



**Silicon Valley Clean Energy Authority
Board of Directors Meeting**

Wednesday, October 12, 2016
7:00 pm

Santa Clara County Board Room
70 West Hedding Street, 1st Floor
San Jose, CA

Rod Sinks, Chair
City of Cupertino

Rob Rennie, Vice Chair
Town of Los Gatos

Liz Gibbons
City of Campbell

Daniel Harney
City of Gilroy

Jeannie Bruins
City of Los Altos

John Harpootlian
Town of Los Altos Hills

Burton Craig
City of Monte Sereno

Steve Tate
City of Morgan Hill

John McAlister
City of Mountain View

Joe Simitian
County of Santa Clara

Howard Miller
City of Saratoga

Jim Griffith
City of Sunnyvale

AGENDA

Call to Order

Roll Call

Public Comment on Matters Not Listed on the Agenda

The public may provide comments on any item not on the Agenda. Speakers are limited to 3 minutes each.

Consent Calendar (Action)

- 1a) Approve Minutes of the September 14, 2016, Board of Directors Meeting

Regular Calendar

- 2) Executive Committee Report (Discussion)
- 3) CEO Report (Discussion)
- 4) Authorize CEO to Approve Service Agreement with PG&E (Action)
- 5) Authorize Executive Committee to Review and Approve Agreement with Noble Americas Energy Solutions LLC (Action)
- 6) Authorize CEO to Approve Membership of CalCCA (Action)
- 7) Approve Resolution to Adopt Personnel Policies/Handbook (Action)
- 8) SVCE Budget Update (Discussion)
- 9) Update on Commercial Customers (Presentation)

svcleanenergy.org

505 W Olive Avenue
Suite 130
Sunnyvale, CA, 94086

Board Member Announcements

Adjourn



**Silicon Valley Clean Energy Authority
Board of Directors Meeting**

Wednesday, September 14, 2016
7:00 pm
Santa Clara County Board Room
70 West Hedding Street, 1st Floor
San Jose, CA

DRAFT MINUTES

Call to Order

Vice Chair Rennie called the meeting to order at 7:01 p.m.

Roll Call

Present:

Chair Rod Sinks, City of Cupertino (arrived during Closed Session)
Vice Chair Rob Rennie, Town of Los Gatos
Director Jeannie Bruins, City of Los Altos
Director John Harpootlian, Town of Los Altos Hills
Director Burton Craig, City of Monte Sereno
Director Steve Tate, City of Morgan Hill
Director John McAlister, City of Mountain View
Director Joe Simitian, County of Santa Clara (arrived during Closed Session)
Director Howard Miller, City of Saratoga
Director Jim Griffith, City of Sunnyvale (arrived at 7:02 p.m.)
Director Liz Gibbons, City of Campbell
Director Daniel Harney, City of Gilroy

Absent:

None

Public Comment on Closed Session

No speakers.

Vice Chair Rennie announced the item for the Closed Session. The Board adjourned to Closed Session in Room 157 at 7:02 p.m.

Convene to Closed Session

Conference with Real Property Negotiators
Property: 333 El Camino Real, Sunnyvale, CA
Agency Negotiator: Tom Habashi, CEO
Negotiating Party: Sunnyvale Village Associates
Under Negotiation: Price and terms of payment for office lease

The Board returned to the Board Room from Closed Session at 7:22 p.m. with all members present.

Report from Closed Session

Chair Sinks reported the Board met in Closed Session; direction was given, and the Board will consider action on the item later in the agenda.

Public Comment on Matters Not Listed on the Agenda

Chair Sinks opened public comment at 7:23 p.m.
No speakers.
Chair Sinks closed public comment closed at 7:23 p.m.

Consent Calendar

MOTION: Director Miller moved and Director Bruins seconded the motion to approve the Consent Calendar.
The motion carried with Director McAlister abstaining.

- 1a) Approve Minutes of the August 10, 2016, Board of Directors Meeting**
- 1b) Approve Minutes of the August 27, 2016, Board of Directors Meeting**

Regular Calendar

2) Executive Committee Report

Chair Sinks reported Executive Committee meeting discussions included office lease terms, an update on the status of banking and credit with River City Bank, a progress report on recruitment, and discussion of a benefits package.

CEO Tom Habashi responded to Board questions regarding the status of recruitment.

3) CEO Report

CEO Habashi provided the CEO Report including status updates on RFPs, the early start option for large commercial customers, the implementation plan, the Town of Los Altos Hills resolution regarding default service, and net metering customers. CEO Habashi noted the community outreach report, regulatory and legislative report, and list of agreements executed by the CEO are included as attachments to the staff report.

CEO Habashi responded to Board comments and questions.

James Tuleya, Sunnyvale resident, provided information regarding Peninsula Clean Energy's handling of net metering customers.

4) Review of Proposed Benefits Package and Personnel Policies

CEO Habashi introduced the item. Janelle Arsich, HR2GO, provided information regarding the proposed benefits package and personnel policies and responded to Board questions. CEO Habashi and General Counsel Greg Stepanich provided additional information and responded to Board questions. Members of the Executive Committee provided information regarding the Executive Committee's discussion of the benefits package and personnel policies.

Chair Sinks stated direction to staff to create a competitive benefits package in order to recruit and retain the best employees, while being responsible to the customer base.

Chair Sinks opened public comment.
No speakers.
Chair Sinks closed public comment.

General Counsel Stepanicich stated the item will come back to the Board for approval at the next meeting.

CEO Habashi stated the issue of retirement benefits will be brought back to the Executive Committee before coming back to the Board for approval at the next meeting.

5) Authorize the Chief Executive Officer to Negotiate and Execute an Office Lease Agreement

CEO Habashi stated an agreement is under negotiation for an office at 333 W. El Camino Real, Sunnyvale; the term of the agreement is 63 months, the size of the space is 5,702 square feet with rent starting at \$4.45 per square foot, with an increase of 3 percent per year for the next five years.

MOTION: Director McAlister moved and Director Bruins seconded the motion to authorize the CEO to execute the office lease on the basic terms as stated by CEO Habashi.

Director Gibbons inquired if the motion includes strong encouragement of the requirement for the building to stay within the SVCE program and the requirement for an electric car charging station.

Following discussion, the maker and seconder modified the motion to include encouragement to the CEO to have a discussion regarding the building staying within the SVCE program and providing an electric car charging station, but that the items not interfere with negotiations.
The motion carried unanimously.

6) Approve Resolution to Change Fiscal Year

General Counsel Greg Stepanicich presented the staff report and responded to Board questions. CEO Habashi provided additional information and responded to Board questions.

Chair Sinks opened public comment.
No speakers.
Chair Sinks closed public comment.

MOTION: Director Miller moved and Director Harney seconded the motion to approve a resolution amending the Authority's fiscal year.
The motion carried unanimously.

7) Approve Banking Services Agreement with River City Bank

CEO Habashi introduced the item. Treasurer Tim Kirby provided the staff report and responded to Board questions.

Chair Sinks opened public comment.
No speakers.
Chair Sinks closed public comment.

MOTION: Director Gibbons moved and Director Miller seconded the motion to authorize the Treasurer to execute a contract for banking services to River City Bank to serve as the Authority's depository and to provide other banking services at a total cost of approximately \$4,000 per year.
The motion carried unanimously.

8) Update on Securing Credit/Financing

Treasurer Tim Kirby provided an update on securing credit/financing and responded to Board questions.

Chair Sinks opened public comment.

Cherie Walkowiak, resident of Mountain View, commended the City of Gilroy.

Glenn Hendricks, Mayor of Sunnyvale, expressed appreciation to the Board.

Chair Sinks closed public comment.

9) Update on Branding and New Logo

CEO Habashi introduced the item. Communications Manager Misty Mersich provided an update on branding, revealed the new logo, and provided information regarding product offering names. Communications Manager Misty Mersich, CEO Habashi and General Counsel Stepanicich responded to Board questions.

The Board provided feedback on the logo, logo colors and reproducibility, and product offering names.

Chair Sinks opened public comment.

Bruce Karney, Carbon Free Mountain View, spoke in support of Board comments regarding the logo and in support of the two product names.

Chair Sinks closed public comment.

CEO Habashi stated that based on feedback from the Board, staff will look at the leaf shape in the logo and come back to the Board next month.

Board Member Announcements

Director John McAlister, City of Mountain View, inquired about biomass generators. CEO Habashi provided information.

Director Liz Gibbons, City of Campbell, expressed gratitude to staff for the Board Workshop.

Adjourn

Chair Sinks adjourned the meeting at 8:46 p.m.



Staff Report – Item 3

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 3: CEO Report

Date: 10/12/2016

REPORT

CPUC Certification Letter

On July 14, 2016, SVCE submitted the authority's Implementation Plan to the California Public Utilities Commission, thereby, taking the first step to register as a Community Choice Aggregator. On September 28, 2016, The CPUC certified the plan. Tonight, staff is recommending approval of the Service Agreement with Pacific Gas and Electric, the second step towards obtaining CCA registration.

River City Bank Approval of the Loan Terms

On September 28, 2016, we were informed by RCB that the loan committee approved the \$20 million line of credit sought by SVCE. RCB is now working on developing the credit agreement. Meanwhile, the County of Santa Clara and the cities of Sunnyvale, Mountain View and Gilroy, collectively, approved to guarantee \$2 million of that line of credit. SVCE Treasurer, Tim Kirby, is working with the other agencies' representatives on developing the appropriate agreements with RCB and SVCE.

Office Lease

An office lease was executed last week and tenant improvements are underway. Sunnyvale IT staff and a contractor for IT and office design work are actively preparing the new office for occupancy, to commence on November 1, 2016.

Board Agenda, Looking Forward

During the September Board meeting, Director Gibbons requested that staff develop an agenda calendar. That calendar is attached and will be continually updated and submitted to the BOD during the monthly meeting.

CEO Agreements Executed

The following agreements have been executed by the CEO, consistent with the authority delegated by the Board:

- 1) Nixon Peabody LLP: Legal services to provide opinion on the credit agreement with River City Bank, for an amount not to exceed \$7,000.
- 2) Braun Blasing McLaughlin & Smith, P.C.: Legal services in support of negotiations, development, preparation, and review of commercial documents for power procurement and other related functions, for an amount not to exceed \$25,000.
- 3) Troutman Sanders LLP: Legal services in connection with review, revision, negotiation, and finalization for SVCEA's 2016 Energy Services Request for Proposals, for an amount not to exceed \$25,000.

ATTACHMENTS

1. CPUC Certification Letter

Agenda Item: 3

Agenda Date: 10/12/2016

2. Office Lease with Sunnyvale Village Associates
3. Board Agenda Planning
4. Community Outreach Report

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 27, 2016

Tom Habashi
Chief Executive Officer
Silicon Valley Clean Energy Authority
505 W. Olive Avenue
Suite 130
Sunnyvale, CA, 94086

RE: Letter certifying Silicon Valley Clean Energy's Implementation Plan and Statement of Intent

Dear Mr. Tom Habashi:

The California Public Utilities Commission's Energy Division has reviewed Silicon Valley Clean Energy's (SVCE) Implementation Plan and Statement of Intent to address the launch of its program in the following areas: the City of Campbell, City of Cupertino, City of Monte Sereno, City of Gilroy, City of Morgan Hill, City of Mountain View, City of Los Altos, City of Saratoga, City of Los Altos, City of Sunnyvale, Town of Los Altos Hills, Town of Los Gatos, and the unincorporated areas of the County of Santa Clara.

Pursuant to Public Utilities Code Section 366.2 (c)(7), within 90 days after the Community Choice Aggregator (CCA) establishing load aggregation files an Implementation Plan, the Commission is required to certify that it has received the Implementation Plan, including any additional information necessary to determine a cost-recovery mechanism.

Public Utilities Code Section 366.2 (c)(3) requires a CCA Implementation Plan to contain all of the following:

- A) An organizational structure of the program, its operations, and its funding.
- B) Rate setting and other costs to participants.
- C) Provisions for disclosure and due process in setting rates and allocating costs among participants.
- D) The methods for entering and terminating agreements with other entities.
- E) The rights and responsibilities of program participants, including, but not limited to, consumer protection procedures, credit issues, and shutoff procedures.
- F) Termination of the program.
- G) A description of the third parties that will be supplying electricity under the program, including, but not limited to, information about financial, technical and operational capabilities.

Tom Habashi
September 27, 2016
Page 2

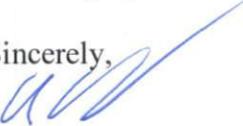
Pursuant to Public Utilities Code Section 366.2 (c)(4), a CCA is also to prepare and provide for all of the following:

- A) A statement of intent; and,
- B) Provision(s) that provide for:
 - 1) Universal access;
 - 2) Reliability;
 - 3) Equitable treatment of all classes of customers; and,
 - 4) Compliance with any legal requirements concerning aggregated service.

The Commission hereby certifies that the CCA Implementation Plan and Statement of Intent submitted by SVCE contains the information required by Public Utilities Code Section 366.2 (c). SVCE has also included a Statement of Intent as part of its Implementation Plan pursuant to Public Utilities Code Section 366.2 (c)(4).

Pursuant to P.U. Code Section 366.2 (c)(7), the Commission is required to provide SVCE with "its findings regarding any cost recovery that must be paid by customers of the community choice aggregator to prevent a shifting of costs as provided for in P.U. Code Section 366.2 subdivisions (d), (e) and (f)." The costs referenced in P.U. Code Section 366.2 subdivisions (d), (e) and (f) are recovered via separate charges for: (1) PG&E's Energy Cost Recovery Amount Charge (per kWh); (2) Power Charge Indifference Adjustment (per kWh); (3) DWR Bond Charge (per kWh); and (4) Competition Transition Charge (CTC) (per kWh). By this letter, the Commission informs SVCE that these costs are identified on each of PG&E's customer-class-specific tariff sheets, in the "Special Conditions" section, sub-section "Billing," in the section labeled "Direct Access (DA) and Community Choice Aggregation (CCA) customers" in the column labeled "Community Choice Aggregation Cost Responsibility Surcharge (CCA CRS)."

Sincerely,


Edward Randolph
Director, Energy Division

cc: Randall Litteneker, PG&E (via email, RJL9@pge.com)



STANDARD MULTI-TENANT OFFICE LEASE - GROSS AIR COMMERCIAL REAL ESTATE ASSOCIATION

1. **Basic Provisions ("Basic Provisions").**

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only September 19, 2016, is made by and between Sunnyvale Village Associates, a California general partnership, ("Lessor") and Silicon Valley Clean Energy Authority, a Santa Clara County public agency ("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) **Premises:** That certain portion of the Project (as defined below), known as Suite Numbers(s) 280 and 290 second floor(s), consisting of approximately 5,702 rentable square feet and approximately 5,080 useable square feet ("Premises"). The Premises are located at: 333 W. El Camino Real in the City of Sunnyvale, County of Santa Clara, State of California, with zip code 94087. 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, the exterior walls, the area above the dropped ceilings, or the utility raceways of the building containing the Premises ("Building") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." The Project consists of approximately 52,414 rentable square feet. (See also Paragraph 2)

1.2(b) **Parking:** Eighteen (18) unreserved and six (6) reserved vehicle parking spaces at a monthly cost of \$-0- per unreserved space and \$-0- per reserved space. (See Paragraph 2.6)

1.3 **Term:** Five (5) years and three (3) months ("Original Term") commencing November 1, 2016 ("Commencement Date") and ending January 31, 2022 ("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 October 17, 2016 ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$25,375.00 per month ("Base Rent)", payable on the first (1st) day of each month commencing February 1, 2017. (See also Paragraph 4)

If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 5.0

1.6 **Lessee's Share of Operating Expense Increase:** Nine and 692/1,000ths--- percent (9.692 %) ("Lessee's Share"). In the event that that size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 **Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** \$25,375.00 for the period February 1-28, 2017

(b) **Security Deposit:** \$28,560.00 ("Security Deposit"). (See also Paragraph 5)

(c) **Parking:** \$-0- for the period N/A

(d) **Other:** \$-0- for N/A

(e) **Total Due Upon Execution of this Lease:** \$53,935.00

1.8 **Agreed Use:** General and administrative offices for a public agency providing community choice energy services. (See also Paragraph 6)

1.9 **Base Year; Insuring Party.** The Base Year is 2017. Lessor is the "Insuring Party". (See also Paragraphs 4.2 and 8)

1.10 **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):

Biagini Properties, Inc., a California corporation represents Lessor exclusively ("Lessor's Broker");

Cushman & Wakefield U.S., Inc. represents Lessee exclusively ("Lessee's Broker"); or

None 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 the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of _____ or _____ % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.11 **Guarantor.** The obligations of the Lessee under this Lease shall be guaranteed by _____ ("Guarantor"). (See also Paragraph 3.7)

1.12 **Business Hours for the Building:** 8:00 a.m. to 5:00 p.m., Mondays through Fridays (except Building Holidays) and _____ a.m. to _____ p.m. on Saturdays (except Building Holidays). "Building Holidays" shall mean the dates of observation of New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Martin Luther King, Jr. Day.

TJB
MB
INITIALS

TH
INITIALS

1.13 **Lessor Supplied Services.** Notwithstanding the provisions of Paragraph 11.1, Lessor is NOT obligated to provide the following within the Premises:

- Janitorial services
- Electricity
- Other (specify): _____

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

- an Addendum consisting of Paragraphs 50 through 54 ;
- a plot plan depicting the Premises; Exhibits A-1, A-2, and A-3
- a current set of the Rules and Regulations; Exhibit B
- a Work Letter; Exhibit E
- a janitorial schedule; Exhibit D Standards For Utilities and Services
- other (specify): Exhibit C Legal Description

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.** Lessor shall deliver the Premises to Lessee in a clean condition on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), and all other items which the Lessor is obligated to construct pursuant to the Work Letter attached hereto, if any, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit 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. 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 49), 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 zoning and other Applicable Requirements 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. 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, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises ("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 nonvoluntary, 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) Lessee 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 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.** So long as Lessee is not in default, and subject to the Rules and Regulations attached hereto, and as established by Lessor from time to time, Lessee shall be entitled to rent and use the number of parking spaces specified in Paragraph 1.2(b) at the rental rate applicable from time to time for monthly parking as set by Lessor and/or its licensee.

(a) If Lessee commits, permits or allows any of the prohibited activities described in the Lease or the rules then in effect, 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.

(b) The monthly rent per parking space specified in Paragraph 1.2(b) is subject to change upon 30 days prior written notice to Lessee. The rent for the parking is payable one month in advance prior to the first day of each calendar month.

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 Project and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general nonexclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including, but not limited to, common entrances, lobbies, corridors, stairwells, public restrooms, elevators, 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,


INITIALS


INITIALS

contractors, customers and invitees, during the term of this Lease, the nonexclusive 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 Project. 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. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage 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 adopt, 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 Project and their invitees. The 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 noncompliance with said Rules and Regulations by other tenants of the Project.

2.10 **Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:
(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;
(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;
(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;
(d) To add additional buildings and improvements to the Common Areas;
(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and
(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

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 Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of the Operating Expense Increase) shall be in effect during such period. 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 deliver 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 **Operating Expense Increase.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share of the amount by which all Operating Expenses for each Comparison Year exceeds the amount of all Operating Expenses for the Base Year, such excess being hereinafter referred to as the "**Operating Expense Increase**", in accordance with the following provisions:

(a) "**Base Year**" is as specified in Paragraph 1.9.

(b) "**Comparison Year**" is defined as each calendar year during the term of this Lease subsequent to the Base Year; provided, however, Lessee shall have no obligation to pay a share of the Operating Expense Increase applicable to the first 12 months of the Lease Term (other than such as are mandated by a governmental authority, as to which government mandated expenses Lessee shall pay Lessee's Share, notwithstanding they occur during the first twelve (12) months). Lessee's Share of the Operating Expense Increase for the first and last Comparison Years of the Lease Term shall be prorated according to that portion of such Comparison Year as to which Lessee is responsible for a share of such increase.

(c) The following costs relating to the ownership and operation of the Project, calculated as if the Project was at least 95% occupied, are defined as "**Operating Expenses**":

(i) Costs relating to the operation, repair, and maintenance in neat, clean, safe, good order and condition, but not the replacement (see subparagraph (g)), of the following:

(aa) The Common Areas, including their surfaces, coverings, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;

(bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, communication systems and other equipment used in common by, or for the benefit of, tenants or occupants of the Project, including elevators and escalators, tenant directories, fire detection systems including sprinkler system maintenance and repair.

(cc) 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 trash disposal, janitorial and security services, pest control services, and the costs of any environmental inspections;

(iii) The cost of any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "Operating Expense";

(iv) The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 and any deductible portion of an insured loss concerning the Building or the Common Areas;

(v) The amount of the Real Property Taxes payable by Lessor pursuant to paragraph 10;

(vi) The cost of water, sewer, gas, electricity, and other publicly mandated services not separately metered;

(vii) Labor, salaries, and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Project and accounting and management fees attributable to the operation of the Project;

(viii) The cost of any capital improvement to the Building or the Project 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 Expenditure in any given month;

(ix) The cost to replace equipment or improvements that have a useful life for accounting purposes of 5 years or less.

(x) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.

(xi) The cost of third party property management fees.


INITIALS


INITIALS

(d) Any item of Operating Expense that is specifically attributable to the Premises, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Premises, Building, or other building. However, any such item that is not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(e) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(c) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project 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.

(f) Lessee's Share of Operating Expense Increase 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 Operating Expense 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, Lessee 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 said statement. Lessor and Lessee shall forthwith adjust between them by cash payment any balance determined to exist with respect to that portion of the last Comparison Year for which Lessee is responsible as to Operating Expense Increases, notwithstanding that the Lease term may have terminated before the end of such Comparison Year.

(g) Operating Expenses shall not include the costs of replacement for equipment or capital components such as the roof, foundations, exterior walls or a Common Area capital improvement, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(h) 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 by insurance proceeds.

4.3 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States on or before the day on which it is due, without offset or deduction (except as specifically permitted in this Lease). 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. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. 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.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. 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 improvements of the Building, will not adversely affect the mechanical, electrical, HVAC, and other systems of the Building, and/or will not affect the exterior appearance of the Building. 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.

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, byproducts 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 such as 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 Project 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


INITIALS


INITIALS

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 result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy 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's occupancy, 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 the Premises, without regard to whether said Applicable 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 9.1e) 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.** Notwithstanding Lessor's obligation to keep the Premises in good condition and repair, Lessee shall be responsible for payment of the cost thereof to Lessor as additional rent for that portion of the cost of any maintenance and repair of the Premises, or any equipment (wherever located) that serves only Lessee or the Premises, to the extent such cost is attributable to abuse or misuse. In addition, Lessee rather than the Lessor shall be responsible for the cost of painting, repairing or replacing wall coverings, and to repair or replace any similar improvements within the Premises. Lessor may, at its option, upon reasonable notice, elect to have Lessee perform any particular such maintenance or repairs the cost of which is otherwise Lessee's responsibility hereunder."

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (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, fire alarm and/or smoke detection systems, fire hydrants, and the Common Areas. 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 lines, vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, and plumbing 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, ceilings, floors or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed \$2000. 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 asbuilt 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 materialmen'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


INITIALS


INITIALS

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 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 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) to the level specified in Applicable 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 **Insurance Premiums.** The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 are included as Operating Expenses (see paragraph 4.2 (c)(iv)). Said costs shall include increases in the premiums resulting from additional coverage related to requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. Said costs shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. If the Project was not insured for the entirety of the Base Year, then the base premium shall be the lowest annual premium reasonably obtainable for the required insurance as of the Start Date, assuming the most nominal use possible of the Building and/or Project. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

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 and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. 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-lessor, and to any Lender insuring loss or damage to the Building and/or Project. The amount of such insurance shall be equal to the full insurable replacement cost of the Building and/or Project, 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 Project 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) **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.

(c) **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.

(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.

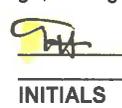
8.5 **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not 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 cancelable or subject to modification except after 10 days prior written notice to Lessor. Lessee shall, at least 30 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,


INITIALS


INITIALS

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, 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 Project, 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 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 cost to repair of which is \$5,000 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 (subject to reimbursement pursuant to Paragraph 4.2), 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 **Abatement of Rent; Lessee's Remedies.**

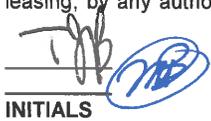
(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated 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 is 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.

9.7 **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 **Definitions.** 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 Project, 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 Project address. "**Real**


INITIALS


INITIALS

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 Project, (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.

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

10.3 **Additional Improvements.** 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 Project 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 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.**

11.1 **Services Provided by Lessor.** Lessor shall provide heating, ventilation, air conditioning, reasonable amounts of electricity for normal lighting and office machines, water for reasonable and normal drinking and lavatory use in connection with an office, and replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures. Lessor shall also provide janitorial services to the Premises and Common Areas 5 times per week, excluding Building Holidays, or pursuant to the attached janitorial schedule, if any. Lessor shall not, however, be required to provide janitorial services to kitchens or storage areas included within the Premises.

11.2 **Services Exclusive to Lessee.** Notwithstanding the provisions of paragraph 11.1, Lessee shall pay for all water, gas, light, power, telephone and other utilities and services specially or exclusively supplied and/or metered exclusively to the Premises or to Lessee, together with any taxes thereon. If a service is deleted by Paragraph 1.13 and such service is not separately metered to the Premises, Lessee shall pay at Lessor's option, either Lessee's Share or a reasonable proportion to be determined by Lessor of all charges for such jointly metered service.

11.3 **Hours of Service.** Said services and utilities shall be provided during times set forth in Paragraph 1.12. Utilities and services required at other times shall be subject to advance request and reimbursement by Lessee to Lessor of the cost thereof.

11.4 **Excess Usage by Lessee.** Lessee shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting or power, or suffer or permit any act that causes extra burden upon the utilities or services, including but not limited to security and trash services, over standard office usage for the Project. Lessor shall require Lessee to reimburse Lessor for any excess expenses or costs that may arise out of a breach of this subparagraph by Lessee. Lessor may, in its sole discretion, install at Lessee's expense supplemental equipment and/or separate metering applicable to Lessee's excess usage or loading.

11.5 **Interruptions.** 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 buyout 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(d), 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 to 110% of the Base Rent 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, i.e. 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.

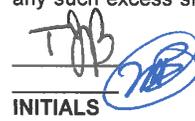
(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or 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)

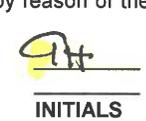
(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition 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


INITIALS


INITIALS

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.

12.4 Sublease Rent. In the event of any assignment or sublease, Lessor shall receive as additional rent hereunder one hundred percent (100%) of Lessee's "Excess Consideration" derived from such assignment or sublease. In the event of an assignment or sublease, "Excess Consideration" shall mean all rent, additional rent or other consideration actually received by Lessee from such assignee or subtenant in connection with the assignment or in excess of the rent, additional rent and other sums payable by Lessee under this Lease during the Original Term, less the sum of Lessee's out-of-pocket costs incurred in connection with such assignment or sublease including brokerage commissions, reasonable attorneys' fees, the cost of any alterations or improvements made for the benefit of such assignee or subtenant, and/or any free rent period granted to such subtenant amortized on a straight line basis over the remainder of the Original Term or sublease period, as the case may be.

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 abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(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. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(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) or (c), 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:

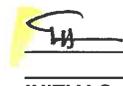
(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of 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



INITIALS



INITIALS

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, the cost of tenant improvements for Lessee paid for or performed by Lessor, 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~~ Except with respect to Lessor's obligations under Paragraph 7.2 of this Lease, 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 seek 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 rentable floor area of the Premises, or more than 25% of Lessee's Reserved Parking Spaces, if any, are 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 1.10 above, 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 Project, (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 Brokers a fee in accordance with the fee schedule of the 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 1.10, 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.

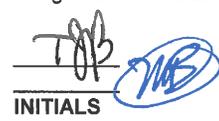
16. **Estoppel Certificates.**

(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 AIRCommercial 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 encumbrancers 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


INITIALS


INITIALS

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 Project, 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, or by email, 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 delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. 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 shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on a monthly bases. 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

TJB
NB
INITIALS

CH
INITIALS

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. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

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. Lessor may not place any sign on the exterior of the Building that covers any of the windows of the Premises. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

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. 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. In the event, however, that Lessor should elect to provide security services, then the cost thereof shall be an Operating Expense.

41. Reservations.

(a) Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that

TJB
INITIALS

PH
INITIALS

Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, (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. Lessor may also: change the name, address or title of the Building or Project upon at least 90 days prior written notice; provide and install, at Lessee's expense, Building standard graphics on the door of the Premises and such portions of the Common Areas as Lessor shall reasonably deem appropriate; grant to any lessee the exclusive right to conduct any business as long as such exclusive right does not conflict with any rights expressly given herein; and to place such signs, notices or displays as Lessor reasonably deems necessary or advisable upon the roof, exterior of the Building or the Project or on signs in the Common Areas. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights. The obstruction of Lessee's view, air, or light by any structure erected in the vicinity of the Building, whether by Lessor or third parties, shall in no way affect this Lease or impose any liability upon Lessor.

(b) Lessor also reserves the right to move Lessee to other space of comparable size in the Building or Project. Lessor must provide at least 45 days prior written notice of such move, and the new space must contain improvements of comparable quality to those contained within the Premises. Lessor shall pay the reasonable out of pocket costs that Lessee incurs with regard to such relocation, including the expenses of moving and necessary stationary revision costs. In no event, however, shall Lessor be required to pay an amount in excess of two months Base Rent. Lessee may not be relocated more than once during the term of this Lease.

(c) Lessee shall not: (i) use a representation (photographic or otherwise) of the Building or Project or their name(s) in connection with Lessee's business; or (ii) suffer or permit anyone, except in emergency, to go upon the roof of the Building.

42. **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.

43. **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.

44. **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.

45. **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.

46. **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 nonmonetary 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.

47. **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.

48. **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.

49. **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:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. 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 AND SIZE 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: Sunnyvale, CA
On: September 21, 2016

Executed at: Sunnyvale, CA
On: 9/21/2016

By LESSOR:

Sunnyvale Village Associates,
a California general partnership

By: Iacopo & Giuseppina Group, LLC,
a California limited liability company,
General Partner
By: Thomas J. Biagini
Name Printed: Thomas J. Biagini
Title: Manager

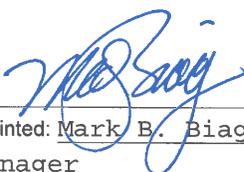
By LESSEE:

Silicon Valley Clean Energy Authority,
a Santa Clara County public agency

By: Tom Habashi
Name Printed: Tom Habashi
Title: Chief Executive Officer
By: _____
Name Printed: _____
Title: _____
Address: _____

TJB
INITIALS

TH
INITIALS

By: 
Name Printed: Mark B. Biagini
Title: Manager
Address: c/o Biagini Properties, Inc.
333 W. El Camino Real, Suite 240
Sunnyvale, CA 94087-1969
Telephone: (408) 331-2300
Facsimile: (408) 331-2301
Email: Tom@BiaginiProperties.com
Email: _____
Federal ID No. 94-2728636

Telephone: () _____
Facsimile: () _____
Email: _____
Email: _____
Federal ID No. _____

LESSOR'S BROKER:

Biagini Properties, Inc.

Attn: Thomas J. Biagini
Address: 333 W. El Camino Real, Suite 240
Sunnyvale, CA 94087-1969

Telephone: (408) 331-2300
Facsimile: (408) 331-2301
Email: Tom@BiaginiProperties.com
Broker/Agent BRE License #: 00616940

LESSEE'S BROKER:

Cushman & Wakefield

Attn: Kelly Yoder
Address: 300 Santana Row, Fifth Floor
San Jose, CA 95128

Telephone: (408) 615-3427
Facsimile: (408) 615-3444
Email: _____
Broker/Agent BRE License #: 01821117

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.

©Copyright 1999-By AIR Commercial Real Estate Association.
All rights reserved.

No part of these works may be reproduced in any form without permission in writing.

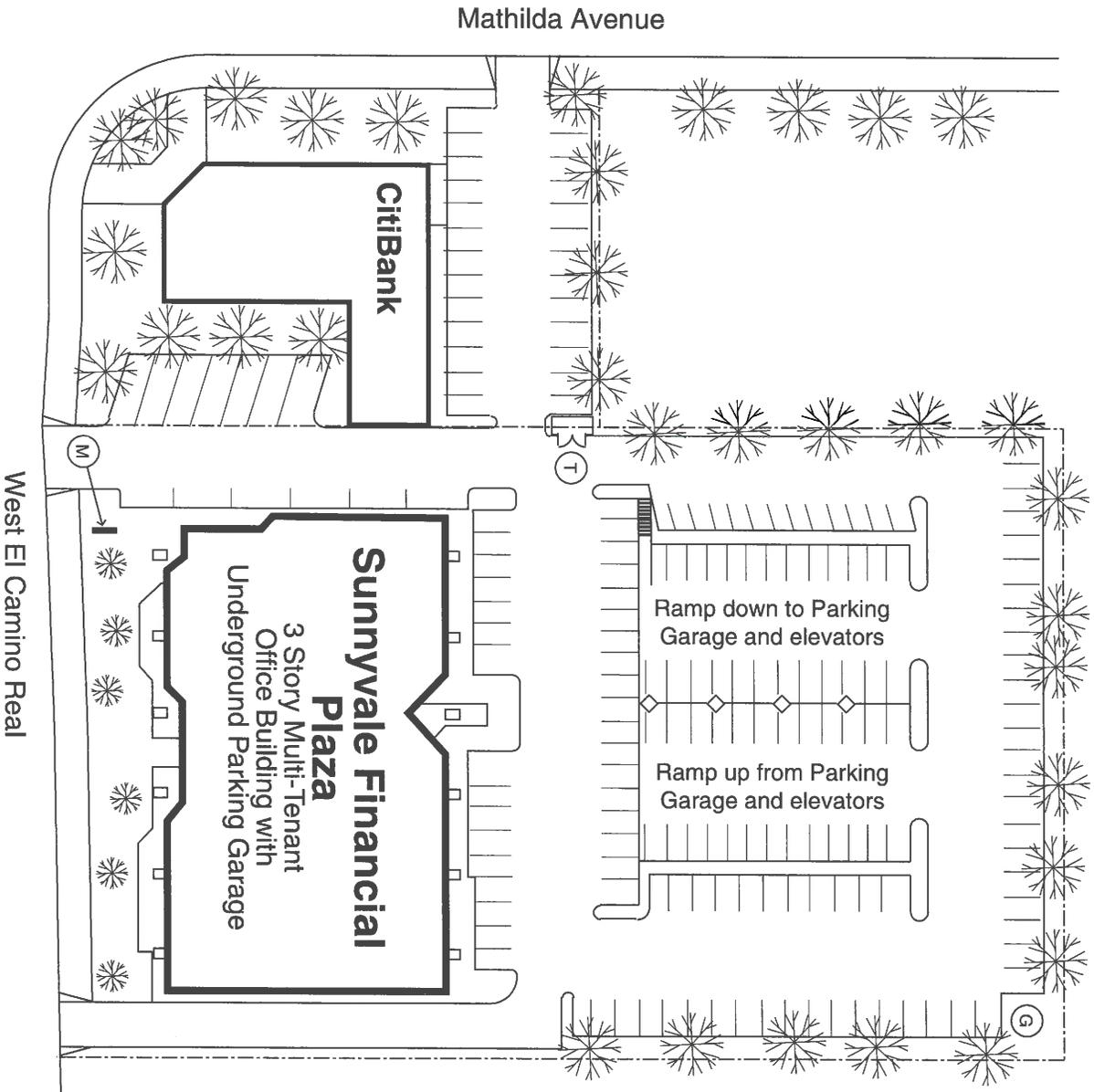

INITIALS


INITIALS

EXHIBIT A-1

- ⓐ Garden Park
 - Ⓜ Monument Sign
 - Ⓣ Trash Enclosure
- Property Line

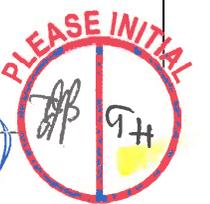
rev: 09/19/16



West El Camino Real

Site plan not to scale and subject to change without notice

**Sunnyvale Financial Plaza
333 West El Camino Real
Sunnyvale, California 94087**



333 W. El Camino Real, Suite 240
Sunnyvale, CA 94087-1969
Phone (408) 331-2300
Fax (408) 331-2301

EXHIBIT A-2

Sunnyvale Financial Plaza

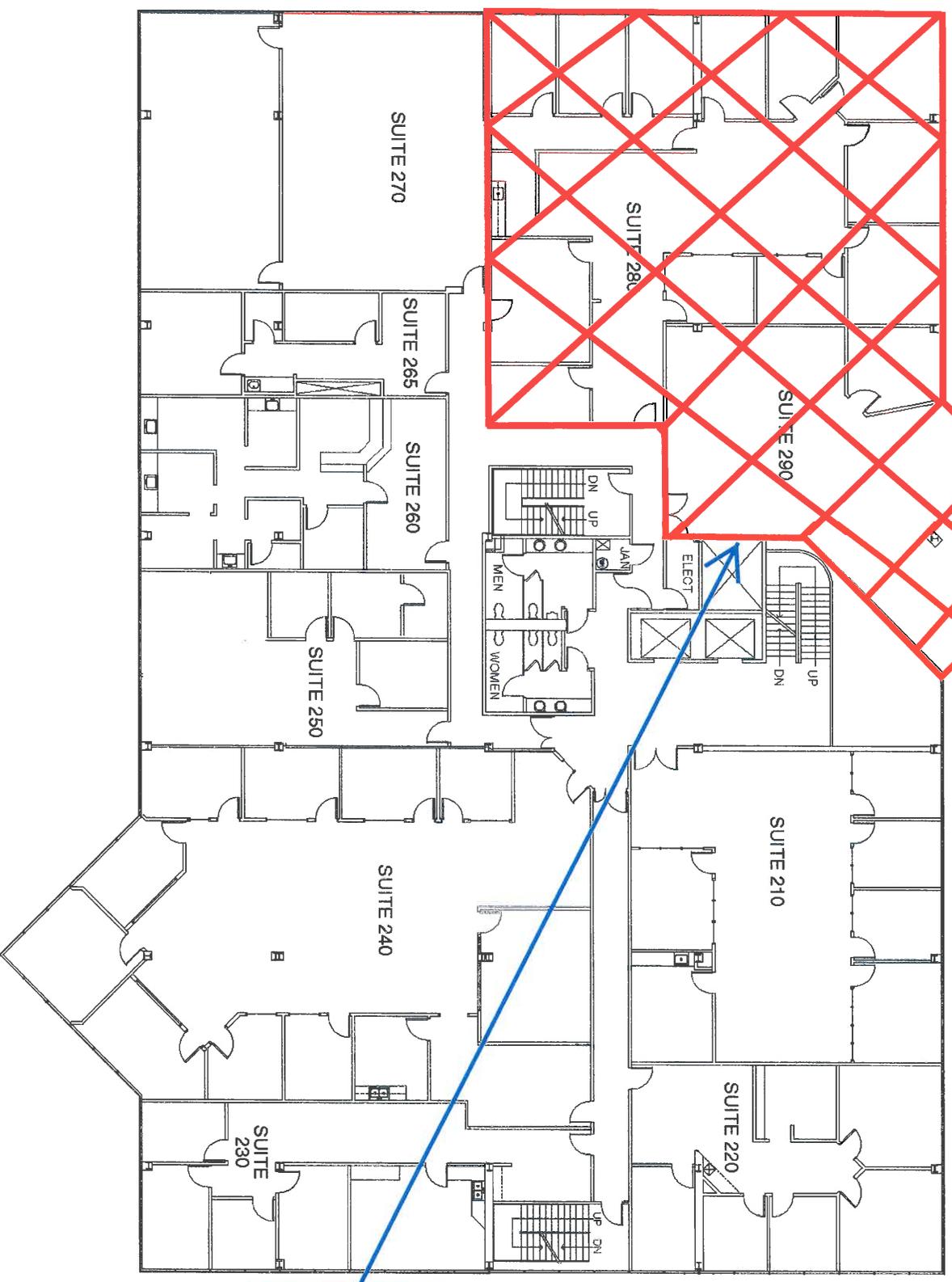
**333 West El Camino Real
Sunnyvale, CA 94087-1969**

Second Floor Plan

Suite 210	2,043 Useable Square Feet
Suite 220	1,350 Useable Square Feet
Suite 230	1,374 Useable Square Feet
Suite 240	3,753 Useable Square Feet
Suite 250	1,115 Useable Square Feet
Suite 260	1,133 Useable Square Feet
Suite 265	650 Useable Square Feet
Suite 270	2,000 Useable Square Feet
Suite 280	3,271 Useable Square Feet
Suite 290	1,809 Useable Square Feet

DEMISED PREMISES

**333 W. El Camino Real, Suites 280 and 290
Sunnyvale, CA 94087-1969
± 5,080 Useable Square Feet
± 5,702 Rentable Square Feet**



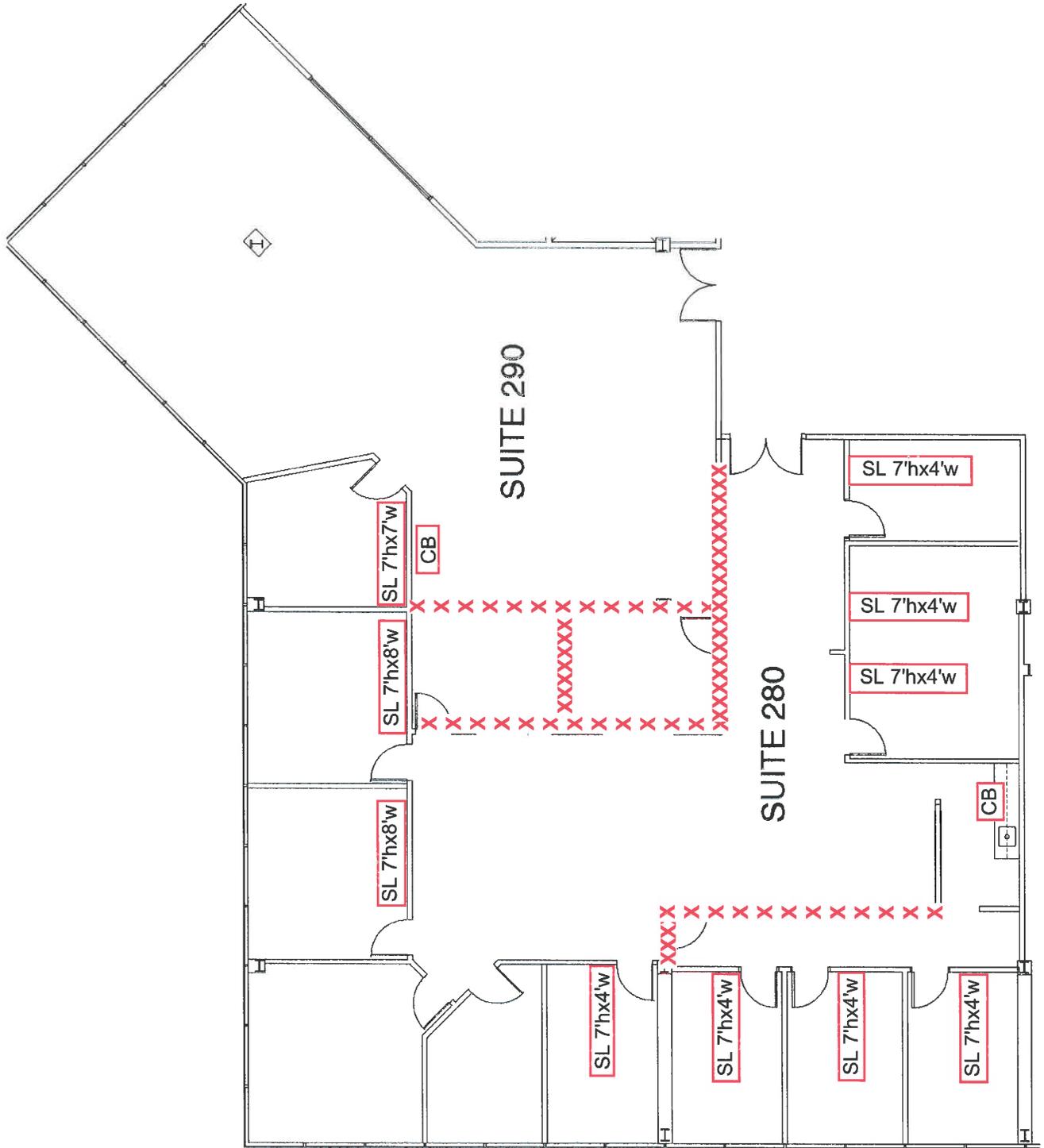
PLEASE INITIAL



333 W. El Camino Real, Suite 240
Sunnyvale, CA 94087-1969
Phone (408) 331-2300
Fax (408) 331-2301

Site plan not to scale and subject to change without notice

EXHIBIT A-3



XXX = Remove non-load bearing walls

SL = Install (10) new side light glass/windows of approximate sizes: (1) 7'hx7'w, (2) 7'hx8'w, (7) 7'hx4'w

CB = Remove coffee bar sink and cabinetry in Suite 290 and relocate in Suite 280 to replace existing coffee bar sink and cabinetry

PLEASE INITIAL

DB *94*

EXHIBIT B



RULES AND REGULATIONS FOR STANDARD OFFICE LEASE

Dated: September 19, 2016

By and Between Sunnyvale Village Associates, a California general partnership, and Silicon Valley Clean Energy Authority, a Santa Clara County public agency

GENERAL RULES

1. Lessee shall not suffer or permit the obstruction of any Common Areas, including driveways, walkways and stairways.
2. Lessor reserves the right to refuse access to any persons Lessor in good faith judges to be a threat to the safety and reputation of the Project and its occupants.
3. Lessee shall not make or permit any noise or odors that annoy or interfere with other lessees or persons having business within the Project.
4. Lessee shall not keep animals or birds within the Project, and shall not bring bicycles, motorcycles or other vehicles into areas not designated as authorized for same.
5. Lessee shall not make, suffer or permit litter except in appropriate receptacles for that purpose.
6. Lessee shall not alter any lock or install new or additional locks or bolts.
7. Lessee shall be responsible for the inappropriate use of any toilet rooms, plumbing or other utilities. No foreign substances of any kind are to be inserted therein.
8. Lessee shall not deface the walls, partitions or other surfaces of the Premises or Project.
9. Lessee shall not suffer or permit anything in or around the Premises or Building that causes excessive vibration or floor loading in any part of the Project.
10. Furniture, significant freight and equipment shall be moved into or out of the building only with the Lessor's knowledge and consent, and subject to such reasonable limitations, techniques and timing, as may be designated by Lessor. Lessee shall be responsible for any damage to the Office Building Project arising from any such activity.
11. Lessee shall not employ any service or contractor for services or work to be performed in the Building, except as approved by Lessor.
12. Lessor reserves the right to close and lock the Building on Saturdays, Sundays and Building Holidays, and on other days between the hours of 8:00 P.M. and 6:00 A.M. of the following day. If Lessee uses the Premises during such periods, Lessee shall be responsible for securely locking any doors it may have opened for entry.
13. Lessee shall return all keys at the termination of its tenancy and shall be responsible for the cost of replacing any keys that are lost.
14. No window coverings, shades or awnings shall be installed or used by Lessee.
15. No Lessee, employee or invitee shall go upon the roof of the Building.
16. Lessee shall not suffer or permit smoking or carrying of lighted cigars or cigarettes in areas reasonably designated by Lessor or by applicable governmental agencies as non-smoking areas.
17. Lessee shall not use any method of heating or air conditioning other than as provided by Lessor.
18. Lessee shall not install, maintain or operate any vending machines upon the Premises without Lessor's written consent.
19. The Premises shall not be used for lodging or manufacturing, cooking or food preparation.
20. Lessee shall comply with all safety, fire protection and evacuation regulations established by Lessor or any applicable governmental agency.
21. Lessor reserves the right to waive any one of these rules or regulations, and/or as to any particular Lessee, and any such waiver shall not constitute a waiver of any other rule or regulation or any subsequent application thereof to such Lessee.
22. Lessee assumes all risks from theft or vandalism and agrees to keep its Premises locked as may be required.
23. Lessor reserves the right to make such other reasonable rules and regulations as it may from time to time deem necessary for the appropriate operation and safety of the Project and its occupants. Lessee agrees to abide by these and such rules and regulations.

PARKING RULES

1. Parking areas shall be used only for parking by vehicles no longer than full size, passenger automobiles herein called "Permitted Size Vehicles." Vehicles other than Permitted Size Vehicles are herein referred to as "Oversized Vehicles."
2. Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.
3. Parking stickers or identification devices shall be the property of Lessor and be returned to Lessor by the holder thereof upon termination of the holder's parking privileges. Lessee will pay such replacement charge as is reasonably established by Lessor for the loss of such devices.
4. Lessor reserves the right to refuse the sale of monthly identification devices to any person or entity that willfully refuses to comply with the applicable rules, regulations, laws and/or agreements.
5. Lessor reserves the right to relocate all or a part of parking spaces from floor to floor, within one floor, and/or to reasonably adjacent offsite location(s), and to reasonably allocate them between compact and standard size spaces, as long as the same complies with applicable laws, ordinances and regulations.
6. Users of the parking area will obey all posted signs and park only in the areas designated for vehicle parking.
7. Unless otherwise instructed, every person using the parking area is required to park and lock his own vehicle. Lessor will not be responsible for any damage to vehicles, injury to persons or loss of property, all of which risks are assumed by the party using the parking area.
8. Validation, if established, will be permissible only by such method or methods as Lessor and/or its licensee may establish at rates generally applicable to visitor parking.
9. The maintenance, washing, waxing or cleaning of vehicles in the parking structure or Common Areas is prohibited.
10. Lessee shall be responsible for seeing that all of its employees, agents and invitees comply with the applicable parking rules, regulations, laws and agreements.
11. Lessor reserves the right to modify these rules and/or adopt such other reasonable and non-discriminatory rules and regulations as it may deem necessary for the proper operation of the parking area.
12. Such parking use as is herein provided is intended merely as a license only and no bailment is intended or shall be created hereby.

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.

TJP
MB
INITIALS

TH
INITIALS

EXHIBIT C

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of Santa Clara, city of Sunnyvale (and is described as follows)

PARCEL ONE:

PORTIONS OF LOTS 17 and 18, in Block 15 as shown on that certain Map entitled, "Map of the Town of Encinal", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on January 25, 1898 in book I of Maps, at page(s) 88 and 89 and more particularly described as follows:

BEGINNING at a stake marked WI standing in the Northerly line of Lot 20 in Block 15, as shown upon the map hereinabove referred to from which stake marked "20-21" standing at the Northeasterly corner of said Lot 20 bears S. 75 degrees 08' E. 130.00 feet; thence said stake "w.1" on a line parallel with the Easterly line of Lots 20 and 16, in Block 15, as shown upon said Map, S. 14 degrees 52' W. 530.00 feet to the True Point of Beginning of this description; thence from said true point of beginning along said parallel line S. 14 degrees 52' W. 377.23 feet to the Northeasterly line of the San Jose and San Francisco Road, as widened by deed to the State of California, recorded April 26, 1933 in Book 653, Official Records, page 36; thence along said line of said road, N. 77 degrees 01' W. 239.65 feet to the Southeasterly line of the parcel of land conveyed to Alma C. Lehmann by deed recorded April 16, 1924 in Book 83, Official Records, page 147; thence along said line and its prolongation N. 14 degrees 52' E. 385.09 feet to a point which bears N. 75 degrees 08' west from the said true point of beginning; thence S. 75 degrees 08' E. 239.52 feet to the said true point of beginning and being shown on a Parcel Map filed February 15, 1983 in Book 509 of Maps, pages 19 and 20.

EXCEPTING THEREFROM the parcel of land conveyed to the City of Sunnyvale, a municipal corporation, by deed recorded November 14, 1972, Book 0111, Official Records, page 641, described as follows:

BEGINNING at the Southwesterly corner of Parcel I as described in Deed to John Aleo, et al, recorded April 2, 1959, Book 4372, Official Records, page 39; thence S. 77 degrees 01' E. along the Northerly line of El Camino Real, a 50 foot half street, 239.65 feet to the Easterly line of said Parcel I; thence N. 14 degrees 52' E. along said Easterly line 9.00 feet to a line parallel with and distant Northerly, measured at right angles, 9.00 feet from said Northerly line; thence N. 77 degrees 01' W. along said parallel line 20.00 feet; thence N. 14 degrees 52' E. 1.00 foot line, parallel with and distant Northerly, measured at right angles, 10.00 feet from said Northerly line; thence N. 77 degrees 01' W. along last said parallel line, 219.65 feet to the Westerly line of said Parcel I; thence S. 14 degrees 52' W. along said Westerly line 10.01 feet to the Point of Beginning

PARCEL TWO:

A right of way for the repair and maintenance of the then (1946) existing sewer, as granted to Chas. E. Hoffman and Dorothy D. Hoffman, husband and wife, by deed recorded March 15, 1946, Book 1333, Official Records, page 243, over that certain strip of land described as follows:

PORTION OF LOTS 18 and 19, in Block 15, as shown on that certain Map entitled, "Map of the Town of Encinal", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on January 25, 1898 in Book I of Maps, at page(s) 88 and 89, Santa Clara County Records, more particularly described as follows:

BEGINNING at a point on the center line of Mathilda Avenue, from which the point of intersection of said center line of Mathilda Avenue with the original Northerly line of the San Jose and San Francisco Road, as said Avenue and road are shown on the Map hereinabove referred to, bears S. 14 degrees 52' W. 354.70 feet; thence at right angles to Mathilda Avenue S.



75 degrees 08' E. 192.90 feet to a point; thence on a line parallel with Mathilda Avenue N. 14 degrees 52' E. 3 feet to a point; thence N. 75 degrees 08' W. 192.90 feet to a point in the said center line of Mathilda Avenue; thence along said center line of Mathilda Avenue S. 14 degrees 52' W. 3 feet to the point of beginning

PARCEL THREE:

A non-exclusive easement appurtenant to Parcel One above for ingress and egress and for emergency vehicle ingress and egress, as contained in that certain Grant of Easement from Citizens Savings and Loan Association to Sunnyvale Village Associates, recorded January 19, 1981 in book 855 of Official Records, page 694, the location of which being established by that certain Agreement executed by and between First Nationwide and Sunnyvale Village Associates, recorded H261 of Official Records, page 83, described as follows:

A PORTION of that certain real property (herein called "the property") described in Exhibit "A" of that certain Grant of Easement recorded January 19, 1981 in Book F855, page 694 of Official Records, and more particularly describes as follows:

A strip of land 26 feet in width, running parallel to the Northerly boundary of the Property, said strip having its Westerly terminus on the Westerly boundary of the Property, its Easterly terminus on the Easterly boundary of the Property, its Southerly boundary of said 26 foot strip is 46 feet distant from the Northerly boundary of the Property and the Northerly boundary of said 26 foot strip is 20 feet distant from the Northerly boundary of said Property

Assessor's Parcel Number
209-29-068

Sunnyvale Financial Plaza
333 W. El Camino Real
Sunnyvale, California 94087



EXHIBIT D

Standards For Utilities and Services

The following Standards for Utilities and Services are in effect. Lessor reserves the right to adopt nondiscriminatory modifications and additions hereto:

As long as Lessee is not in default under any of the terms, covenants, conditions, provisions or agreements of this Lease, Lessor shall:

(a) Provide non-attended automatic elevator facilities Monday through Friday, except holidays, from 8 A.M. to 8 P.M., and have one elevator available at all other times.

(b) On Monday through Friday, except holidays, from 8 A.M. to 6 P.M., (and other items for a reasonable additional charge to be fixed by Lessor), ventilate the Premises and furnish air conditioning or heating on such days and hours, when in the judgment of Lessor it may be required for the comfortable occupancy of the Premises. The air conditioning system achieves maximum cooling when the window coverings are closed. Lessor shall not be responsible for room temperatures if Lessee does not keep all window coverings in the Premises closed whenever the system is in operation. Lessee agrees to cooperate fully at all times with Lessor and to abide by all regulations and requirements which Lessor may prescribe for the proper functioning and protection of said air conditioning system. Lessee agrees not to connect any apparatus, device, conduit or pipe to the Building chilled and hot water air conditioning supply lines. Lessee further agrees that neither Lessee nor its servants, employees, agents, visitors, licensees or contractors shall at any time enter mechanical installations or facilities of the Building or adjust, tamper with, touch or otherwise in any manner affect said installations or facilities.

(c) Lessor shall furnish to the Premises, during the usual business hours on business days, electric current as required by the Building standard office lighting and fractional horsepower office business machines in the amount of approximately two and one-half (2.5) watts per square foot. Lessee agrees, should its electrical installation or electrical consumption be in excess of the aforesaid quantity or extend beyond normal business hours, to reimburse Lessor monthly for the measured consumption at the terms, classifications and rate charges to similar consumers by the public utility serving the neighborhood in which the Building is located. If a separate meter is not installed at Lessor's cost, such excess cost will be established by an estimate agreed upon by Lessor and Lessee, and if the parties fail to agree, as established by an independent licensed engineer. Lessee agrees not to use any apparatus or device in, or upon, or about the Premises which may in any way increase the amount of such services usually furnished or supplied to said Premises, and Lessee further agrees not to connect any apparatus or device with wires, conduits or pipes, or other means by which such services are supplied, for the purpose of using additional or unusual amounts of such services without written consent of Lessor. Should Lessee use such services to excess, the refusal on the part of Lessee to pay upon demand of Lessor the amount established by Lessor for such excess charge shall constitute a breach of the obligation to pay rent under this Lease and shall entitle Lessor to the rights herein granted for such breach. Lessee shall be permitted to install and use computers, electronic data processing equipment and other office equipment in the Premises without the prior written consent of Lessor, provided that Lessor's use of such equipment shall not exceed the capacity of the existing electrical systems of the Building.

(d) Water will be available in public areas for drinking and lavatory purposes only, but if Lessee requires, uses or consumes water for any purposes in addition to ordinary drinking and lavatory purposes, of which fact Lessee constitutes Lessor to be the sole judge, Lessor may install a water meter and thereby measure Lessor's water consumption for all purposes. Lessee shall pay Lessor for the cost of the meter and the cost of the installation thereof, and throughout the duration of Lessor's occupancy Lessee shall keep said meter and installation equipment in good working order and repair at Lessor's own cost and expense, in default of which Lessor may cause such meter and equipment to be replaced or repaired and collect the cost thereof from Lessee. Lessee agrees to pay for water consumed, as shown on said meter, as and when bills are rendered, and on default in making such payment, Lessor may pay such charges and collect the same from Lessee. Any such costs or expenses incurred, or payments made by Lessor for any of the reasons or purposes hereinabove stated shall be deemed to be additional rent payable by Lessee and collectible by Lessor as such.

(e) Provide janitor service to the Premises Monday through Friday, provided the same are used exclusively for the permitted use in Paragraph 1.8 of the Lease, as offices, and are kept reasonably in order by Lessee, and if to be kept clean by Lessee, no one other than persons approved by Lessor shall be permitted to enter the Premises for such purposes. If the Premises are not used for the permitted use in Paragraph 1.8 of the Lease they shall be kept clean and in order by Lessee, at Lessor's expense, and to the satisfaction of Landlord, and by persons approved by Lessor. Lessee shall pay to Lessor the cost of removal of any of Lessor's refuse and rubbish, to the extent that the same exceeds the refuse and rubbish usually attendant upon the use of the Premises as offices.

Lessor reserves the right to stop service of the elevator, plumbing, ventilation, air conditioning and electric systems, when necessary, by reason of accident or emergency or for repairs, alterations or improvements, in the judgment of Lessor desirable or necessary to be made, until said repairs, alterations or improvements shall have been completed, and shall further have no responsibility or liability for failure to supply elevator facilities, plumbing, ventilating, air conditioning or electric service, when prevented from so doing by strike or accident or by and any cause beyond Lessee's reasonable control, or by laws, rules, orders, ordinances, directions, regulations or requirements of any federal, state, county or municipal authority or failure of gas, oil or other suitable fuel supply or inability by exercise of reasonable diligence to obtain gas, oil or other suitable fuel. It is expressly understood and agreed that any covenants on Lessee's part to furnish any service pursuant to any of the terms, covenants, conditions, provisions or agreements of this Lease, or to perform any act or thing for the benefit of Lessee, shall be deemed breached if Lessor is unable to furnish or perform the same by virtue of a strike or labor trouble or any other cause whatsoever beyond Lessee's control.



EXHIBIT E

INTERIOR ALTERATIONS AND IMPROVEMENTS

LESSOR WORK. The Lessor shall not be responsible for performing or paying for any interior alterations and improvements work except as expressly set forth below:

1. Repair as necessary all preexisting electrical, plumbing and mechanical systems and equipment including heating, ventilating and air conditioning systems and equipment for delivery to the Lessee in good serviceable condition as of the Commencement Date.
2. Demolish and remove non-load bearing walls where indicated on floor plan attached hereto as Exhibit A-3.
3. Remove existing carpet and vinyl base in Suite 280 and install new carpet and vinyl base using Lessor's standard grade commercial grade carpet to match existing new carpet in Suite 290. Remove existing carpet base in Suite 290 and replace with new matching vinyl base.
4. Patch/repair and re-paint as needed all interior wall surfaces using Lessor's standard off-white color throughout the Premises.
5. Remove the existing ADA compliant coffee bar sink and cabinetry located in Suite 290 and re-install in Suite 280 to replace the existing non-ADA compliant coffee bar sink and cabinetry. Install new matching carpet where coffee bar is removed in Suite 290 using best effort so that seams are not visible.
6. Install ten (10) new interior glass side light/windows in the sizes and locations as indicated on floor plan attached hereto as Exhibit A-3, using Lessor's building standard black anodized aluminum framing. Remove any existing bronze aluminum door frames and replace with new black anodized aluminum door frames to match the new interior window frames.

LESSEE WORK. Subject to the completion of Lessor Work described hereinabove, Lessee shall accept possession of the Premises on an "as is" basis and perform and pay for any additional interior alteration and improvements, door placard signage, directory board signage, furniture, equipment and trade fixtures necessary for its permitted use.

Lessee work shall include without limitation the installation of Lessee's trade fixtures and equipment as well as any additional furniture together with such electrical, plumbing and mechanical alterations, modifications, upgrades and replacements as may be necessary.

All Lessee Work shall be done in a first class workmanlike manner in accordance with municipal building codes and ordinances subject to the provisions of Section 7.3, Alterations and Additions of the Lease and to Lessor's prior written consent and approval.



ADDENDUM

Addendum to that certain Standard Multi-Tenant Office Lease-Gross dated September 19, 2016 by and between Sunnyvale Village Associates, a California general partnership, ("Lessor") and Silicon Valley Clean Energy Authority, a Santa Clara County public agency ("Lessee") for the Premises commonly known as 333 W. El Camino Real, Suite 280 and Suite 290, Sunnyvale, CA 94087.

50. Base Rent Increases.

The Base Rent shall be increased as set forth below:

(a) Twenty six thousand one hundred thirty six and 00/100---Dollars (\$26,136.00) per month during the period February 1, 2018 through January 31, 2019; and then

(b) Twenty six thousand nine hundred twenty and 00/100---Dollars (\$26,920.00) per month during the period February 1, 2019 through January 31, 2020; and then

(c) Twenty seven thousand seven hundred twenty eight and 00/100---Dollars (\$27,728.00) per month during the period February 1, 2020 through January 31, 2021; and then

(d) Twenty eight thousand five hundred sixty and 00/100---Dollars (\$28,560.00) per month during the period February 1, 2021 through January 31, 2022.

51. Building Signage.

Lessee will have its trade name installed on the first and second floor directory boards of the Building and at the Premises entry to be installed by the Lessor utilizing its Building standard. Lessee shall reimburse the cost to Lessor.

52. Interior Alterations and Improvements.

Lessor and Lessee shall each perform and pay for interior alterations and improvements as generally described in Exhibit E, Work Letter, attached to this Lease in order to prepare the Premises for occupancy by Lessee.

53. Electricity Provider.

Lessee is scheduled to become the default electric generation provider to the majority of cities in Santa Clara County including the Building containing the Premises. To the extent that the Lessee is providing satisfactory and competitively priced service, the Lessor, in its sole and absolute discretion, may consider remaining a business customer of the Lessee.

54. Electric Vehicle Charging Stations.

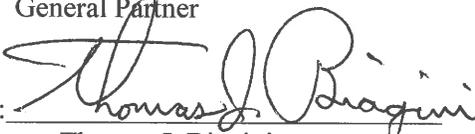
The Lessor has provided two (2) electric vehicle charging stations located in the Building's underground parking lot available for usage by lessees of the Building and their employees. The user is responsible for the cost of electricity drawn.

Dated this 19th day of September, 2016.

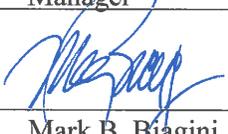
LESSOR:

Sunnyvale Village Associates,
a California general partnership

By: Iacopo & Giuseppina Group, LLC,
a California limited liability company,
General Partner

By: 
Thomas J. Biagini

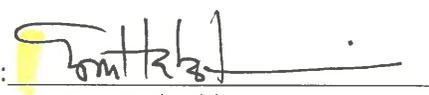
Title: Manager

By: 
Mark B. Biagini

Title: Manager

LESSEE:

Silicon Valley Clean Energy Authority,
a Santa Clara County public agency

By: 
Tom Habashi

Title: Chief Executive Officer

SVCEA Board of Directors Agenda Planning

	NOV	DEC	JAN 2017	FEB	MAR	APR
MILESTONES		Extend Contracts w/ PEA, Sunnyvale, Greg S.	Set Rates Ph 1 Notice # 1	Ph 1 Notice # 2		Launch- Phase 1 Ph2 Notice #1
	November 9, 2016	December 14, 2016	January 11, 2017	February 8, 2017	March 8, 2017	April 12, 2017
ADMINISTRATION, POLICIES	Approve Credit Agreement with River City Bank	Presentation on Rate Setting	Approve Rates	Approve Risk Management Policies & Procedures	Update on Operation Launch	Update on Operation Launch
	Approve agreements between SVCE and the County of Santa Clara and the cities of Sunnyvale, Mountain View and Gilroy re loan guarantee agreements	Provide feedback on Noticing				
STAFFING	Staff Appointments	Staff Appointments	Staff Appointments			
CONTRACTS	Approve Data Mgmt Svcs Agmt	Approve Power Supply Execution Sheets				
	Approve Agreement with Lending Partner	Approve Agmts w/Benefits Providers				
		Approve Power Supply Master Agreements				



**Community Outreach Update
September/October 2016**

1. Events and Outreach

Event	Date	Community
Tabling: MV Art & Wine Festival	9/10/2016 – 9/11/2016	Mountain View
Tabling: Los Altos Hills Hoedown	9/10/2016	Los Altos Hills
Presentation: Building Owners and Management Association (BOMA)	9/14/2016	San Jose
Tabling: Silicon Valley Drive Electric – EV Rally	9/17/2016	Silicon Valley/De Anza College
Presentation: Burbank Community Association Meeting	9/21/2016	Unincorporated SCC
Tabling: Monte Sereno Annual BBQ	9/24/2016	Monte Sereno
Presentation: Silicon Valley Leadership Group Energy Committee	9/30/2016	Silicon Valley
Presentation: League of Women Voters of Southwest Santa Clara Valley	11/14/2016	Campbell

Business Outreach		
Event	Date	Community
Presentation: Moffett Park Business Group Board of Directors	9/12/2016	Sunnyvale/Silicon Valley

2. SVCE Logo Update

At the September 14th Board of Directors meeting, concerns were expressed that the logo leaf looked like a natural gas flame. The logo consultant team at MIG, held a small focus group to gauge the general impression of the new logo and to find out what people think it conveys about the entity using the logo.

The group was held with 23 people, and in Alameda and Santa Clara counties. Without prompting, three people noted that the leaf looks like a flame (13%). MIG has stated that 13% is more than they would like to see, but it is still the opinion of a small minority of the focus group. To make the leaf look less like a flame, MIG created a new modified logo making the white vein of the leaf longer, and making minor tweaks to the shape. This was a minor update to the logo, and did not significantly impact the timeline for updating collateral and the website.



3. Large Commercial Customer Early Adopters

Some large commercial customers have expressed interest in accelerating the environmental and economic benefits of SVCE's new energy offerings. A letter was sent out to over 630 large commercial and industrial business customers, giving them an early enrollment option for SVCE energy generation service beginning in April 2017 instead of July 2017. There is also an option for the customer to choose to opt-up to Green Prime 100% renewable energy. As of September 30th, 20 businesses have opted to enroll early, which makes up about 1/3 of large commercial and industrial customer electricity load and about 15% of the overall customer electricity load.



Staff Report – Item 4

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 4: Authorize CEO to Approve Service Agreement with PG&E

Date: 10/12/2016

RECOMMENDATION

Authorize the Chief Executive Officer to execute a Service Agreement with Pacific Gas and Electric Company.

BACKGROUND

In order to become a registered retail electricity provider, SVCE is required to accomplish three steps:

1. Receive CPUC certification for its Implementation Plan
2. Enter into a service agreement with PG&E
3. Deposit a \$100,000 bond with the CPUC

The SVCEA Implementation Plan outlined the basic information to assure the CPUC that SVCE had a detailed business plan to meet the needs of its customers at competitive rates. The plan was submitted to the CPUC on July 14, 2016. On September 28, 2016, the CPUC issued a letter of certification, prompting staff to consider the next two steps of the process.

ANALYSIS & DISCUSSION

Given that PG&E will deliver the electricity that will be acquired by SVCE and bill the customer for that electricity on SVCE's behalf, the Service Agreement with PG&E is required to set the foundation of how the information and funds will be exchanged between the two parties.

The attached service agreement was developed by PG&E several years ago and has been approved by the CPUC as a boilerplate to provide the necessary step for CCA programs to move forward to service provision.

Once that agreement is approved, SVCE will move to establish the 3rd and final step to become a registered retail supplier to its customers.

ATTACHMENTS

1. PG&E Service Agreement



Pacific Gas and Electric Company
San Francisco, California
U 39

Original
Cancelling Revised

Cal. P.U.C. Sheet No. 27499-E
Cal. P.U.C. Sheet No. 25581-E

Electric Sample Form No. 79-1029
COMMUNITY CHOICE AGGREGATOR (CCA)
SERVICE AGREEMENT

**Please Refer to Attached
Sample Form**

Advice Letter No: 3266-E
Decision No. 08-04-056

Issued by
Brian K. Cherry
Vice President
Regulatory Relations

Date Filed May 2, 2008
Effective June 2, 2008
Resolution No. _____



COMMUNITY CHOICE AGGREGATOR (CCA) SERVICE AGREEMENT

This Community Choice Aggregator (CCA) Service Agreement ("Agreement") is made and entered into as of this 12 day of October, 2016, by and between "Silicon Valley Clean Energy Authority" ("CCA"), a Joint Action Agency organized and existing under the laws of the state of California, and Pacific Gas and Electric Company "PG&E", a corporation organized and existing under the laws of the state of California. From time to time, CCA and PG&E shall be individually referred to herein as a "Party" and collectively as the "Parties."

Section 1: General Description of Agreement

- 1.1 This Agreement is a legally binding contract. The Parties named in this Agreement are bound by the terms set forth herein and otherwise incorporated herein by reference. This Agreement shall govern the business relationship between the Parties hereto by which CCA shall offer electrical energy services. Each Party, by agreeing to undertake specific activities and responsibilities for or on behalf of customers, acknowledges that each Party shall relieve and discharge the other Party of the responsibility for said activities and responsibilities with respect to those customers. Except where explicitly defined herein (including Attachment A hereto) the definitions controlling this Agreement are contained in PG&E's applicable rules or in the relevant community choice aggregation tariff.
- 1.2 The form of this Agreement has been developed as part of the CPUC regulatory process to implement Assembly Bill 117, was intended to conform to CPUC directions, was filed and approved by the CPUC for use between PG&E and CCAs and may not be waived, altered, amended or modified, except as provided herein or in the applicable community choice aggregation tariff, or as may otherwise be authorized by the CPUC.
- 1.3 This Agreement incorporates by reference the applicable community choice aggregation tariff as authorized and modified from time to time by the CPUC.

Section 2: Representations

- 2.1 Each Party represents that it is and shall remain in compliance with all applicable laws and tariffs, including applicable CPUC requirements.

- 2.2 Each person executing this Agreement for the respective Parties expressly represents and warrants that he or she has authority to bind the entity on whose behalf this Agreement is executed.
- 2.3 Each Party represents that (a) it has the full power and authority to execute and deliver this Agreement and to perform its terms and conditions; (b) the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party; and (c) this agreement constitutes such Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.
- 2.4 Each Party shall (a) exercise all reasonable care, diligence and good faith in the performance of its duties pursuant to this Agreement; and (b) carry out its duties in accordance with applicable recognized professional standards in accordance with the requirements of this Agreement.

Section 3: Term of Service

The term of this Agreement shall commence on the date of execution by both Parties hereto (the "Effective Date") and shall terminate on the earlier of (a) the date CCA informs PG&E that it is no longer operating as a CCA in PG&E's service territory; (b) the earlier termination pursuant to Section 4 hereof; or (c) the effective date of a new CCA Service Agreement between the Parties hereto. Notwithstanding the Effective Date of this Agreement, the CCA acknowledges that it may only offer Community Choice Aggregation Services to customers effective on or after the CPUC-approved date for commencement of such services by CCAs, and only after it has complied with all provisions of this Agreement and PG&E's applicable tariffs.

Section 4: Events of Default and Remedy for Default

- 4.1 An Event of Default under this Agreement shall include either Party's material breach of any provision of this Agreement, including those incorporated by reference herein, and failure to cure such breach within thirty (30) calendar days after receipt of written notice thereof from the non-defaulting Party; or such other period as may be provided by this Agreement or PG&E's applicable community choice aggregation tariff.
- 4.2 In the event of such an Event of Default, the non-defaulting Party shall be entitled to exercise any and all remedies (a) available under PG&E's applicable community choice aggregation tariff; and/or (b) provided for by law or in equity to the extent not inconsistent with PG&E's community choice aggregation tariff. In addition, in the event of an Event of Default, this Agreement may be effectively terminated upon Commission authorization.

- 4.3 Breach by any Party hereto of any provision of PG&E's community choice aggregation tariff, including a breach occurring during Exigent Circumstances as defined in Section T.3 of such tariff, which circumstances also shall include bankruptcy of CCA, shall be governed by applicable provisions contained therein and each Party will retain all rights granted thereunder. A breach of said tariff for which no remedy is specified therein shall be governed by this Agreement as an Event of Default.

Section 5: **Billing and Payment**

PG&E will bill and the CCA agrees to pay PG&E for all services and products provided by PG&E in accordance with the terms and conditions set forth in PG&E's community choice aggregation tariff, as stated in PG&E's Electric Rule 23 and PG&E's rate schedules. Any services provided by the CCA to PG&E shall be by separate agreement between the Parties and are not a subject of this Agreement.

Section 6: **Limitation of Liability**

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorneys' fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred, except as provided for in this Section. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever, whether in contract, tort or strict liability, except in the event of an action covered by the Indemnification provisions of Section 7 of this Agreement or by the indemnification provisions in any Nondisclosure Agreement relating to the disclosure of confidential information to the CCA, in which event this Section 6 shall not be applicable.

Section 7: **Indemnification**

- 7.1 To the fullest extent permitted by law, and subject to the limitations set forth in Section 6 of this Agreement, each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party, and its current and future direct and indirect parent companies, affiliates and their shareholders, officers, directors, employees, agents, servants and assigns (collectively, the "Indemnified Party"), and at the Indemnified Party's option, the Indemnifying Party shall defend the Indemnified Party, from and against any and all claims and/or liabilities for losses, expenses, damage to property, injury to or death of any person, including, but not limited to, the Indemnified Party's employees and its affiliates' employees, subcontractors and subcontractors' employees, or any other liability incurred by the Indemnified Party, including reasonable expenses, legal and otherwise, which shall include reasonable attorneys' fees, caused wholly or in part by any negligent, grossly negligent or willful act or omission by the Indemnifying Party, its officers, directors, employees, agents or assigns arising out of this Agreement, except to the extent caused wholly or in part by any negligent, grossly negligent or willful act or omission of the Indemnified Party.

- 7.2 If any claim covered by Section 7.1 is brought against the Indemnified Party, then the Indemnifying Party shall be entitled to participate in, and unless in the opinion of counsel for the Indemnified Party a conflict of interest between the Parties may exist with respect to such claim, assume the defense of such claim, with counsel reasonably acceptable to the Indemnified Party. If the Indemnifying Party does not assume the defense of the Indemnified Party, or if a conflict precludes the Indemnifying Party from assuming the defense, then the Indemnifying Party shall reimburse the Indemnified Party on a monthly basis for the Indemnified Party's defense through separate counsel of the Indemnified Party's choice. Even if the Indemnifying Party assumes the defense of the Indemnified Party with acceptable counsel, the Indemnified Party, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnifying Party of any of its obligations hereunder. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever, whether in contract, tort or strict liability.
- 7.3 The Indemnifying Party's obligation to indemnify under this Section 7 shall survive termination of this Agreement, and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Indemnifying Party under any statutory scheme, including, without limitation, under any Worker's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

Section 8: Assignment and Delegation

- 8.1 Neither Party to this Agreement shall assign any of its rights or obligations under this Agreement, except with the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee and the assignor shall be relieved of its rights and obligations. Any assignment in violation of this Section 8 shall be void.
- 8.2 Notwithstanding the provisions of this Section 8, either Party may subcontract its duties under this Agreement to a subcontractor, provided that the subcontracting Party shall remain fully responsible as a principal and not as a guarantor for performance of any subcontracted duties, shall serve as the point of contact between its subcontractor and the other Party, and shall provide the other Party with thirty (30) calendar days' prior written notice of any such subcontracting, which notice shall include such information about the subcontractor as the other Party shall reasonably require. If either Party subcontracts any of its duties hereunder, it shall cause its subcontractors to perform in a manner which is in conformity with that Party's obligations under this Agreement.

Section 9: Independent Contractors

Each Party shall perform its obligations under this Agreement (including any obligations performed by a Party's designees as permitted under Section 8 of this Agreement) as an independent contractor.

Section 10: Entire Agreement

This Agreement consists of, in its entirety, this Community Choice Aggregator Service Agreement and all attachments hereto, all Community Choice Aggregation Service Requests submitted pursuant to this Agreement and PG&E's community choice aggregation tariffs. This Agreement supersedes all other agreements or understandings, written or oral, between the Parties related to the subject matter hereof, with the express exception of any Nondisclosure Agreement relating to the disclosure of confidential information to the CCA. This Agreement may be modified from time to time only by an instrument in writing, signed by both Parties.

Section 11: Nondisclosure

11.1 Notwithstanding anything provided below, prior to receiving any PG&E confidential customer information, CCA agrees to enter into the CCA Non-Disclosure Agreement and be bound by its terms with respect to Confidential Information as defined therein.

Neither Party may disclose any Confidential Information obtained pursuant to this Agreement to any third party, including affiliates of such Party, without the express prior written consent of the other Party. As used herein, the term "Confidential Information" shall include, but not be limited to, all business, financial, and commercial information pertaining to the Parties, customers of either or both Parties, suppliers for either Party, personnel of either Party, any trade secrets, and other information of a similar nature, whether written or in intangible form that is marked proprietary or confidential with the appropriate owner's name. Confidential Information shall not include information known to either Party prior to obtaining the same from the other Party, information in the public domain, or information obtained by a Party from a third party who did not, directly or indirectly, receive the same from the other Party to this Agreement or from a party who was under an obligation of confidentiality to the other Party to this Agreement or information developed by either Party independent of any Confidential Information. The receiving Party shall use the higher of the standard of care that the receiving Party uses to preserve its own confidential information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Each receiving Party shall, upon termination of this Agreement or at any time upon the request of the disclosing Party, promptly return or destroy all Confidential Information of the disclosing Party then in its possession.

11.2 Notwithstanding the preceding, Confidential Information may be disclosed to any governmental, judicial or regulatory authority requiring such Confidential

Information pursuant to any applicable law, regulation, ruling, or order, provided that: (a) such Confidential Information is submitted under any applicable provision, if any, for confidential treatment by such governmental, judicial or regulatory authority; and (b) prior to such disclosure, the other Party is given prompt notice of the disclosure requirement so that it may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of any injunction to prohibit such disclosure.

Section 12: Enforceability

If any provision of this Agreement or the application thereof, is to any extent held invalid or unenforceable, the remainder of this Agreement and the application thereof, other than those provisions which have been held invalid or unenforceable, shall not be affected and shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law or in equity.

Section 13: Notices

13.1 Except as otherwise provided in this Agreement, any notices under this Agreement shall be in writing and shall be effective upon delivery if delivered by (a) hand; (b) U.S. Mail, first class postage pre-paid, or (c) facsimile, with confirmation of receipt to the Parties as follows:

If the notice is to CCA:

Name of Entity: Silicon Valley Clean Energy Authority

Contact Name: Tom Habashi

Business Address: 333 W. El Camino Real, Suite 290
Sunnyvale, CA 94087

Facsimile: _____

If the notice is to PG&E:

Contact Name: Shafaq Sheik

Business Address: 245 Market St., Mail Code N8C
San Francisco, CA 94105

Facsimile: _____

- 13.2 Each Party shall be entitled to specify as its proper address any other address in the United States upon written notice to the other Party.
- 13.3 Each Party shall designate on Attachment A the person(s) to be contacted with respect to specific operational matters relating to Community Choice Aggregation service. Each Party shall be entitled to specify any change to such person(s) upon written notice to the other Party.

Section 14: Time of Essence

The Parties expressly agree that time is of the essence for all portions of this Agreement.

Section 15: Dispute Resolution

- 15.1 The form of this Agreement has been filed with and approved by the CPUC as part of PG&E's applicable tariffs. Except as provided in Section 15.2 and 15.3, any dispute arising between the Parties relating to interpretation of the provisions of this Agreement or to the performance of PG&E's obligations hereunder shall be reduced to writing and referred to the Parties' representatives identified on Attachment A for resolution, with the responding Party filing its written response within thirty (30) business days after receiving the written position of the complaining party. Thereafter, the Parties shall be required to meet and confer within ten (10) business days in a good faith effort to resolve their dispute. Pending such resolution, the Parties shall continue to proceed diligently with the performance of their respective obligations under this Agreement, unless this Agreement has been terminated under Section 4.2. If the Parties fail to reach an agreement within ten (10) additional business days of the last session to meet and confer, the matter shall, upon demand of either Party, be submitted to resolution before the CPUC in accordance with the CPUC's rules, regulations and procedures applicable to resolution of such disputes.
- 15.2 Except as provided in Section T.3 of PG&E's applicable community choice aggregation tariff (Rule 23), any dispute arising between the Parties relating to interpretation of the provisions of this Agreement or to the performance of the CCA's obligations hereunder shall be reduced to writing and referred to the Parties' representatives identified on Attachment A for resolution, with the responding Party filing its written response within thirty (30) business days after receiving the written position of the complaining party. Thereafter, the Parties shall be required to meet

and confer within ten (10) business days in a good faith effort to resolve their dispute. Pending resolution, the Parties shall continue to proceed diligently with the performance of their respective obligations under this Agreement, unless this Agreement has been terminated under Section 4.2. If the Parties fail to reach an agreement within ten (10) additional business days of the last session to meet and confer, the matter shall, upon demand of either Party, be submitted to resolution before the CPUC in accordance with the CPUC's rules, regulations and procedures applicable to resolution of such disputes, as allowed by law or in equity, or the parties may mutually agree to pursue mediation or binding arbitration to resolve such issues.

15.3 Notwithstanding the provisions of Paragraph 15.1 and 15.2 above: (a) all disputes between the Parties relating to the payment by the CCA of any PG&E fees or charges shall be subject to the provisions of PG&E's applicable tariffs governing disputes over customer bills; (b) all disputes between the Parties regarding non-bypassable charges (including Competition Transition Charges, Cost Responsibility Surcharges, and any other nonbypassable charges adopted by the Commission) payable by community choice aggregation customers or the CCA on behalf of such customers shall be subject to the provisions of PG&E's applicable tariffs; and (c) PG&E may pursue available remedies in law or equity for unauthorized electrical use by the CCA in a court of competent jurisdiction.

15.4 If the dispute involves a request for damages, parties understand that the Commission has no authority to award damages. To resolve such issues, the parties may mutually agree to pursue mediation or binding arbitration to resolve such issues, or if no such agreement is reached, to pursue other legal or equitable remedies that are available to the parties.

Section 16: Applicable Law and Venue

This Agreement shall be interpreted, governed by and construed in accordance with the laws of the State of California, and shall exclude any choice of law rules that direct the application of the laws of another jurisdiction, irrespective of the place of execution or of the order in which the signatures of the parties are affixed or of the place or places of performance. Except for matters and disputes with respect to which the CPUC is the initial proper venue for dispute resolution pursuant to applicable law or this Agreement, the federal and state courts located in San Francisco County, California shall constitute the sole proper venue for resolution of any matter or dispute hereunder, and the Parties submit to the exclusive jurisdiction of such courts with respect to such matters and disputes.

Section 17: Force Majeure

Neither Party shall be liable for any delay or failure in the performance of any part of this Agreement (other than obligations to pay money) due to any event of force majeure or other cause beyond its reasonable control, including but not limited to, unusually severe weather, flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, work stoppage caused by jurisdictional and similar disputes, restraint by court order or public authority, or action or non-action by or inability to obtain authorization or approval from any governmental authority, or any combination of these causes, which by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome. It is agreed that upon the Party so affected giving written notice and reasonably full particulars of such force majeure to the other Party within a reasonable time after the cause relied on, then the obligations of the Party, so far as they are affected by the event of force majeure, shall be suspended during the continuation of such inability and circumstance and shall, so far as possible, be remedied with all reasonable dispatch. In the event of force majeure, as described herein, both Parties shall take all reasonable steps to comply with this Agreement and PG&E's applicable tariffs despite occurrence of a force majeure event.

Section 18: Unauthorized Use of Energy (Energy Theft)

- 18.1 The CCA represents and warrants that for each of its Customers, and at all times during which it provides community choice aggregation services as a Community Choice Aggregator, the CCA shall completely, accurately, and in a timely manner account for each of its Customer's loads. Load data not accounted for in this manner may provide grounds for termination of this Agreement. For verification purposes only, PG&E shall have complete access to the load data provided to the CAISO by the CCA. Such information is to remain confidential, and shall not be disclosed to any unauthorized person other than the CPUC, the California Independent System Operator or other law enforcement or regulatory authority.
- 18.2 PG&E shall notify the CCA immediately and the CCA shall notify PG&E immediately of any suspected unauthorized energy use. The Parties agree to preserve any evidence of unauthorized energy use. Once unauthorized energy use is suspected, PG&E, in its sole discretion, may take any or all of the actions permitted under PG&E's applicable tariffs.

Section 19: Not a Joint Venture

Unless specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be liable individually and severally for its own obligations under this Agreement.

Section 20: Conflicts Between this Agreement and PG&E's Community Choice Aggregation Tariff

Should a conflict exist or develop between the provisions of this Agreement and PG&E's community choice aggregation tariff, as approved by the CPUC, the provisions of PG&E's community choice aggregation tariff shall prevail.

Section 21: Amendments or Modifications

- 21.1 Except as provided in Section 21.2, no amendment or modification shall be made to this Agreement, in whole or in part, except by an instrument in writing executed by authorized representatives of the Parties, and no amendment or modification shall be made by course of performance, course of dealing or usage of trade.
- 21.2 This Agreement may be subject to such changes or modifications as the CPUC may from time to time direct or necessitate in the exercise of its jurisdiction, and the Parties may amend the Agreement to conform to changes directed or necessitated by the CPUC. In the event the Parties are unable to agree on the required changes or modifications to this Agreement, their dispute shall be resolved in accordance with the provisions of Section 15 hereof or, in the alternative, CCA may elect to terminate this Agreement upon written notice to PG&E, which shall be effective upon the receipt thereof. PG&E retains the right to unilaterally file with the CPUC, pursuant to the CPUC's rules and regulations, an application for a change in PG&E's rates, charges, classification, service or rules, or any agreement relating thereto.

Section 22: Audits

- 22.1 PG&E shall retain such specific records as may be required to support the accuracy of meter data provided in PG&E's consolidated billings. When the CCA reasonably believes that errors related to metering or billing activity may have occurred, the CCA may request the production of such documents as may be required to verify the accuracy of such metering and consolidated billing. Such documents shall be provided within ten (10) business days of such request. In

the event the CCA, upon review of such documents, continues to believe that PG&E's duty to accurately meter and provide consolidated billing for usage has been breached, the CCA may direct that an audit be conducted. The CCA shall designate their own employee representative or their contracted representative to audit PG&E's records.

- 22.2 Any such audit shall be undertaken by the CCA, or their contracted representative at reasonable times without interference with PG&E's business operations, and in compliance with the PG&E's security procedures. PG&E and the CCA agree to cooperate fully with any such audit.
- 22.3 Specific records to support the accuracy of meter data provided in the consolidated billings may require examination of billing and metering support documentation maintained by subcontractors. PG&E shall include a similar clause in its agreements with subcontractors reserving the right to designate their own employee representative, or their contracted representative to audit records related to consolidated billing to Community Choice Aggregation Customers.
- 22.4 The CCA will notify PG&E in writing of any exception taken as a result of an audit. PG&E shall refund the amount of any undisputed exception to the CCA within ten (10) days. If PG&E fails to make such payment, PG&E agrees to pay interest, accruing monthly, at a rate equal to the prime rate plus two percent (2%) of Bank of America NT&SA, San Francisco, or any successor institution, in effect from time to time, but not to exceed the maximum contract rate permitted by the applicable usury laws of the State of California. Interest will be computed from the date of written notification of exceptions to the date PG&E reimburses the CCA for any exception. The cost of such audit shall be paid by the auditing Party; provided, however, that in the event an audit verifies overcharges of five percent (5%) or more, then PG&E shall reimburse the CCA for the cost of the audit.

22.5 This right to audit shall extend for a period of three (3) years following the date of final payment under this Agreement. Each party and each subcontractor shall retain all necessary records and documentation for the entire length of this audit period.

Section 23: Miscellaneous

23.1 Unless otherwise stated in this Agreement: (a) any reference in this Agreement to a section, subsection, attachment or similar term refers to the provisions of this Agreement; (b) a reference to a section includes that section and all its subsections; and (c) the words "include," "includes," and "including" when used in this Agreement shall be deemed in each case to be followed by the words "without limitation." The Parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement

23.2 The provisions of this Agreement are for the benefit of the Parties and not for any other person or third party beneficiary. The provisions of this Agreement shall not impart rights enforceable by any person, firm or organization other than a Party or a successor or assignee of a Party to this Agreement.

23.3 The descriptive headings of the various sections of this Agreement have been inserted for convenience of reference only and shall in no way define, modify or restrict any of the terms and provisions thereof.

23.4 Any waiver at any time by either Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any other or subsequent default or matter and no waiver shall be considered effective unless in writing.

23.5 Each Party shall be responsible for paying its own attorneys' fees and other costs associated with this Agreement, except as provided in Sections 6 and 7 hereof. If a dispute exists hereunder, the prevailing Party, as determined by the CPUC, or as may otherwise be determined by the dispute resolution procedure contained in Section 15 hereof, if used, or by a court of law, shall be entitled to reasonable attorneys' fees and costs.

23.6 To the extent that the CPUC has a right under then-current law to audit either Party's compliance with this Agreement or other legal or regulatory requirements pertaining to Community Choice Aggregation transactions, that Party shall cooperate with such audits. Nothing in this Section shall be construed as an admission by either Party with respect to the right of the CPUC to conduct such audits or the scope thereof.

23.7 Except as otherwise provided in this Agreement, all rights of termination, cancellation or other remedies in this Agreement are cumulative. Use of any remedy shall not preclude any other remedy in this Agreement.

The Parties have executed this Agreement on the dates indicated below, to be effective upon the later date.

On Behalf of CCA

By: Silicon Valley Clean Energy Authority

Name: Tom Habashi

Title: CEO

Date: _____

On Behalf of PG&E

By: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT A

A. Definitions:

Billing Services - The consolidated billing services described in PG&E's community choice aggregation tariff which are provided by PG&E.

Community Choice Aggregation Customer - An end-use customer located within PG&E's service territory who purchases Community Choice Aggregation Services through the CCA.

Community Choice Aggregator (CCA) – An entity that provides electric supply services to Community Choice Aggregation customers within PG&E's service territory. A CCA may also provide certain energy efficiency and conservation programs to its Community Choice Aggregation customers as provided for under PG&E's tariffs.

CCA Charges - Charges for Community Choice Aggregation Services provided by the CCA.

PG&E Charges - Charges (a) for services provided by PG&E; or (b) which are energy-related and which are approved by the CPUC or the Federal Energy Regulatory Commission (including any nonbypassable charges (such as Competition Transition Charges, Cost Responsibility Surcharges, and any other nonbypassable charges adopted by a regulatory body) or Fixed Transition Amount Charges owing to PG&E or its affiliates, as those terms are defined under the California Public Utilities Code). Fixed Transition Amount Charges are also referred to as Trust Transfer Amount (TTA) Charges.

B. Contact Persons (Section 13.3):

Billing Services

PG&E Contact: _____

CCA Contact: Tom Habashi

C. Parties' Representatives (Section 15.1):

PG&E Representative:

Contact Name _____

Business Address _____

CCA Representative:

Contact Name: Tom Habashi

Business Address: 333 W. El Camino Real, Suite 290
Sunnyvale, CA 94087



Staff Report – Item 5

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 5: Authorize Executive Committee to Review and Approve Agreement with Noble Americas Energy Solutions

Date: 10/12/2016

RECOMMENDATION

Authorize the SVCEA Executive Committee to review and approve the Agreement with Noble Americas Energy Solutions LLC for Data Management and Customer Call Center Services

BACKGROUND

Two essential services for operating a Community Choice Energy program are the management of customer consumption and billing data and the handling of customer inquiries and selection of program offerings.

Careful management of customer data is essential for ensuring that customers are billed correctly and that revenues are received accordingly by SVCE. Several steps are required to collect data for the services that SVCE will provide to its retail customers. First, the demand in Kw and KWH is individually metered by PG&E; this information is then passed on to SVCE. Retail rates are applied to consumption and the generation charges for each customer are established. This information is transmitted back to PG&E who will in turn add it to their distribution and public goods charges to establish a total electricity charge portion of the customer's bill. Once the monies are collected from the customers, PG&E will deposit the generation portion of the charges, which is also validated by the data manager, into SVCE's account at River City Bank.

Customer service is a close companion to the data management function. Implementing customer requests for opting for different program services is closely coordinated so that their billing accurately reflects such requests. Managing customer inquiries and requests for program services is particularly high during the notification and enrollment periods for each rollout phase.

To fulfill these service needs, staff released a request for proposals for data management and customer call center services on August 17, 2016. The invitation to submit proposals was distributed to the SVCE email list and to known interested parties as well as posted on the SVCE website. Proposals were due on September 9, 2016.

ANALYSIS & DISCUSSION

SVCE received two proposals in response to the RFP solicitation. After review of the proposals and the firms' qualifications, staff selected Noble Americas Energy Solutions LLC (Noble Solutions) to proceed with negotiation of a service agreement. The second proposing firm was Executive Energy Management in partnership with Gas and Power Technologies, Inc. Noble Solutions is the current provider of data management and call center services with the five CCAs currently operating in California and demonstrated

Agenda Item: 5**Agenda Date: 10/12/2016**

during the selection process an exceptional understanding of the needs of a CCE program and readiness to provide the required services.

In addition to managing the data post-launch, Noble Solutions will provide the call center to handle customer inquiries and will also manage the program opt-outs and opt-ups along with the associated data collection. This will require several months of preparation prior to service launch. Staff was informed that Noble requires a minimum of five months to facilitate the preparation of their systems to manage SVCE's service needs.

Staff has begun contract discussions with Noble Solutions and anticipates the agreement will be ready for execution later in the month. While the RFP originally contemplated contract execution by November 9, in order to provide Noble Solutions the five months they need to effectively work with SVCE on system setup, staff proposes that the agreement be approved by November 1, 2016. Therefore, staff requests that the Executive Committee be authorized to review and approve the agreement at their regular meeting on October 26.



Staff Report – Item 6

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 6: Authorize CEO to Approve Membership of CalCCA

Date: 10/12/2016

RECOMMENDATION

Authorize the Chief Executive Officer to approve SVCEA’s membership of the California Community Choice Association (CalCCA).

BACKGROUND

Earlier in 2016, the operating Community Choice Aggregation agencies, namely Marine Clean Energy, Sonoma Clean Power, San Francisco Clean Energy and Lancaster Clean Energy, began contemplating the formation of an association to advocate on their behalf. CEOs from the Peninsula Clean Energy and Silicon Valley Clean Energy joined the discussion with the operating agencies CEOs, eventually culminating in the formation of California Community Choice Association.

ANALYSIS & DISCUSSION

The membership dues are dependent on the expected annual revenue for the participating member. SVCE’s cost for joining is \$0.0 for 2016. In 2017, our dues are likely to be at the \$30,000 level, growing to \$50,000 for 2018 and beyond.

We believe that the value that we obtain from being a member of CalCCA far exceeds the cost and that acting in concert with other CCAs strengthen our ability to influence the legislative and regulatory process.

ATTACHMENTS

1. CalCCA Press Release
2. CalCCA Bylaws
3. CalCCA Benefits of Membership
4. SJ Mercury News Article, 10/2/16



FOR IMMEDIATE RELEASE

September 21, 2016

Contact:

Charles Sheehan: csheehan@swater.org | 415.554.1548

**California Community Choice Association
Launches to Advance Local Energy Control and
Green Electricity Options**

Barbara Hale
President
CleanPowerSF

Geof Syphers
Vice President
Sonoma Clean Power

Dawn Weisz
Secretary
MCE

Barbara Boswell
Treasurer
Lancaster Choice Energy

Jan Pepper
Peninsula Clean Energy

Tom Habashi
Silicon Valley Clean Energy

California – Today, California's six Community Choice Aggregators (CCAs), CleanPowerSF, Lancaster Choice Energy, MCE, Peninsula Clean Energy, Silicon Valley Clean Energy Authority, and Sonoma Clean Power announce the launch of the California Community Choice Association, or CalCCA. With CalCCA as the preeminent statewide voice for these organizations, the Association will advocate for legislative and regulatory policies that support local control over electricity supply and promote cleaner energy choices.

Established by law in seven states, CCA is an energy supply model that allows local government entities to aggregate the electricity load of their residents, businesses, and municipal accounts to source electricity supplies that meet local objectives. California has the strongest collection of climate-friendly CCAs in the nation, providing pollution-reducing renewable energy options. All CCAs partner with their region's existing utility, which continues to deliver the power, maintain the grid, and bill customers. Today, California's CCAs are proliferating because they have a proven track record of success and are providing local communities with:

- consumer choice;
- community control through local governance;
- competitive and often lower electricity rates; and,
- an aggressive transition to clean energy sources.

Cumulatively, California's CCAs are already creating demand for more than 340 megawatts of new California renewables, investing in more than \$1.6 billion of renewables, reducing greenhouse gas emissions by nearly 308,000 metric tons, and supporting over 2,500 California jobs.

Since the launch of California's first CCA in 2010, community choice has become a key tool for local governments striving to reduce community greenhouse gas emissions and contribute to California's climate action goals. Over 500,000 customers buy CCA energy supply which guarantees more renewables. The number of customers served is expected to more than double in the next year as new CCAs start service throughout the state.

A Board of Directors, consisting of Chief Executive Officers or General Managers of California's operational CCAs, manages CalCCA.

For information about CalCCA, please visit www.cal-cca.org.

###

**California Community
Choice Association**

1125 Tamalpais Ave
San Rafael, CA 94901

(415) 464-6689

info@cal-cca.org
www.cal-cca.org

California Community Choice Association

BYLAWS

Adopted August 17, 2016

Article I.

Name and Objects

This organization shall be known as the CALIFORNIA COMMUNITY CHOICE ASSOCIATION and also referred to as “CalCCA”. The objectives of the organization are: *First:* To represent the interests of California Community Choice Aggregators (“CCAs”) by advocating for legislative and regulatory policies that support and promote the core values and interests of CCAs. *Second:* To collect, promote, and disseminate information regarding California CCAs and issues that affect them. *Third:* To render such other and further services for the common benefit of its members, as deemed appropriate by the Board of Directors, in an expedient and efficient manner.

Article II.

Membership

a. *Operational Members.* Any CCA that has submitted all of the following to the Secretary is eligible to be an Operational Member: 1) copy of an Implementation Plan filed with the California Public Utilities Commission, 2) designation of a chief executive officer or general manager, and 3) payment of the applicable membership dues. Membership as an Operational Member shall authorize participation in all Association activities, and a voting seat on the Board of Directors.

b. *Affiliate Members.* Any California local government agency that has completed all of the following is eligible to be an Affiliate Member: 1) submittal of written request for membership, 2) payment of the applicable dues, and 3) approval by the Board of Directors. Acceptance to membership as an Affiliate Member shall authorize participation in most Association activities, but Affiliate Members will not be entitled to a vote on CalCCA matters. Affiliate Members shall designate and maintain a primary point of contact for their local government agency.

Article III.

Board of Directors

Each Operational Member shall appoint a representative to the CalCCA Board of Directors. The Board of Directors shall elect Officers consisting of a President, Vice President, Secretary and Treasurer.

The Officers will be elected by a vote of the Board of Directors at an annual meeting and shall

hold office until their successors are elected at the next annual meeting.

A quorum shall consist of 50% plus one Board of Directors. Members of the Board of Directors may vote either in person, by phone or by written proxy at any meeting of the Board. The Board may also act upon the written signed consent of a majority of the members thereof.

No person shall be eligible to serve as a member of the Board of Directors unless said person is, at the time of election, employed as the chief executive officer or general manager of an Operational Member, or their staff designee. In the event said person ceases to be such employee of the member agency, the office shall become vacant.

Article IV.

Officers

The President shall preside at all meetings and perform those other customary duties required of that officer under parliamentary law. In the case of the President's absence or disability, the duties of the office shall be performed by the Vice President.

The Vice President shall preside in the absence of the President. In the absence of both President and Vice President, a member of the Board of Directors shall be elected as temporary presiding officer.

The Secretary shall keep a record of all meetings, attend to all correspondence, send out all notices, safely keep all the records of the Association and perform such other duties as the Board of Directors may require.

The Treasurer shall pay claims against the Association when requested payments align with Board-approved expenditures, and when requested payments are supported by proper vouchers.

The Secretary and Treasurer shall submit annual reports and such other reports as may be required by the Board of Directors.

The books and accounts of the Secretary and of the Treasurer shall be audited annually by a committee or by a certified public accountant as the Board of Directors may determine.

The term of office for each Officer of the Association shall be one year. There is no limit on the number of terms any Officer of the Association may serve.

An Officer of the Association shall be subject to removal from their office with or without cause at any time by a majority vote of the full membership of the Board.

Article V.

Meetings

a. *Board of Directors.* The Board of Directors shall generally hold one (1) monthly meeting at a time and place to be determined by the Board of Directors. Meetings by phone are permitted. A quorum of the Board of Directors must participate to constitute a meeting. 50% plus one of the Board of Directors constitutes a quorum. Members of the Board of Directors may vote either in person, by phone or by written proxy at any meeting of the Board. The Board may also act upon the written signed consent of a majority of the members thereof. Special meetings of the Board

may be held at the call of the President or a majority of the Board of Directors. A minimum of twenty-four (24) hours' notice in writing (including electronic correspondence) shall be given by the Secretary prior to all meetings of the Board.

b. *Annual Meeting.* The Association's members shall meet at least one time per year at a place to be determined by the Board of Directors. A minimum of ten (10) days' notice in writing (including electronic correspondence) shall be given to Operational and Affiliate Members by the Secretary prior to all Annual Meetings of the Association.

Article VI.

Membership Dues

Prior to the start of each fiscal year (July – June) at a meeting of the Board of Directors, the Treasurer shall submit a budget which shall be subject to revision and approval by the Board of Directors. Dues in an amount sufficient to meet the requirements of the budget shall be established by the Board of Directors. Members who fail to pay member dues for more than one year shall lose membership status except for Operational Members that have payment arrangements approved by the Board of Directors. To restore membership all delinquent dues must be paid in full.

Article VII.

Voting

Each Board Director, appointed by the Operational Member of the Association shall be entitled to one (1) vote in annual, monthly or special meetings.

Article VIII.

Removal from Office

Any Officer or Member of the Board of Directors may be removed for good cause from office as follows: Written charges shall be filed with the President; after due notice to all concerned, the Board of Directors shall hear the matter, and if a majority of the Board find that the charges are sustained and the officer or member should be removed, the Board may forthwith remove him/her from office. Charges against the President shall be filed with the Vice President. The services of any Officer or Employee other than a member of the Board of Directors may be terminated at the pleasure of the Board of Directors. For purposes of this paragraph, "good cause" means that the decision to remove the Officer or Director is made in good faith and based on a fair and honest reason related to the operation of the Association. Good cause does not exist if the reasons for the removal are trivial, arbitrary, inconsistent with usual practices, or unrelated to the needs or goals of the Association.

Article IX.

Amendments

Amendments to the Bylaws may be made by a two-thirds vote of the Board of Directors of the Association present at any monthly meeting.

Article X.

Contact Information

California Community Choice Association
1125 Tamalpais Ave.
San Rafael, CA 94901
<http://www.cal-cca.org>

CALIFORNIA COMMUNITY CHOICE ASSOCIATION

Benefits of Membership

Operational and Affiliate Members will be provided with access to a wide range of information and material including:

- Access to outreach and marketing material used by other CCAs
- Templates for marketing material
- Access to compliance information and tools used by other CCAs
- Templates for advanced metering infrastructure (AMI) audit, green-e compliance audits, and other compliance and reporting audits
- Internal operating procedures and policies
- Human resources information, manuals and sample job descriptions
- Participation in informational seminars with reduced or waived fees
- Printed information about key CCA topics including: PCIA, CAM, Cost-Shifting, Bill explanations and more
- Sample tariff language for NEM Tariff, Battery Storage Tariff, Feed-in Tariff
- Frequently asked questions and answers

In addition, Operational and Affiliate Members may participate in regular meetings of cross-CCA teams regarding:

- Regulatory
- Legislative
- Billing and Customer issues
- Marketing and Outreach
- Energy Efficiency
- Credit and Finance

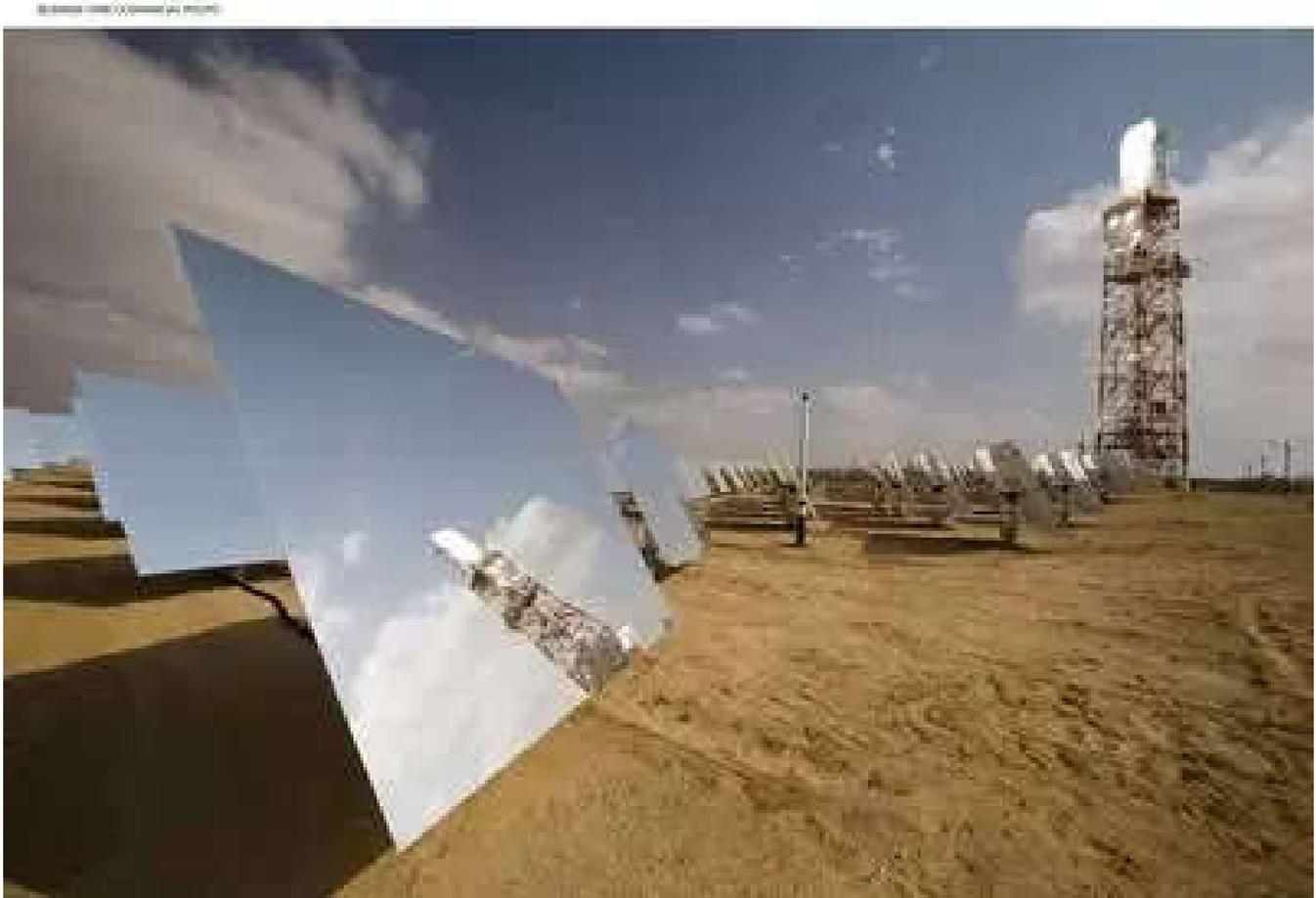
In the future, it is expected that Operational and Affiliate Members will have access to legislative analysis and recommendations as well as alerts regarding regulatory filings at the CPUC. This would include:

- Ability to sign onto letters of support for favorable legislation
- Ability to sign on to some regulatory filings favorable to CCAs

Operational Members have a voting seat on the CalCCA Board of Directors.

News

San Mateo County ditches PG&E, starts buying cheaper, greener energy



Peninsula Clean Energy began service Saturday to 70,000 customers, becoming the fifth program in California to take advantage of a 2002 state law that allows local governments to take over the process of buying power, with the goal of boosting green energy consumption and lowering rates for consumers. Many others are following suit, including San Jose and Santa Clara County.

By **AARON KINNEY** | akinney@bayareanewsgroup.com

PUBLISHED: October 2, 2016 at 4:44 pm | UPDATED: October 3, 2016 at 4:14 am

REDWOOD CITY — San Mateo County this month launched an initiative to provide electricity to consumers, in lieu of PG&E, joining a statewide movement toward community-choice energy programs that supporters tout as the most effective way for Californians to lower their greenhouse gas emissions.

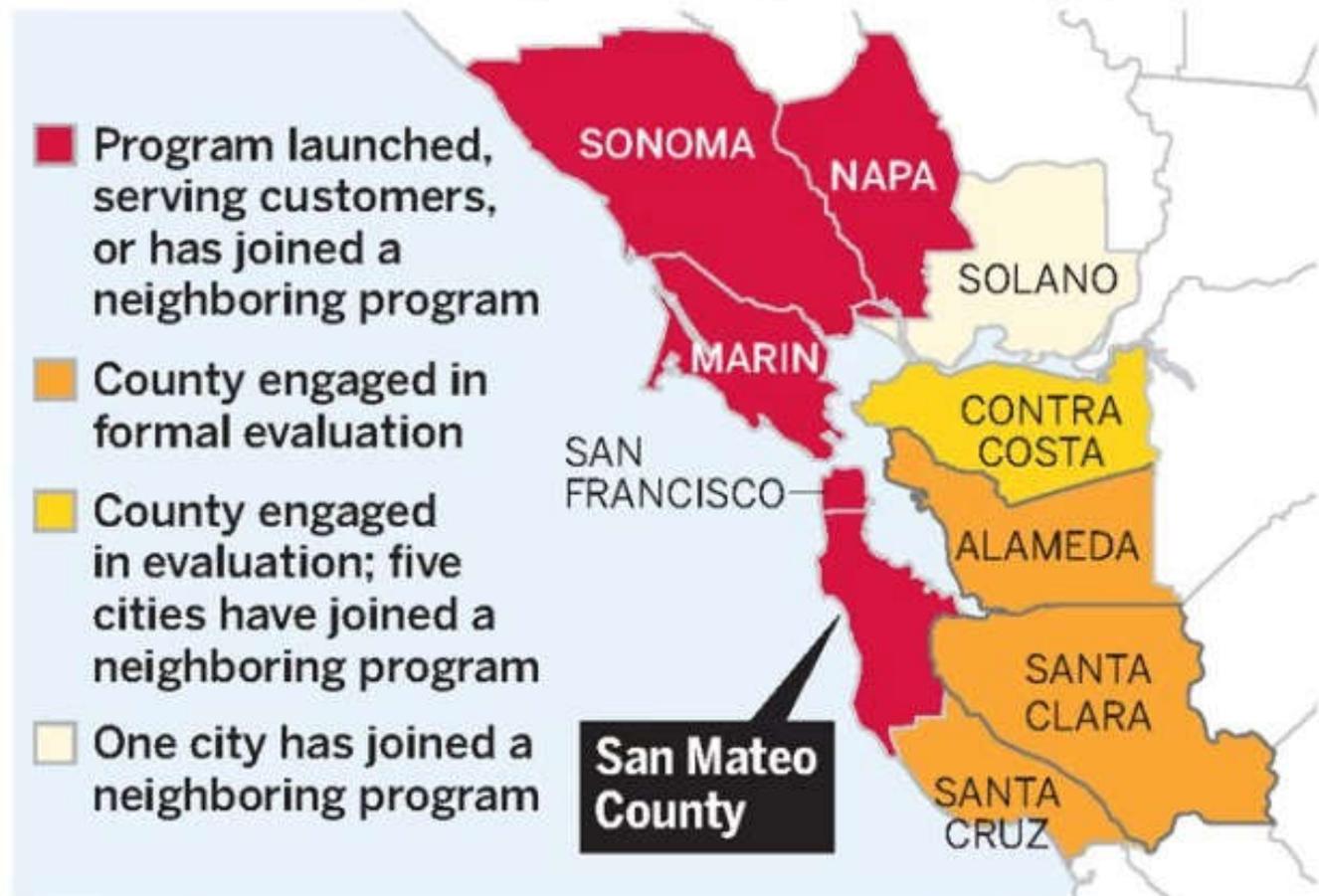
Peninsula Clean Energy began service Saturday to 70,000 customers, becoming the fifth program in California to take advantage of a 2002 state law that allows local governments to take over the process of buying power, with the goal of boosting green energy consumption and lowering rates for consumers. Many others are following suit, including San Jose and Santa Clara County.

Supervisor Dave Pine, one of the leaders of the effort to create Peninsula Clean Energy, a nonprofit governed by a board of directors that includes representatives from 20 cities, hailed the launch as a major stride toward lowering the county's carbon emissions.

“When you look at climate action plans for our cities and counties,” he said, “there aren't other tools that have such substantial and immediate impact.”

COMMUNITY CHOICE ENERGY PROGRAMS

San Mateo County is the latest Bay Area jurisdiction to contract with green-energy producers and provide power to residents, sometimes at lower prices than PG&E. Here is where Bay Area counties stand in planning community-choice energy programs:



Sources: Clean Power Exchange

BAY AREA NEWS GROUP

As of Saturday, Peninsula Clean Energy provides the power to 20 percent of residential customers in San Mateo County, all municipalities, and all small and medium-size businesses. The remaining 200,000 residential and commercial accounts will come online in April.

Customers in San Mateo County will be automatically enrolled in the program but may opt out at any time.

The switch should be seamless for consumers. Pacific Gas and Electric Co. will still deliver the power and process customers' bills.

What's changing is where the power comes from. The default package, known as ECOplus, consists of energy that includes at least 50 percent renewable sources, such as solar and wind. For a bit more money, customers can choose a 100 percent renewable option, dubbed ECO100. PG&E's mix is about 30 percent renewable.

The rates compare favorably with PG&E's. For the typical residential consumer, ECOplus would cost \$85.88 a month, compared with \$88.03 for PG&E, according to Peninsula Clean Energy. ECO100 would be \$90.33 per month.

"It's cleaner, greener and less expensive," said Peninsula Clean Energy CEO Jan Pepper, noting that the outfit's low overhead and nonprofit model, along with increasingly favorable prices for clean energy, will allow Peninsula Clean Energy to deliver competitive rates.

If the program works as planned, San Mateo County by next year will already exceed a statewide mandate for 50 percent renewable energy sources by 2030.

Critics argue there are various risks associated with community-choice programs. They claim future regulatory changes or disruptions to energy markets could make it difficult for the initiatives to live up to their promises of lower prices.

PG&E is prohibited by law from marketing against community-choice energy plans. In a statement, spokeswoman Brandi Merlo touted the utility's green credentials, saying its electricity creates just one-third the greenhouse gas emissions per kilowatt-hour as the industry average.

"For more than 100 years, it has been PG&E's privilege to provide our customers clean, safe, reliable and affordable energy, and we look forward to the opportunity to do so for many years to come," she said. "At the same time, we respect the energy choices that are available to our customers and are cooperating with (community-choice energy) programs."

More customers will have those choices in years to come. City or county governments in nearly half of California's 58 counties have launched or are considering a community-choice energy program, said Woody Hastings, renewable energy manager for the Center for Climate Protection, a Santa Rosa-based nonprofit that advocates for and tracks the programs.

"There are compelling reasons to pursue community choice," he said, "and a lot of cities and counties in the state are waking up to that."

The Bay Area is leading the charge, with Marin, Napa and San Francisco counties and a handful of cities having already set up community-choice energy programs.

Silicon Valley Clean Energy, serving most of Santa Clara County, is scheduled to launch the first phase of its program in April. San Jose is considering its own community-choice energy initiative, which the City Council is slated to consider in December.

As an early adopter of Peninsula Clean Energy, Menlo Park resident Nicole Kemeny said she has already chosen to upgrade to the 100 percent renewable package. The extra cost, she said, was well worth it.

"I'm extremely concerned about climate change, so if there's any opportunity to do something about it, I'm going to take it," said Kemeny, who volunteers for 350 Silicon Valley, a local chapter of a national grass-roots campaign to combat global warming. "I wanted to send the message that there's a market demand for clean energy."

When do I enroll?

To find out when your Peninsula Clean Energy service begins, go to www.peninsulacleanenergy.com/account-lookup.

Tags: [clean energy](#), [Environment](#)



Aaron Kinney

Aaron Kinney covers San Mateo County and the Peninsula for the Bay Area News Group.

 Follow Aaron Kinney [@kinneytimes](#)

SUBSCRIBE TODAY!
ALL ACCESS DIGITAL OFFER FOR JUST 99 CENTS!



Staff Report – Item 7

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 7: Approve Resolution to Adopt Personnel Policies/Handbook

Date: 10/12/2016

RECOMMENDATION

Approve resolution adopting personnel policies for SVCE as described in the Employee Handbook and designating the CEO as the personnel officer and appointing authority.

BACKGROUND

Section 2.5.2 of the SVCEA Joint Powers Agreement authorizes SVCE to employ agents and employees. In May 2016, the Board of Directors hired the first and single employee of SVCE – the Chief Executive Officer. In August 2016, the Board approved SVCE’s organizational structure, job classifications and salary schedule. The organization is now preparing to hire additional personnel and has begun recruitment for several job classifications.

ANALYSIS & DISCUSSION

In order to ensure that SVCE’s employment practices are equitable, uniform, and in compliance with applicable laws, staff worked with a consulting firm, HR2Go, with experience in the creation and implementation of personnel systems for public agencies, to develop an employee handbook that documents policies and procedures that guide personnel matters. The Executive Committee has reviewed two iterations of the handbook and has provided substantive feedback, which has been incorporated into the final product. The handbook would be provided to each employee upon hire and employees are required to formally acknowledge receipt of the handbook.

The attached resolution approves the handbook, and designates the CEO as the personnel officer and appointing authority, which he can also delegate to other personnel. The resolution also authorizes the CEO to make changes to the handbook as needed to meet applicable laws and operational needs. Description of the benefits package will be revised as needed to reflect Board direction.

ATTACHMENTS

1. Resolution Adopting Personnel Policies and Designating the CEO as the Personnel Officer and Appointing Authority
2. SVCE Employee Handbook

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY ADOPTING PERSONNEL POLICIES AND DESIGNATING THE CEO AS THE PERSONNEL OFFICER AND APPOINTING AUTHORITY

WHEREAS, the Silicon Valley Clean Energy Authority (“Authority”) was formed on March 31, 2016 pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Santa Clara County; and

WHEREAS, under Section 2.5.2 of the Joint Powers Agreement creating the Authority, the Authority has the power to employ agents and employees; and

WHEREAS, in exercising its powers, the Authority desires to establish a uniform and equitable system of personnel administration to insure effective service to and on behalf of the Authority and to establish procedures for administering personnel matters in compliance with applicable laws; and

WHEREAS, in adopting personnel policies, the Authority desires to promote fairness and equity to employees; to attract and retain the best and most competent persons available; to ensure the appointment and promotions of employees will be based on merit; and to implement best practices in the administration of the system; and

WHEREAS, the personnel policies as set forth below meet all of the requirements of applicable Government Code provisions and the JPA;

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. The policies and procedures in the attached SVCE Employee Handbook are hereby approved.

Section 2. The Chief Executive Officer shall be designated as the Personnel Officer and is authorized and directed to administer the personnel policies. The Chief Executive Officer is authorized to amend or modify personnel policies and procedures to meet applicable laws and/or to address operational needs or Board direction. The Chief Executive Officer may delegate powers conferred upon him or her by this Resolution as appropriate.

Section 3. The Personnel Officer shall:

(a) Act as the appointing authority for all employees of the Authority with the exception of the Authority’s General Counsel;

(b) Provide the publishing or posting of notices of recruitments for positions and develop and administer procedures of the selection process; and

(c) Perform such other functions as necessary to administer personnel policies as directed from time to time by the Authority Board.

Section 4. The Personnel Officer may contract for the performance of technical or administrative services necessary to establish, maintain, or implement personnel policies and procedures, including without limitation, services for the development of policies, rules, and regulations; preparation of classification and compensation plans; the conduct of employee training programs; the conduct of recruitment and hiring processes; and other special and technical services of an advisory or informational character on matters related to the administration of personnel policies and procedures.

ADOPTED AND APPROVED this 12th day of October, 2016.

Chair

ATTEST:

Clerk

Attachment 1: SVCE Employee Handbook



Issue Date: November 1, 2016

This Handbook issued to

In the future, please insert revision pages and discard the old pages.

505 W. Olive Avenue, Suite 130
Sunnyvale, CA 94086

Table of Contents

WELCOME TO SILICON VALLEY CLEAN ENERGY	5
CHAPTER 1-INTRODUCTORY POLICIES	6
INTRODUCTION & FUTURE REVISIONS	6
OUR WORKING RELATIONSHIP	6
WHAT SILICON VALLEY CLEAN ENERGY EXPECTS FROM YOU	6
EMPLOYEE RELATIONS POLICY	7
OPEN COMMUNICATION POLICY	7
EQUAL EMPLOYMENT OPPORTUNITY	7
UNLAWFUL HARASSMENT.....	9
CHAPTER 2-EMPLOYMENT POLICIES AND PRACTICES.....	12
CLASSIFICATION OF EMPLOYEES	12
JOB POSTING	13
REHIRED/CONVERTED EMPLOYEES.....	13
JOB DUTIES.....	13
WORK SCHEDULES.....	13
PERSONNEL RECORDS	14
INSPECTION OF PAYROLL RECORDS.....	14
LAYOFFS AND WORK REDUCTIONS	15
EMPLOYMENT TERMINATION	15
EXIT INTERVIEWS	16
EMPLOYMENT VERIFICATION AND REFERENCES.....	16
CHAPTER 3-TIMEKEEPING AND ATTENDANCE.....	17
PUNCTUALITY AND ATTENDANCE	17
TIMEKEEPING REQUIREMENTS FOR NON-EXEMPT STAFF.....	17
MEAL AND REST PERIODS FOR NON-EXEMPT STAFF	18
OVERTIME TIME PROVISIONS FOR NON-EXEMPT STAFF	18
EXEMPT EMPLOYEE TIME OFF	19
LACTATION ACCOMMODATION.....	19
PAYMENT OF WAGES	19
ADVANCES.....	19
PAYROLL DEDUCTIONS, WAGE ATTACHMENTS AND GARNISHMENTS.....	19
REPORTING TIME PAY	20
PAYMENT FOR HOURS WORKED DURING BUSINESS TRAVEL FOR NON-EXEMPT STAFF	20
PAY FOR MANDATORY MEETINGS FOR NON-EXEMPT STAFF	20
CHAPTER 4-STANDARDS OF CONDUCT.....	21
PROFESSIONAL BUSINESS CONDUCT AND ETHICS.....	21
PERFORMANCE EVALUATIONS.....	22
PROBLEM RESOLUTION	23
ALCOHOLIC BEVERAGE CONSUMPTION	23
DRUG AND ALCOHOL ABUSE.....	23

CUSTOMER AND PUBLIC RELATIONS.....	25
CONFIDENTIALITY	25
CONFLICT OF INTEREST	26
SOLICITATION	27
MEDIA CONTACT	27
EMPLOYMENT OF FRIENDS AND RELATIVES	27
PERSONAL RELATIONSHIPS IN THE WORKPLACE.....	28
DRESS POLICY.....	28
EMPLOYER AND EMPLOYEE PROPERTY.....	30
ELECTRONIC SYSTEMS AND PRIVACY	30
SOCIAL MEDIA GUIDELINES	31
TELEPHONE USAGE	33
CELL PHONE USAGE	33
WORKPLACE MONITORING	33
TRAVEL EXPENSE POLICY	34
AGENCY PROPERTY AND EQUIPMENT	34
PERSONAL USE OF AGENCY PROPERTY.....	35
DRIVING RECORD AND INSURANCE	36
HEALTH AND SAFETY	36
SMOKING POLICIES.....	36
SECURITY	36
WORKPLACE VIOLENCE	37
OFF-DUTY USE OF FACILITIES	37
PARKING.....	37
EMPLOYEE SUGGESTION PROGRAM.....	38
CHAPTER 6-EMPLOYEE BENEFITS.....	39
BENEFITS.....	39
OFFICIAL HEALTH PLAN DOCUMENTS	39
PAID TIME OFF (PTO).....	39
SICK LEAVE.....	40
HOLIDAYS	41
INSURANCE BENEFITS	42
DOMESTIC PARTNERS	43
CAL-COBRA	44
RECREATIONAL ACTIVITIES AND PROGRAMS	44
LEAVES OF ABSENCE	44
MEDICAL LEAVES OF ABSENCE	45
BEREAVEMENT LEAVE	45
BONE MARROW AND ORGAN DONATION LEAVE	45
CIVIL AIR PATROL LEAVE	46
DOMESTIC VIOLENCE AND SEXUAL ASSAULT VICTIM LEAVE	46
JURY DUTY OR WITNESS LEAVE	46
MILITARY LEAVE.....	47
PREGNANCY DISABILITY LEAVE	47
SCHOOL APPEARANCE LEAVE.....	48

TIME OFF FOR VICTIMS OF A VIOLENT OR SERIOUS CRIME.....	48
TIME OFF TO VOTE	49
VOLUNTEER EMERGENCY DUTY LEAVE.....	49
WORKERS' COMPENSATION.....	49
RECEIPT AND ACKNOWLEDGMENT OF SVCE EMPLOYEE HANDBOOK	51
RECEIPT AND ACKNOWLEDGMENT OF SVCE HANDOUTS.....	52

DRAFT

WELCOME TO SILICON VALLEY CLEAN ENERGY

November 1, 2016

Dear Employee:

We are confident that you will find our agency a dynamic and rewarding place to work and we look forward to having you on our team. We consider the employees of SVCE to be our most valuable resource.

The following pages contain information regarding many of the policies and procedures of SVCE. As a public agency, SVCE has policies and procedures in place in accordance with state and federal laws that may differ from non-profit agencies and private companies.

The procedures, practices, policies and benefits described here may be modified or discontinued from time to time. You will be informed of any changes as they occur.

SVCE values the many talents and abilities of its employees and seeks to foster an open, cooperative and dynamic environment where employees and the agency alike can thrive. If you would like further information or have questions about any of the policies and procedures outlined in this handbook, please feel free to bring them to my attention.

Regards,

Tom Habashi
Chief Executive Officer

Chapter 1-INTRODUCTORY POLICIES

Introduction & Future Revisions

As an employee of SVCE, we hope you will find your employment to be both rewarding and challenging. Because the quality of our employees is the key to our success, we carefully select our new employees. In turn, we expect employees to contribute measurably to the success of the agency.

This Handbook is designed to acquaint you with our policies and benefits. *It is NOT a contract and must not be read to create contractual obligations.* Additionally, nothing in this employee handbook, or in any other personnel document, including benefit plan descriptions, creates or is intended to create a promise or representation of continued employment for any employee.

In the future we may, modify, delete or add to any and all policies, procedures, work rules or benefits stated in this employee handbook or in any other document, except for the policy of at-will employment. Any written changes to this employee handbook will be distributed to all employees so that you will be aware of the new policies or procedures. No oral statements or representations can in any way change or alter the provisions of this employee handbook.

Our Working Relationship

Employment with SVCE is employment at-will. This means that employment may be terminated with or without cause and with or without advance notice at any time by you or us. Nothing in this employee handbook or in any document or statement shall limit the right to terminate employment. No supervisor or employee of the agency has any authority to enter into an agreement for employment for any specified period of time or to make an agreement for employment other than at-will. Only the CEO of the agency has the authority to make any such agreement, with approval by the board at a duly noticed public meeting, and only as a written agreement.

What Silicon Valley Clean Energy Expects From You

SVCE needs your help in making each working day enjoyable and rewarding. Your first responsibility is to know your own duties and how to do them *promptly, safely, correctly and pleasantly.* Secondly, you are expected to cooperate with management and your fellow employees and to maintain a good team attitude. How you interact with fellow employees and our customers, and how you accept direction can affect the success of your department. In turn, the performance of one department can impact the entire service offered by SVCE. Consequently, whatever your position, you have an important assignment: perform every task to the very best of your ability.

We are dedicated to making SVCE an agency where you can approach your supervisor, or any member of management, to discuss any problem or question. We expect you to voice your opinions and contribute your suggestions to improve the quality of SVCE.

Remember, you help create the pleasant and safe working conditions that SVCE intends for you.

Employee Relations Policy

SVCE's established employee relations policy is to:

1. Provide an exciting, challenging, and rewarding workplace and experience.
2. Select people on the basis of skill, training, ability, attitude, and character without discrimination with regard to the following: age (40 and over), ancestry, color, religious creed (including religious dress and grooming practices), denial of family and medical care leave, disability (mental and physical) including HIV and AIDS, marital status, medical condition (cancer and genetic characteristics), genetic information, military and veteran status, national origin (including language use restrictions), race, sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity, and gender expression, sexual orientation, or any other protected status defined by law.
3. Develop competent people who understand and meet our objectives, and who accept the ideas, suggestions and constructive feedback from fellow employees.
4. Assure employees an opportunity to discuss any problems with their supervisor or the Director of Administrative Services and Finance of SVCE.
5. Make prompt and fair adjustment of any complaints, which may arise in the everyday conduct of our business, to the extent that it is practical.
6. Respect individual rights, and treat all employees with courtesy and consideration.
7. Promote employees on the basis of their ability and merit.
8. Keep all employees informed of the progress of SVCE as well as the agency's overall aims and objectives.
9. Do all these things in a spirit of friendliness and cooperation so that SVCE will continue to be known as "a great place to work."

Open Communication Policy

SVCE encourages you to discuss any issue you may have with a co-worker directly with that person. If a resolution is not reached, please arrange a meeting with your supervisor to discuss any concern, problem, or issue that arises during the course of your employment. Any information discussed in an open communication meeting is considered confidential. We will not retaliate against you for appropriate usage of open communication channels. It is counterproductive to a harmonious workplace for you to create or repeat office rumors or gossip. It is more constructive to consult your supervisor immediately with any questions.

Equal Employment Opportunity

SVCE strives to comply with all applicable laws prohibiting discrimination, and we consider ourselves to be an equal opportunity employer. We make employment decisions on the basis of merit and business need. We want to have the best available person in every job. Agency policy prohibits unlawful discrimination based on

the following protected characteristics: age (40 and over), ancestry, color, religious creed (including religious dress and grooming practices), denial of family and medical care leave, disability (mental and physical) including HIV and AIDS, marital status, medical condition (cancer and genetic characteristics), genetic information, military and veteran status, national origin (including language use restrictions), race, sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity, and gender expression, sexual orientation, or any other protected status defined by law. All such discrimination is unlawful.

In recruiting and selecting employees, the agency furthers the principles of equal employment by seeking talented and competent persons who are suited for a specific position by reason of training, experience, character, personality, intelligence and general ability. The agency does not consider an individual's age (40 and over), ancestry, color, religious creed (including religious dress and grooming practices), denial of family and medical care leave, disability (mental and physical) including HIV and AIDS, marital status, medical condition (cancer and genetic characteristics), genetic information, military and veteran status, national origin (including language use restrictions), race, sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity, and gender expression, sexual orientation, or any other protected status defined by law in recruiting and selecting employees.

Promotions are based on an employee's past performance and qualifications to assume additional responsibilities determined without regard to, or consideration of, the individual's status. The agency takes all personnel actions without regard to an individual's protected status. When necessary under the California Fair Employment and Housing Act and the Americans with Disabilities Act, the agency will reasonably accommodate an employee or applicant with a disability if the employee or applicant is otherwise qualified to safely perform all of the essential functions of the position.

We are committed to complying with all applicable laws providing equal employment opportunities. This commitment applies to all persons involved in the operations of the agency, and prohibits unlawful discrimination by any employee of the agency.

We will make reasonable accommodations when requested to comply with applicable laws ensuring equal employment opportunities to qualified individuals with a disability. These accommodations will be made for the known physical or mental disability of an applicant or an employee unless undue hardship would result in a direct threat to the health and safety or other job related considerations exist.

SVCE will engage in a timely, good-faith, interactive process to determine a reasonable accommodation, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

Unlawful Harassment

We intend to provide a work environment that is pleasant, professional, and free from intimidation, hostility or other offenses which might interfere with work performance. Harassment of any sort - verbal, physical, or visual - will not be tolerated. This includes both sexual harassment as well as harassment based on an employee's status in a protected class. These classes include, but are not necessarily limited to age (40 and over), ancestry, color, religious creed (including religious dress and grooming practices), denial of family and medical care leave, disability (mental and physical) including HIV and AIDS, marital status, medical condition (cancer and genetic characteristics), genetic information, military and veteran status, national origin (including language use restrictions), race, sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity, and gender expression, sexual orientation, or any other protected status defined by law. This policy also prohibits unlawful harassment based on the perception that anyone has any of those characteristics, or is associated with a person who has or is perceived as having any of those characteristics. This policy extends to unlawful harassment of, or by vendors, independent contractors, customers, or others with whom employees may come into contact with during their work for SVCE.

Our workplace is not limited to our agency facilities, but may also include customer and vendor facilities, as well as anywhere a business-related function, or social function sponsored by the agency, is taking place.

What Is Workplace Harassment?

Workplace harassment can take many forms. It may be, but is not limited to, words, signs, offensive jokes, cartoons, pictures, posters, e-mail jokes, social media communication, messages or statements, pranks, intimidation, physical assaults or contact, or violence. It may also take the form of other vocal activity including derogatory statements not directed to the targeted individual but taking place within their hearing. Other prohibited conduct includes written material such as notes, photographs, cartoons, articles of a harassing or offensive nature, and taking retaliatory action against an employee for discussing or making a harassment complaint. In addition, this policy covers all individuals in the workplace, such as fellow employees, supervisors, outside customers, vendors, independent contractors, or other non-employees who conduct business with our agency.

What Is Sexual Harassment?

Sexual harassment may include unwelcome sexual advances, requests for sexual favors, or other verbal or physical contact of a sexual nature. When this conduct creates an offensive, hostile and intimidating working environment, it may prevent an individual from effectively performing the duties of their position. It also encompasses such conduct when it is made a term or condition of employment or compensation, either implied or stated and when an employment decision is based on an individual's acceptance or rejection of such conduct.

It is important to note that harassment crosses age and gender boundaries and cannot be stereotyped. Among other perceived unconventional situations, sexual harassment may involve two women or two men. Harassment may exist on a continuum of behavior. For instance, one example of harassment may be that of an employee showing offensive pictures to another employee. A picture will be presumed to be sexually suggestive if it depicts a person of either sex who is not fully clothed or in clothes that are not suited to, or customarily accepted for, the accomplishment of routine work in and around the workplace.

Generally, two categories of harassment exist. The first, "quid pro quo," may be defined as an exchange of sexual favors for improvement or continuance in your working conditions and/or compensation. The second category, "hostile, intimidating, offensive working environment," can be described as a situation in which unwelcome sexual advances, requests for sexual favors, or verbal or other conduct creates an intimidating or offensive environment. Examples of a hostile, intimidating, and offensive working environment includes, but is not limited to, pictures, cartoons, symbols, or apparatus found to be offensive and which exist in the workspace of an employee. This behavior does not necessarily link improved working conditions in exchange for sexual favors. An employee may have a claim of harassment even if he or she has not lost a job or other economic benefit. The law prohibits any form of protected basis harassment that impairs an employee's working ability or emotional well-being at work.

We prohibit any employee from retaliating in any way against anyone who has raised any concern about sexual harassment or discrimination against another individual. We will investigate any complaint of sexual harassment and will take immediate and appropriate disciplinary action if sexual harassment has been found within the workplace.

Responsibility

All SVCE employees, and particularly supervisors, have a responsibility for keeping our work environment free of harassment. Any employee who becomes aware of an incident of harassment, whether by witnessing the incident or being told of it, must report it to their immediate supervisor, the Director of Administrative Services and Finance or the designated management representative with whom they feel comfortable. When management becomes aware of the existence of harassment, it is obligated by law to take prompt and appropriate action, whether or not the victim wants the agency to do so.

Reporting

All reported incidents of prohibited harassment will be investigated in an effective, thorough and objective manner that provides all parties with appropriate due process and reaches reasonable conclusion based on the evidence collected. The investigation will be completed and a determination regarding the reported harassment will be made and communicated to both the complainant and to the accused harasser(s). If you believe you have been harassed by any agency employee, customer, or other business contact, confront the harasser and ask him/her to stop. While we encourage you to communicate directly with the alleged harasser, and make it clear that the harasser's behavior is unacceptable, offensive or inappropriate, it is not required that you do so. It is essential, however, to notify the Director of Administrative Services and Finance immediately even if you are not sure the offending behavior is considered harassment. If the Director of Administrative Services and Finance is not available, please contact your immediate supervisor. At any time if you feel that you are in immediate harm and do not have time to contact either the Director of Administrative Services and Finance or your supervisor, seek assistance from any management representative.

Appropriate investigation and disciplinary action will be taken. All reports will be promptly investigated with due regard for the privacy of everyone involved. However, confidentiality cannot be guaranteed. Any employee found to have harassed any employee will be subject to severe disciplinary action up to and including termination. SVCE will also take any additional action necessary to appropriately remedy the situation. Retaliation of any sort will not be permitted. No adverse employment action will be taken for any employee making a good faith report of alleged harassment.

In addition, the agency will take appropriate action to remedy any loss to the complaining employee resulting from the harassment. The individual who makes unwelcome advances, threatens or in any way harasses another employee may be personally liable for such actions and their consequences.

All employees must report any incidents immediately so that complaints can be quickly and fairly resolved. The California Department of Fair Employment and Housing ("DFEH") investigates and may prosecute complaints of harassment. Whenever an employee thinks he or she has been harassed or that he or she has been retaliated against for resisting or complaining, that employee may file a complaint with the DFEH. The nearest DFEH office is listed in the telephone book. The agency also has a brochure on sexual harassment which is available to all employees for additional information.

DRAFT

Chapter 2-EMPLOYMENT POLICIES AND PRACTICES

Classification of Employees

At the time you are hired, you will be classified as either “exempt” or “non-exempt.” This is necessary because, by law, employees in certain types of jobs are entitled to overtime pay for hours worked in excess of eight (8) hours per day or forty (40) hours per workweek. These employees are referred to as “non-exempt” in this employee handbook.

Exempt employees are those employees whose duties and responsibilities allow them to be “exempt” from provisions as provided by the Federal Fair Labor Standards Act (FLSA) and any applicable state laws. If you are an exempt employee, you will be advised that you are in this classification at the time you are hired, transferred, or promoted. Participation in our benefits programs may be affected by your employment status or classification. All employees of SVCE whether exempt, non-exempt, full-time, part-time, or temporary are employed at-will.

1. The EXEMPT status applies to certain administrative, professional, and executive staff. Exempt employees qualify for exemption from overtime regulations under state and federal law and their salaries already take into account that they may work long hours.
2. The NON-EXEMPT status applies to all other regular employees. Non-exempt employees are covered by regulations in the State of California wage orders and receive extra pay for overtime work (as described in the overtime section of this employee handbook)

Employees working in non-exempt positions are compensated for the actual amount of time spent on their job and are entitled to receive time and one-half (1 ½) their regular rate of pay for each hour worked in excess of forty (40) hours in a work week. Non-exempt California employees are eligible for overtime compensation after eight (8) hours worked in one (1) day or forty (40) hours worked in one (1) week, at one and one-half (1½) times their regular pay.

3. FULL-TIME employees work on a regular basis for at least 40 hours per week. Full-time employees may or may not be EXEMPT. They are eligible for all benefits available through work at SVCE, so long as they meet the applicable requirements, such as length of service.
4. PART-TIME employees work on a regular basis for fewer than 40.0 hours per week. Part-time employees are entitled to all benefits as explained later in this employee handbook according to a prorated formula based on their average hours worked compared to a standard 40.0 hour workweek.
5. TEMPORARY EMPLOYEES are hired with the understanding that their employment will not continue beyond a stated date or beyond completion of a specified project or projects. Temporary employees will generally not be employed for more than 6 months. Temporary employees are not eligible for benefits covered in this employee handbook, other than those required by law or as stipulated in writing signed by the CEO.
6. INTERNS are employees who are students gaining supervised practical experience in a professional field. Interns are paid, and are not eligible for any benefits listed in this employee handbook.

Job Posting

You will be notified of open positions through job postings. The job posting will include the position title, department and a brief description of qualifications. You must discuss your interest in a job opening first with your supervisor. In no event will a promotion or transfer be considered without the supervisor's knowledge. You are also encouraged to refer qualified candidates for open positions.

Rehired/Converted Employees

If you are eligible for rehire at the time of your separation from SVCE, you will be considered for rehire at any time there is a position available for which you are qualified. Former employees will be considered along with all other applicants, and have no greater chance of being selected for employment than all other applicants.

If you are rehired by SVCE or convert from part-time to full-time status, your length of service with SVCE for all purposes will be calculated beginning with the rehiring date or the date of conversion to full-time status.

Employees who are terminated due to misconduct or violation of agency policy will be considered ineligible for rehire.

Job Duties

Your supervisor will explain your job responsibilities and the performance standards expected of you. Please be aware that your job responsibilities may change at any time during your employment. From time to time, you may be asked to work on special projects or to assist with other work necessary or important to the operation of the agency. Your cooperation and assistance in performing such additional work is expected.

We also may, at any time, with or without notice, alter or change your job responsibilities, reassign or transfer your position, or assign you additional job responsibilities depending on our changing business needs.

Work Schedules

SVCE's normal business hours are 8:00 a.m. through 5:00 p.m., Monday through Friday. Your supervisor will assign your individual work schedule, and you are expected to be ready to perform your work at the start of your scheduled shift.

From time to time, work schedules may fluctuate with customer demand. If a change in your work schedule is required, your supervisor will notify you at the earliest opportunity. You may be required to work overtime or hours other than those normally scheduled, although we expect this to be kept to an absolute minimum. Exempt employees are required to work as many hours as are necessary to complete the responsibilities of the positions they have assumed.

Personnel Records

A personnel file will be maintained in the office of the Director of Administrative Services and Finance on each employee of the agency. General personnel records may be kept in your file such as: job application, performance evaluations, training records, emergency contact information and payroll changes. You may review your personnel file during regular business hours upon making a request to the Director of Administrative Services and Finance. No one other than you, your supervisor, the Director of Administrative Services and Finance, the CEO, or his designee may seek information from your file without your written permission, except in limited circumstances required by law. Under no circumstances shall your file be removed from the office.

The agency will keep your personnel records private. However, there are certain times when information may be given to a person outside the agency. These are:

1. In response to a subpoena, court order, or order of an administrative agency;
2. To a governmental agency as part of an investigation by that agency of the agency's compliance with applicable law;
3. In a lawsuit, administrative proceeding, grievance, or arbitration in which you and the agency are parties;
4. In a workers' compensation proceeding;
5. To administer employee health benefit plans;
6. To a health care provider, when necessary;
7. To a first aid or safety personnel, when necessary; and
8. To a prospective employer or other person requesting a verification of your employment.
9. To fulfill other public agency disclosure requirements dictated by law.

Keeping your personnel file up-to-date can be important to you with regard to pay, deductions, benefits and other matters. Coverage or benefits that you and your family may receive under SVCE's benefits package could be negatively affected if the information in your personnel file is incorrect. Please promptly notify the Director of Administrative Services and Finance of any changes in your personal data.

Inspection of Payroll Records

Employees and former employees have the right to inspect and obtain copies of their own payroll records. All requests must be submitted in writing to the Director of Administrative Services and Finance or his/her designee who will make certain that they are properly processed. Requests will be honored within 30 days from the date they are received. Individuals who make a request may be asked to provide identification so that they are not provided access to information on other employees. Individuals who request a copy of their records may be required to pay for the cost of making the copies.

Layoffs and Work Reductions

Once it is determined what the scope of the reduction will be (i.e., agency-wide, job classification, position), employees will be selected for layoff based on a combination of factors, including, but not necessarily limited to: past performance and productivity, qualifications, attendance, attitude, ability and willingness to work the required days and hours, and the ability to work cooperatively with others in the affected work unit.

The weight given to the above factors may vary depending upon the particular needs of the affected work unit and the agency as a whole at the time of the layoff.

Seniority shall be considered only when, in our opinion, all other factors are equal between two or more employees in the affected work unit. Seniority will be computed on the basis of an employee's total continuous service with the agency. For this purpose, continuous service before and after any break in service of less than 30 days or an approved leave of absence, will be counted.

Employment Termination

SVCE strives to ensure a smooth transition for employees leaving the agency.

SVCE and its employees have an employment relationship that is known as "employment at will." This means that employees are not required to work for the agency for any set period of time nor is the agency required to employ individuals for any specific length of time. **The statements made in this policy do not alter, modify or limit the employment at will relationship.** An "at-will" employee is subject to termination of employment at any time the agency concludes it appropriate to do so.

Involuntary separation from service means that the termination action is being initiated by SVCE, rather than by the employee. In general, employees who are discharged by SVCE are not eligible for rehire. However, employees who are terminated due to layoff or restructuring may be eligible for rehire or recall at the agency's discretion.

The agency will consider you to have voluntarily terminated your employment if you do any of the following:

1. Resign from SVCE;
2. Fail to return from an approved leave of absence on the date specified by SVCE, or;
3. Fail to report to work or call in for 3 consecutive work days in accordance with our policies.

In the event that you resign voluntarily, you will be asked to provide us with the professional courtesy of two weeks notice of resignation to allow for a smooth transition and training of any replacement personnel. The notice you give will be noted on the employment record and will be considered in any discussion regarding rehire or reference information. Once notice has been given, accrued and unused PTO days normally may not be taken.

All agency property such as office equipment, credit cards, keys, manuals, computer equipment, and cell phones must be returned on or prior to the last day of employment. You must return these items to your immediate supervisor.

Final wages for time worked, plus any pay for unused but accrued PTO, will normally be paid on your last day of employment.

Exit Interviews

Should you resign voluntarily, the Director of Administrative Services and Finance or your direct supervisor may conduct an exit interview whenever feasible. This interview allows you to communicate your views on your work with SVCE and the job requirements, operations and training needs and future reference information to potential employers.

Employment Verification and References

SVCE's policy as to references for employees who have left the agency is to disclose only the dates of employment, last earned wages or salary, the title of the last position held, and any limited information required by law. You may provide a signed form authorizing the agency to release specific reference information to potential employers.

It is our policy that only the Director of Administrative Services and Finance is authorized to respond to requests for employee references and verification of employment from financial institutions, etc. No other supervisor or employee is authorized to provide references for current or former employees.

As an employee of SVCE, do not under any circumstances respond to any requests for information regarding another employee unless it is part of your assigned job responsibilities. If it is not, please forward the information request to your supervisor or the Director of Administrative Services and Finance.

Chapter 3-TIMEKEEPING AND ATTENDANCE

Punctuality and Attendance

You are expected to have regular attendance during all scheduled work hours, report to work on a timely basis, and work through the end of your regularly scheduled workday. Any unexcused tardiness or absence causes problems for your fellow employees, customers, and your supervisor. Lateness is disruptive, costly and not fair to the organization or other employees. Chronic lateness will not be tolerated and will result in discipline, up to and including termination. Regular attendance and punctuality is considered an “essential function” of your job.

If you are unable to report for work on any particular day, you must personally call your supervisor prior to the start of your shift on the day that you are scheduled to work. If you are not able to reach your supervisor, you are expected to advise another management representative of your absence or tardiness and leave a telephone number where you can be reached. Do not have a relative or friend call in to report your absence, unless you are unable to call yourself due to a medical or other emergency. If you call after the start of your shift you will be considered tardy for that day. In all cases of absence or tardiness, you are expected to provide your supervisor with an honest reason or explanation. You also must inform your supervisor of the expected duration of any absence. Absent extenuating circumstances, you must call in each and every day you are scheduled to work and will not report to work.

Repeated absenteeism or tardiness (whether excused or not) will not be tolerated. Continuing patterns of absences, early departures, or tardiness--regardless of the exact number of days—may warrant disciplinary action, up to and including termination of employment. Emergency or extraordinary circumstances concerning an absence or tardiness will be considered and we reserve the right to make an exception to this policy if, at our discretion, an exception is warranted. Repeated car failures, missing the bus, consistently failing to arrange back up childcare or oversleeping do not constitute emergency or extraordinary circumstances. We reserve the right to determine what is considered excessive absenteeism.

If you fail to report for work for three (3) consecutive days without any notification to your supervisor, we will consider that you have abandoned your employment, and have resigned your position. You may be required to provide documentation verifying your absence.

Timekeeping Requirements for Non-Exempt Staff

Federal and state law requires SVCE to keep an accurate record of time worked. SVCE uses time clocks to record this time worked. Employee time records are official SVCE records and must be accurately maintained. You must input your own time at the start and at the end of each workday, and at the start and end of each lunch hour. Completing another employee's time record or intentionally falsifying a time record is a serious violation of this policy and may result in immediate termination of employment. If a time record needs to be corrected, both you and your supervisor must initial the change in the time record to verify its accuracy.

Meal and Rest Periods for Non-Exempt Staff

California law requires that each non-exempt employee be given at least a 30-minute lunch break each day, and that this break begins within the first five hours of your workday. Accordingly, taking a duty-free lunch period of at least 30 minutes is *mandatory*. If you work more than 10 hours, you are entitled to a second, unpaid meal period of at least 30 minutes. Depending on the circumstances, you may be able to waive your second meal period if you took the first one.

You will be provided one 30 minute lunch each day, to be taken approximately in the middle of the workday. However, under special circumstances you may be granted permission by your supervisor to extend your lunch break.

You are allowed one ten-minute rest period for every four hours of work or major portion thereof. While there is no set schedule for breaks, you are able to take restroom breaks and get refreshments as desired.

If, at any time, you are unable to take a lunch break and/or rest period because of workload, please immediately inform your supervisor so that appropriate arrangements can be made.

You are expected to observe your assigned working hours and the time allowed for meal and rest periods.

Overtime Time Provisions for Non-Exempt Staff

As necessary, you may be asked to work overtime. For purposes of determining which hours constitute overtime, only actual hours worked in a given workweek will be counted. We will attempt to distribute overtime evenly and accommodate individual schedules. A supervisor must previously authorize all overtime work. If overtime is worked without prior authorization this may be grounds for discipline for not following agency policy and procedure. We provide compensation for all overtime hours worked by non-exempt employees in accordance with federal law as follows:

1. All hours worked in excess of forty (40) hours in one workweek, will be treated as overtime.
2. One and one-half (1 ½) times your regular rate of pay for hours worked in excess of forty (40) for the workweek.

Exempt employees may have to work hours beyond their normal schedules, as work demands require. It does not include an unpaid meal period, make-up time, or hours away from work due to PTO, sickness, holiday, jury duty, or other absences from work. No overtime compensation will be paid to exempt employees.

Exempt Employee Time Off

Exempt employees of SVCE are paid a salary, which compensates them for working as many hours as required to complete their job duties. Exempt employees do not receive overtime pay. We realize, however, that in instances of extraordinary additional pressure or increased work hours, it may be appropriate for supervisors to recognize the exempt employee's efforts by granting the employee extra time off separate from and in addition to the employee's accrued PTO time. In order to achieve consistency among supervisors and fairness to the exempt employees, supervisors must use the following guidelines when exercising their discretion to grant additional time off:

1. Limit the amount of time off to no more than two days;
2. Require the employee to take the time off in the following week whenever possible and;
3. Do not allow employees to accumulate any granted but unused time off.

Lactation Accommodation

Women who wish to express breast milk while at work may make arrangements with their supervisor to do so in a private area. Where such arrangements are made during an employee's normal rest period, the time will be paid. If special arrangements are made to provide a non-exempt employee extra time beyond or in addition to her normal rest period, the time will be unpaid.

Payment of Wages

Paydays are every other Thursday. There are 26 pay periods in a year. The workday (a 24-hour, consecutive period) begins at 12:01 a.m. and ends at midnight. The workweek begins on Sunday and ends on Saturday.

If a regular payday falls on a weekend or holiday, you will be paid on the first day of work prior to the regularly scheduled payday. If there is an error on your check, please report it immediately to your supervisor.

For your convenience, we offer a direct deposit option.

Advances

We do not permit advances against paychecks or against unaccrued PTO.

Payroll Deductions, Wage Attachments and Garnishments

SVCE makes certain deductions from every employee's paycheck. Among these are applicable federal, state, and local income taxes, Medicare taxes, state disability insurance contributions, and paid family leave contributions. By law, SVCE is also required to honor legal attachments and garnishments of an employee's wages or salaries. If your wages are attached, we will withhold the specified amount to satisfy the terms of the attachment.

Reporting Time Pay

Reporting time pay will be paid under the following conditions:

1. Reporting time pay is owed when you report to work at your regularly scheduled time, but you are not put to work or are given less than half the usual or scheduled day's work. In this case, you will be paid for at least half of the hours you were scheduled to work, but never less than two hours pay, and never more than four hours pay.
2. Reporting time pay is also owed if you are required to report to work a second time in any one (1) workday and are given less than two (2) hours work on the second reporting. In this case you will receive at least two (2) hours pay for the second appearance.

These provisions do not apply if on a paid "standby" or "on call" status. In some instances, you may not receive reporting time pay. Reporting time pay does not apply if public utilities fail, such as water, gas, electricity, or sewer and/or when work is interrupted by an "act of God" or other causes not within the agency's control.

Payment for Hours Worked During Business Travel for Non-Exempt Staff

Whenever possible, non-exempt employees traveling on agency business are expected to do so during normal working hours. In the very rare instance where your travel time constitutes overtime, you will be paid overtime as required by law. Non-exempt employees will be paid for all hours worked, including out of town travel time, at regular and overtime pay rates according to the law. Pay for travel time may be at a rate of pay that is less than the employee's normal rate of pay.

If you are non-exempt and traveling on business, you will not be paid for time between work assignments; e.g., if you stay the night in a hotel, pay begins when you begin to work, or are in transit. Travel pay is to be scheduled in advance, in writing by your supervisor, with the knowledge of the Director of Administrative Services and Finance.

Non-exempt travel may be approved on an as-needed basis, but only with prior authorization from your supervisor.

Pay for Mandatory Meetings for Non-Exempt Staff

The agency will pay you for your attendance at meetings, lectures and training programs if all of the following conditions are met:

1. Attendance is mandatory (i.e. required by the agency).
2. The meeting, course, or lecture is directly related to your job.
3. You are notified of the necessity for such meetings, lectures, or training programs by your supervisor (i.e. pre-approval by management is required)

If you meet the above conditions you will be compensated at your regular rate of pay. If you are required to travel, then travel pay will be initiated. You will not receive compensation time spent for in voluntary attendance in courses that are conducted outside of normal business hours and/or that are not directly related to your current job.

Chapter 4-STANDARDS OF CONDUCT

Professional Business Conduct and Ethics

By accepting employment with us, you have a responsibility to SVCE and to your fellow employees to adhere to certain codes of behavior and conduct. The purpose of these rules is not to restrict or impair your right to free speech, but rather to be certain that you understand what conduct is expected and necessary. When each person is aware that he or she can fully depend upon fellow workers to follow the rules of conduct, then our agency will be a better place for everyone to work.

Generally speaking, we expect you to act in a mature and responsible way at all times. Again, we value honesty in communication and personal responsibility. However, to avoid any possible confusion, some of the more obvious unacceptable activities are noted below. Your avoidance of these activities will be to your benefit as well as to the benefit of SVCE. If you have any questions concerning any work or safety rule, or any of the unacceptable activities listed, please ask for an explanation.

Occurrences of any of the following violations, because of their seriousness, may result in disciplinary action up to and including immediate suspension or termination:

Unacceptable Activities:

1. Generally, conduct which is disruptive, competitive or damaging to the agency.
2. Falsification of timekeeping records.
3. Dishonesty; falsification or misrepresentation on your application for employment or other work records; lying about sick or personal leave; falsifying reason for a leave of absence or other data requested by SVCE; alteration of agency records or other agency documents.
4. Working under the influence of alcohol or illegal drugs, including marijuana.
5. Theft or inappropriate removal or possession of agency property or the property of fellow employees; unauthorized use of agency equipment and/or property for personal reasons.
6. Possession, distribution, solicitation, sale, transfer, or use of alcohol or illegal drugs, including marijuana, in the workplace, while on duty, or while operating agency-owned vehicles or equipment.
7. Fighting, threatening, or coercing fellow employees on agency property or during working hours, for any purpose.
8. Boisterous or disruptive activity in the workplace.
9. Negligence or any careless action leading to damage of agency-owned or customer-owned property or which endangers the life or safety of another person.
10. Obscene or abusive language toward any supervisor, employee or customer; indifference or rudeness towards a customer or fellow employee; any disorderly/antagonistic conduct on agency premises.
11. Insubordination or other disrespectful conduct; refusing to obey instructions properly issued by your supervisor pertaining to your work; refusal to help out on a special assignment.
12. Violation of security or safety rules or failure to observe safety rules and/or practices; failure to wear required safety equipment; tampering with SVCE equipment or safety equipment.

13. Creating or contributing to unsanitary conditions.
14. Smoking in prohibited areas.
15. Any act of harassment, sexual, racial or other; telling sexist or racist jokes; making racial or ethnic slurs.
16. Possession of dangerous or unauthorized materials, such as explosives or firearms, in the workplace.
17. Excessive absenteeism or any absence without notice; failure to report an absence or late arrival.
18. Unauthorized absence from work station during the workday; sleeping or loitering during working hours.
19. Unauthorized use of telephones, mail system, or other agency-owned equipment.
20. Originating, spreading, and taking part in malicious gossip or rumors about employees of the agency.
21. Unauthorized disclosure of confidential information; giving confidential or proprietary information to competitors or other organizations or to unauthorized SVCE employees; breach of confidentiality of personnel or agency information. This conduct rule is not intended to infringe upon your right to free speech or for purposes of protecting the public good.
22. Violation of agency rules or policies; any action that is detrimental to SVCE's efforts to operate successfully. This conduct rule is not intended to infringe upon your right to free speech or for purposes of protecting the public good.
23. Unsatisfactory or careless work; failure to meet production or quality standards as explained to you by your supervisor.
24. Soliciting during working hours and/or in working areas; selling merchandise or collecting funds of any kind for charities or others without authorization during business hours, or at a time or place that interferes with the work of another employee on agency premises.
25. Conducting a lottery or gambling on agency property.
26. Failure to immediately report any damage or accident involving agency equipment and vehicles.
27. Failure or refusal to comply with the work schedule, including mandatory overtime.
28. Using, removing, or borrowing agency equipment or property without prior authorization.
29. The use of abusive or threatening language or actions toward anyone.

This list is not exhaustive. Rather, we ask that you keep in mind at all times the need to conduct yourself with reasonable and proper regard for the welfare and rights of all our employees and for the best interests of the agency. This statement of prohibited conduct does not alter SVCE's policy of at-will employment. Either you or the agency remains free to terminate the employment relationship at any time, with or without reason or advance notice.

Performance Evaluations

You and your supervisor are strongly encouraged to discuss job performance and goals on an informal, day-to-day basis. Ongoing discussions with your supervisor about your job duties, performance, and the work environment likely will increase your satisfaction with your work experience and the agency's satisfaction with you.

We want to provide you with the tools to stay on track and to reach your full potential. To provide you with the necessary feedback about your performance, you may receive periodic performance evaluations. Performance evaluations may be conducted annually with us. The frequency of performance evaluations may vary depending upon length of service, job position, past performance, changes in job duties, or recurring performance problems.

After the review, you will be asked to sign the evaluation report simply to acknowledge that it has been presented to you and discussed with you by your supervisor, and that you are aware of its contents.

Positive performance evaluations do not guarantee increases in salary or promotions. Salary increases and promotions are solely within the discretion of the agency, and depend upon many factors in addition to performance. Wage and salary increases are based on merit alone, not length-of-service or the cost-of-living. Having your compensation reviewed does not necessarily mean that you will be given an increase.

Problem Resolution

At some time, you may have a complaint or question about your job, your working conditions, or the treatment you are receiving. Your good-faith complaints and questions are of concern to us. We ask that you take your concerns first to your supervisor, following these steps:

1. Bring the situation to the attention of your immediate supervisor who will then investigate and provide a solution or explanation.
2. If the problem remains unresolved, you may present it in writing to the Director of Administrative Services and Finance who will work towards a resolution.

This procedure, which we believe is important for both you and us, cannot result in every problem being resolved to your satisfaction. However, we value your input and you should feel free to raise issues of concern, in good faith, without the fear of retaliation.

Alcoholic Beverage Consumption

Due to the high risk and liability involved, the agency will not provide alcoholic beverages at social gatherings to SVCE employees. This policy applies to the following:

1. Birthday parties;
2. Office parties;
3. Office picnics; and
4. Recreational activities (i.e. organized team sports)

Drug and Alcohol Abuse

SVCE is concerned about the use of alcohol, illegal drugs, or controlled substances as it affects the workplace. We comply with state and federal drug abuse regulations, including the Drug-Free Workplace Act of 1988. Use of these substances whether on or off the job can adversely affect your work performance, efficiency, and safety and health. The use or possession of these substances on the job constitutes a potential danger to the welfare

and safety of other employees, and exposes us to the risks of property loss or damage, or injury to other persons. Furthermore, the use of prescription drugs and/or over-the-counter drugs also may affect your job performance and seriously impair your value to us. Any employee who is using prescription or over-the-counter drugs that may impair your ability to safely perform the job, or affect the safety or well-being of others, must notify a supervisor of such use immediately before starting or resuming work. All precautions necessary to preserve your privacy will be taken. You must adhere to the rules stated in this policy as a condition of employment. Failure to comply with this policy may result in discipline, including termination. The Director of Administrative Services and Finance has been designated to administer this policy, monitor the program and make reports as required by law.

If there is ever a reasonable basis to suspect you of violating the drug and alcohol policy, you will be requested to immediately submit to a drug and/or alcohol test. Suspicion will be based on objective symptoms, such as factors related to your appearance, behavior and speech. Possession of illegal drugs or alcohol is prohibited even if you have not used these substances. To help ensure a safe and healthful working environment, job applicants and employees may be asked to provide body substance samples (such as urine, hair samples, and/or blood) to determine the improper or illegal use of drugs and alcohol.

The following rules and standards of conduct apply to all employees either on agency property, or during the workday (including meals and rest periods). The following are strictly prohibited by the agency:

1. Possession or use of alcohol or illegal drugs, including marijuana, or being under the influence of alcohol or illegal drugs while on agency premises or at any time on duty.
2. Driving an agency vehicle or driving for agency business in a private vehicle while under the influence of alcohol or illegal drugs, including marijuana.
3. Distribution, sale, or purchase of an illegal or controlled substance while on agency premises or at any time on duty.
4. Possession or use of an illegal or controlled substance, or being under the influence of an illegal or controlled substance while on agency premises or at any time on duty.
5. Any drug or alcohol statute conviction. You must notify SVCE within 5 days of such conviction.

In the event of a safety or security concern or reasonable suspicion of use and/or an on the job accident, you may be asked to provide body substance samples (such as urine and/or blood) to determine the illicit or illegal use of drugs and alcohol. The agency will test for alcohol, cannabinoids, (THC), Opiates, i.e. codeine and morphine, Cocaine metabolites, Amphetamines, i.e. amphetamine and metamorphines, adulterants low creatine levels and Phencyclidine. The agency assures that any information concerning your drug and/or alcohol use will remain confidential.

If the results of your drug and/or alcohol test are positive, the agency will take disciplinary action which may include suspension or immediate termination. The disciplinary action will be based on the seriousness of the offense and your past performance with the agency. In the event that you test positive, you may request a second test to be performed by a reliable drug testing agency, at your expense.

Violation of the above rules and standards of conduct will not be tolerated. We also may bring the matter to the attention of appropriate law enforcement authorities.

SVCE's policy on drug and alcohol in no way limits or alters the at-will employment relationship.

Customer and Public Relations

The success of SVCE depends upon the quality of the relationships between SVCE, our employees, and our customers, suppliers and the general public. Our customers' impression of the agency and their interest and willingness to do business with us are formed by how you serve them. In a sense, regardless of your position, you are a SVCE ambassador. The more goodwill you promote, the more our customers will respect and appreciate you and our services.

The opinions and attitudes that customers have toward our agency can be affected for a long period of time by the actions of just one employee. It is sometimes easy to take a customer for granted, but when we do, we run the risk of not only losing that customer, but their associates, friends or family who also may be customers or prospective customers.

Here are several things you can do to help give customers a good impression of SVCE:

1. Customers are to be treated courteously and given proper attention at all times. Never regard a customer's questions or concerns as an interruption or an annoyance. Customer inquiries, whether in person or by telephone, must be addressed promptly and professionally.
2. Never place a telephone caller on hold for an extended period of time. Direct incoming calls to the appropriate person and make sure that the call is received.
3. Act competently and deal with customers in a courteous and respectful manner. Through your conduct, show your desire to assist the customer in obtaining the help that he or she needs. If you are unable to help a customer, find someone who can.
4. All correspondence and documents, whether to customers or others, must be neatly prepared and error-free. Attention to accuracy and detail in all paperwork demonstrates your commitment to those with whom we do business.
5. Never argue with a customer. If a problem develops or if a customer remains dissatisfied, ask your supervisor to intervene.
6. Communicate pleasantly and respectfully with other employees at all times.

These are the building blocks for your and SVCE's continued success. Thank you for adding your support.

Confidentiality

You are responsible for safeguarding confidential information obtained during your employment with us. Additionally, our customers, employees and vendors entrust SVCE with important information relating to their businesses. The nature of this relationship requires maintenance of confidentiality. In safeguarding the information received, SVCE earns the respect and further trust of our customers and vendors. Nothing in this policy is intended to infringe upon your right to free speech or for purposes of protecting the public good.

It is your responsibility to in no way reveal or divulge any such information unless it is necessary for you to do so in the performance of your duties. Such confidential information includes, but is not limited to, the following examples:

- customer lists and customer history
- pending projects and proposals
- marketing strategies
- compensation data
- budget information
- periodic business reports and summaries
- bid proposals/contract negotiations
- statistical data
- research and development programs
- mergers/dissolutions
- employee data
- financial information
- pricing information
- passwords
- business plans

Access to confidential information must be on a "need-to-know" basis and supervisor authorization is required.

Upon accepting employment with SVCE, you may have been asked to sign a Confidentiality Agreement, which generally provides that you will not disclose or use any of the agency's confidential information, either during or after your employment with us. We sincerely hope that our relationship will be long-term and mutually rewarding. However, your employment with SVCE assumes an obligation to maintain confidentiality, even after you leave our employ.

If you are questioned by someone outside the agency or your department and you are concerned about the appropriateness of giving them certain information, you are not required to answer. Instead, as politely as possible, refer the request to your supervisor.

It is also important to remember that you may not disclose or use proprietary or confidential information except as your job requires. You may not keep or retain any originals or copies of reports, notes, proposals, customer lists or other confidential and proprietary documents, equipment, supplies, or property belonging to the agency. Any and all copies or originals of reports, notes, proposals, customer lists or other confidential and proprietary documents must be turned over to the agency within twenty-four (24) hours of termination of employment.

You are not permitted to remove or make copies of any SVCE records, reports or documents without prior management approval. Do not post confidential or proprietary information about SVCE, customers, employees, or affiliates on any social media. Disclosure of confidential information could lead to termination, as well as other possible legal action.

Conflict of Interest

As an employee of SVCE, you must avoid actual or potential conflicts of interest with the agency. This policy provides examples of prohibited conflicts of interest. If you are found to have a conflict of interest with the agency, you may be subject to discipline, including termination. You should contact your supervisor with any questions about this policy. Prohibited activities include, but are not limited to:

1. Being an owner, employee, consultant or vendor to any business that competes, directly or indirectly, with the agency.
2. Having a direct or indirect financial relationship with a competitor, customers, or supplier; however, no conflict will exist in the case of ownership of less than 1 percent of a publicly traded corporation.

3. Engaging in any other employment or personal activity during work hours, or using the agency's name, logo, equipment or property, including stationery, office supplies, computers, telephones, fax machines, postage, and office machines, for personal purposes.
4. Soliciting agency employees, suppliers, or customers to purchase goods or services of any kind for non-agency purposes, or to make contributions to any organizations or in support of any causes.
5. Soliciting or entering into any business or financial transaction with another employee whom the soliciting employee supervises, either directly or indirectly, such as hiring the employee to perform personal services or soliciting the employee to enter into an investment.

Solicitation

You are not permitted to solicit or distribute literature during working time. Working time includes both your working time and the working time of the employee to whom the solicitation or distribution is directed. Similarly, distribution of written solicitation material in working areas is prohibited at all times. If you wish to distribute fundraising items such as cookies, candy, and coupon books for sale, you may place them without solicitation in your workstation or SVCE break rooms.

Media Contact

Only contact people designated by the CEO of the agency may comment on agency policy or events that have an impact on the agency. If you are contacted by a news organization, please direct all media inquiries to your supervisor.

Employment of Friends and Relatives

The employment of friends and relatives in the same area of an organization may cause conflicts of interest and appearances of impropriety. In addition, personal conflicts may impact the working relationship of the parties. Although the agency does not prohibit the hiring of friends and relatives of existing employees, the agency is committed to monitoring situations in which friends or relatives work in the same area. In the event of an actual or potential problem, the agency's response may include reassignment or termination of one or both of the individuals involved. For the purposes of this policy, a relative is any person who is related by blood or marriage, or whose relationship with an employee is similar to that of persons who are related by blood or marriage, or one who is a domestic partner.

The agency desires to avoid misunderstandings, complaints of favoritism, claims of sexual harassment, and employee dissension that may result from personal or social relationships amongst employees. Therefore, the agency asks that if you become romantically involved with another employee that you disclose your relationship to an appropriate supervisor with whom you feel comfortable. This information will be kept as confidential as possible. For purposes of this provision, "romantically involved" will be interpreted broadly. The agency reserves the right to take necessary and appropriate action to resolve any potential conflict of interest arising out of romantic involvement among employees. Depending on the facts of the situation, such action may include reassignment or termination of one or both of the employees involved.

Personal Relationships in the Workplace

The agency is committed to maintaining a professional work environment where their supervisors treat all employees fairly and impartially. Accordingly, supervisors are not allowed to date, or become romantically or intimately involved with, employees who report to them directly or indirectly. Also, spouses and immediate family members are prohibited from working in job positions where they directly report to, or are reported to, by their spouses or family members. Personal relationships very often cause problems in the workplace, such as a lack of objectivity towards the subordinate's job performance, the perception of favoritism by other employees (whether justified or not), and potential sexual harassment complaints should a couple break up.

For purposes of this policy, "immediate family" includes significant others (such as unmarried couples who live together), domestic partners, step-parent and step-child relationships, in-law relationships, grandparents and cousins (including analogous relationships with the parents and children of an employee's significant other). This policy covers all family-like relationships, regardless of blood or legal relationships.

Employees who are currently dating one another, or employees who are married or related and report to or supervise each other, may request to be transferred in order to comply with this policy. When possible, the agency will attempt to accommodate such requests. Please understand, however, that the agency reserves the right not to transfer employees based on conflicting business considerations.

Unprofessional behavior in the workplace, such as sexually related conversations, inappropriate touching (i.e., kissing, hugging, massaging, sitting on laps) another employee, and any other behavior of a sexual nature, is prohibited.

If two employees marry or become related, causing actual or potential problems such as those described, only one of the employees will be retained with the agency unless reasonable accommodations can be made to eliminate the actual or potential conflict. The employees will have 30 days to decide which relative will stay with the agency. If this decision is not made in the time allowed the CEO will make the decision, taking the employment history and job performance of both employees into account. Supervisors who have any questions about the application of this policy to an employee or applicant should contact the Director of Administrative Services and Finance.

Dress Policy

In order for our customers to be confident in the trust they have placed with us, the office must have a professional, dignified and gracious atmosphere. Courtesy and graciousness in dealing with customers is part of our service. These same attitudes are expected in all business contacts, whether with fellow employees or other individuals contacted in the course of business.

Professional conduct includes professional appearance, which must conform to the dignity of our office. Please understand that you are expected to dress and groom yourself in accordance with accepted social and business standards, particularly if your job involves dealing with customers or visitors in person.

A neat, tasteful appearance contributes to the positive impression you make on our customers. Business casual dress is generally expected. Business casual dress must include nice shoes, slacks, pantsuits, dresses, skirts, and shirts (and possibly ties). Hair must be human colored and facial and tongue jewelry must not be worn at work. Please keep your nails clean and tastefully groomed. Visible tattoos are not acceptable.

Personal appearance should be a matter of concern for each employee. If your supervisor feels your attire and/or grooming is out of place, you may be asked to leave your workplace until you are properly attired and/or groomed. Violating dress code standards may subject you to appropriate disciplinary action

DRAFT

Chapter 5-DAY TO DAY OPERATIONS

Employer and Employee Property

Because even a routine inspection of agency property might result in the discovery of an employee's personal possessions, you are encouraged not to bring into the workplace any item of personal property which you do not want to reveal to the agency.

In addition, all desks, lockers, offices, work spaces, credenzas, cabinets, electronic mail (e-mail), telephone systems, office systems, computer systems, any and all electronically issued technology, agency vehicles and other areas or items belonging to the agency are open to the agency and its employees. **YOU SHALL HAVE NO EXPECTATION OF PRIVACY IN ANY OF THESE AREAS.** Personal items and messages or information that you consider private must not be placed or kept in any of these places or areas belonging to the agency.

Storage areas, work areas, file cabinets, credenzas, computer systems and software, office telephones, cellular telephones, any and all electronically issued technology, modems, facsimile machines, copy machines, tools, equipment, desks, voice mail, and electronic mail are agency property, and need to be maintained according to agency rules and regulations.

Desks and work areas must be kept clean, and are to be used for work-related purposes. Agency property is subject to inspection at any time, with or without prior notice. Prior authorization must be obtained before any agency property may be removed from the premises.

For security reasons, you must not leave personal belongings of value in the workplace. Personal items, lockers and desks are subject to inspection and search, with or without notice, and with or without your prior consent.

Terminated employees must remove any personal items at the time they leave us. Personal items left in the workplace by previous employees are subject to disposal if not claimed at the time of your termination.

Electronic Systems and Privacy

You shall understand that you have NO expectation of privacy in connection with the use of electronic systems, including stored e-mail/voice mail messages or any messages sent electronically. All messages created, sent, received or stored in these systems are and remain the property of SVCE. SVCE reserves the right to retrieve and review any message composed, sent or received via the system. Please note that even when a message is deleted or erased, it is still possible to recreate the message; therefore, the ultimate privacy of messages cannot be ensured to anyone.

To safeguard and protect the proprietary, confidential and business-sensitive information of SVCE, and to ensure that the use of all electronic systems and equipment is consistent with SVCE's legitimate business interests, authorized representatives of SVCE may monitor the use of such systems from time to time without notice, which may include printing and reading materials, files on the system, list servers, and equipment.

You should be aware that e-mail messages, like SVCE correspondence, and any and all messages sent electronically may be read by other SVCE employees and outsiders under certain circumstances. While it is impossible to list all of the circumstances, some examples are the following: (1) during system maintenance of the e-mail system, (2) when SVCE has business needs to access the employee's mailbox, (3) when SVCE receives a legal request to disclose e-mail messages, or (4) when SVCE has reason to believe the employee is using e-mail in violation of SVCE policies.

Social Media Guidelines

The agency understands that various forms of communication occur through social media, such as Facebook, Twitter, LinkedIn, blogs, and multimedia host sites such as YouTube. Such communications occur in social networking, blogs, and video sharing and similar media. It must be remembered that social media sites do not provide a private setting. Employees who communicate information through social media therefore must not expect that such information is private.

Employees must remember that all existing policies apply to information disseminated through social media. These guidelines are intended to help employees understand some of the unintended outcomes of sharing information through social media.

Application of Policies

The employer's policies and standards apply to conduct that occurs in the workplace and while employees are on duty, wherever they happen to be. Nothing in this policy prevents employees from exercising their broad rights to discuss the terms and conditions of employment with others, to take action with others to improve your working conditions, or to otherwise exercise their rights to engage in protected concerted activity.

General Policies

The agency's policies regarding workplace conduct and interpersonal interactions are embodied in a number of policies, including policies that protect the agency's trade secrets, legal interests and confidential information. Nothing in this policy is intended to infringe upon your right to free speech or for purposes of protecting the public good.

The policies also prohibit unlawful harassment and discrimination and require employees to use work time in an appropriate manner.

The principles set forth in the agency's policies apply equally to social media, even when the policies do not refer specifically to social media. Violations of any policy through social media or networking will be appropriately addressed when brought to management's attention.

Illustrations of some of the relevant policies and how they may apply to social media are provided below. The following guidelines apply to all employees when they are at work and away from work.

General Expectations

- Employees may not post or transmit any material or information that includes confidential, proprietary or trade secret information, or information that is untrue, defamatory, obscene, profane, threatening, harassing, abusive, hateful or humiliating to another person or entity. This includes, but is not limited to, comments regarding the agency or its employees or customers. Employees must ask their supervisors and refer to agency policies if they have any questions about what is appropriate to include in communications involving social media.

Harassment

- The agency cannot tolerate intimidation, bullying or threats of violence among co-workers and such acts, even if occurring on line outside of work, will result in serious consequences, including termination.
- The agency maintains a strict policy prohibiting unlawful harassment of any kind. Harassment is unlawful if it is based upon any legally protected characteristic. It includes unwelcome verbal, physical, or visual conduct that creates an intimidating, offensive, or hostile work environment or unreasonably interferes with work performance.

Reputation

- Employees must act responsibly and remember that untrue or defamatory postings can have serious consequences. Do not create fake blogs or false reviews of the agency or its competitors.

Acceptable Use Guidelines

- E-mail and Internet access is provided to support the agency's business. Users who are given access to these tools may not make personal use of them either during work or non-work time. Any use that includes tapping into electronic social media must be consistent with the agency's values, policies and applicable laws.
- Participation in social media sites should be limited during work time; incidental use during break time is not prohibited by this policy. Under no circumstances may employees access social media sites while performing safety-sensitive functions such as driving.

Opinions

- Employees should not refer to the agency without proper authorization to do so. Employees should at all times make it clear that their opinions do not represent those of the agency. They should include disclaimers in online communications advising that they are not speaking officially or unofficially on behalf of the organization.
- Employees may not use the agency's logo or proprietary graphics to imply that you are speaking on behalf of the agency.

Questions

- Employees who have concerns regarding workplace conduct or inappropriate behavior or comments are encouraged to contact the Director of Administrative Services and Finance for further guidance.

Additional Guidance and Information

While the agency's policies offer very clear direction on some issues, there are other areas where common sense must prevail. When in doubt about posting, employees shall consider the following:

- There is no expectation of privacy when engaging in social media networking activities. You may know everyone in the room when you have a conversation in person. This will not apply with social networking applications. You may not have full control over how your comments are perceived or shared.
- These are public forums. As a practical matter, it may be impossible to delete information that is shared. Comments may be publicly available for years.

- Even when you do not identify your employer by name in the communication or posting, some readers are likely to know where you work. Keep this in mind when you consider posting or transmitting comments that may be work-related. This shall also be considered when creating your profile.
- Do not state or imply that the opinions you express are those of the agency, its management, or other employees. Include a disclaimer to this effect.

Telephone Usage

You may use agency telephones for local or personal calls within reason. You are not to charge long distance personal telephone calls to the agency. You are expected to limit personal calls so they do not become excessive or disruptive to your work or work area.

Cell Phone Usage

The agency realizes that in our fast paced business environment, meeting our goals and staying in touch with our customers and co-workers is a necessary process in working efficiently. But, first and foremost, we want to preserve the safety of our employees and those in the community. California law limits the use of cell phones while driving to those having hands-free operation.

This law provides that, it is illegal to drive a motor vehicle while using a wireless telephone, unless that telephone is designed and configured to allow hands-free listening and talking operation, and is used in that manner while driving.

Additionally, writing, sending, or reading text-based communications on your cell phone while driving is also prohibited under California law. This includes text messaging, instant messaging, and e-mail. You will be responsible for any tickets you receive if you violate this law.

Use of a hands-free cell phone is required while driving for agency business. An option is that you pull over while driving to place or receive calls on your cellular phones. There is a great potential for harm to you and to others if this policy is violated.

Personal cell phone use is not needed or required for work purposes unless expressly directed by a supervisor and must not be used for work.

Workplace Monitoring

Workplace monitoring, both human and electronic, may be conducted by SVCE to ensure quality control, employee safety, security, and customer satisfaction.

Customer sites may also utilize video surveillance of non-private workplace areas. Video monitoring is used to identify safety concerns, maintain quality control, detect theft and misconduct, and discourage or prevent acts of harassment and workplace violence.

Because SVCE is sensitive to your legitimate privacy rights, every effort will be made to see that workplace monitoring is done in an ethical and respectful manner.

Travel Expense Policy

SVCE will reimburse you for work-related travel expenses such as transportation, overnight accommodations and meals. The total daily maximum reimbursable amount for meals is \$50.00. You must have your supervisor's approval before incurring travel expenses. All requests for reimbursement must be submitted to the Director of Administrative Services and Finance for approval along with supporting documents or original invoices.

Non-exempt employees will be paid for time spent traveling and in conference sessions. If you are required to use your personal automobile on work-related business, SVCE will reimburse you for mileage at the current IRS reimbursement rate and for parking expenses. You must submit the appropriate expense form to the Director of Administrative Services and Finance for approval and then forward it for payment once per month. If you use your personal vehicle for work-related travel you are expected to maintain at least the minimum insurance required by law.

Agency Property and Equipment

Equipment essential to accomplishing job duties is often expensive and may be difficult to replace. When using agency property, you are expected to exercise care, perform required maintenance, and follow all operating instructions, safety standards, and guidelines.

The agency requires that all equipment be in proper working order and safe to work with at all times. If any equipment appears to be damaged, defective, or in need of repair, do not use it until a qualified technician certifies that it is repaired and safe. Never try to fix broken equipment yourself. Please notify your supervisor of any equipment breakdown as soon as it happens. If the breakdown requires emergency repairs, your supervisor will help you deal with the emergency situation as soon as possible. Prompt reporting of damages, defects, and the need for repairs could prevent possible personal injury and deterioration of equipment. Please ask your supervisor if you have any questions about your responsibility for maintenance and care of equipment used on the job.

If you are authorized to operate an agency vehicle in the course of your assigned work, or if you operate your own vehicle in performing your job, you must adhere to the following rules:

1. You must be a licensed California driver and must maintain at least the minimum insurance required by law.
2. You must maintain weekly mileage reports.
3. You are responsible for following all the manufacturer's recommended maintenance schedules so as to maintain valid warranties, and for following the manufacturer's recommended oil change schedule.
4. SVCE provides insurance on agency vehicles. However, you will be considered completely responsible for any accidents, fines, moving or parking violations.
5. If involved in an accident do not admit fault, only provide required insurance and personal DMV information.

6. You must keep the agency vehicle clean at all times. You must also wash and vacuum the vehicle as often as necessary. You will be reimbursed for your reasonable expense of keeping the vehicle clean. Please retain any receipts for reimbursement.
7. Persons not authorized or employed by SVCE cannot operate or ride in an agency vehicle.
8. Prior to operation of any agency vehicle, your supervisor will train you on the appropriate steps to take if you are involved in an accident, such as filling out the accident report, getting names and phone numbers of witnesses and so on.

If you are required to drive an agency vehicle or your own vehicle for agency business, you will also be required to show proof of a current, valid driver's license and current effective auto insurance coverage prior to the first day of employment.

If you drive your own vehicles on agency business you will be reimbursed at the current IRS reimbursement rate.

You are responsible for all agency property, materials, or written information issued to you or in your possession. You may be asked to sign an acknowledgment of receipt of agency property issued to you. All agency property must be returned on or before your last day of work. You may be responsible for the replacement cost of agency property not returned.

Agency cars are for agency business only, and only authorized employees may drive agency cars. Employee spouses, children, friends or anyone other than the employee may not operate these vehicles, unless an emergency arises. A violation of these rules, or excessive or avoidable traffic and parking violations may result in disciplinary action, up to and including termination.

Personal Use of Agency Property

You are not allowed to use agency owned property for personal use. The definition of "agency owned" assets includes, but is not limited to, facilities, computers, and their related equipment, labelers, copy machines, fax machines, postage meter, any type of supplies including office supplies, tools, vehicles, credit cards, etc. These assets are provided to you for agency related business only.

Please also remember that all desks, lockers, cabinets, computers and vehicles that belong to the agency will be open to all agency employees. Personal items, messages or information that you consider private must not be placed or kept in telephone systems, office systems, agency computer systems, office work spaces, desks, and credenzas or file cabinets.

The postage meter is not for personal use. It is at your supervisor's discretion to allow you to use the postage meter for personal purposes. If allowed, the postage must be paid for in advance.

If you are issued an agency credit card you are responsible for the use of that card. Under no circumstances will the agency allow you to sign an agency credit card unless the card being signed is issued in your name. Signing another employee's credit card will result in liability for the expense and may subject you to immediate termination. If you hold an agency credit card you may only give permission to another employee to make an authorized business purchase or reservation using your card with prior approval from the Director of Administrative Services and Finance of the agency. Any holders of agency credit cards or authorized users who transact a non-business related charge may be subject to immediate termination. Receipts for all credit card

transactions must be given to the Director of Administrative Services and Finance along with an explanation of the purchase.

Driving Record and Insurance

As a condition of employment, we require you to maintain an acceptable driving record if you drive for agency business. Any accidents or traffic violations must be reported to a supervisor immediately if they occur during the course of your duties. You will be responsible for any tickets you receive while driving on agency business whether in an agency vehicle or your own personal vehicle. Failure to report an on-the-job motor vehicle accident, no matter how minor, will lead to disciplinary action, up to and including termination. Additionally, you are required to maintain the level of insurance required by the state of California. A copy of your insurance card must be on file before you will be allowed to drive for agency business.

Health and Safety

Safety is everybody's business. Safety is to be given primary importance in every aspect of planning and performing all SVCE activities. We want to protect you against injury and illness, as well as minimize the potential loss of production. To achieve our goal of maintaining a safe workplace, everyone must be safety conscious at all times. In compliance with California law, and to promote the concept of a safe workplace, we maintain an Injury and Illness Prevention Plan (IIPP). The IIPP is available for your review from the Responsible Safety Officer. The Responsible Safety Officer has responsibility for implementing, administering, monitoring, and evaluating the safety program. Its success depends on the alertness and personal commitment of all.

You will receive a copy of the agency's general safety rules and will receive health and safety training as part of this program. A complete copy of the Safety Program is kept by the Director of Administrative Services and Finance and is available for your review.

Smoking Policies

Smoking, use of e-cigarettes or vapor products is not allowed in any enclosed area of the building, or within 25 feet of any entrance of the building or in any agency vehicle. In fairness to those who do not smoke, smoking is allowed only during breaks and lunch and only in designated areas.

Security

To provide for the safety and security of you, our customers and our facilities, only authorized visitors are allowed in the work areas. To ensure the safety of our guests, we encourage family and friends to check in when visiting you at the workplace.

The following security procedures must always be followed to ensure your safety and the safety of your fellow employees, and to ensure the confidentiality of the agency's proprietary information. At no time shall unauthorized persons be allowed to roam unescorted through the agency's office. It is a matter of courtesy to accompany customers and guests to and from the exits and other office to which they may be destined. If strangers are encountered in our office who do not satisfactorily identify themselves or the person with whom they will be meeting, escort them to the front of the office. If they resist, contact your supervisor immediately.

Be aware of persons loitering for no apparent reason in other non-office areas (e.g., in parking areas, walkways, entrances/exits and service areas). Report any suspicious persons or activities to your supervisor. Secure your desk at the end of the day or when called away from your work area for an extended length of time and do not leave valuable and/or personal articles in or around your workstation that may be accessible. Please report any lost facility keys to your supervisor immediately.

Workplace Violence

SVCE recognizes that violence in the workplace is a growing nationwide problem necessitating a firm, careful response by all employees. The costs of workplace violence are great, both in human and financial terms.

SVCE has adopted the following policies to ensure the safety of its employees and to provide guidance on dealing with violence in the workplace. If qualified, you may provide first aid to injured persons when required. You are required to:

1. Immediately report all indirect and direct threats of violence to a supervisor.
2. Immediately report all suspicious individuals or activities to a supervisor.
3. Never put yourself or others in peril.
4. Immediately call 911 and seek shelter if you hear a violent commotion near your workstation.
5. Cooperate fully with security, law enforcement, and medical personnel who respond to a call for help.
6. Direct all inquiries from the media about violence on SVCE premises to your supervisor or the Director of Administrative Services and Finance.

The CEO of SVCE will make the sole determination of whether, and to what extent, threats or acts of violence will be acted upon by the company. In making this determination, we may undertake a case-by-case analysis in order to ascertain whether there is a reasonable basis to believe that workplace violence has occurred. No provision of this policy shall alter the at-will nature of employment at SVCE.

Off-Duty Use of Facilities

You are prohibited from being on agency premises, or making use of agency facilities, while not on duty. You are expressly prohibited from using agency facilities, agency property or agency equipment for personal use.

Parking

You are encouraged to use the parking areas designated for our employees. Please keep in mind that the parking spaces adjacent to or in front of our building(s) are for customers and visitors only. Remember to lock your car every day and park within the specified areas.

Courtesy and common sense in parking will help eliminate accidents, personal injuries, and damage to your vehicle and to the vehicles of other employees. If you should damage another car while parking or leaving, immediately report the incident, along with the license numbers of both vehicles and any other pertinent information you may have, to your supervisor. SVCE cannot be and is not responsible for any loss, theft or

damage to your vehicle or any of its contents. You will be responsible for any parking tickets you receive while driving on agency business whether in an agency vehicle or your own personal vehicle.

Employee Suggestion Program

We encourage you to bring forward your suggestions and good ideas about how our agency can be made a better place to work and our service to customers enhanced. When you see an opportunity for improvement, please talk it over with your supervisors. Your manager can help you bring your idea to the attention of the people in the agency who will be responsible for possibly implementing it.

All suggestions are valued and listened to. When a suggestion of yours has particular merit, we provide special recognition.

DRAFT

Chapter 6-EMPLOYEE BENEFITS

Benefits

SVCE has developed and invested in an employee benefit program to supplement your regular wages. SVCE will continue these benefits as agency revenues permit; however, we reserve the right to change or eliminate any benefit program at any time.

Our benefit program consists of programs which may include health, dental, and vision coverage, life insurance, paid time off and holiday pay. In addition, there are a number of programs such as State Disability, Paid Family Leave, Unemployment Insurance, Workers' Compensation. Eligibility to participate in these programs is determined by your employee classification and length of continued service with the Agency.

Although this employee handbook does not restate all the features of our benefit programs, it provides brief summaries to acquaint you with some of the key features of the programs. Separate plan summaries and plan documents describe the plans in detail and should be consulted for further information. In the case of a conflict between the benefit information set forth in this employee handbook or oral explanations by agency representatives and the terms and conditions of the official plan documents, the provisions of the official plan documents, as interpreted by the plan administrator, shall control.

Our benefits represent a hidden value of between 35% and 50% supplement to your incomes.

Official Health Plan Documents

The employee handbook contains a number of brief summaries of the benefit programs that the employer provides for eligible employees. The purpose of these summaries is simply to acquaint you with the general provisions of the applicable plans. In the interest of brevity, they do not contain full statements of all of the terms, conditions, and limitations of the plans. If there are any real or apparent conflicts between the brief information in the handbook and the terms, conditions and limitations of the official plan documents, the provisions of the official plan documents will be considered accurate. You are encouraged to review all plan documents carefully to familiarize yourself with all of the provisions of the plans.

Paid Time Off (PTO)

Eligibility

Paid Time Off (PTO) is an all purpose time-off policy for eligible employees to use for vacation, the diagnosis, care, treatment of an existing health condition or preventative care of an employee, family member or for employees who are victims of domestic violence, sexual assault or stalking to seek aid, treatment, or related assistance. A family member is defined as a spouse, registered domestic partner (RDP), grandparent, grandchild, sibling, In-law, parent, step-parent, legal guardian, or child (regardless of age or dependency status), illness or injury, and personal business. Personal business also includes time spent for jury duty, and bereavement. Regular full-time employees are eligible to earn and use PTO as described in this policy.

PTO begins accruing upon your date of hire. Employees may begin using PTO upon your 90th day of employment. At that time, you can request the use of earned PTO including that accrued during the waiting period. On your 90th day of employment you will be eligible for our Paid Time Off Schedule.

Accrual

Regular, full-time employees accrue 6.15 hours of PTO per pay period for your first year of eligibility. After your first anniversary, and thereafter, you will receive an additional eight (8) hours per year, which will accrue at an additional rate of .31 hours per pay period, not to exceed ten (10) years of employment.

The length of eligible service is calculated on the basis of a "benefit year." This is the 12-month period that begins when you start to earn PTO. You will not earn PTO while you are out on a leave of absence. Therefore, your benefit year may be extended if you go out on a leave of absence other than a military leave of absence. Military leave has no effect on this calculation. (See individual leave of absence policies for more information.)

Scheduling PTO

PTO can be used in minimum increments of one (1) hour for non-exempt employees. Exempt employees may use PTO in ½ day or 1 full day increments. If you have an unexpected need to be absent from work you must notify your direct supervisor before the scheduled start of your workday, if possible. Your direct supervisor must also be contacted on each additional day of unexpected absence.

To schedule planned PTO, you need to request advance approval from your supervisor. Requests will be reviewed based on a number of factors, including business needs and staffing requirements.

PTO is paid at your base pay rate at the time of absence. It does not include overtime or any special forms of compensation such as incentives, commissions, bonuses, or shift differentials.

PTO will be used to supplement any payments that you are eligible to receive from state disability insurance, or workers' compensation. The combination of any such disability payments and PTO cannot exceed your normal weekly earnings.

PTO Caps

In the event that available PTO is not used by the end of the benefit year, you may carry unused time forward to the next benefit year. The amount of PTO carried may not exceed twice your annual accrual. Once this maximum is reached, PTO will stop accruing until PTO is taken.

Upon termination of employment, you will be paid for unused PTO that has been earned through your last day of work.

Sick Leave

Sick leave is a form of insurance that is accumulated in order to provide a cushion for incapacitation due to illness. It is to be used only for the diagnosis, care, treatment of an existing health condition or preventative care of an employee, family member or for employees who are victims of domestic violence, sexual assault or stalking to seek aid, treatment, or related assistance. A family member is defined as a spouse, registered domestic partner (RDP), grandparent, grandchild, sibling, In-law, parent, step-parent, legal guardian, or child (regardless of age or dependency status).

For employees who are not eligible for the PTO policy as outlined above, employees will be granted 24 hours of sick leave upon hire and on January 1st of each year thereafter. Employees may begin using sick leave upon their 90th day of employment. Employees may not carry unused sick leave forward to the next year.

When wishing to use sick leave, you must personally call your supervisor prior to the start of your shift on the day you are scheduled to work. Sick leave is not to be taken in less than two (2) hour increments and does not accrue when you are out on sick leave.

A paid absence is counted as hours worked for the purposes of computing a 40-hour week, but is not counted as a basis for computing overtime.

You will not receive sick pay for any days for which you received State Disability Insurance (SDI) or Workers' Compensation payments.

If you become a full time employee, you will be eligible to begin accruing PTO based on your full time convergence. You will no longer be eligible for sick leave.

Sick leave is not granted for the purpose of accompanying or taking pets to procure medical attention.

Accrued sick leave does not carry over from year to year. We do not provide pay in lieu of unused sick leave. Additionally, unused sick leave has no cash value and will not be paid at termination.

Holidays

We observe the following paid holidays for full-time employees:

New Year's Day
Martin Luther King Jr.'s Birthday
President's Day
Memorial Day
Independence Day
Labor Day
Veterans Day
Thanksgiving
Day after Thanksgiving
Christmas Day

Eligibility for holiday pay begins upon date of hire. You must also be regularly scheduled to work on the day on which the holiday is observed, and must work your regularly scheduled working days immediately preceding and immediately following the holiday, unless an absence on either day is approved in advance by your supervisor.

When a holiday falls on a Saturday or Sunday, it is usually observed on the preceding Friday or the following Monday. Holiday observance will be announced in advance.

If you are on a paid absence due to PTO when a holiday occurs, you will receive holiday pay. Non-exempt employees who work on holidays, due to customer job requirements, will receive regular earned wages.

Insurance Benefits

Medical, Dental and Vision Insurance: We provide comprehensive medical, dental & vision insurance plans for eligible employees and their dependents. You may be required to provide adequate proof of the dependent relationship in order to add the dependents to our insurance policies. Typically proof of the relationship may be established through a copy of a birth certificate, adoption documents, marriage license, or certificate of registered domestic partnership. We cannot guarantee your domestic partner relationship will be kept confidential.

Full-time and part-time employees are eligible on the first of the month once they have completed 30 days of continuous employment with SVCE. The agency will contribute \$1,000 towards full-time employee's medical, dental and vision benefits. Part-time employees will be eligible on a prorated contribution based on the average hours worked. You will be responsible for any excess premiums due for the coverage you choose for your dependents. Deductions from your paycheck will be made to cover this cost through payroll deductions. Information describing your benefits will be given to you when you join the program. Any remaining employer contribution will be allocated towards the employee's flexible spending account or health savings account.

During any leave of absence such as personal leave, Workers' Compensation leave or other disability leave, health benefits will continue through the end of the month. For the duration of any pregnancy disability leave of absence, health and life insurance benefits will be continued for the duration of your pregnancy disability leave.

Please direct any questions you have regarding your health and dental insurance to the Director of Administrative Services and Finance.

Retirement Plan: For more information regarding eligibility, contributions, benefits and tax status, contact the Director of Administrative Services and Finance. All eligible participants will receive a summary plan description.

Disability Insurance: The Agency furnishes private long-term disability policies. For more information, contact the Director of Administrative Services and Finance.

Life and Accidental Death and Dismemberment Insurance: If you are a regular full time employee of SVCE, you will be provided our group life insurance coverage paid for by the organization. This insurance is payable in the event of your death, in accordance with the policy, while you are insured. You may change your beneficiary whenever you wish by submitting the appropriate documents to the Director of Administrative Services and Finance. Refer to the literature provided by our insurance agency for details on your life insurance coverage.

Paid Family Leave (PFL) Insurance: All employees who take time off to care for a seriously ill family member (child, parent, grandparent, grandchildren, in-laws, spouse or registered domestic partner) or bond with a new child may be eligible to receive replacement wages for up to six weeks during any 12-month period, under California's Paid Family Leave program. This program is funded with employee contributions through the State Disability Insurance (SDI) Program. Such contributions are deducted from each employee's paycheck. Even though employees may be eligible to receive Paid Family Leave insurance benefits, a leave of absence must still be requested and approved as defined in our leave policies. Please understand that this leave does not mandate any guarantee that your job will be available when you are ready to return.

State Disability Insurance: If you are unable to work due to a non-work related medical condition or injury you may be entitled to State Disability Insurance (SDI). SDI benefits are paid by the state and are financed from mandatory payroll tax deductions from all employees' wages. Questions regarding SDI benefits should be

directed to the Director of Administrative Services and Finance or the state's Employment Development Department.

Unemployment Compensation: We contribute each year to the California Unemployment Insurance Fund on behalf of our employees.

Workers' Compensation: The agency purchases a workers' compensation insurance policy to protect you while you are employed by us. The policy covers you in case of occupational injury or illness. It is your responsibility to notify a member of management immediately if injured. Please refer to the Workers' Compensation policy for additional information.

We provide workers' compensation insurance for our employees as required by state law. The insurance provides important protection for employees who suffer a work-related injury. We encourage you to report all workplace injuries immediately and to take advantage of the benefits provided by our workers' compensation insurance if you are injured on the job.

Workers' compensation insurance provides important protection for employees who suffer an injury at work. Unfortunately, we understand that some employees are encouraged to file fraudulent workers' compensation claims. For your own protection, you should know that the California Insurance Frauds Protection Act provides that it is unlawful for any person to:

"Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining . . . compensation . . . and shall be punished by imprisonment in county jail for one year, or in the state prison for two, three or five years, or by a fine not exceeding Fifty Thousand Dollars (\$50,000.00) . . . or by both imprisonment and fine."

Our policy is to investigate all questionable workers' compensation claims. If they appear to be fraudulent, they are referred to the Bureau of Fraudulent Claims and the District Attorney's office.

Section 125 (Cafeteria Plan): Through the flexible spending account or the health savings account, you may designate an annual dollar amount of your before-tax income to pay for certain eligible expenses. Particular care should be taken to assure that the funds required in the flexible spending account are not over estimated as unused funds cannot be returned to the participant at the end of the plan year. Please refer to the Flexible Benefit Plan (SPD) and the Health Spending Account (SPD) booklets for information about the program. If you need additional information or change forms, please speak with the Director of Administrative Services and Finance.

Domestic Partners

SVCE believes that basic medical/dental/vision coverage should be available to employees and their dependents. To recognize non-traditional family arrangements and to demonstrate our commitment to our community of employees and their families, SVCE has instituted a Domestic Partners Policy. This policy gives you the opportunity to cover a long-term, significant same sex partner under our benefits plans, as well as opposite sex partners for employees over 62 years of age. SVCE wishes to make it clear that it cannot

guarantee confidentiality of the relationship once a domestic partner is covered under our policy. See the Director of Administrative Services and Finance for more information.

Cal-COBRA

The California Continuation Benefits Replacement Act (Cal-COBRA) gives qualified employees and their dependents the opportunity to continue health insurance coverage under SVCE's health plan when a "qualifying event" would normally result in the loss of eligibility. Some common qualifying events are resignation, termination of employment, or death of an employee; a reduction in an employee's hours or a leave of absence; an employee's divorce or legal separation; and a dependent child no longer meeting eligibility requirements. Under Cal-COBRA, you or the beneficiary pays the full cost of coverage at SVCE's group rates. In addition, you or the beneficiary may be required to pay an administration fee. Our plan administrator will provide you with a written notice describing rights granted under Cal-COBRA when you become eligible for coverage under our plan. The notice contains important information about your rights and obligations.

Recreational Activities and Programs

SVCE or its insurer will not be liable for payment of workers' compensation benefits for any injury that arises out of your voluntary participation in any off-duty recreational, social, or athletic activity that is not part of your work related duties.

Leaves of Absence

Occasionally, for medical, personal, or other reasons, you may need to be temporarily released from the duties of your job with SVCE. It is the policy of SVCE to allow its eligible employees to apply for and be considered for certain specific leaves of absence.

All requests for leaves of absence shall be submitted in writing to your supervisor. Each request shall provide sufficient detail such as the reason for the leave, the expected duration of the leave, and the relationship of family members, if applicable. When you become aware of your need for leave, requests shall be provided at least 30 days in advance. If your need for leave is not foreseeable, you must follow the agency's customary notice and procedural requirements for requesting leave. Failure to return to work as scheduled from an approved leave of absence or to inform your supervisor of an acceptable reason for not returning as scheduled will be considered a voluntary resignation of employment. While on a leave of absence you may not obtain other employment or apply for unemployment insurance. If either of these instances occurs, you may be viewed as having voluntarily resigned from the agency.

You will not accrue PTO while you are on a leave of absence, regardless of whether it is paid or unpaid. There are several types of leaves for which you may be eligible.

Medical Leaves of Absence

A medical leave of absence may be granted for non-work related temporary medical disabilities (other than pregnancy, childbirth and related medical conditions) until the end of the month in which the leave began with a doctor's written certificate of disability. Requests for leave must be made in writing as far in advance as possible, but, requests shall be provided at least 30 days in advance. If your need for leave is not foreseeable, you must follow the agency's customary notice and procedural requirements for requesting leave. If you are granted a medical leave you are required to use any accrued sick pay. You also may use any PTO or sick time previously accrued.

A medical leave begins on the first day your doctor certifies that you are unable to work and ends when your doctor certifies that you are able to return to work, when the employer is unable to accommodate additional leave or until the end of the month in which the leave began, whichever occurs first. Your supervisor will supply you with a form for your doctor to complete, showing the date you were disabled and the estimated date you will be able to return to work. You must present a doctor's certificate showing fitness to return to work.

For the duration of any leave of absence, health and life insurance benefits ordinarily provided by SVCE, and for which you are otherwise eligible, will be continued until the last day of the month in which the leave begins. For the duration of a pregnancy disability leave, health and life insurance benefits ordinarily provided by SVCE, and for which you are otherwise eligible, will be continued for the duration of your pregnancy disability leave. During this time, you will be required to contribute your portion of the premium on the same basis as you would have been required during your normal working relationship, including payment of any premium for the dependent coverage you have elected.

If you wish to continue these benefits you may do so by electing to continue the benefit through the Cal-COBRA provisions, and by paying the applicable premiums.

You will not accrue PTO while you are on a medical leave of absence.

If returning from a non-work related medical leave, you will be offered the same position held at the time of leaving, if available. However, we cannot guarantee that your job or a similar job will be available upon your return. If SVCE is unable to provide a job for you at the end of your leave, we will end your employment, but you will be eligible to apply for any opening that may arise for which you are qualified.

Bereavement Leave

SVCE provides regular full-time and regular part-time employees up to three (3) days' paid bereavement leave in the event of a death in your immediate family. For purposes of this policy, "immediate family" includes your spouse, parent, child, sibling; your spouse's parent, child, or sibling; your long-time companion or domestic partner; and your grandparents or grandchildren. If you need to take time off due to the death of an immediate family member you must contact your supervisor. Your supervisor may approve additional unpaid time off.

Bone Marrow and Organ Donation Leave

Employees who are donating an organ to another person may take a leave of absence not exceeding 30 business days (and which may be taken in one or more periods) in any one-year. Employees who are donating

their bone marrow to another person may take a leave of absence not exceeding 5 business days (and which may be taken in one or more periods) in any one year.

Requests for leave must be made in writing as far in advance as possible. You must provide a written medical certification from your health care provider to SVCE that shows that you are a bone marrow or organ donor and that there is a medical necessity for the donation.

Bone Marrow and Organ Donation leave is a paid leave, however you are required to use up to 5 days of accrued but unused sick or PTO leave for bone marrow donation, and up to 2 weeks of accrued but unused sick or PTO leave for organ donation.

For the duration of a Bone Marrow or Organ Donation leave of absence, health and life insurance benefits ordinarily provided by SVCE, and for which you are otherwise eligible, will be continued until the last day of the month in which the leave begins. During this time, you will be required to contribute your portion of the premium on the same basis as you would have been required during your normal working relationship, including payment of any premium for the dependent coverage you have elected.

When you are ready to return to work after a Bone Marrow or Organ Donation leave, you must provide certification from your medical care provider that you are able to safely perform all of the essential functions of your position with or without reasonable accommodation. Except as otherwise allowed by law, you are entitled, upon return from leave, to be reinstated in the position you held before the Bone Marrow or Organ Donation leave, or to be placed in a comparable position with comparable benefits, pay, and terms and conditions of employment.

Civil Air Patrol Leave

Employees who volunteer for the California Wing of the Civil Air Patrol are allowed up to ten days of unpaid leave each year. This leave covers employees who are needed to respond to an emergency operational mission who have been employed by the agency for at least 90 days immediately preceding the requested leave. The agency reserves the right to verify the need for the leave with the Air Patrol.

Domestic Violence and Sexual Assault Victim Leave

SVCE takes threats and actions of domestic abuse and sexual assault against our employees very seriously, and wants employees to feel free to obtain services to keep themselves and their dependents safe.

If at any time you need to be absent from work because you have been a victim of domestic violence or sexual assault, and you need to take time off to ensure your safety, seek medical treatment, or receive counseling as a result of domestic violence or sexual assault, please let your supervisor or the Director of Administrative Services and Finance know immediately. Your privacy will be protected to the greatest extent possible. You may use accrued PTO or sick leave in lieu of unpaid time off for these purposes.

Jury Duty or Witness Leave

You may want to fulfill your civic responsibilities by serving on a jury or as a witness as required by law. You may request unpaid leave for the length of absence, unless the leave of absence is taken as PTO. We

will comply with federal and state requirements on pay for exempt employees. You may be requested to provide written verification from the court clerk of having served.

You must show the jury duty or witness summons to your supervisor as soon as possible so that arrangements can be made to cover your absence. Of course, you are expected to report for work whenever the court schedule permits. If you are called for jury duty during a particularly busy time, we may ask you to request the court to postpone the mandatory jury duty to a more convenient time for us. You retain all fees paid for appearing, plus transportation reimbursements received, if any.

Military Leave

If you wish to serve in the military and take military leave you must contact the Director of Administrative Services and Finance for information about your rights before and after such leave. You are entitled to reinstatement upon completion of military service provided you return or apply for reinstatement within the time allowed by law.

Pregnancy Disability Leave

Eligibility and Terms of Leave

Female employees are entitled to an unpaid Pregnancy Disability Leave (PDL) during the time they are disabled due to pregnancy, childbirth, or related medical conditions. This leave will be for the period of disability, up to four months or 17 1/3 workweeks. You are "disabled by pregnancy" if you are unable because of pregnancy to work at all, are unable to perform the essential functions of your job, or to perform these functions without undue risk to successful completion of your pregnancy, or to other persons.

Leave may be taken intermittently or on a reduced work schedule when medically advisable, as determined by your medical care provider. Medical certification is required, and the length of Pregnancy Disability Leave will depend on the medical necessity for the leave. If you need intermittent leave or leave on a reduced schedule, SVCE may require you to transfer, during the period of the intermittent or reduced schedule leave, to an available alternative position for which you are qualified and which better accommodates your recurring periods of leave. Transfer to an alternative position may include altering an existing job to better accommodate your need for intermittent leave or a reduced work schedule.

Applying For Leave

If possible, you shall give at least 30 days notice requesting a pregnancy-related leave. This notice must provide and include the expected date on which the leave will begin, written certification from your medical care provider stating the anticipated delivery date and the duration of the leave.

Return to Work

Before returning to work, you must provide a release from your medical care provider certifying that you are able to safely perform all of the essential functions of your position with or without reasonable accommodation. SVCE will reinstate you to your position unless:

1. Your job has ceased to exist for legitimate business reasons;
2. Your job could not be kept open or filled by a temporary employee without substantially undermining SVCE's ability to operate safely and efficiently;

3. You have directly or indirectly indicated your intention not to return;
4. You are no longer able to perform the essential functions of the job with or without reasonable accommodation;
5. You have exceeded the length of the approved leave; or
6. You are no longer qualified for the job.

If SVCE cannot reinstate you to the position you held before the pregnancy disability leave began, SVCE will offer you a comparable position, provided that a comparable position exists and is available, and provided that filling the available position would not substantially undermine SVCE's ability to operate safely and efficiently.

Integration with Other Benefits

A pregnancy disability leave is unpaid, but you are required to use your accrued sick leave during the leave. In addition, you may elect to use accrued PTO during the leave. Sick leave and PTO will supplement any State Disability Insurance benefits. SVCE will maintain group medical benefits during a pregnancy disability leave as required by law. No additional PTO, sick leave or holiday pay will accrue during the leave. You may also, however, be eligible for short term disability benefits.

Continuation of Medical Benefits

For the duration of your PDL leave of absence, health and life insurance benefits ordinarily provided by SVCE, and for which you are otherwise eligible, will be continued for the duration of your pregnancy disability leave. During this time, you will be required to contribute your portion of the premium on the same basis as you would have been required during your normal working relationship, including payment of any premium for the dependent coverage you have elected. If you wish to continue these benefits you may do so by electing to continue the benefit through the Cal-COBRA provisions, and by paying the applicable premiums.

School Appearance Leave

If you are the parent or guardian of a child who has been suspended from school and you receive a notice from your child's school requesting that you attend a portion of a school day in the child's classroom, you may take unpaid time to appear at the school, unless you use accrued PTO. Before your planned absence, you must give reasonable notice to your supervisor that you have been requested to appear by your child's school.

Time Off for Victims of a Violent or Serious Crime

Under certain circumstances, employees who are victims of serious crimes may take time off work to participate in judicial proceedings. Qualified family members of such crime victims may also be eligible to take time off from work to participate in judicial proceedings. The law defines a serious crime to include violent or serious felonies, such as felonies involving theft or embezzlement, crimes involving vehicular manslaughter while

intoxicated, child abuse, physical abuse of an elder or dependent adult, stalking, solicitation for murder, hit-and-run causing death or injury, driving under the influence causing injury, and sexual assault. When possible, you must provide us with advance notice of the need for the time off. Your privacy will be protected to the greatest extent possible. Time away from work for non-exempt employees will be without pay, unless you wish to use your accrued PTO or sick leave to cover the period of absence.

Time Off to Vote

If you do not have sufficient time outside of working hours to vote in a statewide election, you may, without loss of pay, take off up to two hours of working time to vote. Such time must be at the beginning or end of the regular working shift, whichever allows the most free time for voting and the least time off from working, unless otherwise mutually agreed. You must notify us at least two working days in advance to arrange a voting time.

Volunteer Emergency Duty Leave

SVCE will allow unpaid time off to employees who perform emergency duty as a volunteer firefighter, reserve peace officer, emergency rescue personnel, an officer, employee, or member of a disaster medical response entity sponsored or requested by the state. If you are a volunteer firefighter, or perform other emergency personnel duties, please alert your supervisor so that he or she may be aware of the fact that you may have to take time off for emergency duty. When possible, you must provide us with advance notice of the need for the time off. Time away from work will be without pay, unless you wish to use your accrued PTO or sick leave to cover the period of absence.

Workers' Compensation

We, in accordance with state law, provide insurance coverage for employees in case of a work related injury. To ensure that you receive any workers' compensation benefits to which you may be entitled, you will need to:

1. Immediately report any work-related injury to your supervisor.
2. Seek medical treatment and follow-up care if required.
3. Complete a written Employee's Claim Form (DWC Form 1) and return it to your supervisor.

Provide us with certification from your health care provider regarding the need for workers' compensation disability leave and your ability to return to work from the leave.

Return to Work Policy

SVCE is committed to returning injured employees to modified or alternative work as soon after a work related injury as possible. Temporarily modifying your job or providing you with an alternative position will do this. Your medical condition along with any limitations or restrictions given by the attending physician will be considered as a priority when identifying the modified/alternative position.

The program is intended to provide our employees with an opportunity to continue as valuable members of our team while recovering from a work related injury. We want to minimize any adverse effects of an ongoing disability on our employees. This program is intended to promote speedy recovery, while keeping the

employees' work patterns and income consistent. At the same time, we benefit from having our employees providing a service and contributing to the overall productivity of our business.

DRAFT

Receipt and Acknowledgment of SVCE Employee Handbook

I have received my copy of SVCE's employee handbook. I understand and agree that it is my responsibility to read and familiarize myself with the policies and procedures contained in the handbook.

At-Will Employment

I further understand that my employment is at-will, and neither SVCE nor I have entered into a contract regarding the duration of my employment. I am free to terminate my employment with SVCE at any time, with or without cause. Likewise, the agency has the right to terminate my employment with or without cause, at the discretion of the agency. No employee of SVCE can enter into an employment contract for a specified period of time, or make any agreement contrary to this policy without the written agreement from the CEO and formal approval by the Board.

Future Revisions

We reserve the right to revise, modify, delete or add to any and all policies, procedures, work rules or benefits stated in this employee handbook or in any other document, except for the policy of at-will employment. Any written changes to this employee handbook will be distributed to all employees so that you will be aware of the new policies or procedures. No oral statements or representations can in any way change or alter the provisions of this employee handbook.

Illness and Injury Prevention Plan

I acknowledge that I have read and understand the SVCE's Illness & Injury Prevention Plan and that I agree to abide by these policies.

Drug and Alcohol Abuse Policy

I certify that I have read the agency's Drug and Alcohol Abuse Policy and agree to abide fully by its terms. I understand that as a condition of my employment, I must notify the agency of any conviction for a drug violation that occurs within five days after such a conviction. I understand that any violation of the policy may result in serious disciplinary action, including immediate termination.

Employee's Printed Name _____

Position _____

Employee's Signature _____

Date _____

Receipt and Acknowledgment of SVCE Handouts

Sexual Harassment Prevention Handout

I acknowledge that I have read and understand the enclosed pamphlet on sexual harassment prevention in the workplace and reporting procedures in the event that harassment occurs.

State Disability Insurance, Paid Family Leave and Unemployment Handouts

I acknowledge that I have received the enclosed pamphlets on state disability insurance, paid family leave and unemployment insurance as provided by the Employment Development Department.

Workers' Compensation Handout

I acknowledge that I have received the enclosed pamphlet on workers' compensation benefits as provided by the California Chamber of Commerce.

Employee's Printed Name _____

Position _____

Employee's Signature _____

Date _____

DRAFT



Silicon Valley Clean Energy Authority
 Budget FY 2016-2017
 Oct. 1, 2016 - Sep 30, 2017

REVENUE

Power Supply Revenue		37,700,000
Initial Funding		1,506,000
Total Revenue	\$	39,206,000

EXPENDITURES

Power Supply Cost	\$	24,754,000
SVCE and Members Wages		
SVCE Salaries		1,662,000
SVCE Benefit		332,400
Members Transitional Staff		39,000
SVCE Wages and Members Wages Subtotal	\$	2,033,400
Consultant Support		
Data Management		700,000
Technical Consulting		185,000
Community Outreach		160,000
Admin. And Legal		205,000
Consultant Support Subtotal	\$	1,250,000
Program Roll-out		
Bond		100,000
Notifications		940,000
Program Roll-out Subtotal	\$	1,040,000
Office Lease and Capital Expense		
Office Lease		140,000
Furniture and Electronics		180,000
Off. Lease and Capital Expense Subtotal	\$	320,000
Travel	\$	27,000
Misc.		
To Reserves		2,262,000
Initial funding repayment		225,000
LOC initial cost		50,000
Interest expense on LOC		60,000
Misc. Subtotal	\$	2,597,000
Total Expenditures	\$	32,021,400
Net Revenue	\$	7,184,600