” and a “Load Serving Entity” under California law. CCAs were made possible by the adoption in 2002 of Assembly Bill 117, as one of the State’s efforts to insert more public oversight over energy markets and reduce risk following the energy crisis.

The purpose, structure and rules of SCP were initially developed between 2010 and 2013 by a Stakeholder Committee of representatives from local governments, labor, environmental groups, businesses and taxpayer and ratepayer advocates, and which were ultimately codified in the Joint Powers Agreement (JPA) that formed SCP. Since formation, the Board of Directors has updated the JPA and adopted policies to manage risk, increase transparency, provide for customer rights, adopt personnel rules, set internal procurement authorities and govern other business matters.

D. Territory

SCP provides service to nearly all of Sonoma and Mendocino Counties, excluding only the incorporated cities of Healdsburg and Ukiah, which are already served by public power providers in the form of municipal power.

Sonoma County is known for its wine, dairy products, hops, apples and beautiful coastline and countryside. Major industries include tourism, agriculture, ranching, healthcare and medical devices, technology and education. SCP began serving Sonoma County in 2014. Mendocino County is known for its rugged coastline and redwood forests. Economic activity is driven by agricultural products, forest products, fishing and tourism. SCP began serving Mendocino County in June 2017.

3. Rethinking Integrated Resource Planning

In February 2018 (D.18-02-018), the CPUC directed retail electric providers to share (by August 1, 2018) “Integrated Resource Plans,” consisting of specific data and based on CPUC-required templates. To comply with this requirement, SCP staff completed the CPUC-required templates, obtained approval from SCP’s Board of Directors on July 12, 2018 and submitted the IRP compliance filing in July 2018 (see Exhibit A for a full copy of the submission). However, in addition to complying with CPUC requirements, SCP has developed *this* Integrated Resource Plan, which is a better reflection of SCP’s actual projected load and resources, and includes important information about SCP’s vision and values (see Exhibit A, Table 3 for more detail). As a result, this IRP serves two purposes:

- Provides SCP’s most accurate information to be used in statewide planning; and
- Identifies additional IRP responsibilities necessary to maintain energy affordability and reliability while meeting the State’s climate goals.

A. Responsibility Beyond Supply and Demand

Historically, integrated resource planning has been based on forecasting customer demand as modified by assumed efficiency program impacts and then ensuring sufficient supply resources to meet that demand. More recently, integrated resource planning has incorporated efforts to increase the use of renewable sources and decrease GHG emissions. In the last few years, an effort has begun to plan for “renewable integration,” the work necessary to ensure grid reliability as more of California’s energy comes from solar and wind resources.

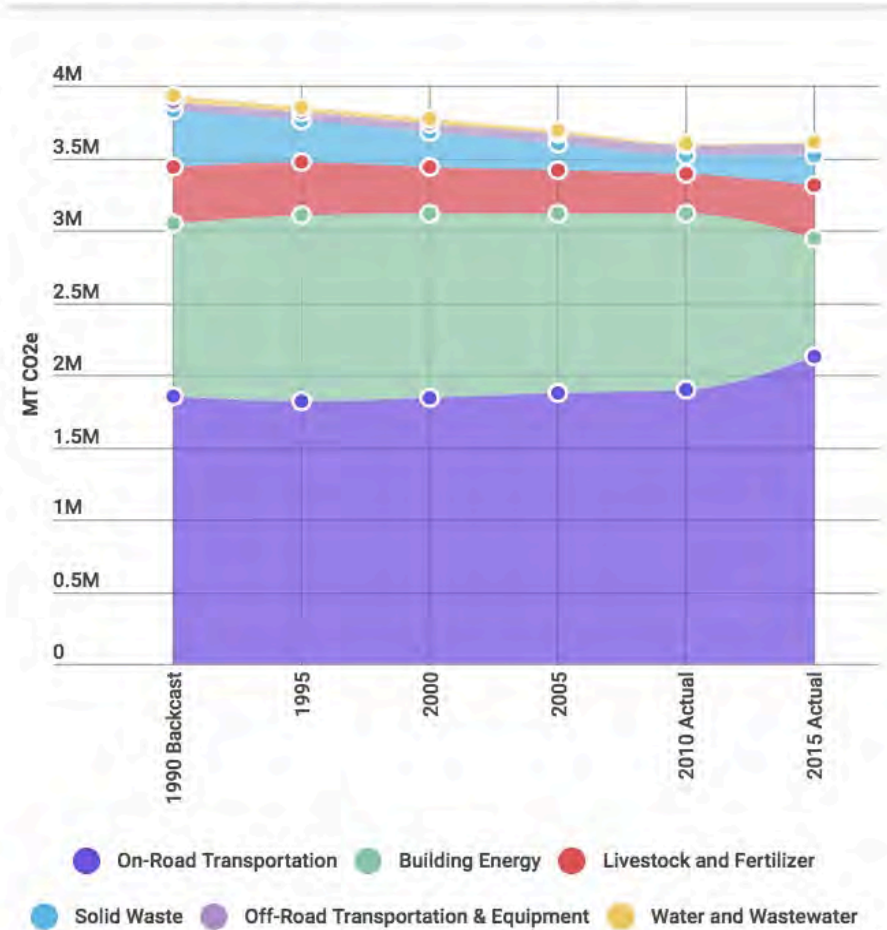
While these planning steps are necessary, they fail to ensure that California’s climate goals are met. California’s current planning process seeks to provide affordable, reliable, low-carbon electricity, but it doesn’t go far enough in examining the responsibility of the electric power sector to maintain affordability while also displacing other energy sources like gasoline. It also largely ignores the importance of customer participation in grid reliability measures. The result is that most projections of our energy future fall short of the necessary goals, as articulated in SB 350 (De León 2015) and AB 32 (Núñez/Pavley 2006):

By 2030, reduce GHG emissions to 40 percent below 1990 levels

By 2050, reduce GHG emissions to 80 percent below 1990 levels

Electric providers have so far made good progress in decarbonizing each megawatt-hour of electric energy produced. But focusing solely on decarbonization of electricity resources ignores an essential component for achieving California’s climate goal: using clean electricity to displace other fuels, particularly petroleum for on-road transportation and natural gas for building heating and water heating. These two sources make up nearly 80% of Sonoma County’s greenhouse gas emissions and are replaceable with clean electricity.

Sonoma County Emissions Trend



For these reasons, this IRP addresses all of the ordinary IRP elements, but also addresses the responsibility of SCP in achieving the climate goals of other (non-electric) sectors, and explores the possible large-scale expansion of using customer-owned technology and controls to provide essential grid reliability services.

B. How This IRP Differs from the CPUC’s IRP

As a load serving entity, SCP has core responsibilities for planning supply and demand, maintaining affordability and reliability, and for planning ahead to ensure California’s climate goals can be met.

One of SCP’s core responsibilities is to forecast its customer load and develop a plan to serve such load in alignment with its Board of Directors’ vision and values, and in accordance with regulatory requirements. In 2015, California codified this responsibility with the passage of SB 350, which requires the CPUC to establish and oversee an Integrated Resource Planning process. Across the United States, Integrated Resource Plans (IRPs) are often 10 to 20 year plans that map out both the supply-side and demand-side resources required for meeting customer needs. Given the complexity of the grid and the time required

to plan and build generating facilities, IRPs are a critical part of planning for affordable and reliable clean power.

In California, SB 350 has driven Integrated Resource Planning towards a more specific goal: helping the State meet its ambitious near-term GHG-reduction targets of 40% below 1990 levels by 2030. Accordingly, the CPUC has developed a capacity expansion model (called *Resolve*) that limits GHG emissions from California’s electric sector and—while meeting reliability, regulatory and other requirements—intends to produce a cost-effective portfolio of resources. The CPUC calls this portfolio its Reference System Plan and has produced a scenario assuming 42 MMT¹ of electric sector GHG emissions per year in 2030.

While SCP must meet the criteria of SB 350 and show its compliance to the CPUC for certification, State law allows and requires SCP’s governing board to determine how to achieve those goals, whether to use CPUC models as part of SCP’s planning process, and to approve SCP’s IRP.

Since this is SCP’s first complete IRP, SCP’s process will necessarily be refined in subsequent plans. In addition to seeking to improve the CPUC’s internal process for sharing IRP data, SCP has also invited the CAISO to meet late in 2018 to discuss what additional data it needs to more accurately identify necessary reliability resources in the year-ahead RA process, particularly for sub-local areas.

The following chapters will discuss SCP’s customer load, the resources required to meet such load and SCP’s procurement processes. In addition, this IRP illustrates how SCP’s planned activities fulfill SCP’s governing board’s vision, values and regulatory requirements.

SCP’s efforts to go beyond traditional resource planning include:

1. *GridSavvy*. A grid reliability platform being built to provide the capability of automatically dispatching electric vehicle chargers, heat pumps, thermostats and stationary batteries to both increase and decrease load on a fast signal. The goal of GridSavvy is to achieve Proxy Demand Response participation in 2020, Non-Generating Resource participation in 2024 and qualified System Resource Adequacy in 2030. By 2030, SCP aims to provide a minimum of 5% of RA from GridSavvy. The technical potential of GridSavvy appears to be sufficient to supply a small majority of real-time and hourly load shaping by 2050, but none of the reliability needs of the *Dunkelflaute*.²
2. *Portfolio*. SCP purchases long-term PPAs of renewable sources with a goal of matching real-time customer load as closely as practical *before* utilizing shaping or other strategies. The intent of this strategy is to minimize our reliance on system power and reduce the corresponding financial risk to our customers. Specifically, we:
 - o Buy geothermal, wind, solar, hydro, biomass and other non- and very low-GHG sources in an effort to best match hourly and seasonal customer demand, while purchasing high-value RA from these same sources and negotiating for curtailment rights on solar and wind; then

¹ “MMT” means millions of metric tons of carbon dioxide equivalent emissions.

² “Dunkelflaute” is a German word that describes when it is both dark and calm, a time during which neither solar nor wind resources can produce a sufficient amount of power.

- Plan to utilize GridSavvy, targeted customer programs (e.g., residential evening-hour efficiency), and energy storage to shape the real-time demand profile to better match the available supply; then
 - Purchase natural gas energy (often as an open position or “unspecified source”) to meet the remaining need; while
 - Utilizing natural gas RA sources to ensure system reliability for those portions not already met by renewable PPAs.
3. *Programs.* SCP specifically operates its customer programs to deliver the greatest reduction in total regional greenhouse gas emissions across all sectors and does not view its electric portfolio emissions factor itself as the primary goal, but rather as a means to achieving a societal reduction in emissions. This means:
- Transportation Fuel Shift. Electrification of transportation is SCP’s number one environmental objective as this is where the bulk of Sonoma and Mendocino county greenhouse gas emissions originate. SCP currently operates a bulk discount electric vehicle program, offers customers free charging stations for their homes, and partners with local non-profits to deploy electric vehicles in our community.
 - Building Fuel Shift. Reducing and eliminating natural gas from buildings is SCP’s number two environmental objective. SCP is actively rolling out programs in heat pumps, induction cooking, and building decarbonization education.
 - Time of Efficiency. Efficiency during evening hours – when grid prices and grid GHG intensities are both high – is extremely important, while efficiency during mid-day hours, when the grid is cheap and very low-GHG, is relatively unimportant. Through programs like GridSavvy, Sonoma Clean Power can begin to pair fuel-shifting and energy efficiency programs with aggregated customer load shaping strategies.
4. *Engagement.* SCP regularly meets with our regional transportation, water, land use, and planning agencies to coordinate and jointly prioritize climate action. We now have joint mapping, policies and legislative action, and coordinate electric vehicle charging station deployment, for example.

Fundamentally, SCP views its obligation as utilizing affordable and reliable clean sources of electricity to replace other sources of energy.

C. SCP’s Role in Creating Needed Energy Market Changes

It is worth celebrating that solar and wind power are now frequently the lowest cost new energy resource. This is good news, but producing renewable energy is now the easy part. Ensuring reliability with a growing fraction of variable (solar) and intermittent (wind) sources is harder.

Our IRP thus begins with certain principles, summarized here:

Measure Actual Climate Impacts, Not Proximate Ones

California climate policy should move away from simply promoting the construction of new renewable sources (e.g., percent RPS or megawatts of new RPS sources) and toward metrics that will support a reliable near-zero carbon grid (e.g., total tons of CO₂ emitted per geographic territory, from all sources, with credit to electric providers for contributing to reductions regardless of the sector).

SCP's Role: SCP no longer considers the addition of new renewable sources equivalent to a reduction in emissions, for example, and instead focuses on total tons of emissions in its service territory. The reason is that the addition of new sources can expand total energy use, and may not reduce absolute emissions at all, or at least not in proportion to the new construction. Construction-oriented policies also tend to overlook less expensive options, such as conservation, controls and efficiency.

Improve Market Stability for Natural Gas Turbines While Planning Ahead to Reduce Reliance on Them

There is an urgent need to shore up the market for natural gas units to sell reliability through and beyond the closure of the Diablo Canyon nuclear power plant. A multi-year compliance obligation to purchase Resource Adequacy will stabilize the market and help avoid the risk of early plant closures. Moving toward California's climate goal requires *both* a clear plan to reduce reliance on natural gas units for shaping and reliability over the next twenty years, *and* multi-year resource adequacy (RA) obligations to ensure that gas units needed for reliability can remain operational.

SCP's Role: Advocate for multi-year RA obligations, implement GridSavvy, and continue to improve the match between real-time supply and demand.

Make a Plan for Dunkelflaute

Ensuring reliability when it is both dark and without wind (Germans call this "Dunkelflaute") will likely require all of the following: (a) increased energy storage at scale and duration, (b) retention of significant gas plant resources for reliability for the next thirty years, (c) improved segmentation of circuits and back-up power to ensure reliability to critical services, while (d) we reconsider our current reliability standards for non-critical loads. Today's IOUs plan for a specific up-time. But that standard was set when nearly all resources were dispatchable. As California presses forward with plans to decarbonize, ratepayers should be informed about the cost of that reliability standard and provided with alternative standards which may greatly lower costs.

SCP's Role: convene conversations about affordable reliability that other market actors cannot or should not (e.g., the CAISO should not be expected to initiate a conversation about changing California's reliability standards).

Open Access to Data for Innovation

California needs detailed open public data on distribution grid infrastructure and competitive markets for providing distribution grid reliability. Such data can be provided in a manner that continues to protect customer privacy. As more of our energy comes from renewable sources, our options for dispatching supply sources will continue to diminish and our need to manage load and distributed energy resources

will increase. These pressures demand more creativity from customers, technology companies and community choice aggregators, and that requires open access to real-time circuit information and improved use of smart meter data.

SCP's Role: Identify specific data needed and advocate for those data to be provided in GIS, APIs and other usable formats. Advocate for actual load profiles to be used for settlements for residential and small business customers, so that customers can be fully compensated for their participation in demand response.

Improve Affordability with Better Distribution Reliability Markets

The CPUC, CAISO and other stakeholders need to define better markets for reliability services from customer-owned and third-party-owned resources. Today, only very limited markets exist for customers, CCAs and third parties to provide reliability services (e.g., the DRAM), stifling creativity and meaning that near-zero-cost solutions (e.g., behavioral changes driven by smart phone apps) are undervalued. Nearly all reliability investments today are still focused on utility-owned equipment. However, affordability can be significantly improved when customers can utilize readily-available technology, such as smart inverters, smart EV chargers and even phone apps to provide large-scale reliability. Concerns about the dependability of customer-provided reliability can be addressed through large-scale programs with broad statistical diversity and a credit-worthy aggregator.

SCP's Role: Provide more details to the CPUC, CAISO and the CEC on GridSavvy and SCP's attempts to fully value customer-owned, CCA-owned and third-party-owned reliability resources. Advocate for improved reliability markets and improved procedures to ensure adequate notice of reliability needs and ability to propose lower cost non-wires alternatives.

Create a Plan to Avoid Building New Natural Gas Plants

Even if there is no buyer for the energy, gas turbines used for electric reliability must still run at their minimum settings (typically between 20% and 30%) and therefore would create sufficient emissions to make reaching California's 2050 climate goals challenging if nearly all reliability is still provided by natural gas turbines in 32 years. SCP expects that a significant fraction of reliability services will still be met by natural gas turbines in 2050, but seeks a statewide dialog now to ensure that California's climate goals can still be met.

SCP's Role: Participate in long-term reliability planning, advocate for an extremely high bar to approve any new construction of natural gas power facilities and better noticing and market signals for alternatives to be developed whenever possible.

D. Preparing for an Upside-Down Grid

As part of SCP's efforts to achieve California's climate goal, we have identified a number of problems that we seek broad industry collaboration to solve.

One set of problems comes from the fact that the transition to an extremely low-carbon society is flipping the grid "upside-down." Historically, California's grid has used dispatchable *resources* to meet forecast demand. A low-carbon grid will rely much more on forecast supply (e.g., solar and wind) and therefore will require much greater amounts of dispatchable *load*. Existing demand response programs

are insufficient because they are too low value, too slow to react, and too complex for most businesses and residential customers to implement.

Most conversations about solutions to this problem are too narrow in scope, focusing on one solution, such as batteries. But SCP's analysis finds it is more likely that affordable solutions to this problem will involve a number of elements, including:

1. Very close collaboration with customers, who will be increasingly paid to provide reliability services.
2. Improved access to smart meter and distribution grid data, and improved markets for distribution grid reliability to allow innovation.
3. Increased use of stationary batteries at high-value locations informed by real-time distribution grid data.
4. Broad use of automated demand response, including both up- and down-regulation of loads and distributed energy resources.
5. Increased curtailment of renewables, but with improved clarity from CAISO on curtailment risks associated with new projects.
6. Changes to the CAISO market to facilitate easier exporting and importing of power, reducing the risks associated with solar and wind curtailment, and increasing access to cheaper clean generation during times of high net demand (e.g., during CAISO evening ramps).
7. Changes to building codes to ensure heating and water heating with heat pumps having dispatch capability.
8. Time-of-Use rates to encourage mid-day EV charging and other rate restructuring to better reflect wholesale costs.

No doubt this is a partial list, and there are additional actions that will be needed for addressing the "upside-down grid." SCP therefore seeks to create a forum for analyzing and discussing the appropriate balance of approaches to ensure affordability and reliability in a decarbonized future. What other strategies should California be planning now to facilitate the transition to a near-zero-carbon grid?

SCP seeks partners to regularly discuss this topic, update our processes and regulations and collaborate.

4. Portfolio Regulatory Requirements

A. Regulatory Deliverables

As a California load serving entity, SCP must comply with numerous regulations, many of which deal with ensuring grid reliability and limiting greenhouse gas emissions. The tables below list SCP’s regulatory deliverables (required and voluntary) as well as the frequency and regulatory jurisdiction for each deliverable. Each table represents a specific regulatory topic, and key topics are explained in greater detail in subsequent sections of this chapter.

Resource Adequacy (RA)

Frequency/Timing	Regulatory Deliverable	Jurisdiction
Annual: January	Flexible Capacity Needs Assessment	CAISO
Annual: February	Historical Capacity Price Data Request	CPUC
Annual: March	Historical Load Used for Year-Ahead RA Process	CPUC/CEC
Annual: April	Going Forward Capacity Volumes Data Request	CPUC
Annual: April	Year-Ahead Load Forecast Used for Year-Ahead RA Process	CPUC/CEC
Annual: June	Import Capability & Path 26 Allocation Processes Begin	CAISO
Annual: August	Revised Year-Ahead Load Forecast Used for Year-Ahead RA Process	CPUC/CEC
Annual: October	Year-Ahead RA Demonstration	CPUC/CEC
Monthly	2.5 Months Ahead Load Migration Forecast	CEC
Monthly	45 Days Ahead RA Demonstration	CPUC/CEC
Monthly	45 Days Ahead RA Demonstration (cure period ends T-30 Days)	CAISO

Renewables Portfolio Standard (RPS)

Frequency/Timing	Regulatory Deliverable	Jurisdiction
Annual: Q2	Retire RECs and Prepare WREGIS Reports for Suppliers	N/A
Annual: July	WREGIS: Compliance Report, e-Tag Report, Attestation	CPUC/CEC
Annual: July	RPS Procurement Plan	CPUC
Annual: July	RPS Data Request related to Workforce Development & Diversity	CPUC
Annual: August	RPS Compliance Report	CPUC

Energy Storage Procurement

Frequency/Timing	Regulatory Deliverable	Jurisdiction
Biennial: January	Energy Storage Procurement Tier 2 Advice Letter	CPUC

Greenhouse Gas (GHG) Reporting

Frequency/Timing	Regulatory Deliverable	Jurisdiction
Annual: February	Emission Performance Standard Advice Letter	CPUC
Annual: June	Retail Load Reporting for MRR	CARB
Annual: June	GHG Reports due to The Climate Registry	Voluntary
Annual: December	GHG Report Published by The Climate Registry	Voluntary

Power Source Disclosure (PSD)

Frequency/Timing	Regulatory Deliverable	Jurisdiction
Annual: April	Third party verification of retail sales by product	N/A
Annual: June	PSD Report submitted to CEC	CEC
Annual: July	SCP-PG&E rate comparison mailed to customers	CPUC
Annual: August	Power Content Label mailed to Customers and CEC	CEC
Annual: October	Independent audit of PSD Report, Power Content Label	CEC

Integrated Resource Planning (IRP)

Frequency/Timing	Regulatory Deliverable	Jurisdiction
Biennial: June*	CPUC Templates Submitted to CPUC for Verification	CPUC
Biennial: TBD	SCP's IRP (including CPUC templates) posted to SCP website	Voluntary

**The CPUC extended the 2018 IRP deadline to August 1, 2018*

Energy Information Administration (EIA) Reporting and Quarterly Fuel and Energy Report (QFER)

Frequency/Timing	Regulatory Deliverable	Jurisdiction
Annual: April	Annual 861 Filing	EIA
Quarterly	Quarter Behind QFER (1306B Filing)	CEC
Monthly	Month Behind 861 Filing	EIA

Integrated Energy Policy Report (IEPR)

Frequency/Timing	Regulatory Deliverable	Jurisdiction
Biennial: April	Integrated Energy Policy Report - Load Forecasts	CEC
Biennial: April	Integrated Energy Policy Report - Resource Plans	CEC

Wind Power Procurement

Frequency/Timing	Regulatory Deliverable	Jurisdiction
Quarterly	Quarter Behind CA Wind Power Procurement (1386 Filing)	CEC

Congestion Revenue Rights (CRRs)

Frequency/Timing	Regulatory Deliverable	Jurisdiction
Annual: August	Annual CRR Allocation Process Begins	CAISO
Monthly	1.5 Month Ahead Load Forecast for CRR Allocations	CAISO

PG&E Energy Resource Recovery Account (ERRA)

Frequency/Timing	Regulatory Deliverable	Jurisdiction
Annual: February	Year-Ahead Load Forecast Used for PG&E ERRA	CPUC
Annual: September	Revised Year-Ahead Load Forecast Used for PG&E ERRA	CPUC

Advanced Metering Initiative (AMI) Data

Frequency/Timing	Regulatory Deliverable	Jurisdiction
Triennial	AMI Data Privacy Audit	CPUC
Annual: April	AMI Data Privacy Annual Report	CPUC

Officer Certification

Frequency/Timing	Regulatory Deliverable	Jurisdiction
Annual: April	Annual Officer Certification Form	CAISO

B. Resource Adequacy

In the aftermath of California’s electricity crisis (2000-2001), the California Public Utilities Commission (CPUC) introduced a new requirement in 2004 to better ensure grid reliability. More specifically, the CPUC required load-serving entities to secure adequate capacity well in advance of the real-time need and make such capacity available to the California ISO (CAISO), which is the balancing authority (i.e., grid operator) for the majority of California. This requirement, called “Resource Adequacy,” has evolved over the years since 2004, and today’s program (jointly administered by the CPUC, CAISO and California Energy Commission) is comprised of three products: (1) System RA, (2) Flexible RA, and (3) Local RA.

System RA

In order to meet its CPUC-jurisdictional System RA requirements, SCP must demonstrate that it has secured capacity equal to 115% of its expected peak load for each month of the year. However, instead of making such a demonstration all at once, SCP is instead required to make a year-ahead filing as well as twelve individual month-ahead filings. For the year-ahead filing (October 31st of the preceding year), SCP must demonstrate 90% of the 115% requirement for the coming year’s five summer months: May through September. For the 12 monthly filings (each submitted 45 days in advance of the month), SCP must demonstrate 100% of the 115% requirement. For reference, the 115% requirement is often referred to as the expected peak load plus a 15% “planning reserve margin.” Also, to be more precise, the CPUC makes several adjustments to SCP’s expected monthly peak loads; one of these adjustments is to account for the fact that SCP’s peaks do not perfectly coincide with CAISO’s peaks.

When demonstrating System capacity, SCP must count only the “Net Qualifying Capacity” of each resource it includes in its filings. At a high level, the Net Qualifying Capacity (NQC) of a resource, published by the CAISO, is the capacity (one number for each month of the year) that can be relied upon to meet that month’s peak load system conditions. For wind and solar resources, the NQC calculations must take into account the intermittent and seasonal nature of such resources and are based on an Effective Load Carrying Capacity (ELCC) methodology. For example, solar resources receive no capacity value in December and January.

When demonstrating System capacity, SCP must also consider three other factors. First, due to limited capacity on Path 26 (a cluster of critical transmission lines that allow power to flow between northern and southern California), SCP must secure the bulk of its system resources from north of Path 26 (thereby reducing the need to use the path). In order to comply with CPUC rules, SCP is only allowed to procure a certain amount of capacity from south of Path 26, with the specific number being provided each year by the CAISO through the CPUC. Second, due to limited capacity on the interties that connect the CAISO grid with other western grids, SCP must secure the bulk of its system resources from within the CAISO grid. Again, SCP is only allowed to procure a certain amount of capacity from outside of the CAISO grid, with the specific number being provided each year by the CAISO and CPUC. Third, each year SCP is allocated a certain amount of capacity that was procured by the CAISO for reliability purposes or by PG&E due to policy mandates. These allocations are known as Reliability Must Run (RMR) and Cost Allocation Mechanism (CAM) allocations, and SCP is given this capacity because its customers are charged for it. The CPUC notifies SCP of its RMR and CAM allocations on a quarterly basis (approximately two months in advance of each quarter).

Flexible RA

In order to meet its Flexible RA requirements, SCP must demonstrate that it has secured Flexible capacity equal to its assigned share of the CAISO’s flexibility need (based in part on the largest expected three-hour ramp of system load) for each month of the year. However, instead of making such a demonstration all at once, SCP is instead required to make a year-ahead filing as well as twelve monthly filings. For the year-ahead filing (October 31st of the preceding year), SCP must demonstrate 90% of its assigned flexible capacity requirement for each month of the coming year. For the twelve individual monthly filings (each submitted 45 days in advance of the month), SCP must demonstrate 100% of its assigned flexible capacity requirement.

When demonstrating Flexible capacity, SCP must count only the “Effective Flexible Capacity” of each resource it includes in its filings. At a high level, the Effective Flexible Capacity (EFC) of a resource, published each year by the CAISO, is the capacity (one number for each month of the year) that can be relied upon to help meet that month’s system ramping needs. For this reason, only resources that can ramp and sustain energy output for at least three hours are eligible to receive an EFC value.

When procuring Flexible capacity, SCP must choose among three categories: (1) Base Flexibility; (2) Peak Flexibility; (3) Super-Peak Flexibility. Each category of capacity must be economically bid into the California ISO’s markets (i.e., each category is subject to “must-offer obligations”), but the exact requirements differ by category. In addition, load serving entities must procure flexible capacity in accordance with the following rules: (A) For the summer months (May through September), SCP must procure at least 55% of its Flexible Capacity portfolio with Category 1 (Base Flexibility) capacity; (B) For the non-summer months, SCP must procure at least 38% of its Flexible Capacity portfolio with Category 1 capacity; (C) SCP may only procure up to 5% of its Flexible Capacity portfolio with Category 3 (Super-Peak Flexibility). Since the inception of Flexible Capacity, SCP has procured only Category 1.

Local RA

In order to meet its Local RA requirements, SCP must demonstrate that it has secured capacity in specific transmission-constrained (i.e., “Local”) areas equal to its assigned share of the CAISO’s need for each month of the year. For the year-ahead filing (October 31st of the preceding year), SCP must demonstrate 100% of its assigned local capacity requirements for each month of the coming year. To be clear, the assigned requirement for each local area is one number for the entire year, but SCP must show that it has secured enough capacity in each month to meet this number. Also, the CAISO has established a list of seven local areas in PG&E’s transmission area: (1) Humboldt; (2) North Coast/North Bay; (3) Sierra; (4) Stockton; (5) Greater Bay; (6) Greater Fresno; (7) Kern. However, the CPUC has established a less granular list of only two local areas in PG&E’s transmission area: (1) Bay Area; (2) Other PG&E Areas. As a result, SCP has two separate local RA compliance obligations: a CPUC-defined obligation and a CAISO-defined obligation.

When demonstrating capacity to meet CPUC Local RA requirements, SCP must use the August Net Qualifying Capacity (NQC) of each resource. This means that if SCP has a solar resource in a local area, and that resource has a March NQC of 5 MW and an August NQC of 20 MW, then for purposes of Local RA compliance, SCP can and must list 20 MW across the year for that specific resource (even though this would seem to overstate the capacity in March by a factor of 4).

SCP’s System, Flexible and Local RA requirements are all based in part on SCP’s load data. The first step in SCP’s RA compliance cycle is to submit historical load data to the CPUC and CEC in March of the preceding year. The following month (in April of the preceding year), SCP is required to submit an initial year-ahead load forecast. Based in part on this data, the CPUC then provides SCP with draft year-ahead RA obligations; these are provided in late July or early August of the preceding year. The following month (in August of the preceding year), SCP is required to submit a revised year-ahead load forecast. Accordingly, the CPUC then provides SCP with revised year-ahead RA obligations; these are provided in September of the preceding year. Based on these obligations and as discussed in the section above, SCP then must make its year-ahead filing on October 31st of the preceding year.

Once the year-ahead process is completed on October 31st of the preceding year, the month-ahead process begins. As explained in the section above, SCP is required to make RA submissions 45 days in advance of each month. In addition to making such RA submissions, SCP is also required to submit load forecasts 2.5 months in advance of each month. In fact, it is these load forecasts that are used to modify SCP’s 45 day-ahead System requirements, in order to capture load migration. For example, in mid-January SCP is not only required to submit its March RA plan, but it is also required to submit an April load forecast. It is this April load forecast that is used the following month (in mid-February) to determine SCP’s remaining April System RA need.

C. Renewable Portfolio Standard

Established in 2002 under Senate Bill 1078, accelerated in 2006 under Senate Bill 107, expanded in 2011 under Senate Bill 2, and expanded once again in 2015 under Senate Bill 350, California's Renewables Portfolio Standard (RPS) requires California load serving entities to supply their retail sales with minimum portions of eligible renewable energy. As shown in the table below, the RPS requirements have increased over the years, and such requirements (expressed as percentages of retail sales) are enforced within compliance periods. For each compliance period, load-serving entities (LSE) like SCP and PG&E, are required to meet the weighted average of the RPS requirements for that period, with retail sales providing the weights. For example, in compliance period #3, LSEs are required to supply their retail sales with at least the following portion of renewable energy: $[(2017 \text{ sales} \times 27\%) + (2018 \text{ sales} \times 29\%) + (2019 \text{ sales} \times 31\%) + (2020 \text{ sales} \times 33\%)] / [2017 \text{ through } 2020 \text{ sales}]$.

Year	Compliance Period	RPS Requirement (% of Retail Sales)
2011	1	20.0
2012	1	20.0
2013	1	20.0
2014	2	21.7
2015	2	23.3
2016	2	25.0
2017	3	27.0
2018	3	29.0
2019	3	31.0
2020	3	33.0
2021	4	34.8
2022	4	36.5
2023	4	38.3
2024	4	40.0
2025	5	41.7
2026	5	43.3
2027	5	45.0
2028	6	46.7
2029	6	48.3
2030	6	50.0

In order to supply their retail sales with minimum portions of renewable energy, load serving entities must acquire and retire renewable energy credits (RECs). Each REC represents the environmental/renewable attributes associated with 1 MWh of eligible renewable energy and is created at the moment the electricity is generated; accordingly, each REC is assigned a vintage year and month. RECs are created in a database known as the “Western Renewable Energy Generation Information System (WREGIS), which is used across the Western Interconnection to track the environmental/renewable attributes of wholesale electricity.

When acquiring and retiring RECs to meet its RPS requirements, SCP must also comply with additional requirements related to three Portfolio Content Categories (PCCs), defined as follows:

- **PCC 1:** Bundled RECs from facilities with a first point of interconnection within a California Balancing Authority (CBA), or RECs from facilities that schedule electricity into a CBA, and without substitute energy. In other words, these are RECs that are bundled with electricity – all coming from the renewable energy facility. If that facility is outside a CBA, the electricity must be scheduled into the CBA, and only the fraction of the schedule actually generated by the renewable facility may count (i.e., any Ancillary Services needed to support the schedule are not counted).
- **PCC 2:** Bundled RECs – using substitute energy delivered within the same calendar year – from facilities that are outside of a California Balancing Authority (CBA). In other words, these are RECs that are bundled with electricity, but the electricity scheduled into the CBA does not have to come from the renewable energy facility in real time. Instead, the electricity is provided by a substitute facility, as long as the electricity is scheduled into the CBA within the same calendar year.
- **PCC 3:** Unbundled RECs originally associated with generation from an RPS-facility (but where no energy is actually procured) or unbundled RECs that do not qualify for PCC 1 or PCC 2. SCP’s Board chose to never use PCC3 resources to reduce greenhouse gas emissions, and has avoided purchasing PCC3 altogether since the end of 2014.

In accordance with its RPS requirements, SCP must acquire and retire RECs in line with the following PCC-related restrictions:

Year	Compliance Period	RPS Requirement (% of Retail Sales)	PCC 1 Minimum (% of RPS)	PCC 3 Maximum (% of RPS)
2011	1	20.0	50	25
2012	1	20.0	50	25
2013	1	20.0	50	25
2014	2	21.7	65	15
2015	2	23.3	65	15
2016	2	25.0	65	15
2017	3	27.0	75	10
2018	3	29.0	75	10
2019	3	31.0	75	10
2020	3	33.0	75	10

Long-Term Contracting Obligation

Starting with Compliance Period 4 (which begins 1/1/2021), at least 65% of the RECs retired for the purpose of meeting the Procurement Quantity Requirement (PQR) must come from contracts that are 10 or more years in duration.

D. Energy Storage

In December 2013, the CPUC issued Decision 13-10-040 and adopted the Energy Storage Procurement Framework and Design Program for Investor Owned Utilities (“IOUs”), Electric Service Providers (“ESPs”),

and CCA programs. In this decision, the CPUC established a goal for CCAs to procure energy storage equal to 1% of their 2020 annual peak load. To count toward the 2020 goal, energy storage projects must meet the following eligibility requirements:

- Energy storage systems must be installed and operational after January 1, 2010
- Energy storage systems must be online and delivering by the end of 2024
- Distributed storage (i.e., customer-sited or customer-owned storage) qualifies
- Electric vehicle programs qualify
- Energy storage projects must further a relevant purpose (i.e., demonstrate their ability to provide grid optimization, integration of renewable energy, or reduction of GHG emissions)
- Government funded projects may be included
- Energy storage procurement must be cost-effective

E. Greenhouse Gas Reporting

California law requires the state to reduce its greenhouse gas (GHG) emissions to 1990 levels by 2020, and to 40% below 1990 levels by 2030. The first goal was recently reached, with 1990 levels of GHG emissions reached in mid-2018. To help achieve the reductions needed by 2030, the California Air Resources Board (CARB) – which is a department within the state’s Environmental Protection Agency – enforces an emissions Cap & Trade program. This program, which covers electricity generators, electricity importers, industrial facility operators and fuel distributors, requires covered entities to obtain emissions allowances, the total supply of which is ramped down over time. As part of the Cap & Trade program, CARB also requires covered entities to report their emissions on an annual basis. One important note: CARB allows covered entities to exclude (for compliance purposes) the emissions associated with Category 2 RPS (i.e., the emissions associated with electricity used to firm and shape renewables from non-California balancing authorities). This compliance exception is known as the “RPS Adjustment.”

SCP has contracts with electricity generators and electricity importers, but SCP is not itself a generator or importer. As a result, SCP is not a covered entity under California’s Cap & Trade program. However, SCP is an “Electric Power Entity” as defined in the California Code of Regulations (CCR) and is therefore required to report its retail sales to CARB on an annual basis (17 CCR 95111). In addition, SCP voluntarily has its GHG emissions audited and reported by The Climate Registry (TCR), a non-profit organization that the investor-owned utilities have used for many years as their means to measure and communicate the impacts of their GHGs from retail sales. Through its Electric Power Sector Protocol, TCR audits SCP’s emission factors, allowing SCP to have published utility-specific GHG emission factors that its customers can use to quantify their own emissions.³ The use of TCR was long the only option for reporting emissions from retail sales because CARB’s Mandatory Reporting Requirements were expressly developed for producers and importers and could not be used to measure impacts associated with purchased energy to serve retail customer load.

³ Available online at: <https://www.theclimateregistry.org/our-members/cris-public-reports/>

The practice of relying on The Climate Registry for GHG reporting for retail sales will eventually be replaced by the CEC’s rules under AB 1110 (see “Power Source Disclosure” section directly below), however that methodology is not yet finalized.

F. Power Source Disclosure

California law requires load-serving entities (LSEs) to disclose the types of power resources used to serve customers. This mandate, known as the Power Source Disclosure (PSD) program, is a consumer information program enforced by the California Energy Commission (CEC) on an annual basis. More specifically, LSEs are required to submit detailed reports to the CEC and mail simplified one-pagers to customers each summer. With respect to the one-pager, the CEC requires that LSEs use the exact same template, called the “Power Content Label,” which allows customers to easily compare a specific LSE’s resource mix to the California average. SCP’s draft 2017 Power Content Label is below. The final version will be mailed to customers in August 2018.

2017 POWER CONTENT LABEL			
Sonoma Clean Power Authority			
ENERGY RESOURCES	SCP CleanStart	SCP EverGreen	2017 CA Power Mix**
Eligible Renewable	45%	100%	29%
Biomass & biowaste	0%	0%	2%
Geothermal	11%	100%	4%
Eligible hydroelectric	0%	0%	3%
Solar	11%	0%	10%
Wind	23%	0%	10%
Coal	0%	0%	4%
Large Hydroelectric	42%	0%	15%
Natural Gas	0%	0%	34%
Nuclear	0%	0%	9%
Other	0%	0%	<1%
Unspecified sources of power*	13%	0%	9%
TOTAL	100%	100%	100%
* "Unspecified sources of power" means electricity from transactions that are not traceable to specific generation sources.			
** Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the identified year.			
For specific information about this electricity product, contact:		Sonoma Clean Power Authority	
		855-202-2139	
For general information about the Power Content Label, please visit:		http://www.energy.ca.gov/pcl/	
For additional questions, please contact the California Energy Commission at:		844-454-2906	

California Assembly Bill 1110, which was passed in 2016, directs the CEC to modify the Power Source Disclosure program as follows: the CEC must require LSEs to disclose (in addition to the power sources that they already disclose) the GHG emissions intensities associated with the portfolios they offer to their customers, beginning in 2020 for the 2019 reporting year. In order to implement this new law, the CEC began engaging stakeholders in 2017 and has shared pre-rulemaking staff proposals for modifying the Power Source Disclosure program. A final rulemaking is expected in late 2018 or early 2019.

5. Customer Load

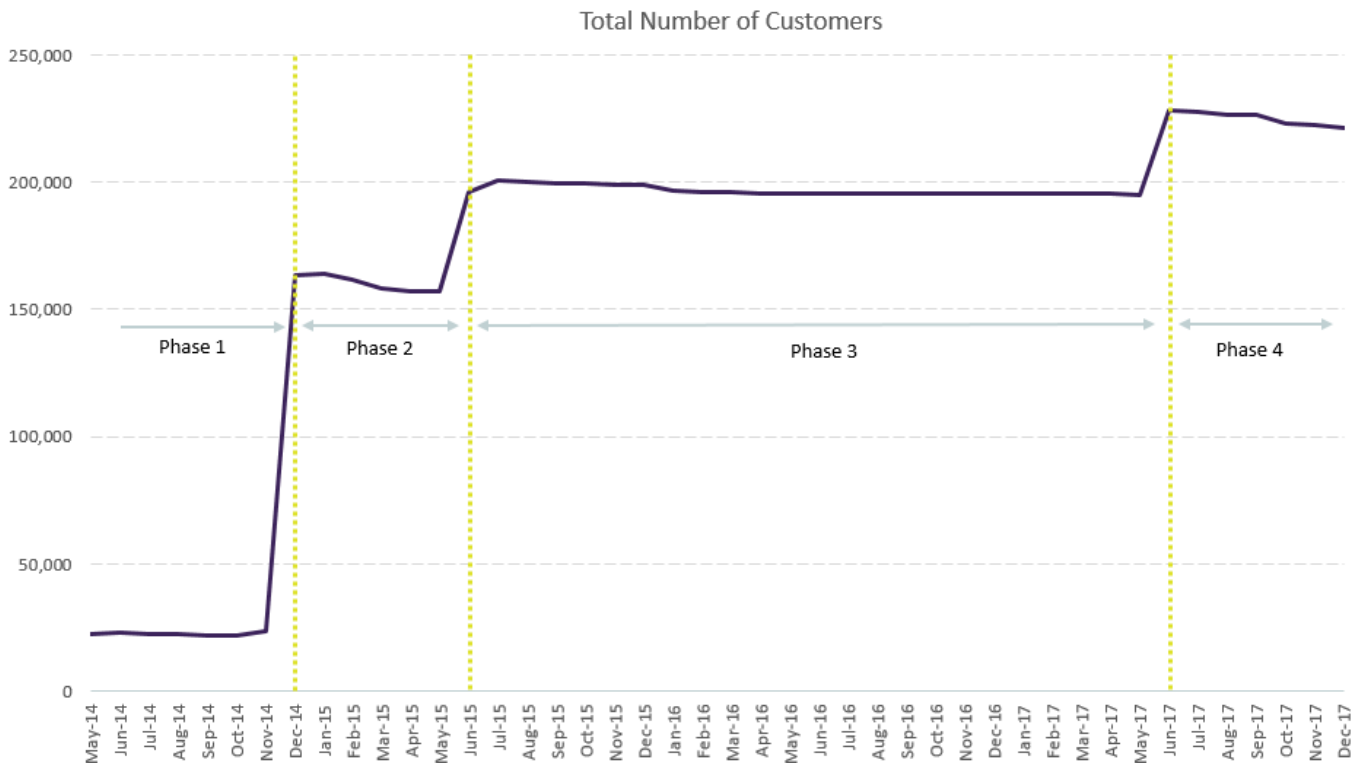
A. Historical Number of Enrolled Customers

As previously stated, SCP is the default electricity provider for Sonoma and Mendocino counties, while customers have the right to opt-out and remain with PG&E. The current participation rate for SCP is 87%, meaning that 13% of eligible customers have opted out.

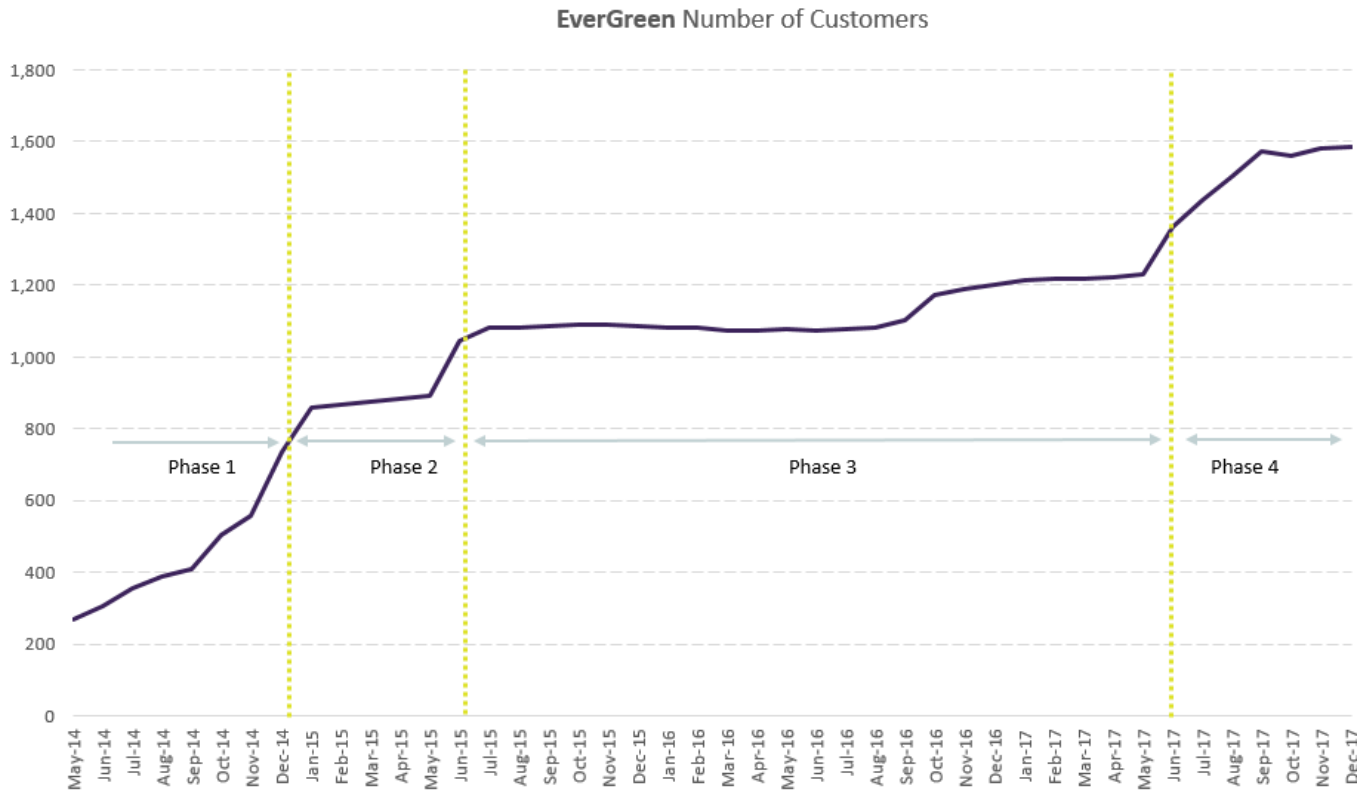
SCP began serving customers in May 2014 and has served Sonoma and Mendocino counties in the following phases:

- Phase 1- May 1, 2014 began serving commercial and industrial customers and a random selection of 5,000 residential customers in Unincorporated Sonoma County, Cotati, Santa Rosa, Sebastopol, Sonoma, and Windsor
- Phase 2- Dec 1, 2014 added the remaining residential customers in the jurisdictions listed above
- Phase 3- Jun 1, 2015 added all customers in Cloverdale, Petaluma, and Rohnert Park
- Phase 4- Jun 1, 2017 added all customers in Unincorporated Mendocino County, Fort Bragg, Point Arena, and Willits

The figure below shows the number of customers through each phase. Note that in October 2017, the Tubbs and Nunn fires destroyed approximately 3,800 accounts. The number of customers as of Dec 31, 2017 was 221,309 which was comprised of almost 86% residential accounts.



The number of EverGreen accounts (SCP’s 100% local renewable option) has steadily increased through each of the phases as shown in the following figure. The number of EverGreen customers as of Dec 31, 2017 was 1,587 (0.72% of SCP’s total customers).



B. Historical Load (MWh)

The table below shows the historical annual load (MWh) for 2015-2017. 2014 is not included because it does not represent a full year and the phasing in of customers was not representative of SCP’s typical customer base.

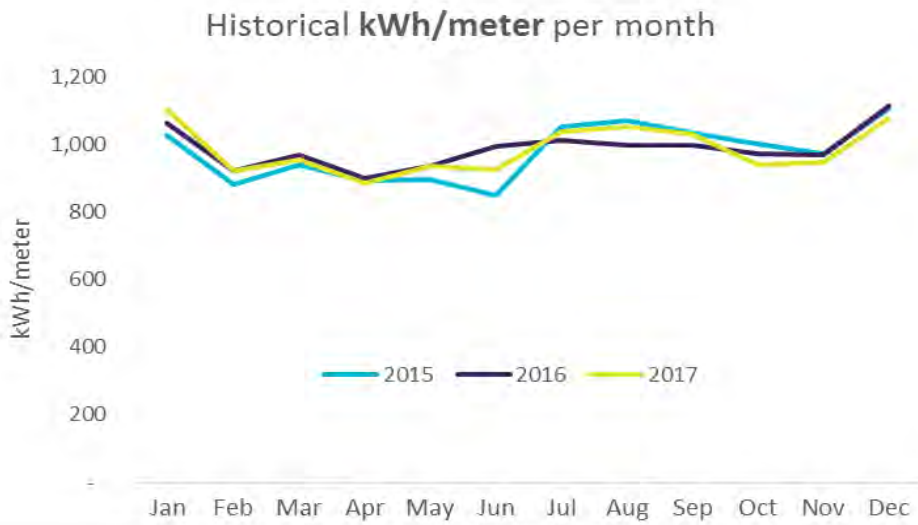
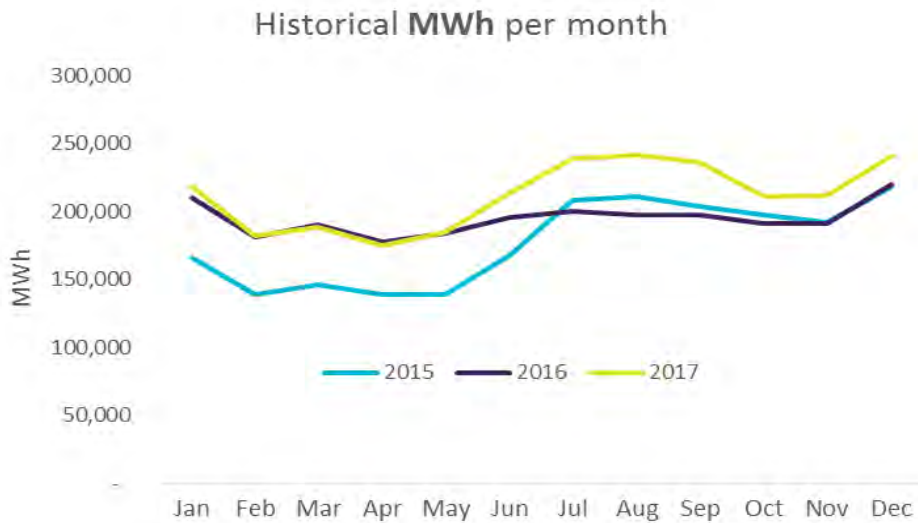
Load is given in Loss Adjusted Load (LAL) MWh and retail sales MWh. LAL is the amount of energy that is procured on behalf of SCP’s customers at the sources of generation, retail sales is the amount of energy measured and invoiced at the customer meter as follows:

$$LAL\ MWh - line\ losses\ MWh - unaccounted\ for\ energy\ MWh = retail\ sales\ MWh.$$

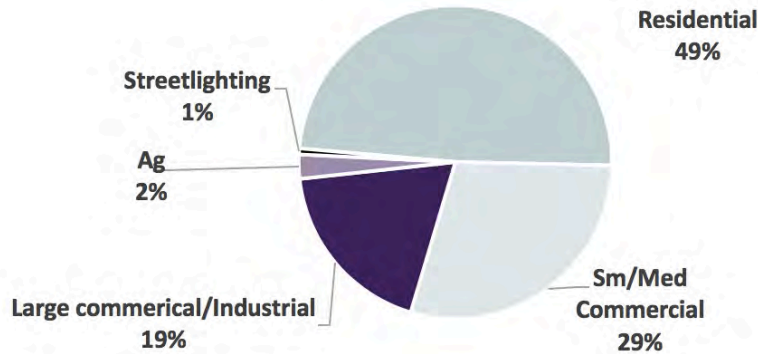
	2015	2016	2017
Total MWh LAL	2,126,623	2,336,362	2,541,056
TOTAL MWh retail sales	1,987,001	2,186,726	2,379,874
CleanStart	1,980,353	2,178,195	2,366,381
EverGreen	6,648	8,531	13,493

The graphs below present the historical MWh LAL across each month from 2015-2017. The first graph is total MWh and the second graph is kWh/meter (Note 1,000 kWh = 1 MWh). Energy load on a kWh/meter basis is significant for forecasting purposes when the number of customers changes between periods. For example, the historical load in May 2017 does not include Mendocino customers, so this will not account for the Mendocino customers for forecasting May into the future. To accommodate this, the historical kWh/meter can be used and then applied to the increased number of accounts.

Both 2015 and 2017 historical MWh loads included phasing in new customers in June. In 2015, SCP enrolled Cloverdale, Petaluma and Rohnert Park, and in 2017 SCP enrolled in Mendocino County. 2016 is the only full calendar year that did not phase in new service territory. The load is relatively flat throughout the year with higher loads in January, December, and the summer months. The higher load in January and December is likely due to increased lighting and space heating needs and the higher load in summer months is likely due to increased air conditioning needs. Note that the load significantly decreased in October 2017 due to the wildfire power outages and destroyed accounts.

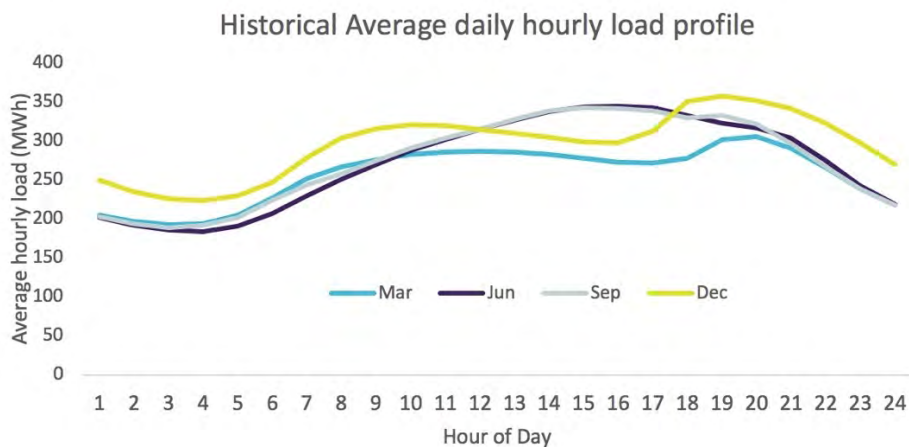


On an annual basis, SCP's load is comprised of about 50% residential energy use. See the figure below for the load breakdown for 2017.



The following graph represents the average daily profile for the months of Mar, Jun, Sep, and Dec of 2017. These are representative of seasonal variations in load across the year. Note that since these are averages across every day of the month, they do not represent the peak hourly load in any given month. The graph shows load at the customer meter, so it already accounts for reductions in load due to behind-the-meter solar installations. This graph does not reflect any supply resources, which will be covered in subsequent sections of this report.

June and September follow similar average daily profiles with the most usage in the afternoon hours likely due to increased air conditioning needs. March is similar to June and September from 8 pm to 10 am. The middle of the day in March shows lower loads than June and September likely due to the milder temperatures decreasing the need for air conditioning. March and December usage spikes in the early evening likely due to residential lighting needs due to shorter days. The average hourly load for hours in December nighttime hours is higher than the other seasons likely due to holiday lights and space heating needs. Similarly, December usage is higher than March during the daytime hours likely due to increased space heating needs.



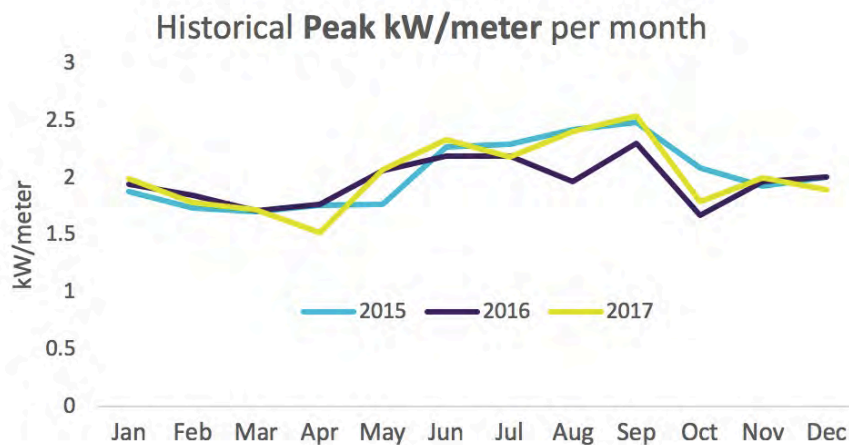
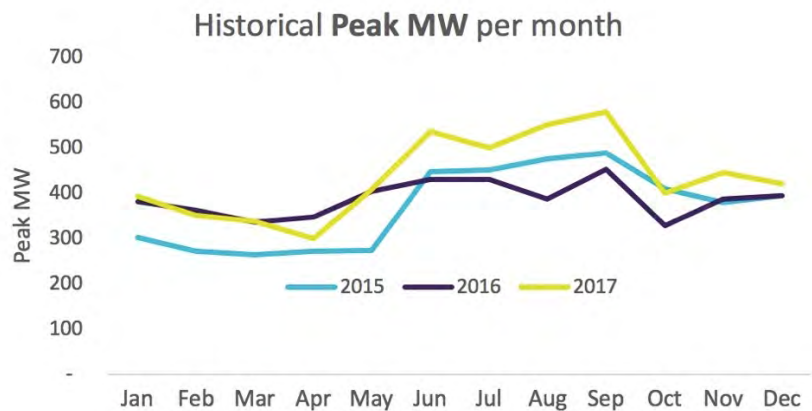
C. Historical Peak (MW)

SCP’s annual peak load for 2015-2017 is shown in the following table. SCP’s peak load has consistently occurred in September in the afternoon.

	2015	2016	2017
Peak MW	489	454	580
Day of Peak	Thu, Sep 10	Mon, Sep 26	Fri, Sep 1
Hour of Peak	3 pm	3 pm	4 pm

The graphs below present the historical peak across each month from 2015-2017. The first graph is total peak MW and the second graph is the peak kW/meter (Note 1,000 kW = 1 MW). Peak kW/meter is significant for forecasting purposes because the number of customers and meters change over time. Peak kW/meter serves as a better forecast indicator than total historic peak kW.

It is interesting to note that while January and December have increased load (MWh) as shown previously, both month’s peak hourly MW is less than the peak hourly MW in the summer.



D. Forecast Customer Load

The historical data previously presented is essential to forecasting load (MWh) and peak (MW) into the future. Load forecasting is critical to support SCP's procurement activities. The financial exposure to real-time markets when the forecasted load does not match the actual load, along with procurement requirements of supply resources to meet that load, drive the need to forecast future loads with as much certainty as possible.

Reliable load forecasting enables resource procurement that seeks to minimize imbalances and provide predictable costs that in turn support stable and competitive pricing. SCP load forecasting uncertainty is most affected by the following factors:

1. The number of customers taking service from SCP, including population changes in Sonoma and Mendocino Counties and customers switching their electric service between SCP and PG&E;
2. Under- or over-performance of SCP programs that impact load (such as NetGreen net metering, electric vehicle programs, energy efficiency and fuel switching);
3. Load changes from external factors such as economic business cycles or new emerging industries; and,
4. Weather patterns or events, which can unexpectedly impact customer electric consumption.

Forecasting methodology

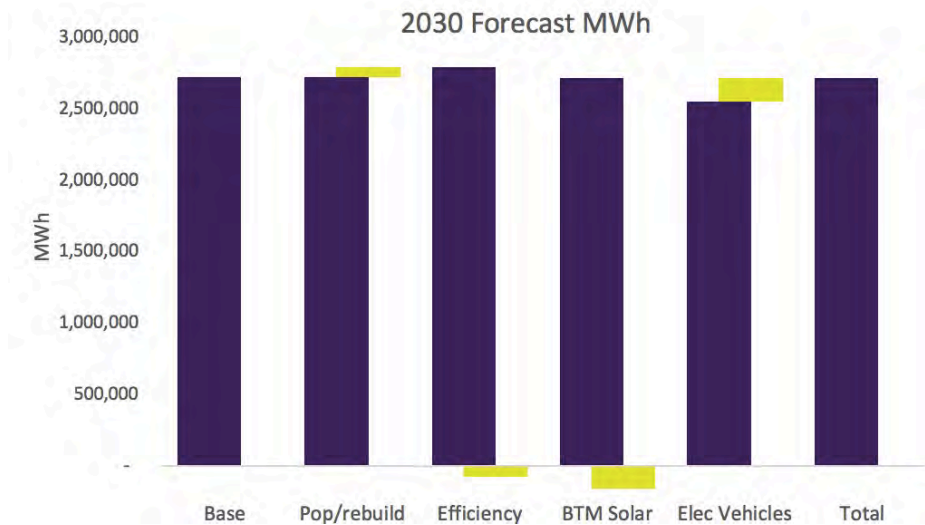
SCP's load forecast uses actual recorded historical data in order to forecast forward. For the purpose of this IRP, SCP has forecast through 2030 and has used the following process:

1. Forecast number of customer meters
 - o Establish historical steady-state opt-out and participation rates (excluding the first couple months following a phase-in) for each customer type.
 - o Use U.S. Census Bureau historical population and housing unit increases for Sonoma and Mendocino counties.
 - o Develop fire rebuild estimates to forecast the number of returning customer meters through 2025.
2. Forecast kWh/meter profile:
 - o Establish historical (2015-2017) kWh/meter profiles using actual recorded kWh and the quantity of meters for each customer type for each hour
 - o Choose a representative kWh/meter profile for each month based on historical kWh/meter averages, weather, extreme natural events, economic and behavioral shifts
3. Calculate kWh profile
 - o Multiply the total forecasted quantity of meters (#1 above) by the kWh/meter profile (#2 above) to arrive at a base kWh profile

- Incorporate additional factors that impact load over the planning horizon
 - Current efficiency and building electrification trends were forecast forward through 2030. These numbers will be refined in future planning processes as more data is available on SCP program uptake.
 - Behind-the meter solar capacity forecast was determined using yearly capacity increase trends reported for Sonoma and Mendocino counties from California Distributed Generation Statistics <http://www.californiadgstats.ca.gov/charts/>
 - Electric vehicle goals of SCP’s programs were used to forecast forward electrification

Forecast Load (MWh)

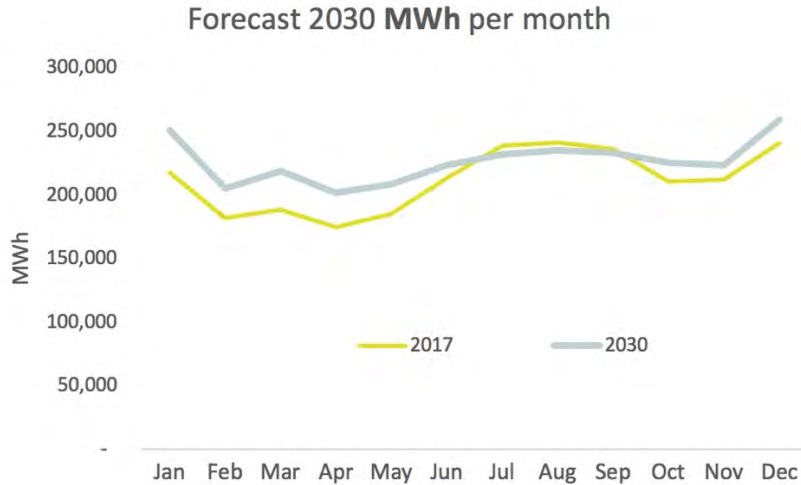
The following chart shows the 2030 forecasted load due to each factor described above. It illustrates that SCP’s load over the next twelve years is projected to increase slightly. Moving from left to right, the 2018 “Base” year load increases from population and rebuilding after the fires by the amount in the yellow bar. Efficiency decreases load by a similar amount. Behind-the-Meter solar further decreases load, and electric vehicles increase it to arrive at the 2030 year forecast.



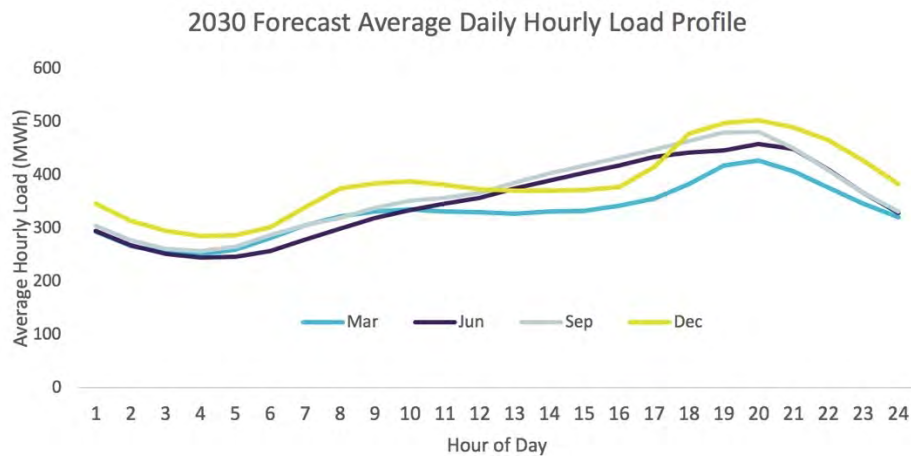
The table below shows the forecasted annual load (MWh) for 2020, 2025, and 2030.

	2020	2025	2030
Total MWh LAL	2,720,980	2,717,657	2,717,746
TOTAL MWh retail sales	2,547,735	2,544,621	2,544,706
CleanStart	2,522,258	2,506,452	2,493,812
EverGreen	25,477	38,169	50,894

The graph below presents the actual 2017 monthly load (MWh LAL) compared to the forecast for 2030.



The following graph represents the forecast average daily profile for the months of Mar, Jun, Sep, and Dec for 2030. These are representative of seasonal variations in load across the year. Note that since these are averages across every day of the month, they do not represent the peak hourly load in any given month. As more efficiency and behind the meter solar installations occur, the average daily load in 2030 is expected to increase into the evening as electric vehicles are returning to residences to be charged. The load is expected to drop off again as people go to sleep and lights and appliances are turned off. The impacts of building electrification, behind the meter storage, and GridSavvy will be assessed each year and as data becomes available, SCP peak forecast may be adjusted.

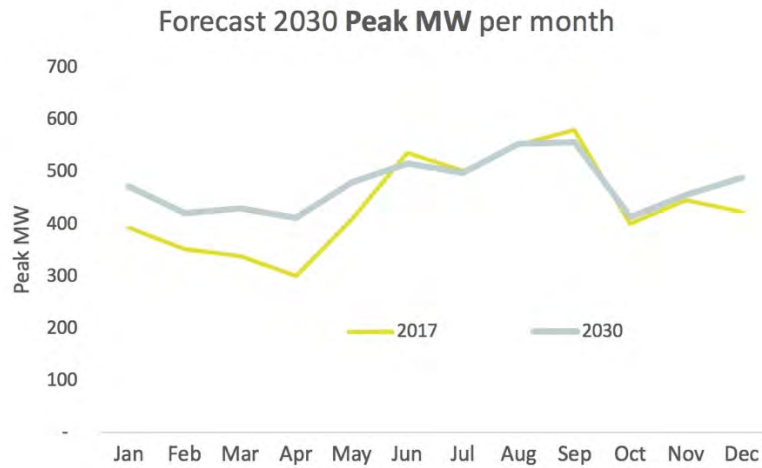


Forecast Peak (MW)

SCP’s forecast annual peak MW load for 2020, 2025, and 2030 is shown in the following table. SCP’s peak load is forecast to continue to occur in September, however as continued efficiency and behind the meter solar installations occur, the afternoon peak is expected to shift more and more into the evening as electric vehicles are returning to residences to be charged. The impacts of building electrification, behind the meter storage, and GridSavvy will be assessed each year and as data becomes available, the peak forecast may be adjusted.

	2020	2025	2030
Peak MW	571	561	558
Day of Peak	Fri, Sep 4	Fri, Sep 3	Thurs, Sep 12
Hour of Peak	4 pm	5 pm	7 pm

The graphs below present the actual peak for each month from in 2017 compared to the forecasted peak for 2030.



6. Resource Plan

A. Strategy

SCP employs a number of wholesale procurement strategies to secure low-cost, and low cost-volatility power. For example, SCP procures a diverse mix of generation types through contracts that are primarily long-term. In addition, SCP has structured a hedging plan and uses congestion revenue rights to reduce its exposure to basis risk. SCP also maintains a low overhead cost structure with a small staff.

SCP also has significant influence over a number of important areas, including:

- Land use policies that promote development in transit-friendly, energy efficient and lower-cost-of-service locations
- Customer-owned distributed energy resources to support an affordable, reliable, low-carbon grid
- Universal access to electric vehicles and charging infrastructure
- Efficient and zero carbon buildings that rely less on “netting” and more on meeting real-time energy needs
- Low energy intensity agriculture
- Non-wires alternatives to both transmission and distribution reliability
- Advocating for lower cost energy policy and regulations

While SCP does not have direct control over the results of these ambitions, it nevertheless has a responsibility, and is actively working in all of these areas.

Ability to Contract

While the newness of CCAs means that a conversation about credit is a part of every supply contract negotiation, SCP has been able to successfully execute all of its intended transactions. It is SCP’s understanding this experience is common to all of the 18 operating CCAs, meaning that concerns about credit by new CCAs do not appear to be well founded—at least so far.

SCP has prepared to obtain even stronger credit positioning through careful and conservative financial management. In the four years since SCP launched service, it has gone from \$8 million in debt financing to a net position of \$75 million (May 2018) with no debt. The agency currently holds reserves equal to four months of expenses and its Board has adopted a financial policy to continue building reserves until six months of expenses are held.

Reliability Planning

In addition to providing system reliability, SCP has roles in integrating renewable sources and helping avoid some IOU investments. With respect to providing reliable power, SCP takes great pride in moving rapidly toward providing over 90% of all energy from zero and near-zero GHG sources in a manner that all electric providers could afford to copy. Doing this requires significant effort to support a reliable grid while using intermittent (wind) and variable (solar) resources in growing amounts.

- Procure a diverse portfolio of renewable and hydropower sources designed to match real-time customer load to the greatest extent practical.
- Negotiate for curtailment rights and flexibility from solar and wind resources, and plan to begin integrating storage into future solar and wind facilities.
- Prepare to aggregate large amounts of customer load through automated demand response to provide hourly load shaping with both up and down regulation. Include stationary storage in this resource.

SCP also recognizes the significant potential ratepayer savings from using customer-owned resources to provide distribution system reliability, and advocates for the ability to provide non-wires alternatives.

B. Resource Plan Overview

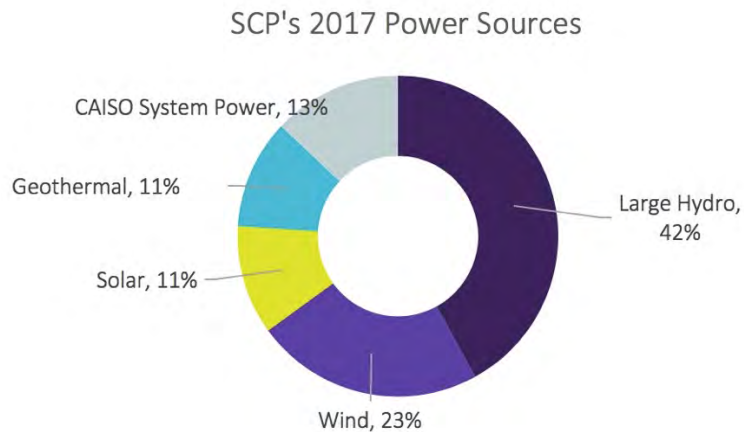
SCP has a policy to plan ahead to ensure its sources for default service are a minimum of 30% lower in greenhouse gas (GHG) intensity than PG&E’s default service. SCP’s long-term goal is to nearly-eliminate its portfolio emissions, and so it has set ambitious targets as follows:

- 75 lb CO₂e/MWh (0.034 MT CO₂e/MWh) by 2030
- 50% RPS-eligible energy by 2020, 10 years ahead of its CPUC requirement

While the RPS target doesn’t directly translate into reduced greenhouse gas emissions, it indirectly supports the transition toward a climate-smart grid.

Current Power Supply

SCP works to power Sonoma and Mendocino Counties with clean electricity, while keeping customer rates low and stable. In 2017, SCP provided its retail customers with 2,367,075 MWh of electricity, 87% of which was sourced from renewables and large hydro, as illustrated in the chart below. The remaining 13% of SCP’s retail load was sourced from CAISO system power.



To produce the 2017 power portfolio illustrated above, SCP had the following contracts:

- 50 MW of local baseload geothermal from the Geysers facility in Sonoma County
- 70 MW of utility-scale solar from 2 solar projects in Lemoore, CA
- 46 MW of utility-scale wind (which went commercial in November 2017) from a repowered wind facility in Livermore, CA
- Energy contracts for large hydro from out-of-state delivered to the CAISO
- Energy contracts for PCC 2. This is renewable power that is generated within the Western Interconnection and delivered (using substitute power) to the CAISO within the calendar year. Such contracts are known as Portfolio Content Category 2 (PCC 2) and qualify as renewable contracts under California’s Renewable Portfolio Standard (RPS) regulations.
- CAISO System Power. SCP bids/schedules all of its load and contracted supply into the markets run by the California Independent System Operator (CAISO), the largest of 38 balancing authorities that comprise the Western Interconnection. From a net settlements perspective, this means that SCP buys CAISO system power when its load is greater than its contracted supply, and SCP sells power to the CAISO when its contracted supply is greater than its load.

In 2017, SCP’s estimated emissions (not yet third party verified) totaled 134 lbs CO₂e /MWh (0.06 metric tons CO₂e/MWh).

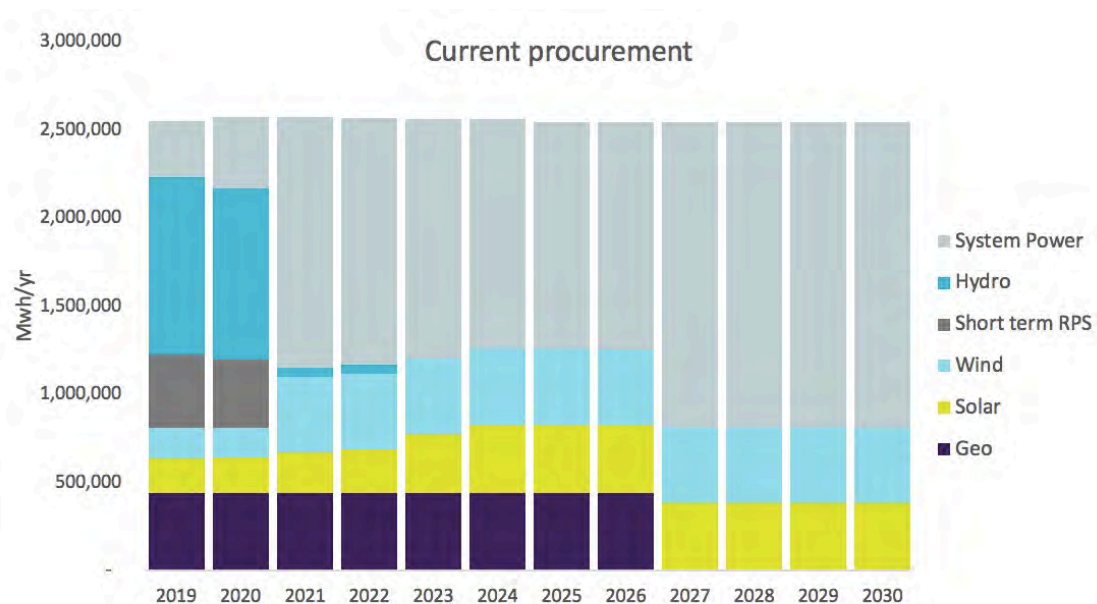
Planned Future Power Supply

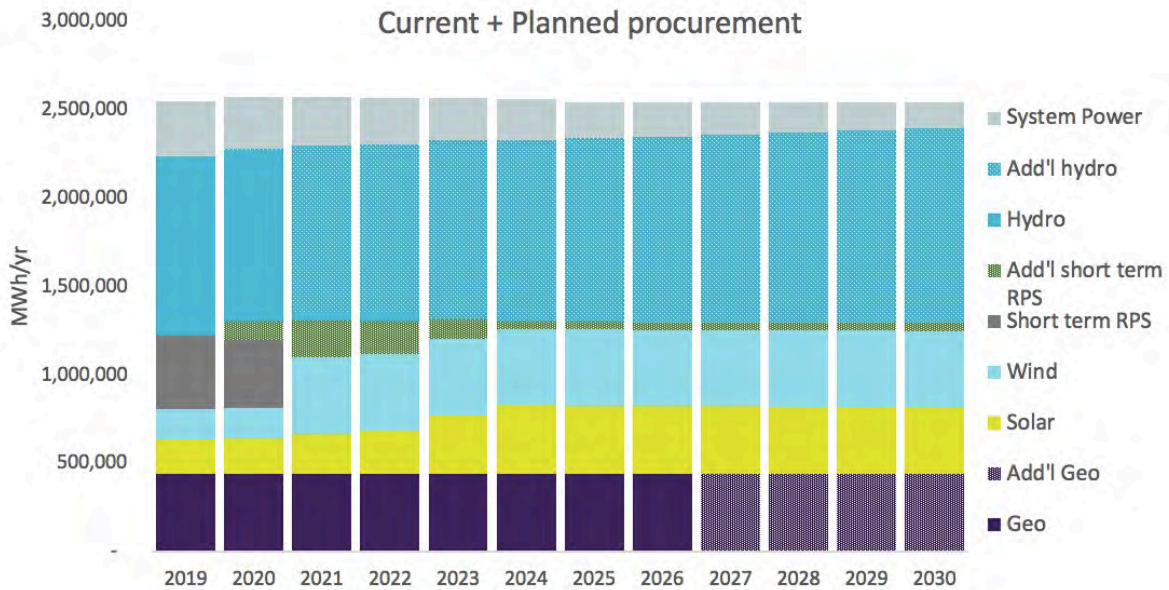
SCP plans to continue local renewable development and contracting for increased renewable and carbon-free resources. SCP specifically highlights the investment in local renewable development within Sonoma and Mendocino Counties. By 2030, SCP plans to have 56 MW of local renewable sources to specifically serve EverGreen customers and supplement the default CleanStart service. SCP plans to have 50 MW of Sonoma County geothermal and 6 MW of solar in Sonoma and Mendocino counties. SCP plans on the following sources through 2030:

- Geothermal (RPS Portfolio Content Category 1) - In addition to the existing 50 MW of geothermal resources under contract from the Geysers facility in Sonoma County through 2026, SCP plans to procure comparable resources under long-term contract after 2026.
- Solar (RPS Portfolio Content Category 1) - In addition to the 70 MW of utility-scale solar in Lemoore, CA, SCP has 2 MW of Feed-In-Tariff solar in Sonoma County that came online in April 2018. SCP has another 3 MW of Feed-in-Tariff solar under contract in Sonoma County and 1 MW of Feed-in-Tariff solar under contract in Mendocino County. The Feed-in-Tariff projects are expected to come online in late 2018 and mid-2019. SCP is actively working on additional solar contracts to increase the total solar portfolio to 146 MW before 2030.
- Wind (RPS Portfolio Content Category 1) - In addition to the 46 MW of utility-scale wind built and operating in Livermore, CA, SCP recently executed a contract for another 80 MW of utility-scale wind in Northern California. It is expected to come online by January 1, 2021, for a total of 126 MW of wind in 2030.
- Large Hydro - SCP currently has several energy contracts for large hydro both in-state and out of state. Currently, SCP does not contract for shaped hydro.

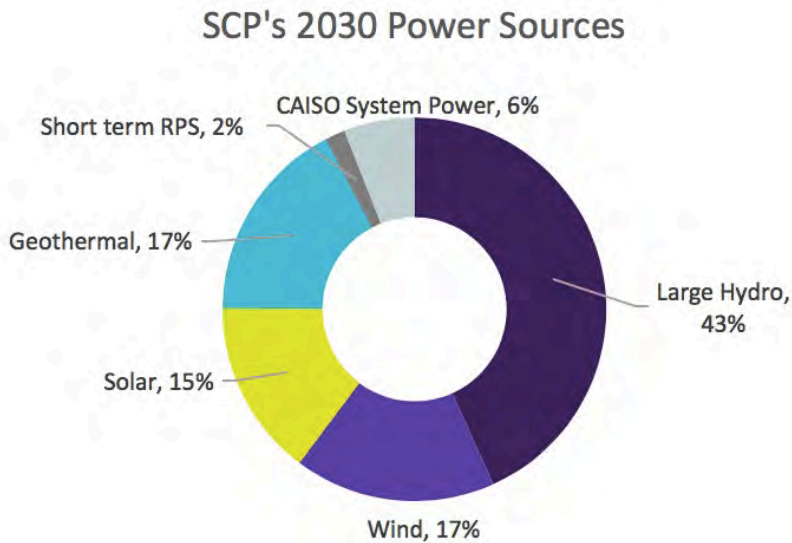
- Additional short term RPS - SCP currently has PCC2 energy contracts for renewable power that is generated within the Western Interconnection and delivered (using substitute power) to CAISO within the calendar year. SCP plans to utilize short term RPS contracting for either PCC1 or PCC2 resources to true up any needs due to load forecasting variable resource forecasting adjustments through the planning horizon.
- Storage - In accordance with CPUC Decision 13-10-040, SCP must demonstrate storage equal to at least 1% of its 2020 annual peak load with such systems online and delivering by the end of 2024. Accordingly, SCP is actively working on a contract for 5 MW of storage starting in 2023. SCP is also allowed to count portions of customer-installed storage projects towards its 1% requirement, and such portions totaled 0.77 MW as of June 1, 2018. This totals 5.77 MW of currently planned storage in 2030. As more data becomes available on the operation of SCP’s 5 MW storage project, SCP will revisit potential additional storage capacity targets.
- CAISO System Power- SCP plans on steadily decreasing its reliance on system power each year to comprise less than 10% of total power purchases by 2030.
- Resource Adequacy (RA)-Only- SCP currently has numerous RA-only contracts that it uses to supplement the long-term RA provided by its RPS PCC 1 contracts to comply with California’s Resource Adequacy (RA) program. The RA program requires LSEs to demonstrate specific quantities of system, local and flexible capacity in the year-ahead and month-ahead time frames. SCP will continue to fully comply with all RA requirements, and SCP will continue its practice of procuring long-term, multi-year, year-ahead and month-ahead RA.

The following graphs show the current and planned resource generation for each year 2019-2030 as outlined above. The ‘Current Procurement’ graph shows resources under contract or in active negotiation. The ‘Current + Planned Procurement’ graph shows the additional resources that SCP plans to procure through 2030.





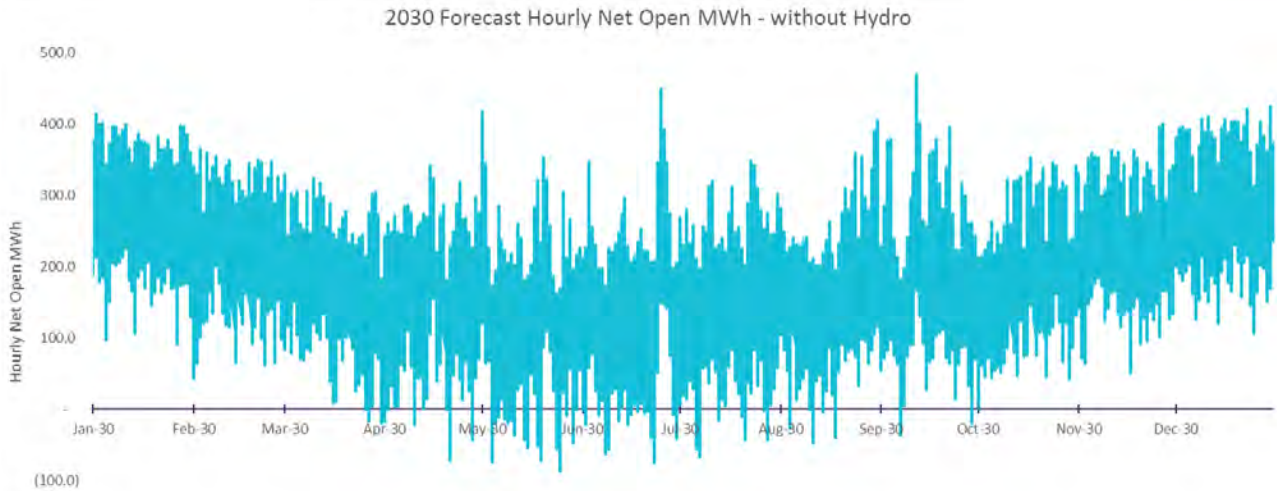
The following chart shows the SCP planned percent power mix for 2030.



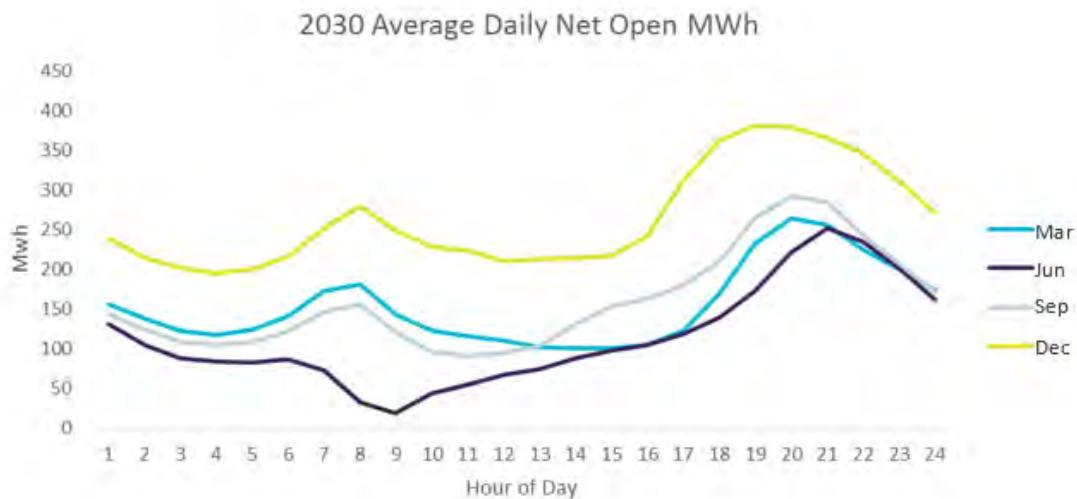
Hourly Load and Supply Matching

In addition to realizing annual targets, the SCP procurement strategy is to work toward aligning the hourly resource supply with the hourly customer load demand. First, SCP procures resources to closely follow the typical demand profile, next SCP endeavors to adjust the load profile through customer programs that will closer align with and react to the real-time profile of the generation sources. This is described further in Chapter 7 Integrated Procurement of Supply and Demand Resources.

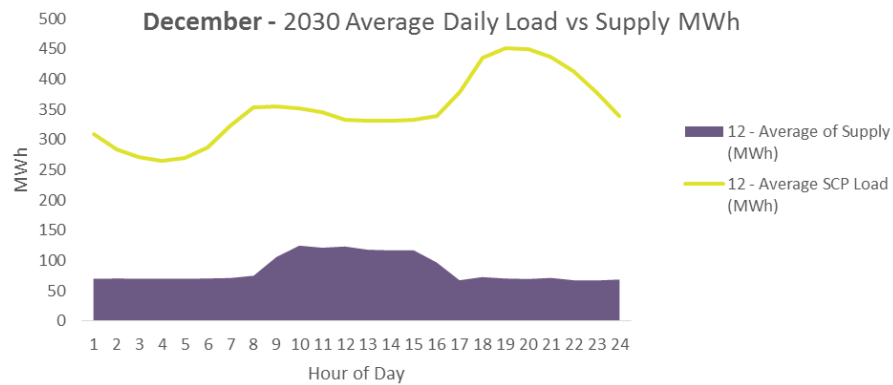
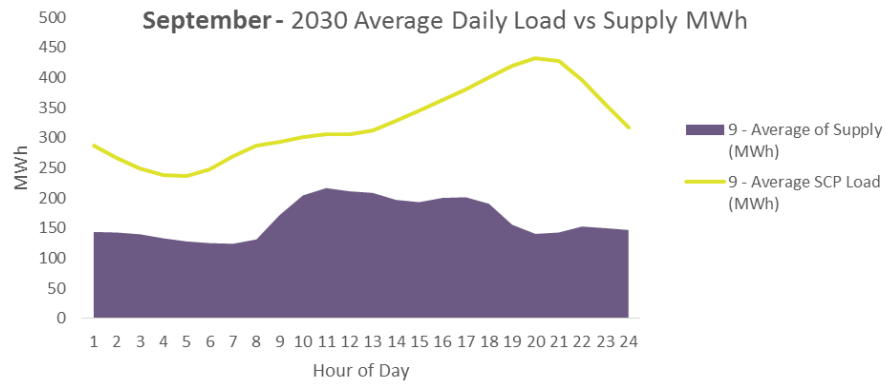
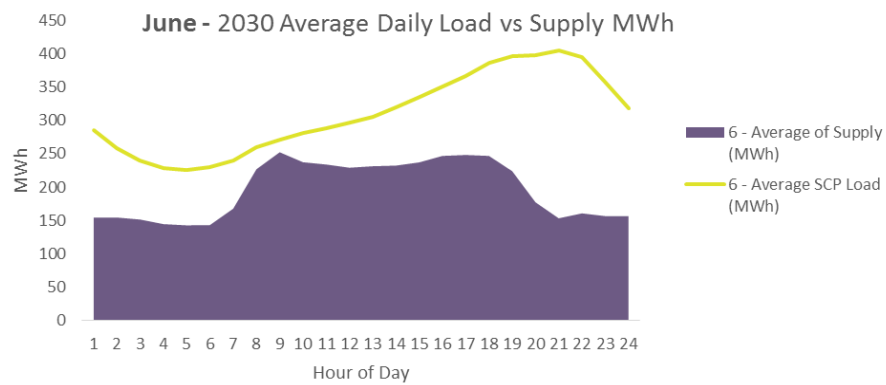
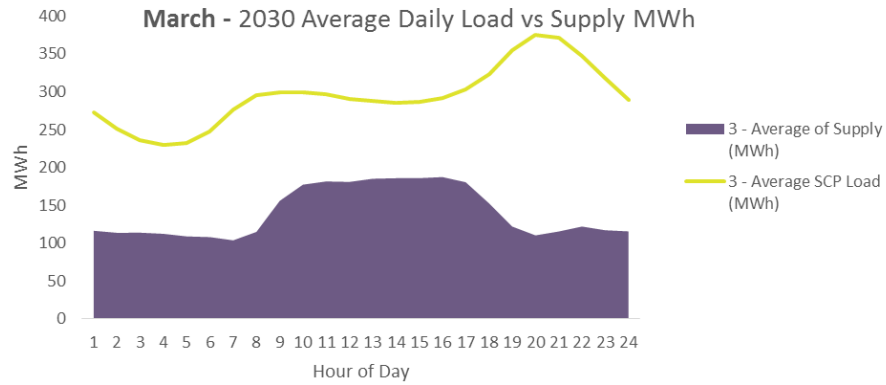
The 2030 forecasted hourly profile of SCP’s renewable resources is matched with the forecasted load to obtain the hourly net open position as shown in the following graph. Hydropower is not included in this graph because SCP does not have insight into the dispatch profile of future hydropower contracts. This graph helps SCP determine periods within the year that hydropower would be most beneficial. The graph shows a few hours of the year where SCP’s forecasted renewable supply is greater than the forecasted load. Note that SCP also has the ability to curtail resources when desired and is actively working on contracts that allow for an agreed amount of curtailment hours without penalty or payment.



The following graph shows the average daily net open position for March, June, September, and December 2030. This level of forecasting shows seasonal variations in hourly open position that inform what hours are needed to fill with a potential future shaped hydropower contract.



The following graphs show another view of the graph presented above, however instead of just net open position, they explicitly show the 2030 forecasted average daily customer load and average daily resource supply. The difference between the load line and the supply area is the net open position.



7. Integrated Procurement of Supply and Demand Resources

A. Procurement

SCP procures both supply and demand resources to meet its customer needs. The integration of this effort, and the reliance on customer-owned resources, has growing importance as California continues to increase its use of solar and wind.

Supply Resources

SCP's procurement activities are structured to meet compliance obligations and agency goals. The exact portfolio characteristics selected must constantly adapt to legislative and policy changes, technological improvements, and new information about markets and risk. To manage this future uncertainty, SCP continuously examines and estimates supply and customer demand, including demand trends as they relate to population of customers served, climate, energy efficiency, distributed generation, electrification of vehicles and buildings, and emerging industries. SCP structures its procurement efforts to balance customer demand with resource commitments. SCP also considers the deliverability characteristics of its resources and reviews the respective risks associated with short and long-term purchases as part of its forecasting and procurement processes. These efforts have led to a diverse resource mix that addresses grid integration issues, closely matches our electrical supply to our customers' demand and reduces ratepayer risk. SCP examines the need to procure new resources when significant change in load is expected to occur (e.g. phasing in new territories). If further procurement is deemed necessary, bilateral transactions as well as Requests for Offers (RFOs) to fill these needs are issued to the market and offers are assessed to determine the best outcome for SCP's portfolio.

SCP also operates ProFIT, a feed in tariff program designed to promote medium-sized solar installations in Sonoma and Mendocino counties that has resulted in six contracts to build approximately 6 MW, 2 MW of which came on line in April 2018.

B. Demand Resources

SCP currently operates 17 customer programs, all of which are designed to keep energy affordable while reducing greenhouse gas emissions and supporting grid reliability. SCP does not currently see value in duplicating or competing with PG&E's customer programs, but instead advertises them to customers or thinks of creative ways to layer additional offerings on those programs. SCP's programs can be categorized to have the following impact on SCP loads: renewable integration/system reliability, load reducing, load shifting, and minimal load impact. For more comprehensive information on SCP's customer programs, see the *Programs Group Strategic Action Plan* (Exhibit B).

Programs that Support Renewable Integration and System Reliability

While SCP doesn't focus specifically on programs that build load, goals such as the displacement of petroleum in on-road transportation and natural gas in building heating and water heating have a natural effect of increasing customer electrical usage while reducing greenhouse gas emissions. Programs that

build load are paired with strategies to shift this increased load to minimize additional need for supply resource procurement or costly grid infrastructure upgrades.

Through its Drive EV Program, SCP has negotiated bulk discounts averaging more than \$11,000 per car for the purchase or lease of electric vehicles. Since the fall of 2016, 773 electric vehicles have been sold or leased through the program. Based on a post-program evaluation, the 2017 program is anticipated to save 4,985 metric tons of CO₂-equivalent over the next three years.

Based on post-purchase surveys, most Sonoma and Mendocino county EV owners want to charge their vehicles at home. To this end, SCP provides Free Residential Level 2 Charging Stations to its customers. This program resulted in the shipment of 1681 (as of June 1, 2018) electric vehicle charging stations. SCP works to ensure charging stations are not used during the evening ramp period by integrating the chargers into its GridSavvy program.

A program to incentivize the purchase of EV's by local non-profits has resulted in 3 EVs being provided. This program will continue into 2019.

SCP is currently operating a workplace charging pilot program to help 5 workplaces in Sonoma and Mendocino counties evaluate the costs and benefits of installing large scale electric vehicle charging station projects. This program works collaboratively to funnel customers to PG&E's EV Charge Network program.

The Advanced Energy Rebuild Program is a unique program created in partnership with PG&E and the BAAQMD to incentivize those rebuilding their homes after the 2017 fires to do so in an energy efficient and carbon-free manner. While these homes will represent a significant reduction in load over their pre-fire equivalents, SCP expects to see a gradual increase in customer load as these homes come online.

Programs that Reduce Load

Load reduction programs tend to be cost effective per current CPUC cost-effectiveness metrics, which make them a natural fit for investor-owned utilities (IOU) like PG&E. Because of SCP's efforts to not duplicate existing PG&E programs and its ability to more quickly establish customer programs, SCP instead chooses to focus on areas where we can innovate and be more responsive to Sonoma and Mendocino counties' specific needs.

A net energy metering program called NetGreen has resulted in payments of \$1.4 million to 2,900 customers who have produced excess local renewable energy.

SCP has partnered with Sonoma County and the Sonoma County Water Agency to provide Do-It-Yourself Energy and Water Saving Toolkits that include energy and water efficiency devices such as LED lightbulbs, low-flow devices, weatherstripping at almost all libraries in SCP's territory. The toolkits, which can be checked out for free just like a book, have been checked out 296 times as of June 2018.

In Summer of 2018, a program designed to promote low income solar installations on homes was initiated in partnership with Grid Alternatives. The program is currently evaluating the installation of solar on 30 qualified Sonoma Clean Power customer leads.

SCP funds Solar Sonoma County, which provides support to local residents who wish to install renewable energy systems. Solar Sonoma County provides impartial advice regarding PV siting, financing and contractor selection.

SCP has a program to provide free assistance to commercial customers with energy audits or in planning and implementing energy efficiency upgrades on an as-needed basis.

SCP was awarded a \$9.8M grant from the CEC to promote energy efficiency and fuel substitution technologies in the residential built environment. The goal of the grant is to deploy energy efficiency in a total of 300,000 square feet of customer space and reduce energy usage by 10% in participating residential projects and 20% in participating commercial projects.

Programs that Shift Load

SCP has progressed from traditional utility program models to start thinking about time-valuation of energy and how best to match customer load with procured supply.

A Commercial and Industrial Battery Storage Pilot Program was implemented to assist commercial customers in reducing their demand charges through battery storage. Properties for the pilot were targeted based on an analysis of SCP customers with the largest peak demand.

A market assessment of the potential for heat pump water heaters in SCP territory was completed. SCP is working with heat pump water heaters to ensure products are capable of receiving a remote OpenADR signal so that heat pump water heater thermal storage capacity can be more readily leveraged as a grid resource in the GridSavvy program.

GridSavvy is a grid reliability platform with the capability of automatically dispatching technologies such as electric vehicle chargers, heat pumps, thermostats and stationary batteries to both increase and decrease load on a fast signal. The goal of GridSavvy is to achieve Proxy Demand Response participation in 2020, Non-Generating Resource participation in 2024 and qualified System Resource Adequacy in 2030. Currently there are over 500 customers that are participating in GridSavvy's first offering, which controls electric vehicle charging stations.

Programs with Minimal Load Impact

An Induction Cooking Lending Program has been established so customers can borrow and test induction cooktops. While there is minimal load impact of this effort, it is hoped to encourage installation of induction cooktops in new construction and retrofit projects.

The SWITCH electric vehicle education program placed 5 electric kit cars in local high schools in Sonoma and Mendocino counties to educate students about the manufacture and maintenance of electric vehicles. While this program is not expected to have direct impacts on customer load, it is seen as an educational resource that may increase EV penetration in the future.

An Energy Education Program for Schools was initiated in the Fall of 2017 and ran through the school year, reaching over 10,000 students with information about energy efficiency, climate change and actions students can take to help the environment.

Methods for the long-term planning of demand resource grid impacts are still rudimentary, and lacking important sources of data. While SCP routinely makes estimates of EV adoption rates, residential efficiency programs, updates to Title 24 building codes, amounts of new customer-owned solar power, etc., there are a number of data sources that would greatly improve the ability to forecast demand resources and the financial value of those resources. These include:

- Use of actual residential smart meter data for scheduling loads into CAISO. Currently, IOUs use average profiles for residential customers rather than actual demand profiles, meaning that load-serving entities cannot generate the same financial rewards from residential customer participation in demand response programs, thereby leaving these customers behind.
- Public access to gasoline and diesel fuel sales by ZIP code to allow more accurate fuel switching calculations from transportation electrification efforts.
- Public access to real-time electric circuit data and regular updates to approved connected loads and net-metered resources by circuit to allow improved distributed energy resource planning by customers, CCAs and third parties.

C. Managing Risks

Supply Resource Risks

When making power procurement decisions, SCP considers numerous market factors which may include the following:

- Market price risks (CAISO LMPs, RA prices, RPS prices, Specified-source prices, etc.)
- Locational price risk of physical resources
- Counterparty credit risk
- Contract language in long-term contracts
- Curtailments
- Variance from load forecasts
- SCP's customer participation/opt-out rate
- Assignment of unplanned resources (for example, through CAM, RMR, CPM)
- Legislative and regulatory changes (for example, RA, RPS, PSD requirements)

The primary price risks are legislative and regulatory. For example, SCP may procure its portfolio using current and existing guidelines in order to meet our agency goals while meeting or exceeding state mandates. Should the laws change or be implemented differently than originally intended, this would cause SCP to have to procure additional resources in order to meet the mandates, resulting in overprocurement and additional customer costs. Other common business risks include load forecast error, unexpected changes in customer participation, supply forecast error (e.g., variable generation output of solar and wind resources), generation curtailment risks, and forward pricing peak and off-peak unhedged energy.

These risks are managed through several common approaches, including diversity of supply technology, location, length, supplier, and financial hedging. SCP has signed long-term contracts with geothermal, solar, and wind renewable resources to minimize dependence on any one supply resource type. SCP's supply is also geographically diverse in Northern California to manage to price spread from the generator LMP to the load LMP. Using various locations in Northern California enable SCP to manage any large variances between what we purchase from the CAISO (load bids) and what we sell to the CAISO (generation offers). SCP seeks to spread the mix of generation resources over various LMP locations, so that the price risk is not too concentrated in any one area. In addition to carefully selecting the physical location of renewable assets, SCP will stagger the contracting terms for our long-term contracts. Some long-term contracts are for 10 years, while others are for 20 years. SCP works with expert industry counsel to negotiate these long-term contracts in order to anticipate market changes that will enable SCP to be protected under changing conditions. SCP also financially hedges its position. Instead of making one big purchase to fill a position, SCP makes multiple purchases over time, providing flexibility to respond to market conditions while achieving budget predictability. SCP will benefit in periods of price declines, as well as have the security of knowing that price increases will be mitigated over time. This helps SCP achieve our business goals, manage price risk and achieve budget certainty.

Although the capacity market in California is evolving, SCP has taken steps to hedge our risk for changing market rules and conditions. Currently, the capacity market mandates an LSE must be 100% complete for meeting their Local Area capacity obligation 60 days before the beginning of a calendar year. SCP has gone out as far as 20 years to hedge some of that obligation. In fact, SCP has ~80% of its anticipated Local Area obligation purchased for the next four years.

Demand Resource Risks

Common risks associated with demand resources include:

- **Availability of dispatch.** Smart grid devices, such as thermostats, heat pumps, electric vehicle chargers, solar inverters and batteries, may be part of an aggregated resource bid into the CAISO's Proxy Demand Resource or Non-Generating Resource markets, PG&E's DRAM, or potentially full qualifying Resource Adequacy. However, a key element of each of these markets is the level of certainty that the resource will respond to a signal, when requested. SCP plans to mitigate this risk through statistical diversity of customers, including a margin for error, and operating networks to test availability and response before committing grid resources.
- **Incomplete participation.** The process for enrolling customer resources in grid services is cumbersome and complex, involving multiple forms, and several steps for registration. SCP is working to streamline enrollment to make participation easier. To date, SCP estimates that less than one quarter of installed smart grid resources are currently registered in a grid resource.
- **Legislation.** Barriers to customer participation in grid reliability are routinely proposed in legislation, likely because they pose a risk to supply-side resource providers. SCP works to ensure that customers retain the ability to use smart grid technologies and to receive full value for those technologies, including offsetting supply-side resources when appropriate.

8. Exhibit A: CPUC IRP Compliance Filing

9. Exhibit B: SCP Programs Strategic Action Plan