



# CITY OF MORRO BAY CITY COUNCIL AGENDA

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*The City of Morro Bay provides essential public services and infrastructure to maintain a safe, clean and healthy place for residents and visitors to live, work and play.*

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## **Regular Meeting - Tuesday, April 24, 2018 Veterans Memorial Hall - 6:00 P.M. 209 Surf St., Morro Bay, CA**

ESTABLISH QUORUM AND CALL TO ORDER  
MOMENT OF SILENCE  
PLEDGE OF ALLEGIANCE  
RECOGNITION  
CLOSED SESSION REPORT  
MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS  
CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS  
PRESENTATIONS - None

### **PUBLIC COMMENT PERIOD**

Members of the audience wishing to address the Council on City business matters not on the agenda may do so at this time. For those desiring to speak on items on the agenda, but unable to stay for the item, may also address the Council at this time.

To increase the effectiveness of the Public Comment Period, the following rules shall be followed:

- When recognized by the Mayor, please come forward to the podium and state your name and city of residence for the record. Comments are to be limited to three minutes.
- All remarks shall be addressed to Council, as a whole, and not to any individual member thereof.
- The Council respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, commission and/or staff.
- Please refrain from public displays or outbursts such as unsolicited applause, comments or cheering.
- Any disruptive activities that substantially interfere with the ability of the City Council to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in City Council meetings is welcome and your courtesy will be appreciated.

### **A. CONSENT AGENDA**

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

A-1 APPROVAL OF MINUTES FOR THE MARCH 13, 2018 CITY COUNCIL MEETING;  
(ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

- A-2 APPROVAL OF MINUTES FOR THE MARCH 27, 2018 CITY COUNCIL MEETING;  
(ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

- A-3 APPROVAL OF MINUTES FOR THE APRIL 10, 2018 CITY COUNCIL SPECIAL  
CLOSED SESSION MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

- A-4 APPROVAL OF FINAL MAP FOR TRACT 2812 (2400 MAIN STREET); (PUBLIC  
WORKS)

**RECOMMENDATION: City Council adopt Resolution No. 18-18 approving the Final  
Map for Tract 2812.**

- A-5 AUTHORIZATION TO ALLOW MORRO DUNES TRAILER PARK AND CAMPGROUND  
INC., LEASE HOLDER OF 1700 EMBARCADERO TO SUBMIT A DEVELOPMENT  
PROPOSAL TO THE COMMUNITY DEVELOPMENT DEPARTMENT TO INSTALL A  
CARPORT SOLAR ARRAY STRUCTURE; (COMMUNITY DEVELOPMENT)

**RECOMMENDATION: Authorize Morro Dunes Trailer Park and Campground Inc.  
to submit an application to the Community Development Department for  
installation of a carport solar array.**

- A-6 APPROVAL OF PRELIMINARY STREETS TO BE MAINTAINED USING FUNDING  
FROM SB1; (PUBLIC WORKS)

**RECOMMENDATION: Adopt Resolution No. 20-18 approving the Fiscal Year 2018-  
2019 project list for Senate Bill 1 (Road Repair and Accountability Act of 2017)  
Road Maintenance and Rehabilitation Account (RMRA) funding.**

- A-7 ADOPTION OF RESOLUTION NO. 19-18 DESIGNATING AUTHORIZED  
REPRESENTATIVES FOR FEMA AND CAL OES DISASTER ASSISTANCE; (CITY  
MANAGER/PUBLIC WORKS)

**RECOMMENDATION: Council adopt Resolution No. 19-18 authorizing execution  
of Governor's Office of Emergency Services (Cal OES) Form 130 designating the  
City Manager, or Finance Director, or Public Works Director as Applicant's  
Authorized Agents for all matters pertaining to State disaster assistance.**

- A-8 COMPLETION OF FY17/18 PROJECT NO. MB2017-ST0: COMMUNITY  
DEVELOPMENT BLOCK GRANT (CDBG) SIDEWALK PROJECT; (PUBLIC WORKS)

**RECOMMENDATION: Council receive and file this report and authorize an  
additional \$14,665.21 for unanticipated changes to the project due to existing  
conditions discovered during construction.**

- A-9 COMPLETION OF FY17/18 PROJECT NO. MB2018-ST01: PAVEMENT  
MANAGEMENT PROJECT (PMP); (PUBLIC WORKS)

**RECOMMENDATION: Council receive and file this report.**

A-10 ADOPTION OF RESOLUTION NO. 21-18 APPROVING AN INTERIM LEASE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND TLC FAMILY ENTERPRISES FOR LEASE SITE 87-88/87W-88W, LOCATED AT 883 EMBARCADERO ROAD, AND FORMERLY KNOWN AS "OFF THE HOOK" RESTAURANT; (HARBOR)

**RECOMMENDATION:** Staff recommend the City Council adopt Resolution No. 21-18, approving an interim lease agreement for Lease Site 87-88/87W-88W, as proposed, with TLC Family Enterprises.

B. PUBLIC HEARINGS - None

C. BUSINESS ITEMS

C-1 DISCUSSION AND DIRECTION ON COMMUNITY CHOICE ENERGY; (CITY MANAGER)

**RECOMMENDATION:** City Council:

1. Authorize the City Manager to work with the City of San Luis Obispo to develop a request for proposal for the provision of services to conduct a formal study and develop an implementation plan for a regional Community Choice Energy (CCE) program; and
2. Direct staff to return to City Council with regular updates on the progress of the study and implementation plan, with the deadline of September 2018 for formal discussion of creating a Joint Powers Authority agreement with the City of San Luis Obispo.

C-2 INTRODUCTION AND FIRST READING OF ORDINANCE NO. 613 AMENDING SECTION 5.47.050 OF THE MORRO BAY MUNICIPAL CODE TO LIMIT THE NUMBER OF VACATION RENTALS IN RESIDENTIAL ZONES TO 250 AT ANY ONE TIME; (COMMUNITY DEVELOPMENT)

**RECOMMENDATION:** City Council waive reading of Ordinance 613 in its entirety and introduce for first reading, by number and title only, Ordinance No. 613 amending section 5.47.050 of the Morro Bay Municipal Code (MBMC) to limit the number of vacation rentals to not more than 250 at any given time on residentially zoned property.

C-3 DISCUSSION OF ORDINANCE TO ADD CHAPTER 3.70 (CANNABIS TAX) TO TITLE 3 OF THE MORRO BAY MUNICIPAL CODE FOR TAXATION OF COMMERCIAL CANNABIS OPERATIONS, AND CONSIDER SENDING ORDINANCE TO THE VOTERS AS A BALLOT MEASURE FOR THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION; (CITY ATTORNEY)

**RECOMMENDATION:** Council discuss proposed cannabis tax ordinances (one to tax only currently authorized operations, the other to tax both currently authorized operations as well as prospectively any future operations that may be allowed) for the taxation of commercial cannabis operations, and consider placing a cannabis tax ordinance on the ballot for the November 6, 2018 general municipal election.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, May 8, 2018 at 6:00 p.m.** at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

**THIS AGENDA IS SUBJECT TO AMENDMENT UP TO 72 HOURS PRIOR TO THE DATE AND TIME SET FOR THE MEETING. PLEASE REFER TO THE AGENDA POSTED AT CITY HALL FOR ANY REVISIONS OR CALL THE CLERK'S OFFICE AT 772-6205 FOR FURTHER INFORMATION.**

**MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL LOCATED AT 595 HARBOR STREET; MORRO BAY LIBRARY LOCATED AT 625 HARBOR STREET; AND MILL'S COPY CENTER LOCATED AT 495 MORRO BAY BOULEVARD DURING NORMAL BUSINESS HOURS.**

**IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK'S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.**

PRESENT:	Jamie Irons	Mayor
	Robert Davis	Council Member
	John Headding	Council Member
	Matt Makowetski	Council Member
	Marlys McPherson	Council Member
STAFF:	Scott Collins	City Manager
	Joseph Pannone	City Attorney
	Dana Swanson	City Clerk
	Jennifer Callaway	Finance Director
	Rob Livick	Public Works Director
	Scot Graham	Community Development Director
	Greg Allen	Police Chief
	Eric Endersby	Harbor Director
	Janeen Burlingame	Management Analyst

#### ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 6:01 p.m., with all members present.

#### MOMENT OF SILENCE

#### PLEDGE OF ALLEGIANCE

RECOGNITION - None

CLOSED SESSION REPORT – No Closed Session meeting was held.

#### MAYOR AND COUNCIL MEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/YuZakirn8Rc?t=2m32s>

#### CITY MANAGER REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/YuZakirn8Rc?t=8m44s>

City Manager Collins requested the Council continue Item C-1, to a date to be determined, to allow for a proper RFP process to solicit proposals. Further, he recommended the Council provide community members who wish to speak to this item an opportunity to do so during the general Public Comment period.

C-1 CONSIDERATION OF PROPOSAL FROM AND APPROVAL OF CONTRACT TO GSI WATER SOLUTIONS FOR GROUNDWATER FLOW MODELING AND INJECTION TESTING FOR FUTURE INDIRECT POTABLE REUSE IN MORRO VALLEY; (PUBLIC WORKS)

<https://youtu.be/YuZakirn8Rc?t=11m17s>

MOTION: Mayor Irons moved to continue Item C-1, as recommended. The motion was seconded by Council Member Davis and carried unanimously, 5-0.

#### PRESENTATIONS

- Chamber of Commerce Quarterly Report

<https://youtu.be/YuZakirn8Rc?t=12m21s>

PUBLIC COMMENT

<https://youtu.be/YuZakirn8Rc?t=25m45s>

Carrie Raya from Buttercup Bakery and Café provided the business spot. Buttercup Café is located at 430 Morro Bay Blvd. opened in May 2017 and is open 7:00 a.m. - 5:00 p.m. Monday – Saturday, and 7:30 a.m. – 5:00 p.m. on Sundays.

Shaun Alladio from K38 Water Rescue Association thanked the Council for its support and presented a proclamation recognizing the City of Morro Bay and surrounding area as the Rescue Watercraft Training Capital of the World.

Pam Ochs, Morro Bay, spoke regarding the Water Reclamation Facility project and asked the Council to explore less expensive options.

Aaron Ochs, on behalf of Save Morro Bay, thanked Council Members and the City Manager for attending Sunday's Citizens for Affordable Living workshop regarding the Water Reclamation Facility project and Proposition 218 process. He also thanked Ms. Crawford and the Chamber for the presentation and progress they are making.

Janeen Burlingame, City of Morro Bay Public Works Department, announced the City is in the process of updating its short-range travel services and is seeking public input through March 28<sup>th</sup>. Surveys are available on the City website or you may call Selena McKinney at (916) 342-7895. Comments can also be submitted to Janeen Burlingame c/o City of Morro Bay, 595 Harbor Street, Morro Bay.

Eric Ford, Morro Bay, expressed concern about increased water bills and asked for clarification about the Proposition 218 process.

Betty Winholtz, Morro Bay, stated she had submitted comments to the Council for the previous meeting and those comments were not addressed. She asked the Council to explain the procedure getting a response to questions when you're unable to attend the meeting.

Steve Stevens, Morro Bay, thanked those who appeared at the meeting Sunday and asked the Council at what point the cost of the Water Reclamation Facility project would be too excessive.

Cynthia Hawley asked if the Council would be allowing public comment on Item C-1 since it had been continued.

The general Public Comment period was closed.

The public comment period for Item C-1 was opened.

Aaron Ochs, on behalf of Save Morro Bay, stated his opposition to the contract.

Nancy Bast, Morro Bay, requested a map be provided when this item comes back to Council. She also asked for clarification on whether the bids would be for reclamation ready, or a complete recycling plant.

Cynthia Hawley, Morro Bay, suggested this item was a land use item and should have been noticed as a public hearing, rather than approval of a contract. She also asked when the City intended to obtain development permits and certify the EIR for the project.

The public comment period for Item C-1 was closed.

The Council and staff responded to issues raised during Public Comment.

A. CONSENT AGENDA  
<https://youtu.be/YuZakirn8Rc?t=1h12m36s>

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion.

A-1 APPROVAL OF MINUTES FOR THE FEBRUARY 2, 2018 CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINUTES FOR THE FEBRUARY 13, 2018 CITY COUNCIL MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF MINUTES FOR THE FEBRUARY 27, 2018 CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-4 APPROVAL OF MINUTES FOR THE FEBRUARY 28, 2018 CITY COUNCIL CLOSED SESSION MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

The public comment period for the Consent Agenda was opened; seeing none, the public comment period was closed.

MOTION: Council Member Headding moved the Council approve all items on the Consent Agenda. The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

C-2 DISCUSSION AND ADOPTION OF RESOLUTION NO. 08-18 APPROVING ADOPT-A-PARK, ADOPT-A-STREET AND MEMORIAL PROGRAM POLICIES AND RESOLUTION NO. 09-18 ESTABLISHING FEE STRUCTURE FOR MEMORIAL BENCHES AT THE ROCK PARKING LOT AND TARGET ROCK AREA; (PUBLIC WORKS)

<https://youtu.be/YuZakirn8Rc?t=1h13m14s>

Management Analyst Burlingame presented the staff report and responded to Council inquiries.

The public comment period for Item C-2 was opened.

Ed Boies, Morro Bay, expressed appreciation for the work Morro Bay in Beautiful Bloom has done and hoped the City would formalize an application process and reimbursement program to help non-profit organizations cover the cost of planting. He also hoped the Master Landscape Program would move forward and suggested pets be memorialized at Del Mar Dog Park.

Walter Heath, Morro Bay, shared Morro Bay in Bloom formed in 2013 and worked with the Recreation & Parks Director at that time. He was pleased to see prior authorization is being put into place and offered to assist with developing plant palettes to determine what plants will work in different areas. Regarding monument benches, he suggested 'one size fits all' language be stricken from the policy.

Betty Winholtz, Morro Bay, appreciated formalization of the policy to ensure consistency. She suggested language in Attachment 1 allowing each group to decide what they want to do, was too broad. She objected to the City reimbursing non-profit groups for the cost of planting, adding it would simplify the process if money were not involved. She also appreciated remarks about documenting all memorials.

The public comment period for Item C-2 was closed.

Following discussion, the Council directed staff to make the following modifications and bring policies back for approval as a Business Item at a future meeting:

- A limited "Beautification" budget line item should be presented to Council for approval.
- The agreed scope of work should include a 'not to exceed' amount for each adopter, with set limits on what is reimbursable to control costs.
- Allow some flexibility on the types of benches and furniture used.
- Develop an approval process for who or what is being memorialized and the wording that is used.
- Volunteer badges be provided by the City.
- Volunteer orientation to include a clear process for reporting injuries to the City.
- Require volunteers to provide and wear safety vests.
- Establish requirements for consistent signage.
- Establish and application period ("call for projects") with either the Public Works Advisory Board or Recreation & Parks Commission providing input on potential projects.
- Combine and simplify adoption program and memorial program into one policy.

No formal action was taken by the Council.

The Council took a brief recess at 8:53 p.m. The meeting reconvened at 9:02 p.m. with all members present.

**C-3 FISCAL YEAR 2017/18 MID-YEAR BUDGET PERFORMANCE AND STATUS REPORT – SIX MONTHS ENDING DECEMBER 31, 2017, ADOPTING RESOLUTION NO. 10-18:**

- A. AUTHORIZING STAFF TO PROCEED WITH MID-YEAR ADJUSTMENTS DISCUSSED AND APPROVED DURING THE FEBRUARY 27, 2018 COUNCIL MEETING;
- B. RATIFYING COUNCIL'S ACTION ON FEBRUARY 27, 2018 TO PREPAY THE CITY'S SAFETY FIRE TIER 1 SIDE-FUND BALANCE IN THE AMOUNT OF \$301,247 FROM THE CITY'S GENERAL FUND EMERGENCY RESERVE;
- C. CONSIDER AUTHORIZATION OF AN ADDITIONAL BUDGET ADJUSTMENT FROM THE FIRE DEPARTMENTS DONATION FUND (515-2305) IN THE AMOUNT OF \$21,500 TO PURCHASE REQUIRED MANDATED ELECTRONIC PATIENT CARE, NATIONAL INFORMATION REPORTING SYSTEM (NIFRS), AND FIRE INSPECTION PROGRAM.

D. CONSIDER AUTHORIZATION OF AN ADDITIONAL BUDGET ADJUSTMENT FROM THE HARBOR ACCUMULATION FUND IN THE AMOUNT OF \$20,000 TO THE ICE MACHINE MAINTENANCE CAPITAL FUND TO ENABLE CONTINUED CITY OBLIGATIONS OF ICE MACHINE CAPITAL REPAIRS AND MAINTENANCE; (FINANCE)

<https://youtu.be/YuZakir8Rc?t=2h53m51s>

Finance Director Callaway presented the staff report and responded to Council inquiries.

The public comment period for Item C-3 was opened; seeing none, the public comment period was closed.

The Council expressed the importance of increased community participation in the upcoming budget process. Mayor Irons provided the following suggested language for a 3<sup>rd</sup> WHEREAS statement documenting the City is meeting its budget policies.

*WHEREAS, the \$301,247 expenditure meets the City's General Fund Emergency Reserve Policy Resolution 33-15, anticipating the need to prepare for future CalPERS costs while maintaining the required minimum reserve levels; and*

MOTION: Council Member Headding moved for approval of Resolution No. 10-18, a Resolution of the City Council of the City of Morro Bay, California, approving amendments to the City's Fiscal Year 17/18 budget to authorize various additional expenditures, as presented, with the one change as outlined by the Mayor. The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

C-4 ADOPT RESOLUTION NO. 11-18 RESCINDING RESOLUTION NO. 02-06 FORMING UNDERGROUND UTILITY DISTRICT NO. 7 (BEACH & MAIN STREET) DUE TO INSUFFICIENT CREDITS TO PERFORM WORK AND AUTHORIZATION TO SELL A PORTION OR ALL THE REMAINING CREDITS; (PUBLIC WORKS/FINANCE)

<https://youtu.be/YuZakir8Rc?t=3h14m44s>

Public Works Director Livick presented the staff report and, along with Ms. Callaway, responded to Council inquiries.

The public comment period for Item C-4 was opened.

Andy Hampp, Morro Bay, shared his observations regarding construction delays and escalating costs, and expressed disappointment that after 12 years staff was recommending the district be suspended.

The public comment period for Item C-4 was closed.

Following discussion, the Council supported staff recommendation and clarified any opportunity to sell credits would be brought back to the Council.

MOTION: Council Member Headding moved for approval of Resolution No. 11-18 Rescinding Resolution 02-06 Forming Underground Utility District No. 7 (Beach & Main Streets) due to Insufficient Credits to Perform Work, and authorization to sell a portion or all the remaining credits, with the change on line item under Section 2, second sentence to read "our" instead of "their." The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

<https://youtu.be/YuZakir8Rc?t=3h56m2s>

Council Member Davis requested consideration of a resolution in support of Proposition 69 on the June ballot, prohibiting legislature from raiding new transportation funds and ensuring funds only be used for transportation projects. He also suggested discussion of efforts to repeal SB-1, which provides additional transportation funds.

Mayor Irons stated the Resolution of support for Proposition 69 will be on the Consent Agenda for the next meeting.

Upon discussion, it was determined Council discussion regarding the effort to repeal SB-1 can wait until such time the initiative is validated for the November ballot.

E. ADJOURNMENT

The meeting adjourned at 10:08 p.m. The next Regular Meeting will be held on Tuesday, March 27, 2018, at 6:00 p.m. at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

Recorded by:

Dana Swanson  
City Clerk

PRESENT:	Jamie Irons	Mayor
	Robert Davis	Council Member
	John Heading	Council Member
	Matt Makowetski	Council Member
	Marlys McPherson	Council Member
STAFF:	Scott Collins	City Manager
	Lori Kudzma	Deputy City Clerk
	Jennifer Callaway	Finance Director
	Scot Graham	Community Development Director
	Greg Allen	Police Chief
	Steve Knuckles	Fire Chief
	Eric Endersby	Harbor Director
	Cindy Jacinth	Senior Planner
	Jennifer Little	Tourism Manager

#### ESTABLISH QUORUM AND CALL TO ORDER

<https://youtu.be/DbpfCgkyfPw?t=31s>

The meeting was called to order at 6:01 p.m., with all members present.

#### MOMENT OF SILENCE

#### PLEDGE OF ALLEGIANCE

RECOGNITION – None

#### CLOSED SESSION REPORT

City Attorney Pannone reported that direction from the City Council received during the March 14, 2018, Closed Session resulted in Item A-6 on today's agenda.

#### MAYOR AND COUNCIL MEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/DbpfCgkyfPw?t=2m38s>

#### CITY MANAGER REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/DbpfCgkyfPw?t=8m3s>

PRESENTATIONS – None

#### PUBLIC COMMENT

<https://youtu.be/DbpfCgkyfPw?t=10m6s>

Ed Griggs, Morro Bay resident, spoke regarding the draft Mitigated Negative Declaration related to 3300 Panorama tank removal. Mr. Griggs read and submitted a letter dated March 27, 2018.

Eric Foor spoke regarding concerns of where the money goes when he pays his water bill. Mr. Foor also expressed his dismay that Council did not appoint Barry Branin to the WRFCAC.

Bill Martony spoke regarding the recent passing of Bud Anderson. Mr. Martony also asked for clarification regarding the 218 process and if possible to overturn with a citizen initiative.

Aaron Ochs, Save Morro Bay, spoke against the Water Reclamation Facility as currently proposed. Mr. Ochs also spoke regarding the need for a change in culture.

Pam Ochs, SaveMorroBay.com, spoke regarding the need for affordability of the WRF.

Carole Truesdale, Morro Bay resident, thanked the Morro Bay Police Department and specifically Chief Allen for standing tall and keeping everyone safe.

Richard Sadowski, Planning Commissioner, spoke regarding Item C-3 and reminded the Council that the first duty should be public health and safety. Expressed a need to prioritize duties.

Marla Joe Sadowski, Morro Bay resident, spoke regarding Item C-3 and respectfully requested the Council table the item until citizens could be appointed to the subcommittee. Ms. Sadowski expressed concern over the lack of public participation. Ms. Sadowski also requested the Council adopt a sunshine ordinance.

David Nelson, expressed his concern that questions from the public regarding the WRF are being ignored.

Cynthia Hawley spoke regarding the Closed Session scheduled for the next day, and asked for clarification as to whether the firm of Aleshire & Wynder was being reviewed or solely Mr. Pannone. Ms. Hawley expressed her concerns regarding Mr. Pannone's guidance regarding the WRF project.

Betty Winholtz spoke regarding Item C-1, requesting clarification as to whether the funds for the website would be coming from the General Fund or TBID. Ms. Winholtz feels only Morro Bay residents should be allowed to serve on advisory bodies. Ms. Winholtz also expressed her opinion as to how the recent appointment to WRFCAC was unfair and unwise.

Paula Radke spoke regarding MBMC 2.08.090, stating that minutes should be provided at the next meeting.

Tina Metzger asked the Council to explain why Barry Branin was not appointed to the WRFCAC.

Mayor Irons closed Public Comment.

Council and staff responded to comments raised during public comment.

A. CONSENT AGENDA

<https://youtu.be/DbpfCgkyfPw?t=55m5s>

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion.

A-1 APPROVAL OF MINUTES FOR THE FEBRUARY 27, 2018 CITY COUNCIL MEETING;  
(ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINTUES FOR THE MARCH 14, 2018 CITY COUNCIL SPECIAL  
MEETING AND CLOSED SESSIONL (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF PROCLMATION DECLARING APRIL 2018 AS "MONTH OF THE CHILD"  
AND "CHILD ABUSE PREVENTION MONTH"; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

- A-4 ADOPTION OF RESOLUTION NO. 12-18 SUPPORTING PROPOSITION 69 ON THE JUNE 2018 BALLOT AND JOINING THE COALITION TO PROTECT LOCAL TRANSPORTATION IMPROVEMENTS' EFFORTS TO PREVENT TRANSPORTATION FUNDS FROM BEING DIVERTED FOR NON-TRANSPORTATION PURPOSES; (CITY MANAGER)

**RECOMMENDATION:** City Council adopt Resolution No. 12-18 supporting Proposition 69 on the June 2018 Ballot and joining the Coalition to Protect Local Transportation Improvements' efforts to prevent transportation funds from being diverted for non-transportation purposes.

- A-5 ADOPTION OF RESOLUTION NO. 13-18 AUTHORIZING THE CITY OF MORRO BAY TO ENTER INTO A 2017/2018 SURRENDERED AND ABANDONED VESSEL EXCHANGE GRANT CONTRACT WITH THE STATE OF CALIFORNIA DIVISION OF BOATING AND WATERWAYS IN THE AMOUNT OF \$16,100 FOR REMOVAL OF ABANDONED/SURRENDERED VESSELS AND HAZARDS TO NAVIGATION; (HARBOR)

**RECOMMENDATION:** City Council adopt Resolution No. 13-18 accepting and authorizing the Harbor Director to execute the attached Surrendered and Abandoned Vessel Exchange (SAVE) Grant Contract Agreement #C17S0602-S with the California Division of Boating and Waterways (DBW) for \$16,100 for the funding of removal of abandoned/surrendered vessels and hazards to navigation.

- A-6 ADOPTION OF RESOLUTION NO. 15-18 APPROVING AMENDMENT #1 TO THE NEW LEASE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND BOATYARD LLC FOR LEASE SITE 90/90W, LOCATED AT 885 EMBARCADERO ROAD, AND COMMONLY KNOWN AS THE OTTER ROCK CAFÉ; (HARBOR)

**RECOMMENDATION:** City Council adopt Resolution No. 15-18, approving Amendment #1 to the new lease agreement on Lease Site 90/90W, the Otter Rock café, as proposed.

Mayor Irons pulled Items A-3 and A-6. Council Member Makowetski pulled Item A-5.

MOTION: Council Member Davis moved to approve all but Items A-3, A-5 and A-6. The motion was seconded by Council Member Heading and carried unanimously, 5-0.

- A-3 APPROVAL OF PROCLAMATION DECLARING APRIL 2018 AS "MONTH OF THE CHILD" AND "CHILD ABUSE PREVENTION MONTH"; (ADMINISTRATION)

**RECOMMENDATION:** Approve as submitted.

<https://youtu.be/DbpfCgkyfPw?t=56m17s>

Mayor Irons spoke regarding the proclamation.

- A-5 ADOPTION OF RESOLUTION NO. 13-18 AUTHORIZING THE CITY OF MORRO BAY TO ENTER INTO A 2017/2018 SURRENDERED AND ABANDONED VESSEL EXCHANGE GRANT CONTRACT WITH THE STATE OF CALIFORNIA DIVISION OF BOATING AND WATERWAYS IN THE AMOUNT OF \$16,100 FOR REMOVAL OF ABANDONED/SURRENDERED VESSELS AND HAZARDS TO NAVIGATION; (HARBOR)

**RECOMMENDATION:** City Council adopt Resolution No. 13-18 accepting and authorizing the Harbor Director to execute the attached Surrendered and

**Abandoned Vessel Exchange (SAVE) Grant Contract Agreement #C17S0602-S with the California Division of Boating and Waterways (DBW) for \$16,100 for the funding of removal of abandoned/surrendered vessels and hazards to navigation.**

<https://youtu.be/DbpfCgkyfPw?t=58m8s>

Council Member Makowetski asked Harbor Director Endersby to elaborate on what is done with the grant funds and whether it is sufficient.

- A-6 ADOPTION OF RESOLUTION NO. 15-18 APPROVING AMENDMENT #1 TO THE NEW LEASE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND BOATYARD LLC FOR LEASE SITE 90/90W, LOCATED AT 885 EMBARCADERO ROAD, AND COMMONLY KNOWN AS THE OTTER ROCK CAFÉ; (HARBOR)

**RECOMMENDATION: City Council adopt Resolution No. 15-18, approving Amendment #1 to the new lease agreement on Lease Site 90/90W, the Otter Rock café, as proposed.**

Mayor Irons stated that Item A-6 involves an amendment to a substitute lease the City currently has for lease site 90/90W with Boatyard LLC. That amendment was to modify some of the terms of that lease because, due to no fault of the City, one of the conditions Boatyard LLC required of that lease (closure of escrow for Boatyard LLC to purchase the current 90/90W leaseholder interests from Joe Steinmann, and business interests from his tenant, Jamie Parker, the operator of the Otter Rock Café) will not timely occur. The City is hopeful either Boatyard, Mr. Steinmann and Ms. Parker will come to agreement so the purchases of those interests do timely occur or Mr. Steinmann and Ms. Parker do all that is necessary to become fully compliant with the terms of their subject lease and sublease.

Mayor Irons elaborated the amendment is not valid at this time, it will not be continued and asked that the item be withdrawn from the agenda.

MOTION: Council Member Heading moved to withdraw Item A-6. The motion was seconded by Council Member Makowetski and was unanimously approved, 5-0.

MOTION: Council Member McPherson moved approval of Item A-3 and A-5. The motion was seconded by Council Member Makowetski and was unanimously approved, 5-0.

**B. PUBLIC HEARINGS**

<https://youtu.be/DbpfCgkyfPw?t=1h3m42s>

- B-1 ADOPTION OF RESOLUTION NO. 14-18 APPROVING CONDITIONAL USE PERMIT NO. UP0-448 FOR 945 EMBARCADERO. PROJECT INCLUDES REMODEL OF EXISTING RESTAURANT, HARBORWALK PUBLIC ACCESS IMPROVEMENTS, PILING & WHARF REPAIRS; (HOUSE OF JUJU); (COMMUNITY DEVELOPMENT)

**RECOMMENDATION: Council adopt Resolution No. 14-18, making the necessary findings for approval of Conditional Use Permit (CUP) No. UP0-448 as Concept Plan approval.**

Senior Planner Jacinth gave the report and answered questions from the Council. Ms. Jacinth noted some formatting errors on the resolution that will be corrected.

Cathy Novak, representing the applicant, spoke regarding the proposed plans and answered questions from the Council.

Public Comment: None.

There was Council consensus to have the coastal access signs state “Morro Bay Harborwalk” instead of identifying business name.

There was discussion as to where to place the trash cans and the wording in the condition regarding the design of the trash cans.

There was Council consensus regarding language for the trash enclosure to “Outdoor trash cans shall be designed to prevent wildlife from removing trash...”

**MOTION:** Council Member Headding moved approval of Resolution No. 14-18 approving Conditional Use Permit No. UP0-448 (note: should be UP0-446) for 945 Embarcadero, including the remodel of existing restaurant, harborwalk public access improvements, piling & wharf repairs, signage and trash as amended. The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

The Council took a brief recess at 7:34 p.m. and reconvened at 7:43 p.m.

### C. BUSINESS ITEMS

#### C-1 AWARD OF TWO CONTRACTS TO SIMPLEVIEW FOR REBUILDING AND MANAGING THE MORROBAY.ORG WEBSITE; (TOURISM)

**RECOMMENDATION: Council award two contracts to Simpleview for rebuilding and managing the morrobay.org website, approved to form by the City Attorney:**

**1.) Rebuild the morrobay.org website starting April 2018 (Fiscal Year 2017-18) and anticipated to be finished in FY 2018-19 October 2018 in the contract amount of \$44,950; and,**

**2.) Three-year contract for monthly Content Management System (CMS) and Customer Relationship Management (CRM) management of the site beginning FY 2018-19, including 5-hours per month of staff support, in the annual amount of \$26,280 and total amount over three years of \$78,840.**

**In addition, Council authorize the City Manager to enter into a contract with MobiManage in the amount of approximately \$ 4,000 for the period until Simpleview has completed rebuilding the morrobay.org website.**

<https://youtu.be/DbpfCgkyfPw?t=1h34m10s>

City Manager Collins introduced the item and then turned over to Tourism Manager Little. Ms. Little gave the report and, along with Kevin Bates from Simpleview, answered questions from the Council.

Public Comment: None

**MOTION:** Council Member Headding moved staff recommendation; that we award two contracts to Simpleview for rebuilding and managing the morrobay.org website, approved to form by the City Attorney:

**1.) Rebuilding the morrobay.org website starting April 2018 (Fiscal Year 2017-18) and anticipated to be finished by FY 2018-19 October 2018 in the contract amount of \$44,950; and,**

- 2.) Three-year contract for monthly Content Management System (CMS) and Customer Relationship Management (CRM) of the site beginning FY 2018-19, including 5-hours per month of staff support, in the annual amount of \$26,280 and total amount over three years of \$78,840.

In addition, authorizing the City Manager to enter into a contract with MobiManage in the amount of approximately \$ 4,000 for the period until Simpleview has completed rebuilding the morrobay.org website.

The motion was seconded by Council Member McPherson and carried unanimously, 5-0

- C-2 REPORT ON WASHINGTON D.C. MEETINGS FOR C-MANC'S ANNUAL "WASHINGTON WEEK" CONFERENCE, AND FOR THE WATER TREATMENT FACILITY; (HARBOR/PUBLIC WORKS)

**RECOMMENDATION: Receive and file.**

<https://youtu.be/DbpfCgkyfPw?t=2h18m24s>

Harbor Director Endersby went over the CMANC and Washington D.C. meetings and events and answered questions from the Council.

City Manager Collins spoke regarding the WRF portion of the trip, noting that the Ferguson Group was instrumental in setting up meetings.

Mayor Irons and Council Member Heading shared highlights from the trip.

Public Comment:

Barry Branin, spoke regarding a typo on the WIFIA application.

Mayor Irons closed Public Comment.

The report was received and filed.

- C-3 REVIEW AND PROVIDE DIRECTION REGARDING COUNCIL SUBCOMMITTEE PROPOSED CHANGES TO THE COUNCIL POLICIES & PROCEDURES AND ADVISORY BODIES HANDBOOK AND BY-LAWS; (CITY CLERK)

**RECOMMENDATION: City Council review and discuss the proposed changes to the Council Policies & Procedures and Advisory Bodies Handbook and By-laws, as recommended by the Council Subcommittee and staff, and provide direction as deemed appropriate for adoption at a future meeting.**

<https://youtu.be/DbpfCgkyfPw?t=3h2s>

Mayor Irons suggested tackling the Council Policies & Procedures, and if substantive changes discuss and then submit in writing to City Clerk and then it will come back at a later meeting.

Council Member McPherson introduced the item and went over the background.

Public Comment:

Betty Winholtz requested the Council go through public comments and address each comment submitted.

The Council discussed changes to the Council Policies & Procedures.

Location of Resolution No. 70-15

There was Council consensus to leave the Resolution in its current location and re-adopt the content of the resolution.

1.2.1 Council consensus to leave as is.

Closed Session was moved to 1.1.5, not deleted.

1.2.8 Procedural Order move to 1.3.3.1 then shift the rest of that section down.

1.3.6.1 City Attorney Pannone will work on wording for this section.

1.3.7.1 Speaker Slips – “may” be asked. Strike the last sentence of this section.

1.3.7.2.5 Appears in another section (p20 last sentence) add language “may speak only once on a given issue” to 1.3.7.2.2

1.3.7.4 and 1.3.7.6 Move to 1.3.9.3

Page 24 – Remove draft paragraph

Page 26 – Staff to draft a paragraph on Business Items

Page 27 – Add wording “Other recordings are for convenience and occasionally used when a verbatim transcript is required in legal proceedings. Audio recordings have a 2-year retention and video recordings have a 10-year retention. Meeting minutes are permanent.”

Page 28 – Council consensus to add “Salaries reviewed every 8 years by selection of Finance Committee” starting 2019.

Council Member Davis stated he was not in favor of increasing Council salaries.

There was a discussion regarding PARS and the need to provide in lieu of Social Security.

2.4.7 and 2.4.8 discussion regarding cash advances and/or use of City credit card. Staff to come back with ‘middle of the road’ language.

Page 33 Honorarium – City Attorney to review wording.

3.1.4 and 3.1.5 There was a discussion regarding the process and timing, specifically related to requests from the League of California Cities

3.1.6 Discussion regarding similar language for other Council Members

3.9 Discussion regarding acceptance of grants or deeds. City Attorney Pannone does not see this section raising an issue.

3.11 Add wording “City Council Members shall be notified within 7 days of such authorization being added.”

3.13 Add wording “or City Council by majority vote”... and “Subcommittees ‘shall’ report back to the full Council for discussion before any formal action can be taken on the pertinent issue, and in addition, shall provide updates on their progress.”

4.1 Add Brown Act training requirement language

4.2.2 remove 4.2.2 except for quote from City Attorney Pannone

4.2.7 agreement with changes as noted

There was a brief discussion regarding emails and the second paragraph on page 41.

5.2.2 Council consensus is to leave as is.

Page 46 – Discussion regarding process of appointing Advisory Board Members. Council consensus to leave as is.

5.3.4 City Attorney to add some clarifying language.

6.3.1 City Attorney to review language.

6.3.2.2 Consensus to add wording “or Chair of advisory bodies”

#### Advisory Bodies Handbook

There was clarification regarding the mission statement and the process for approval.

Page 5 – Remove specific reference to WRFCAC & GPAC. Add “From time to time a special advisory body may be created...” and add language regarding establishing a mission statement/purpose for each special purpose advisory body.

Page 5 - Discussion regarding first paragraph under Section B. There was consensus to leave as is.

Page 5 – There was a discussion regarding terms and whether to state that terms may be less at the discretion of Council.

Page 8 – Discussion to add language regarding the meeting schedule “according to the established calendar.”

Page 8 – Discussion regarding the official spokesperson for the City. Consensus to leave as is.

Page 8c – Add Risk Manager to the City Clerk’s title.

Page 8b – Add clarifying language – not just department heads report to the City Manager.

Page 9(2) – Leave as is.

MOTION: Council Member McPherson moved to continue the meeting beyond 11:00p.m. Mayor Iron seconded the motion. The motion failed 2-3 with Council Members Davis, Headding and Makowetski opposed.

There was Council consensus to continue this item to a future meeting – date uncertain. Mayor Irons urged Council Members to submit their comments to the City Clerk to be included for discussion at a future date.

#### FUTURE AGENDA ITEMS

<https://youtu.be/DbpfCgkyfPw?t=4h50m42s>

There was Council consensus to bring forward for discussion the ordinance regarding meeting minutes.

#### ADJOURNMENT

The meeting adjourned at 11:00 p.m. The next Regular Meeting will be held on Tuesday, April 10, 2018, at 6:00 p.m. at the Veteran’s Memorial Hall located at 209 Surf Street, Morro Bay, California.

Recorded by:

Lori Kudzma  
Deputy City Clerk

MINUTES - MORRO BAY CITY COUNCIL  
SPECIAL CLOSED SESSION MEETING –  
APRIL 10, 2018 – 4:00 P.M.  
CITY HALL CONFERENCE ROOM

AGENDA NO: A-3  
MEETING DATE: April 24, 2018

PRESENT:            Jamie Irons                            Mayor  
                       Robert Davis                         Council Member  
                       John Heading                        Council Member  
                       Matt Makowetski                    Council Member  
                       Marlys McPherson                 Council Member

STAFF:              Scott Collins                         City Manager  
                       Joseph Pannone                     City Attorney  
                       Eric Endersby                       Harbor Director

**ESTABLISH QUORUM AND CALL TO ORDER**

The meeting was called to order at 4:01 p.m. with all members present.

**SUMMARY OF CLOSED SESSION ITEMS** – The Mayor read a summary of Closed Session items.

**CLOSED SESSION PUBLIC COMMENT** – Mayor Irons opened the meeting for public comment for items on the agenda; seeing none, the public comment period was closed.

The City Council moved to Closed Session and heard the following items:

**CS-1 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9.:  
One matter relating to Lease Site 87-88/87W-88W.

**CS-2 GOVERNMENT CODE SECTION 54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR:**

Property: Lease Site 90/90W, Otter Rock, 885 Embarcadero

Property Negotiators: Cliff Branch and Joe Steinmann

Agency Negotiators: Eric Endersby, Harbor Director; Joseph Pannone, City Attorney; Scott Collins, City Manager

Negotiation: Price and Terms of Payment

Property: Lease Site 87-88/87W-88W Off the Hook/Under the Sea, 833 Embarcadero

Property Negotiators: Cherise Hansson and Travis Leage, TLC Family Enterprises, Inc.

Agency Negotiators: Eric Endersby, Harbor Director; Joseph Pannone, City Attorney; Scott Collins, City Manager

Negotiation: Price and Terms of Payment

**RECONVENE IN OPEN SESSION** – The City Council reconvened in Open Session. City Attorney Pannone reported there were three items on the Closed Session Agenda and no reportable action was taken on two of those items. Regarding Initiation of Litigation, there was authorization and direction to bring action, as necessary, to recover damages the City received due to the condition the Off the Hook lease site was left in when her lease terminated by operation of law.

**ADJOURNMENT** - The meeting adjourned at 5:14 P.M.

Recorded by:

Dana Swanson, City Clerk

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AGENDA NO: A-4  
MEETING DATE: April 24, 2018

# Staff Report

**TO:** Honorable Mayor and City Council **DATE:** April 17, 2018  
**FROM:** Rob Livick, PE/PLS – Public Works Director/City Engineer  
**SUBJECT:** Approval of Final Map for Tract 2812 (2400 Main Street)

### RECOMMENDATION

Staff recommends City Council adopt Resolution No. 18-18 approving the Final Map for Tract 2812.

### ALTERNATIVE

If City Council determines the subdivider has not met the conditions of approval of the Tentative Map, then the City Council should deny the approval of the Final Map.

### FISCAL IMPACT

City will realize approximately \$92,000 in permit fees and the improvements will result in an increase in property tax revenue of around \$16,000 per year.

### BACKGROUND/ DISCUSSION

At its regular meeting on May 10, 2011, the Planning Commission approved the request for a Vesting Tentative Map (S00-048), Use Permit (UPO-086) and Coastal Development Permit (CPO-130) for Tract Map 2812. That subdivision divides two parcels totaling 1.18 acres (APN 068-020-007 and 068-020-008) into twenty-four (24) lots for the development of twenty-three residential lots clustered in seven groups that range between 993 and 2,426 square-feet and one 19,259 square-foot common lot for access, landscaping, and general common area. The project is currently under construction after receiving grading permits this year and the Community Development Department anticipates the first of the 23 units will be ready to occupy later this year or early 2019.

This Map also abandons a 6-foot wide by 236.63-foot long strip of Main Street right-of-way and rededicates the same as a public utility easement (PUE) in accordance with California Government Code subdivision 66434(g).

The applicant has satisfied all Conditions of Approval and Subdivision Map Act requirements for the recordation of this map. The Final Map conforms to the approved tentative map and per Morro Bay Municipal Code section 16.16.210, the City Council shall approve a final map if those requirements are met. Once approved the Final Map will be submitted for recorded at the office of the San Luis Obispo County Clerk-Recorder. After recording the individual lots may be sold.

### CONCLUSION

Approval of a Final Map is a "ministerial act," pursuant to the California Subdivision Map Act (Government Code Section 66474 .1), once the map is found to be in substantial conformance with the approved tentative map. This parcel map has met all City regulations and no further discretionary approvals are required. Staff recommends the City Council approve Final Map for

Prepared By: \_\_\_pn\_\_\_ Dept Review: \_\_RL\_\_\_  
City Manager Review: \_\_\_\_\_ City Attorney Review: \_\_\_JWP\_\_\_

Tract 2812 by Resolution No. 18-18.

**ATTACHMENTS**

1. Resolution 18-18
2. Final Map for Tract 2812

**RESOLUTION NO. 18-18**  
**A RESOLUTION OF THE CITY COUNCIL OF MORRO BAY APPROVING THE FINAL MAP FOR AN A 24-LOT RESIDENTIAL SUBDIVISION KNOWN AS TRACT 2812, ABANDONING A PORTION OF MAIN STREET AND ACCEPTING THE ASSOCIATED PUBLIC UTILITY EASEMENT DEDICATION**

**THE CITY COUNCIL**  
**City of Morro Bay, California**

**WHEREAS**, on May 10, 2011, the Planning Commission did hold a duly noticed public hearing, received public testimony, and after closing the public hearing fully considered the various issues surrounding the case; and

**WHEREAS**, the Planning Commission did approve the Vesting Tentative Map for Tract 2812, and associated development applications, subject to certain Conditions of Approval; and

**WHEREAS**, the Planning Commission has previously made findings required by the California Environmental Quality Act (CEQA) and the City of Morro Bay procedures for implementation of CEQA; and

**WHEREAS** the applicant has since satisfied all Conditions of Approval and requests permission to record the Final Map; and

**WHEREAS**, the approval of the final map is a ministerial act pursuant to the Morro Bay Municipal; Code section 16.16.210 and California Subdivision Map Act;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California,

**SECTION 1.** The Final Map for Tract 2812 is hereby approved.

**SECTION 2.** The 6-foot wide by 236.63-foot long strip of Main Street right-of-way the “Public ROW”), as shown on the Final Map, is hereby abandoned.

**SECTION 3.** The offer of rededication of the Public ROW as a public utility easement, in accordance with California Government Code subdivision 66434(g) is hereby accepted.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay, California, at a regular meeting held on the 24<sup>th</sup> day of April 2018, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
JAMIE L IRONS, Mayor

ATTEST:

\_\_\_\_\_  
DANA SWANSON, City Clerk

# OWNER'S STATEMENT

WE THE UNDERSIGNED, HEREBY CERTIFY THAT WE ARE ALL THE OWNERS OF, AND ALL RECORD HOLDERS OF SECURITY INTEREST IN, AND ALL PARTIES HAVING ANY RECORD TITLE IN THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION AND PROJECT SHOWN ON THIS MAP, AND THAT EACH OF US DOES HEREBY CONSENT TO THE FILING AND/OR RECORDATION OF THIS MAP.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES AS DELINEATED ON SAID MAP:  
1. PEDESTRIAN ACCESS EASEMENTS

WE ALSO HEREBY DEDICATE TO THE PUBLIC FOR PUBLIC USE AND THE BENEFIT OF THE SEVERAL PUBLIC UTILITY COMPANIES WHICH ARE AUTHORIZED TO SERVE IN SAID SUBDIVISION, EASEMENTS FOR PUBLIC UTILITY PURPOSES DELINEATED ON SAID MAP AS "PUBLIC UTILITY EASEMENT" OR "P.U.E."

WE ALSO HEREBY RESERVE TO OURSELVES, OUR HEIRS AND ASSIGNS PRIVATE ACCESS, PRIVATE SEWER, PRIVATE UTILITY, AND PRIVATE DRAINAGE EASEMENTS FOR THE USE AND BENEFIT OF THE PRESENT OR FUTURE OWNERS OF THE LOTS AFFECTED BY SUCH EASEMENTS AS DELINEATED ON SAID MAP.

MORRO MIST, LLC, A LIMITED LIABILITY COMPANY

*Steve K. Miller*  
STEVE K. MILLER, MANAGER

# CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE ANNEXED MAP, THAT THE SUBDIVISION SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE APPROVED TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF AND THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND THE CITY OF MORRO BAY SUBDIVISION ORDINANCE HAVE BEEN COMPLIED WITH AND THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT.

ROB LIVICK, PLS 8126 DATE  
CITY ENGINEER, CITY OF MORRO BAY

# CERTIFICATE OF THE CITY CLERK

I DO HEREBY STATE THAT THE COUNCIL OF THE CITY OF MORRO BAY, DID ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ APPROVE THIS MAP OF TRACT 2812, SHOWN HEREON, IN ACCORDANCE WITH THE PROVISIONS OF THE SUBDIVISION MAP ACT AND THAT THE EASEMENTS FOR OPEN SPACE, PEDESTRIAN ACCESS, AND WATER WITHIN SAID SUBDIVISION WILL BE ACCEPTED UPON COMPLETION OF THE IMPROVEMENTS TO THE SATISFACTION OF THE CITY AND THE OFFER OF DEDICATION FOR PUBLIC UTILITY EASEMENT OR P.U.E. WAS ACCEPTED ON BEHALF OF THE PUBLIC UTILITY COMPANIES AUTHORIZED TO SERVE SAID SUBDIVISION, BEING THE LANDS OFFERED FOR DEDICATION BY THE PARTIES HAVING ANY RECORD TITLE INTEREST IN SAID LANDS, AND THAT ACCORDING TO THE RECORDS OF MY OFFICE, THERE ARE NO SPECIAL ASSESSMENTS EXCEPT SPECIAL ASSESSMENTS NOT YET PAYABLE. I ALSO STATE THAT THE 6.00 FOOT WIDE PORTION OF MAIN STREET AS DELINEATED ON THIS MAP IS HEREBY ABANDONED IN ACCORDANCE WITH GOVERNMENT CODE SECTION 66434G, WITH THE FILING OF THIS MAP, RESERVING UNTO:

1. PACIFIC GAS AND ELECTRIC COMPANY,
2. PACIFIC BELL TELEPHONE COMPANY,
3. CHARTER CABLE TELEVISION COMPANY, AND
4. SOUTHERN CALIFORNIA GAS COMPANY

ANY EXISTING EASEMENT AND/OR FRANCHISE RIGHT AT ANY TIME, OR FROM TIME TO TIME, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, REMOVE, RENEW AND ENLARGE THE EXISTING FACILITIES, AND ALL FACILITIES INCIDENTAL THERETO, INCLUDING ACCESS TO PROTECT THE PROPERTY FROM HAZARDS, IN, UPON AND OVER THE ROAD HEREWITH VACATED.

DANA SWANSON, CITY CLERK DATE  
CITY OF MORRO BAY  
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

# COUNTY RECORDER'S STATEMENT

FILED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2018 AT \_\_\_\_ .M. IN  
BOOK \_\_\_\_ OF TRACT MAPS, AT PAGE \_\_\_\_\_, AT THE REQUEST OF MICHAEL B. STANTON.

DOCUMENT NO: \_\_\_\_\_  
FEE: \_\_\_\_\_  
SIGNED: \_\_\_\_\_ BY: \_\_\_\_\_  
COUNTY RECORDER DEPUTY

# RECORDER'S DISCLAIMER

THE TABULATION, LISTING AND NUMBERING OF ANY SEPARATE DOCUMENTS AUTHORIZED TO BE RECORDED CONCURRENTLY WITH THIS MAP HAVE BEEN PROVIDED BY THE SUBDIVIDER OR BY THE LOCAL AGENCY APPROVING THE MAP. THE COUNTY RECORDER MAKES NO REPRESENTATIONS REGARDING THE ACCURACY OR THE TABULATION, LISTING AND NUMBERING OF ANY SEPARATE DOCUMENTS REFERRED TO ON THIS MAP.

NOTE: THE FOLLOWING DOCUMENTS AFFECTING THE PROPERTY DENOTED HEREON ARE BEING RECORDED CONCURRENTLY HEREWITH:

- 1) COVENANTS, CONDITIONS, AND RESTRICTIONS, DOC. NUMBER 2018-\_\_\_\_\_
- 2) SUBDIVISION AGREEMENT, DOC. NUMBER 2018-\_\_\_\_\_

# NOTARY

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA )  
COUNTY OF San Luis Obispo )

ON Feb. 21, 2018, BEFORE ME, Keena R. Zorovich NOTARY PUBLIC, PERSONALLY APPEARED Steve K. Miller, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND  
*Dana Swanson*  
SIGNATURE: \_\_\_\_\_ COMMISSION NO.: 2062980  
Keena R. Zorovich COUNTY OF: San Luis Obispo  
PRINTED NAME: \_\_\_\_\_ MY COMMISSION EXPIRES: Mar. 30, 2018  
NOTE: NO NOTARY SEAL PER CALIFORNIA GOVERNMENT CODE § 66436(c)

# NOTARY

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

ON \_\_\_\_\_, 20\_\_\_\_, BEFORE ME, \_\_\_\_\_ NOTARY PUBLIC, PERSONALLY APPEARED \_\_\_\_\_, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

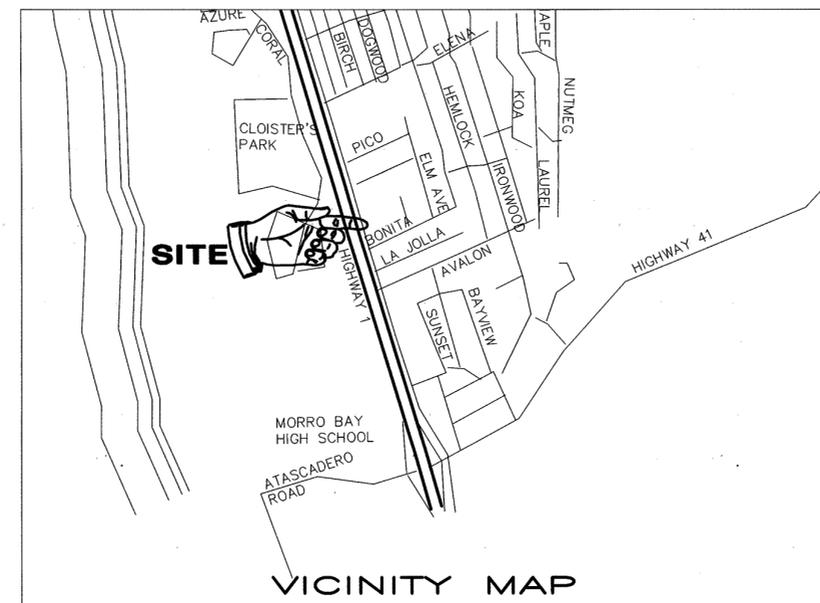
WITNESS MY HAND  
SIGNATURE: \_\_\_\_\_ COMMISSION NO.: \_\_\_\_\_  
COUNTY OF: \_\_\_\_\_  
PRINTED NAME: \_\_\_\_\_ MY COMMISSION EXPIRES: \_\_\_\_\_  
NOTE: NO NOTARY SEAL PER CALIFORNIA GOVERNMENT CODE § 66436(c)

# SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF DANIEL SOTELO ON DECEMBER 18, 2015. I HEREBY STATE THAT THIS TRACT MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY. I ALSO STATE THAT ALL MONUMENTS WILL BE SET WITHIN ONE YEAR OF RECORDATION OF THIS MAP, AND THAT THE MONUMENTS SHOWN HEREON WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

*Michael B. Stanton*  
MICHAEL B. STANTON L.S. 5702

3-1-2018  
DATE



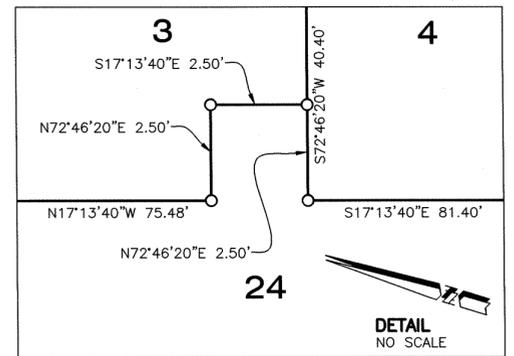
# TRACT 2812

MORRO MIST  
A PORTION OF LOT 25 OF THE SUBDIVISIONS OF THE RANCHO MORO Y CAYUCOS ACCORDING TO THE MAP FILED ON SEPTEMBER 28, 1875, IN THE CITY OF MORRO BAY, COUNTY OF SAN LUIS OBISPO, CALIFORNIA

**MBS** LAND SURVEYS  
MICHAEL B. STANTON, PLS 5702  
3563 SUELDO STREET, SUITE Q  
SAN LUIS OBISPO, CA 93401  
805-594-1960

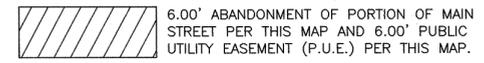
2721 OR 747

17  
18  
19  
20  
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22



**LEGEND**

- SET 5/8" REBAR AND CAP OR NAIL AND TAG "L.S. 5702" UNLESS NOTED OTHERWISE
- FOUND MONUMENT AS NOTED
- M MEASURED
- R RECORD
- FND FOUND

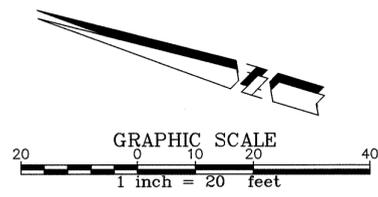


**REFERENCES**

- R1 56-RS-38
- D1 DOC. NO. 2002-108575
- D2 DOC. NO. 2002-108577

**BASIS OF BEARINGS**

THE BASIS OF BEARINGS FOR THIS PROJECT IS GEODETIC NORTH PER GPS OBSERVATIONS TAKEN AT THE SOUTHWEST CORNER OF SITE.



**TRACT 2812 MORRO MIST**

A PORTION OF LOT 25 OF THE SUBDIVISIONS OF THE RANCHO MORO Y CAYUCOS ACCORDING TO THE MAP FILED ON SEPTEMBER 28, 1875, IN THE CITY OF MORRO BAY, COUNTY OF SAN LUIS OBISPO, CALIFORNIA

**MBS** LAND SURVEYS  
 MICHAEL B. STANTON, PLS 5702  
 3563 SUELDO STREET, SUITE Q  
 SAN LUIS OBISPO, CA 93401  
 805-594-1960

FOUND 5/8" REBAR AND CAP LS4382 PER R1

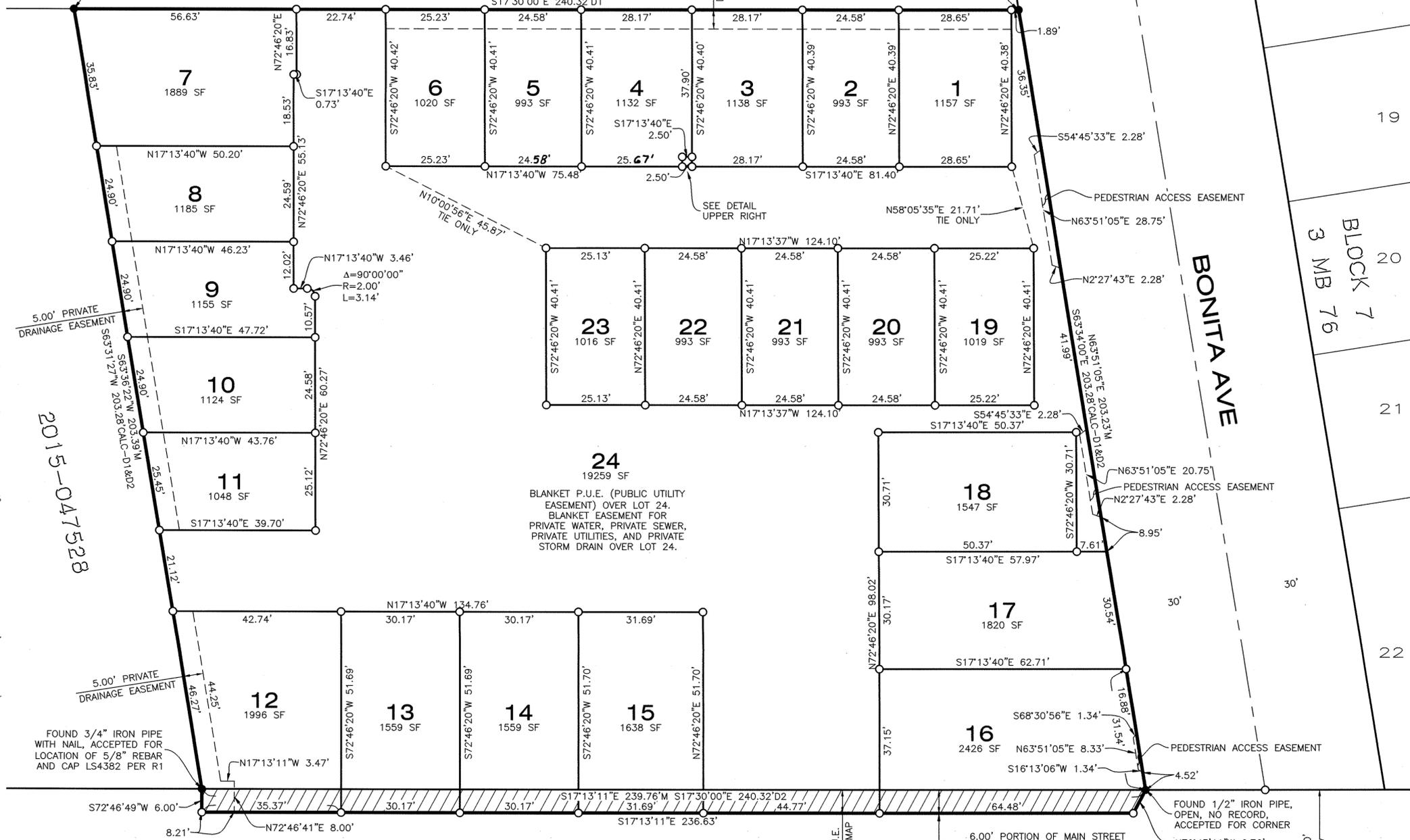
FOUND 1/2" IRON PIPE, OPEN, NO RECORD, ACCEPTED FOR CORNER

5.00' PRIVATE DRAINAGE EASEMENT

5.00' PRIVATE DRAINAGE EASEMENT

2015-047528

N:\2015\15-360 Morro Mist at Bonita & Main MB\CS0-2013\15-360 Morro Mist Tm.dwg, SHEET 2 OF 2, Feb 13, 2018 11:02am, LRichardson



MAIN STREET

STATE HIGHWAY 1

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AGENDA NO: A-5  
MEETING DATE: April 24, 2018

# Staff Report

**TO:** Honorable Mayor and City Council **DATE:** April 12, 2018

**FROM:** Scot Graham, Community Development Director

**SUBJECT:** Authorization to allow Morro Dunes Trailer Park and Campground Inc., lease holder of 1700 Embarcadero to submit a development proposal to the Community Development Department to install a carport solar array structure

### RECOMMENDATION

Authorize Morro Dunes Trailer Park and Campground Inc. to submit an application to the Community Development Department for installation of a carport solar array.

### ALTERNATIVE

Deny request for authorization

### FISCAL IMPACT

City will realize permitting fees and the improvements will result in a slight increase in property tax revenue.

### BACKGROUND/DISCUSSION

Morro Dunes RV Park, located at 1700 Embarcadero, is requesting City Council authorization to submit a development proposal to the Community Development Department for the installation of a 150 kilowatt photovoltaic carport solar array structure (see image below). The property is owned by both the City of Morro Bay and the Cayucos Sanitary District. The City executed a lease agreement with Morro Dunes Trailer Park and Campgrounds, Inc., commencing September 1, 2008, for a period of twenty (20) years, terminating on August 30, 2028 (Attachment 1). Article 4.01 of the lease agreement requires prior written consent by the City and the Cayucos Sanitary District (District) to make any alterations or structural additions to the premises. Article 4.05 of the lease agreement states the City/District has the option and right to require the tenant to remove improvements installed by the tenant (which would also apply to the carport solar structure) upon termination of the lease. Bratton Solar, Inc., provided the City with a Performance and Financial Analysis for the proposed project (Attachment 2).



Prepared By: SG Dept Review: \_\_\_\_\_  
City Manager Review: SC City Attorney Review: JWP



**CONCLUSION**

Staff recommends City Council authorize, subject to concurrence from the District, the Morro Dunes Trailer Park and Campground Inc. to submit an application to the City for planning entitlements to allow for the construction of a carport solar array structure at Morro Dunes RV Park.

**ATTACHMENTS**

1. Lease Agreement
2. Bratton Solar Inc.'s Performance and Financial Analysis

**RESOLUTION NO. 60-08**

**APPROVAL OF LEASE AGREEMENT FOR REAL PROPERTY LOCATED AT  
1700 EMBARCADERO, JOINTLY OWNED BY THE CITY OF MORRO BAY AND  
CAYUCOS SANITARY DISTRICT, WITH MORRO DUNES TRAILER PARK  
& CAMPGROUNDS, INC.**

**THE CITY COUNCIL  
City of Morro Bay, California**

**WHEREAS**, the City of Morro Bay and the Cayucos Sanitary District are the Owners and Lessors of certain property located in the City of Morro Bay at 1700 Embarcadero; and

**WHEREAS**, Morro Dunes RV Park and Doug Claassen have been the Lessees and Operators of said property for over 40 years pursuant to a lease dated March 28, 1967; and

**WHEREAS**, the current lease between the Lessors and Lessee expired on April 1, 2007 and has been in holdover status since then pursuant to paragraph 22 of the lease agreement dated March 28, 1967; and

**WHEREAS**, the City of Morro Bay and the Cayucos Sanitary District desire to continue to lease the property at 1700 Embarcadero Road to Morro Dunes RV Park pursuant to the terms and conditions set forth in the attached Lease Agreement; and

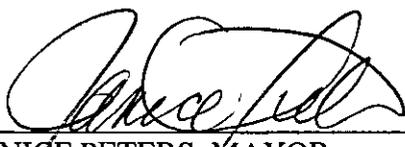
**WHEREAS**, the City Council of the City of Morro Bay finds that the approval of the Lease Agreement is exempt from review under CEQA because it involves the lease and minor alteration of existing facilities as described in State CEQA Guidelines Section 15301 and is exempt under Class 1, Existing Facilities, Title 2, California Code of Regulations, Section 2905 (a)(2).

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay that a new lease agreement for real property located at 1700 Embarcadero, with Morro Dunes Trailer Park & Campgrounds, Inc., is hereby approved and that the Mayor is hereby authorized to execute the lease document.

**BE IT FURTHER RESOLVED** that this approval is contingent upon similar approval by the Cayucos Sanitary District as evidenced by signature on the Lease Agreement.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 22<sup>nd</sup> day of September, 2008, by the following vote:

AYES: DEMERITT, GRANTHAM, PEIRCE, WINHOLTZ, PETERS  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

  
\_\_\_\_\_  
JANICE PETERS, MAYOR

ATTEST:

  
\_\_\_\_\_  
JAMIE BOUCHER, DEPUTY CITY CLERK

## COMMERCIAL LEASE

This Commercial Lease is made and entered into this 1<sup>st</sup> day of September, 2008 by and between the **MORRO DUNES TRAILER PARK & CAMPGROUNDS INC**, a California Corporation (hereinafter referred to as "**TENANT**"), and the **CITY OF MORRO BAY**, a California Municipal Corporation (hereinafter referred to as "**CITY**") and the **CAYUCOS SANITARY DISTRICT**, a California Special District (hereinafter referred to as "**DISTRICT**") acting jointly pursuant to a Joint Powers Agreement ("**JPA**") between **CITY** and **DISTRICT** dated October 25, 1982, as amended. (**CITY and DISTRICT** are hereinafter collectively referred to as "**CITY/ DISTRICT**").

### WITNESSETH

**WHEREAS**, pursuant to the **JPA**, **CITY/DISTRICT** jointly own certain real property located at 1700 Embarcadero (the "**Premises**"), Morro Bay, California and more specifically described and depicted in Exhibit "**A**" attached hereto and incorporated herein by this reference; and

**WHEREAS**, **TENANT** currently leases the **Premises** pursuant to a lease dated March 28, 1967; and

**WHEREAS**, **Tenant's** current lease for the **Premises** expired on April 1, 2007 and has been in holdover status since then pursuant to paragraph 22 of the lease agreement dated March 28 1967; and

**WHEREAS**, **CITY/DISTRICT** desire to continue to lease the **Premises** to **TENANT** based on the terms and conditions set forth herein.

**NOW THEREFORE**, in consideration of the mutual covenants to be performed and the rental to be paid by **TENANT** to **CITY/DISTRICT**, **CITY/DISTRICT** leases to **TENANT**, and **TENANT** leases from **CITY/DISTRICT**, the **Premises**.

### Article 1 FIXED TERM

#### Section 1.01 Term.

The term of this Lease shall be for a period of twenty (20) years, commencing September 1, 2008 (the "**Commencement Date**"). This Lease shall terminate, without notice, on August 30,

2028, unless sooner terminated as herein provided. Notwithstanding the term of this lease, in the event that the CITY/DISTRICT's use of the Waste Water Treatment Plant ( WWTP) necessitates a rearrangement, relocation, reconstruction or construction of the WWTP onto the Premises, CITY/District may terminate the Lease for that part of premises that is necessary for a rearrangement, relocation, reconstruction or construction of the WWTP upon thirty (30) days prior written notice to TENANT . If termination for part of premises occurs, the minimum rent pursuant to Section 2.01 shall be pro rated.

**Section 1.02 No Extensions.**

This Lease shall not be extended nor shall this Lease be renewed. Requests for continued use of the Premises shall be treated as an application for a new lease and shall require an appropriate application to the CITY/DISTRICT with all required supporting information and documents, separate CITY Council and DISTRICT Board of Directors approval and the execution of a new lease.

**Section 1.03 Hold Over.**

Should TENANT hold the Premises after the expiration of the term of this Lease with the consent of the CITY/DISTRICT, express or implied, such holding over (in the absence of a written agreement between CITY/DISTRICT and TENANT with respect thereto) shall be deemed to create a tenancy from month to month, terminable upon thirty (30) days prior written notice from either party to the other, at a monthly rental equal to one hundred twenty-five percent (125%) of the average total Rent per month for the twelve (12) months immediately preceding the termination of this Lease, and otherwise subject to each and every term, covenant and condition of this Lease. Provided, however, that Tenant shall not be penalized in the event that a new lease is being negotiated and through no fault of its own there's a delay in executing a new lease.

**Section 1.04 Replacement.**

As of the Commencement Date of this Lease, this Lease shall extinguish, replace and supersede every prior lease or agreement between CITY/DISTRICT and TENANT respecting the Premises. Any right or interest held by the TENANT pursuant to any existing lease or agreement with respect to the Premises, which is not created pursuant to this Lease, shall be extinguished as of the Commencement Date of this Lease.

## Article 2 RENT

### Section 2.01 Annual Minimum Rent.

TENANT agrees to pay to CITY/DISTRICT a minimum guaranteed annual rental for the use and occupancy of the Premises, in an initial amount of \$175,000.00 per year (the "Minimum Rent"), payable in advance in equal semiannual installments on January 1 and July 1 each year during the term of the Lease. If the Commencement Date is other than January 1 or July 1, then TENANT shall pay, on the Commencement Date, such prorated amount of the Minimum Rent payable for the period from the Commencement Date until the next payment date of January 1 or July 1, as the case may be. If the term of the Lease expires on a date other than December 31 or June 30, TENANT'S final installment of Minimum Rent shall be prorated to the time remaining in the term. All Rent, shall be paid in lawful money of the United States of America, without offset or deduction and shall be paid to CITY/DISTRICT at Morro Bay City Hall located at 595 Harbor Street, Morro Bay, CA 93442, or at such other place or places CITY/DISTRICT may from time to time designate by written notice delivered to TENANT.

### Section 2.02 CPI Adjustment to Annual Minimum Rent.

(1) The parties agree that as of each and every July 1 following the Commencement Date ("CPI Adjustment Date"), the annual Minimum Rent shall be increased in direct proportion to any upward movement in the Consumer Price Index. The Consumer Price Index referred to herein is the Consumer Price Index (all items indexes, all urban consumers) for the San Francisco-Oakland-San Jose Consolidated Metropolitan Statistical Area, compiled and published by the United States Department of Labor, Bureau of Labor Statistics, 1982-84 Base Year = 100 (the "Index"). The percentage adjustment for any given year shall be based on the monthly average Index for the calendar year immediately preceding the CPI Adjustment Date as compared with the monthly average Index for the calendar year immediately preceding the prior CPI Adjustment Date.

(2) The annual Minimum Rent shall be adjusted as of each CPI Adjustment Date, and will remain in effect as adjusted until the next CPI Adjustment Date. As an illustration only, if the monthly average Index for the calendar year 2007 was 166.1 and the monthly average Index for the calendar year 2008 was 171.6, then the percentage increase is equal to 3.31%. Therefore, the Minimum Rent would be increased by 3.31% as of July 1, 2009 and would continue at that rate through June 30, 2010.

(3) If the United States Department of Labor, Bureau of Labor Statistics, shall cease to compile and make public the Index as now constituted and issued, but shall substitute another

index in its place, then said substituted index shall be used for the purpose of adjusting the Minimum Rent for the Premises. If the Index is changed so that the base year differs from that in effect on the Lease Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics.

**Section 2.03. Percentage Rent.**

A. In addition to the Minimum Rent, TENANT agrees to pay to CITY/DISTRICT at the time and in the manner hereinafter specified, as additional Rent for the occupancy and use of the Premises, a sum equal to fifteen percent (15%) of TENANT'S Gross Revenues, as hereinafter defined (the "Percentage Rent").

B. The term "Gross Revenues," as used herein, shall mean (subject to the exceptions and authorized deductions as hereinafter set forth), the total selling price for and the total gross amount of funds received by TENANT from any and all rentals, merchandise sold and services rendered in, on or from the Premises by TENANT, its sublessees, licensees, or concessionaires, both for cash and on credit, and if on credit whether or not payment be actually made therefor, all charges for services, alterations or repairs made in or upon the Premises; the gross amount received by TENANT for merchandise sold pursuant to orders received in the Premises, though filled elsewhere; and the gross amount received by TENANT from any and all other sources of income derived from the business conducted upon the Premises.

C. Notwithstanding the other provisions of Section 2.03, the term "Gross Revenues" shall not include the following items:

(1) Credits and refunds made to customers for rentals, merchandise returned or exchanged;

(2) Any sales or excise taxes otherwise includable in Gross Revenues as defined in this Section because such taxes are part of the total selling price of merchandise or services rendered in, from, or on the Premises, where TENANT must account for and remit the taxes to the government entity or entities by which they are imposed; and

(3) With respect to credit card sales, fees retained or withheld by the issuer and/or merchant bank pursuant to TENANT'S credit card acceptance agreement.

D. TENANT shall keep or cause to be kept full, complete, and accurate records, and books of account in accordance with generally accepted accounting practices showing the total amount of Gross Revenues, made each calendar month in, on or from the Premises. TENANT shall keep said records and books of account within San Luis Obispo County and shall notify CITY/DISTRICT in advance of their location at all times. Furthermore, TENANT shall, at the time of sale and in the presence of the customer, cause the full selling price of each piece of

merchandise, each rental received and each service rendered in, on or from the Premises to be recorded in a cash register or cash registers that have cumulative totals and are sealed in accordance with standard commercial practices. Said records, books of account and cash register tapes, including any sales tax reports that TENANT may be required to furnish any government or governmental agency shall at all reasonable times be open to the inspection of CITY/DISTRICT, and/ or CITY/DISTRICT'S auditor, or other authorized representative or agent of CITY/DISTRICT. TENANT consents to the release of sales tax information to CITY/DISTRICT and on demand will furnish to CITY/DISTRICT a copy of the sales tax reports, quarterly reports and any audit reports of sales for confidential internal use of the CITY/DISTRICT in determining Gross Revenues for TENANT. TENANT consents and authorizes CITY/DISTRICT to request such information directly from the State Board of Equalization or other State agency with which sales tax information is filed.

E. By July 31 of each year, TENANT shall furnish CITY/DISTRICT with a statement, to be certified by TENANT as current, true and accurate, which shall set forth the Gross Revenues of each sublessee, licensee and concession operating in, on or from the Premises for the previous twelve (12) calendar months, ending June 30, of each such year, and the authorized deductions, if any, therefrom; and with it TENANT shall pay to CITY/DISTRICT the amount of the Percentage Rent which is due to CITY/DISTRICT as shown thereby. If TENANT shall at any time cause an audit of sales of TENANT'S business to be made by a certified public accountant, TENANT shall furnish CITY/DISTRICT with a copy of said audit without cost or expense to CITY/DISTRICT. CITY/ DISTRICT may, once in any twelve-month period, cause an audit of the business of TENANT to be made by a certified public accountant of CITY/ DISTRICT'S own selection. TENANT shall, upon receiving written notice of CITY/ DISTRICT 'S request for such an audit, deliver and make available all such books, records and cash register tapes to the certified public accountant selected by CITY/ DISTRICT. Furthermore, TENANT shall promptly on demand reimburse CITY/ DISTRICT for the full cost and expense of said audit, should the audit disclose that the questioned statement or statements understated Gross Revenues by three percent (3%) or more but less than ten percent (10%). In the event that an audit performed at CITY/DISTRICT'S request discloses that TENANT understated Gross Revenues by less than three percent (3)%, the cost of such audit shall be paid by CITY/ DISTRICT. In the event that any audit or other review of records discloses that the amounts reported as Gross Revenues was understated by TENANT by ten percent (10%) or more, CITY/ DISTRICT shall not only be entitled to recover from TENANT all costs of audit and review but shall also be entitled to recover from TENANT a penalty equal to two (2) times the Percentage Rent due pursuant to this Lease on such unreported amounts. Whenever any audit discloses that Gross Revenues were understated by any amount, TENANT shall immediately pay the

additional Percentage Rent therein shown to be payable by TENANT to CITY/DISTRICT, together with interest at the Default Rate thereon, from the date the Percentage Rent was payable until the date paid.

F. CITY/DISTRICT shall be entitled at any time within five (5) years after the receipt of any such Percentage Rent payment, to question the sufficiency of the amount thereof and/or the accuracy of the statement or statements furnished by TENANT to justify the same. For the purpose of enabling CITY/DISTRICT to check the accuracy of any such statement or statements, TENANT shall for said period of five (5) years after submission to CITY/DISTRICT of any such statement keep all of TENANT'S original records, including sales tax returns, all cash register tapes and other data which in any way evidence, bear upon or are required to establish in detail TENANT'S Gross Revenues and any authorized deductions therefrom as shown by any such statements and shall upon request make the same available to CITY/DISTRICT for examination.

**Section 2.04 Reimbursements.**

If TENANT fails to perform any term or covenant of this Lease, CITY/DISTRICT may, but is not obligated to, perform such term or covenant, and TENANT shall reimburse CITY/DISTRICT therefore as additional Rent hereunder. As an illustration and not as a limitation, if TENANT fails to procure the insurance required by this Lease, CITY/DISTRICT may, but is not obligated to, obtain such insurance, with the cost of such premiums being due to CITY/DISTRICT upon demand as additional Rent. Any failure by TENANT to reimburse CITY/DISTRICT as required herein, shall be considered a material breach by TENANT subject to immediate termination.

**Section 2.05 Penalty and Interest.**

(1) If any Rent (Minimum, Percentage, or other additional Rent of any and every type) is not received within ten (10) days following the date on which such rent first became due, TENANT shall pay a late penalty of ten percent (10%) of the delinquent amount.

(2) In addition to the penalty, TENANT shall pay interest at the rate of one percent (1%) per month or fraction thereof or the maximum amount permitted by law as of the date this Lease is signed, whichever is greater (the "Default Rate"), on the amount of the Rent, exclusive of the penalty, from the date on which Rent first became delinquent until fully paid. The term "Rent" includes any sums advanced by the CITY/DISTRICT and any unpaid amounts due from TENANT to the CITY/DISTRICT.

## Article 3 USE OF PREMISES

### Section 3.01 Permitted Uses.

The Premises shall, during the term of this Lease, be used solely for the purpose of operating TENANT's travel trailer park and resort consistent with all applicable laws and regulations and in compliance with CITY Conditional Use Permit (CUP) and Coastal Development Permit (CDP) for the Premises, as it may be amended from time to time, and for no other purpose. TENANT shall not permit any person to occupy or utilize TENANT facilities or space on the Premises for more than fourteen (14) days in any thirty (30) day period from between June 1 and September 15 of any year, and not more than sixty (60) days in any ninety (90) day period between September 16 and May 31.

### Section 3.02 Unauthorized Use.

TENANT agrees to use the Premises as specifically authorized in Section 3.01 hereinabove and that any unauthorized use of the Premises shall constitute a material breach of this Lease and shall, at the option of CITY/DISTRICT, in their sole discretion, terminate this Lease.

### Section 3.03 Operation of Business - Hours of Operation.

TENANT shall, during the term of this Lease, conduct all business described in Section 3.01 above in an efficient and diligent manner and keep the Premises open for the conduct of business continuously and without interruption for at least six (6) hours each day of the year except for one (1) day each week and legal holidays with the exception to temporarily close business for a period not to exceed a maximum of fourteen (14) calendar days in any calendar year to make necessary repairs, maintenance or other construction deemed necessary by TENANT. This provision shall not apply for business closures that are authorized or required by the CITY/DISTRICT or on account of strikes, walkouts, or other causes beyond the control of TENANT. Failure to actively and diligently conduct the business as required herein constitutes a material breach of this Lease and shall, at the option of CITY/DISTRICT, terminate this lease.

### Section 3.04 Hazardous Materials.

(1) TENANT shall not transport, use, store, maintain, generate, dispose, release, treat or discharge any "Hazardous Material" (as defined below) upon or about the Premises (such activities being hereafter referred to as "Hazardous Materials Activities"), nor permit TENANT'S employees, agents, or contractors to engage in Hazardous Materials Activities upon or about the

Premises, except as allowed by applicable law. The term "Hazardous Material" for purposes hereof shall mean any chemical, substance, material or waste or component thereof which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, material or waste or component thereof by any Federal, State or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body.

(2) TENANT shall promptly notify CITY/DISTRICT of: (i) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Premises or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any party against TENANT or the Premises relating to any loss or injury resulting from any Hazardous Material on or from the Premises, and (iii) any matters where TENANT is required by applicable law to give a notice to any governmental or regulatory authority respecting any Hazardous Material on the Premises. CITY/DISTRICT shall have the right (but not the obligation) to inspect the Premises, to take such remedial action on the Premises as CITY/DISTRICT may deem appropriate, and to join and participate, as a party, in any legal proceedings or actions affecting the Premises initiated in connection with any environmental, health or safety law. TENANT shall reimburse CITY/DISTRICT for any cost or expense, including attorney's fees, incurred in connection with, arising from, in whole or in part, TENANT's violation of Section 3.05(1) above.

**Section 3.05 Compliance with Law.**

TENANT shall, at no cost to CITY/DISTRICT, comply with all of the requirements of all local, municipal, County, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the Premises and TENANT's business, and shall faithfully observe in the use of the Premises, all local, municipal and County ordinances and State and Federal statutes, rules, regulations and orders now in force or which may hereafter be in force .

**Section 3.06 Waste or Nuisance.**

TENANT shall not commit or permit the commission by others of any waste on the Premises; TENANT shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined by law on the Premises; and TENANT shall not use or permit the use of the Premises for any unlawful purpose.

## Article 4 CONSTRUCTION, ALTERATION AND REPAIRS

### Section 4.01 Construction Approval.

(1) TENANT shall not make or permit any other person to make any alterations or structural additions or structural modifications to the Premises or to any structure thereon or facility appurtenant thereto without the prior written consent of CITY/DISTRICT. TENANT remains obligated to obtain any and all other permits and comply with all applicable laws and regulations prior to the construction of any improvement.

### Section 4.02 Construction Bond.

(1) Prior to the commencement of any construction on the Premises, the cost of which is greater than the amount of fifty thousand dollars (\$50,000), TENANT shall file with the Morro Bay City Clerk a final detailed Civil Engineer's, Registered Architect's or Licensed and Bonded General Contractor's estimate of the cost of construction and installation of improvements on the Premises. Said estimate must be submitted to the CITY/DISTRICT Engineer for approval. Subsequent to CITY/DISTRICT Engineer's approval of said estimate, TENANT shall file with the Morro Bay City Clerk a faithful performance bond, in a form and issued by a corporate surety company satisfactory to CITY/DISTRICT, in an amount satisfactory to CITY/DISTRICT but not in excess of one hundred percent (100%) of the final detailed cost estimate, securing the faithful performance of TENANT or its contractor in the completion of said construction.

(2) TENANT shall also file with the Morro Bay City Clerk a labor and materials bond, in a form and issued by a corporate surety company satisfactory to CITY/DISTRICT, in an amount satisfactory to CITY/DISTRICT but not in excess of one hundred percent (100%) of the final detailed cost estimate, securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of said construction.

(3) In lieu of the above referenced bonds, TENANT may post cash deposits or may make other mutually satisfactory arrangements to guarantee the completion of construction projects. In the event the contractor bonds the project, CITY/DISTRICT shall be named as additional indemnitee to comply with these requirements.

### Section 4.03 Mechanics' Liens.

At all times during the term of this Lease, TENANT shall keep the Premises and all buildings, installations and other improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises. TENANT further agrees to at all times, save

CITY/DISTRICT free and harmless, defend and indemnify CITY/DISTRICT against all claims for labor or materials in connection with any improvement, repairs, or alterations to the Premises, and the cost of defending against such claims, including reasonable attorneys' fees.

**Section 4.04 Leasehold Mortgages.**

TENANT shall not mortgage, securitize, pledge or hypothecate this Lease or any interest herein in whole or in part without the prior written approval of CITY/DISTRICT as evidenced by Resolutions of both the City Council and District Board of Directors (hereinafter a "Permitted Leasehold Encumbrance").

**Section 4.05 Ownership of Improvements.**

(1) TENANT shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Premises, and fasten the same to the Premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by TENANT at the commencement of the Lease Term or placed or installed on the Premises by TENANT thereafter, shall remain TENANT's property free and clear of any claim by CITY/DISTRICT. TENANT shall have the right to remove the same at any time during the Lease Term provided that all damage to the Premises caused by such removal shall be repaired by TENANT at TENANT's sole expense.

The parties agree that CITY/DISTRICT has the option and right to require TENANT to remove all buildings, structures, installations, improvements of any kind or other property belonging to or placed upon the Premises by TENANT at the termination of this Lease, however occurring, providing CITY/DISTRICT gives notice, in writing, no later than thirty (30) days prior to the termination of the Lease, of its decision to require that such improvements be removed. The parties agree that if the CITY/DISTRICT exercises its option, then at the termination of this Lease, however occurring, TENANT shall have sixty (60) days thereafter to remove all buildings, structures, facilities, installations, improvements and other property belonging to TENANT from the Premises. If CITY/DISTRICT exercises such option and TENANT fails to remove all such improvements and other property within sixty (60) days after the termination of this Lease, CITY/DISTRICT shall have the right to have any or all such improvements and other property removed at the expense of TENANT. If TENANT fails to remove the improvements and other property, then title to such improvements and other property shall vest in CITY/DISTRICT, at CITY/DISTRICT's option. TENANT agrees to take such further action and execute any and all documents necessary to formally effectuate such a transfer of title.

## Article 5 REPAIRS, MAINTENANCE AND RESTORATION

### Section 5.01 Maintenance by Tenant.

At all times during the term of this Lease, TENANT shall, at TENANT'S sole cost and expense, keep and maintain all improvements now or hereafter on the Premises in good order and repair and in a safe and clean condition. Furthermore, TENANT shall, at TENANT'S sole cost and expense, maintain at all times during the term of this Lease the whole of the Premises in a safe, clean, sanitary, neat and orderly condition. CITY/DISTRICT may, at the sole option of CITY/DISTRICT, clean and clear the Premises, at TENANT'S cost and expense, in the event TENANT fails to clean and clear the Premises in accordance with this Section to the satisfaction of CITY/DISTRICT after fifteen (15) days' written notice to TENANT from CITY/DISTRICT of CITY/DISTRICT'S intent to exercise this option.

### Section 5.02 Legal Requirements.

At all times during the term of this Lease, TENANT, at no cost to CITY/DISTRICT, shall:

(1) Make all alterations, additions, or repairs to the Premises or the improvements or facilities on the Premises required by any Legal Requirements (as defined in Section 3.07 above) now or hereafter made or issued;

(2) Observe and comply with all Legal Requirements now or hereafter made or issued respecting the Premises or the improvements or facilities located thereon;

(3) Obtain all required permits pursuant to the Morro Bay Municipal Code or State law prior to the initiation of any repair or maintenance activity; and

(4) Indemnify and hold CITY/DISTRICT and the property of CITY/DISTRICT, including the Premises, free and harmless from any and all liability, loss, damages, fines, penalties, claims and actions resulting from TENANT'S failure to comply with and perform the requirements of this section.

### Section 5.03 Failure to Repair.

In the event of any hazardous or unsafe condition occurring on the Premises, CITY/DISTRICT shall have the right and option, but not the obligation, to close and prohibit access to any unsafe portion of the Premises until such necessary repairs are completed and accomplished and the Premises is safe. In addition, if TENANT fails to repair any hazardous or unsafe condition within ten (10) days of written notice thereof from CITY/DISTRICT, CITY/DISTRICT shall have the right, but not the obligation, to perform such repair at TENANT'S sole expense. TENANT shall reimburse CITY/DISTRICT for any such repair

undertaken by CITY/DISTRICT, promptly upon CITY/DISTRICT'S demand, as additional Rent, pursuant to Section 2.04. Failure by CITY/DISTRICT to enforce any of the provisions of this Article shall not constitute a waiver of these provisions and CITY/DISTRICT may at any time enforce all of the provisions of this Article, requiring all necessary repairs, rebuilding or replacement. This provision shall survive the expiration or termination of this Lease.

**Section 5.04 Inspection by CITY/DISTRICT.**

CITY/DISTRICT or CITY/DISTRICT'S officials, agents, representatives, or employees may enter the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether TENANT is complying with the terms and conditions of this Lease and for the purpose of doing other lawful acts that may be necessary to protect CITY/DISTRICT'S interest in the Premises under this Lease or to perform CITY/DISTRICT'S duties under this Lease.

**Section 5.05 TENANT'S Duty to Restore Premises.**

(1) Except as provided in Section 5.07 below, if at any time during this Lease, any improvements now or hereafter on the Premises are destroyed in whole or in part by the elements, or any other cause not the fault of TENANT or CITY/DISTRICT, this Lease shall continue in full force and effect and TENANT, at TENANT'S sole cost and expense, shall repair and restore the damaged or destroyed improvement(s) according to the original plan thereof or according to such modified plans therefore as shall be approved in writing by CITY/DISTRICT. The work of repair and restoration shall be commenced by TENANT within one hundred eighty (180) days after the damage or destruction occurs unless the CITY/DISTRICT and TENANT mutually agree, in writing, to a different time frame, and shall be pursued with due diligence, and shall be completed not later than one year after the work is commenced, unless the CITY/DISTRICT and TENANT mutually agree, in writing, to a different time frame. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for construction work on the Premises set forth in Article 4 of this Lease. Any failure by TENANT either to commence or to complete repair and restoration as required by this Section 5.05 shall be a material default under this Lease.

(2) Any and all insurance proceeds that become payable at any time during the term of this Lease because of damage to or destruction of any improvements on the Premises shall be paid to TENANT and applied by TENANT toward the cost of repairing and restoring the damaged or destroyed improvements in the manner required by this Section 5.05. Except as set

forth in Section 5.06 below, TENANT'S obligation to restore pursuant to this Section shall exist whether or not funds are available from insurance proceeds.

**Section 5.06 Termination of Lease for Destruction.**

(1) Notwithstanding the provisions of Section 5.05 of this Lease, TENANT shall have the option of terminating this Lease as provided in this Section 5.06 if:

(a) During the last fifteen (15) years of the term of this Lease, any improvements now or hereafter located on the Premises are so damaged or destroyed by the elements or any cause not the fault of TENANT or CITY/DISTRICT, that they cannot be repaired and restored as required by Section 5.05 of this Lease at a cost not exceeding thirty-five percent (35%) of the cost of replacing all improvements if they had been totally destroyed at the time of such damage; or

(b) During the last ten (10) years of the term of this Lease, any improvements now or hereafter located on the Premises are so damaged or destroyed by the elements or any cause not the fault of TENANT or CITY/DISTRICT, that they cannot be repaired and restored as required by Section 5.05 of this Lease at a cost not exceeding fifteen percent (15%) of the cost of replacing all improvements if they had been totally destroyed at the time of such damage.

(2) TENANT may exercise its right to terminate pursuant to this Section 5.06 by providing written notice to CITY/DISTRICT within one hundred eighty (180) days following damage or destruction of any improvement as described herein. Such termination shall be effective on the last day of the calendar month following the month in which TENANT provides its notice.

(3) If TENANT fails to commence or complete repair and restoration as required by Section 5.05, CITY/DISTRICT shall have all rights and remedies with respect to TENANT's default, including but not limited to, termination of this Lease.

(4) If this Lease is terminated as a result of damage or destruction, then any insurance proceeds received with respect to the damaged improvements shall be applied or distributed in the following order:

- (a) to any accrued and unpaid rent as of the effective date of the termination; then
- (b) to the repair of the improvements and removal of all demolition debris; then
- (c) to each Lender under a Permitted Leasehold Encumbrance, in order of lien priority, an amount not to exceed the amount due under such Leasehold Encumbrance; then

(d) to CITY/DISTRICT, an amount equal to the present value, as of the date of termination, of the total Minimum Rent for the remainder of the Term; then

(e) the remaining proceeds, if any, to TENANT.

**Section 5.07 Destruction Due to Risk Not Covered by Insurance.**

Notwithstanding anything to the contrary in Section 5.05 of this Lease, TENANT shall have the right to terminate this Lease at any time if the improvements on the Premises are damaged or destroyed by a casualty for which TENANT is not required under this Lease to carry insurance and the cost to repair or restore such improvements exceeds fifty percent (50%) of the fair market value of all the improvements on the Premises immediately prior to the damage or destruction.

## **Article 6 INDEMNITY AND INSURANCE**

**Section 6.01 Indemnity Agreement.**

To the fullest extent permitted by law, TENANT shall, at TENANT's sole expense and with counsel reasonably acceptable to CITY/DISTRICT, defend, indemnify, and hold harmless CITY/DISTRICT and CITY/DISTRICT's officers, officials, employees and agents from and against all claims, (including demands, losses, actions, causes of action, damages, liabilities, expenses, charges, assessments, fines or penalties of any kind, and costs including consultant and expert fees, court costs and attorney's fees) from any cause, arising out of or relating (directly or indirectly) to this Lease, the tenancy created under this Lease, or the Premises, including without limitation:

(1) The use or occupancy, or manner of use or occupancy, of the Premises by TENANT;  
and

(2) Any act, error, omission or negligence of TENANT or of any subtenant in, on or about the Premises; and

(3) TENANT's conducting of its business;

(4) Any alterations, activities, work, or things done, omitted, permitted, allowed or suffered by TENANT in, at, or about the Premises, including the violation of or failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, decrees, or judgments in existence on the Lease Commencement or enacted, promulgated or issued after the date of this Lease; and

(5) Any breach or default in performance of any obligation on TENANT's part to be performed under this Lease, whether before or during the Lease Term or after its expiration or earlier termination; and

(6) This indemnification extends to and includes, without limitation, claims for:

(a) Injury to any persons (including death at any time resulting from that injury);

(b) Loss of, injury or damage to, or destruction of property (including loss of use at any time resulting from that loss, injury, damage or destruction); and

(c) All economic losses and consequential or resulting damage of any kind.

TENANT's indemnification obligation hereunder shall survive the expiration or earlier termination of this Lease until all claims against CITY/DISTRICT involving any of the indemnified matters are fully, finally and absolutely barred by the applicable statutes of limitations.

**Section 6.02 Liability Insurance.**

TENANT, at TENANT's sole expense shall throughout the Lease Term, maintain:

(1) Commercial property insurance covering the Premises, fixtures, equipment, building, all property situated in, on, or constituting a part of the Premises and any improvements. Coverage shall be at least as broad as the Insurance Services Offices broad casuses of loss form CP 10 20, and approved of in writing by CITY/DISTRICT. Coverage shall be sufficient to insure 100% of the replacement value and there shall be no coinsurance provisions. The policy shall include an inflation guard endorsement, 100% rents coverage, contents coverage, coverage for personal property of others, ordinance or law and increased cost of construction coverage. CITY/DISTRICT shall be included as an insured and as loss payee on any such insurance. CITY/DISTRICT shall not be liable for any loss of TENANT's personal property even if such loss is caused by negligence of CITY/DISTRICT, CITY/DISTRICT's employees or agents.

(2) Boiler and Machinery insurance with limits of not less than actual replacement cost for all property and improvements, encompassing explosion and breakdown. Lessee shall obtain and deliver to CITY/DISTRICT, along with copies of all policies of insurance required here, a joint loss endorsement for property and boiler and machinery policies. The CITY/DISTRICT is to be added as insured to boiler and machinery coverage. Lessee also agrees to provide builder's all-risk insurance using an inland marine form during the period of any major alteration or

improvement, using the broadest form available. CITY/DISTRICT shall be named as loss payee under all first party coverages.

(3) Garage Liability and Garage Keeper's Liability insurance coverage in an amount sufficient to cover the total loss of the vehicle(s)/equipment being repaired or rebuilt or stored. Lessee shall obtain and deliver to CITY/DISTRICT, along with copies of all policies of insurance required herein. The CITY/DISTRICT is to be added as insured to Garage Liability and Garage Keeper's Liability insurance coverage.

(4) Commercial general liability insurance and umbrella liability insurance (with drop down coverage applicable when underlying does not apply) that pays on behalf of the insured, provides defense in addition to limits, concurrent starting and ending dates for both primary and umbrella coverage, naming CITY/DISTRICT as additional insured. Said coverage to encompass bodily injury and property damage during the policy period. Coverage will not exclude suits between insureds.

Coverage and limits shall apply to the full extent of the policy with no limitation to vicarious liability for additional insureds and extending coverage to any location for operations or activities necessary or incidental to the operations of the Premises. Coverage limits for primary and umbrella liability insurance combined to be no less than three million dollars (\$3,000,000) annually in the aggregate. This is the minimum requirement and is not to be considered as precluding CITY/DISTRICT from availing itself of any additional coverage or limits available from Lessee. Coverage provided by Lessee is intended to apply first on a primary non-contributing basis in relation to any insurance or self-insurance of CITY/DISITRCT shall approve deductibles.

TENANT agrees to waive rights of subrogation as to CITY/DISTRICT and to have all policies of insurance required here endorsed to permit such waiver. All insurance provided pursuant to these requirements is to be provided by insurers admitted and authorized to do business in the State of California with minimum Best's rating A:VII. The insurance coverage and limits required here shall not be construed as a limit of Lessee's liability.

Rent shall not abate by any reason of damage to or destruction of the Premises, Any rent insurance proceeds received by TENANT by reason of such damage or destruction of Premises shall be applied by TENANT to the payment of Rent, but this shall not relieve TENANT of any obligation under the Lease including the obligation to pay rent.

Proof of insurance using certificates of insurance and copies of policies must be delivered to CITY and DISTRICT no later than thirty (30) days following execution of this Lease. If TENANT fails to comply, CITY/DISTRICT has the right, but not the duty, to purchase such coverage and charge the premium to TENANT who must promptly pay said premium. TENANT agrees to be personally responsible for all losses not covered by insurance whether by reason of coverage being inapplicable or by TENANT's failure to obtain coverage.

**Section 6.03 General Requirements.**

Except as specifically provided to the contrary, all the insurance required pursuant to this Article 6 shall be subject to the requirements of this Section 6.03.

(1) Maintenance of proper insurance coverage is a material element of this Lease and failure to maintain or renew coverage or to provide evidence of coverage and/or renewal may be treated by the CITY/DISTRICT as a material breach.

(2) CITY/DISTRICT may, at any time and at its sole and absolute discretion, require TENANT to increase the minimum coverage limits for any insurance required by this Lease.

(3) Any deductibles must be declared to and approved by CITY/DISTRICT. At the option of CITY/DISTRICT, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY/DISTRICT, its officers, officials, employees and volunteers; or the TENANT shall provide a financial guarantee satisfactory to CITY/DISTRICT guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(4) Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be cancelled or reduced, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to CITY/DISTRICT.

(5) TENANT's insurance coverage shall be primary insurance as respects CITY/DISTRICT, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY/DISTRICT, its officers, officials, employees, or volunteers shall be excess of TENANT's insurance and shall not contribute with it.

**Section 6.04 TENANT'S Waiver.**

TENANT hereby waives any right of recovery against CITY/DISTRICT for each claim, expense, liability, or business interruption, or other loss, except where caused by CITY/DISTRICT'S active and proven sole negligence or willful misconduct. TENANT agrees

that to the extent that TENANT fails to acquire insurance, TENANT shall not have any claim against CITY/DISTRICT for any loss that results from a risk or peril that would have been included in such insurance.

**Section 6.05 Insurance Not a Limit.**

The insurance requirements of this Article 6 are independent of, and do not limit or modify, TENANT'S indemnification and other obligations pursuant to this Lease.

## **Article 7 TAXES AND FEES**

**Section 7.01 TENANT to Pay Taxes.**

TENANT shall pay, before delinquency, all taxes and assessments levied upon or assessed to TENANT on the Premises by reason of this Lease or of any equipment, appliances, improvement, or other development of any nature whatsoever, erected, installed, or maintained by TENANT or by reason of the business or other activity of TENANT upon or in connection with the Premises. TENANT shall pay all possessory interest taxes applicable to the Premises.

**Section 7.02 TENANT to Pay License and Permit Fees.**

TENANT shall pay any fees imposed by law for licenses or permits for any business or activities including construction or improvement by TENANT upon the Premises.

**Section 7.03 Utilities.**

TENANT shall pay, or cause to be paid, and hold CITY/DISTRICT and the Premises, free and harmless from all charges for the furnishing of gas, water, electric, telephone service, and for other public utilities to the Premises during the term of this Lease and for the removal of garbage and rubbish from the Premises during the term of this Lease.

## **Article 8 CONDEMNATION**

**Section 8.01 Total Condemnation.**

If title and possession to all of the Premises is permanently taken for any public or quasi-public use under any statute, or by the right of eminent domain, then this Lease shall terminate on the date that possession of the Premises is taken, and both CITY/DISTRICT and TENANT shall thereafter be released from all obligations, including Rent, all of which shall be prorated to the date of termination, except as specified in Section 8.02 of this Lease.

**Section 8.02 Condemnation Award.**

Any compensation or damages awarded or payable because of the permanent taking of all or any portion of the Premises by eminent domain shall be allocated between CITY/DISTRICT and TENANT as follows:

(1) All compensation or damages awarded or payable for the taking by eminent domain of any land that is part of the Premises shall be paid to and be the sole property of CITY/DISTRICT free and clear of any claim of TENANT or any person claiming rights to the Premises through or under TENANT.

(2) All compensation or damages awarded or payable which is specifically attributed by the taking party to the "good will" of TENANT'S business shall be paid to and be the sole property of TENANT.

(3) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of the Premises taken by eminent domain where only a portion of the Premises is taken by eminent domain, and TENANT is not entitled to or does not terminate this Lease, shall be applied in the manner specified in Section 8.04 toward the replacement of such improvements with equivalent new improvements on the remaining portions of the Premises.

(4) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of the Premises taken by eminent domain where this Lease is terminated because of the taking by eminent domain, whether all or only a portion of the Premises is taken by eminent domain, shall be allocated between CITY/DISTRICT and TENANT as follows:

(a) That percentage of the compensation or damages awarded or payable arising from the improvements constructed and paid for by TENANT equal to remaining term as of the time of the taking, not expired shall belong to and be the sole property of TENANT.

(b) That percentage of the compensation or damages awarded or payable arising from the improvements constructed and paid for by TENANT that equals the percentage of the expired term as of the time of the taking, shall belong to and be the sole property of CITY/DISTRICT.

(c) The term "time of taking" as used in this Section shall mean 12:01 a.m. of the date that the agency or entity exercising the eminent domain power, takes, title, or the date that it takes physical possession of the portion of the Premises, whichever shall first occur.

(5) Any severance damages awarded or payable because only a portion of the Premises is taken by eminent domain shall be the sole and separate property of CITY/DISTRICT.

**Section 8.03 Termination for Partial Taking.**

Should, during the term of this Lease, title and possession of only a portion of the Premises be taken for any public or quasi-public use under any statute, or by right of eminent domain, TENANT may, at TENANT'S option, terminate this Lease by serving written notice of termination on CITY/DISTRICT within ninety (90) days after TENANT has been deprived of actual physical possession of the portion of the Premises taken for such public use. This Lease shall terminate on the first day of the calendar month following the calendar month in which the notice of termination described in this section is served on CITY/DISTRICT. On termination of this Lease pursuant to this Article, all subleases and subtenancies in or on the Premises or any portion of the Premises created by TENANT under this Lease shall also terminate and the Premises shall be delivered to CITY/DISTRICT free and clear of all such subleases and subtenancies, provided, however, that CITY/DISTRICT may, at CITY/DISTRICT'S option, by mailing written notice to a subtenant allow any subtenant to attorn to CITY/DISTRICT and continue such subtenant's occupancy on the Premises as a TENANT of CITY/DISTRICT. On termination of this Lease pursuant to this section, however, both CITY/DISTRICT and TENANT shall be released from all obligations under this Lease, except those specified in Section 8.02 of this Lease.

**Section 8.04 Rent Abatement for Partial Taking.**

Should, during the term of this Lease, title and possession of only a portion of the Premises be taken under the power of eminent domain by any public or quasi-public agency or entity and TENANT does not terminate this Lease, then this Lease shall terminate as to the portion of the Premises taken under eminent domain on the date actual physical possession of the portion taken by eminent domain is taken by the agency or entity exercising the eminent domain power. Furthermore, the Rent payable under this Lease shall, as of that time, be reduced in the same proportion that the value of the portion of the Premises taken by eminent domain bears to the full value of the Premises at that time; provided, however, that TENANT shall replace any improvements or facilities with equivalent new facilities on the remaining portion of the Premises and do all other acts, at TENANT'S sole cost and expense required by the eminent domain taking to make the remaining portion of the Premises fit for the use specified in this Lease.

**Section 8.05 Conveyance in Lieu of Eminent Domain.**

A voluntary conveyance by CITY/DISTRICT, with the consent of TENANT, of title to all or a portion of the Premises to a public or quasi-public agency or entity in lieu of and under threat by such agency or entity to take the same by eminent domain proceedings shall be considered a taking of title to all or such portion of the Premises under the power of eminent domain subject to the provisions of this Article.

**Section 8.06 Temporary Taking.**

If the possession of the Premises or any portion thereof should be taken under the power of eminent domain by any public or quasi-public agency or entity for a limited period not extending beyond the term of this Lease, then this Lease shall not terminate (except as provided in this Section 8.06) and TENANT shall continue to perform all its obligations hereunder, except only to the extent that TENANT is prevented from performing such obligations by reason of such taking. In the event of a partial taking, the Rent payable under this Lease during such time, shall, be temporarily reduced in the same proportion that the value of the portion of the Premises temporarily taken by eminent domain bears to the full value of the Premises. TENANT shall be entitled to receive its proportionate amount of compensation or damages awarded because of such temporary taking. If a temporary taking extends for more than thirty-six (36) months, then TENANT shall have the right to terminate this Lease, and TENANT shall be entitled to receive, out of the compensation or damages awarded because of such temporary taking, the amount that is attributable to the period of time up until the effective date of TENANT'S termination of this Lease.

**Article 9 ASSIGNMENT AND SUBLEASING**

**Section 9.01 No Assignment Without CITY/DISTRICT'S Consent.**

Except as provided in this Article 9, TENANT shall not assign or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Premises or any of the improvements that may now or hereafter be constructed or installed on the Premises, without the express prior written consent of CITY/DISTRICT evidenced by consent resolutions from both the CITY Council and DISTRICT Board of Directors first had and obtained. Any assignment or transfer by TENANT without the prior written consent of CITY/DISTRICT, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of CITY/DISTRICT, terminate this Lease. A consent by CITY/DISTRICT to one assignment shall not be deemed to be a consent to any subsequent assignment of this Lease by TENANT.

CITY/DISTRICT shall not arbitrarily withhold its approval to the assignment or transfer of this Lease to an assignee who is financially reliable and qualified to conduct the business for which this Lease was granted, as determined by CITY/DISTRICT in their sole discretion. It is mutually agreed that the TENANT'S qualifications are a part of the consideration for granting of this Lease and said party does hereby agree to maintain active control and supervision of the operation conducted on the Premises.

**Section 9.02 Change of Ownership as Assignment.**

For purposes of this Article 9, the following transactions will be deemed to be assignments or transfers:

(1) If TENANT is a partnership or limited liability company:

(a) A change in ownership effected voluntarily, involuntarily, or by operation of law, within a twelve-month (12-month) period, of twenty-five percent (25%) or more of the partners or members or twenty-five percent (25%) or more of the partnership or membership interests; or

(b) The dissolution of the partnership or limited liability company without its immediate reconstitution.

(2) If TENANT is a closely held corporation (i.e., one whose stock is not publicly held and not traded through an exchange or over the counter):

(a) The sale or other transfer, within a twelve-month (12-month) period, of more than an aggregate of twenty-five percent (25%) of the voting shares of TENANT (other than to immediate family members by reason of gift or death); or

(b) The dissolution, merger, consolidation, or other reorganization of TENANT.

**Section 9.03 Application for Assignment.**

A condition of an assignment shall be that TENANT shall file with the CITY/DISTRICT an application to assign the leasehold prepared by the prospective assignee. Concurrently with filing the application, TENANT shall pay a fee in an amount determined by CITY/DISTRICT in cash or certified or cashier's check to enable CITY/DISTRICT adequately to investigate the proposed assignee's qualifications as a permitted assignee. CITY/DISTRICT shall not be required to account for the use of the sum paid. If the proposed assignee's net worth on the date of assignment is not sufficient to reasonably guarantee successful operation of the Premises in compliance with all applicable CITY/DISTRICT, County, State and Federal requirements,

CITY/DISTRICT may withhold approval of the assignment or condition it upon TENANT'S guarantee of such assignee's obligations hereunder for such period as CITY/DISTRICT deems advisable. Net worth shall mean the amount by which the total of all assets shall exceed the total of all liabilities as determined in accordance with generally accepted accounting principles as approved by CITY/DISTRICT'S auditor, or other authorized representative or agent.

**Section 9.04 Probate Transfer of Assignment.**

If TENANT is an individual, nothing herein contained will prevent the transfer of this Lease by will, or by operation of law under the intestacy provisions of the California Probate Code as it may be amended from time to time. Probate sale of the leasehold interest will not be permitted without the consent of the CITY/DISTRICT, evidenced by resolutions from both entities, first had and obtained.

**Section 9.05 No Sublease Without CITY/DISTRICT'S Consent.**

TENANT shall not sublease the whole nor any part of the Premises, or license, permit, or otherwise allow any other person (the employees of TENANT excepted) to occupy or use the Premises, or any portion thereof, without the written consent of CITY/DISTRICT evidenced by resolutions from both the CITY Council and DISTRICT Board of Directors first had and obtained. A consent to one subletting, occupation, licensing or use shall not be deemed to be a consent to any subsequent subletting, occupation, licensing or use by another person. Any sublease or license without CITY/DISTRICT'S prior written consent shall be void, and shall at CITY/DISTRICT'S option, terminate this Lease. CITY/DISTRICT'S consent to any occupation, use, or licensing shall be in CITY/DISTRICT'S sole and absolute discretion. This Section shall not apply to the resublease of individual RV space pursuant to short-term rental agreement.

**Section 9.06 Subtenant Subject to Lease Terms.**

Any and all subleases shall be expressly made subject to all the terms, covenants, and conditions of this Lease. In no event shall the term of any sublease extend beyond the term of this Lease. Subject to Section 9.09, termination of this Lease prior to the expiration of this Lease term shall also terminate any and all subleases. A breach of the terms of this Lease by a subtenant shall constitute a breach on the part of TENANT and shall subject both the subtenant and TENANT to all the remedies provided to CITY/DISTRICT herein and by law. Failure by any subtenant to report Gross Revenues or to pay Percentage Rent due from subtenant shall

constitute a breach of this Lease. TENANT hereby agrees to and does guarantee payment of such Percentage Rent due by a subtenant under the terms of this Lease.

**Section 9.07 Consent Form Agreement.**

Prior to any consent by CITY/DISTRICT to any sublease hereof, TENANT shall cause to be executed between TENANT and any subtenant an agreement making the CITY/DISTRICT a third party beneficiary, in a form acceptable to CITY/DISTRICT, whereby the subtenant agrees to be bound by all of the terms, covenants and conditions of this Lease. Further, it is agreed by TENANT that any default by the subtenant of any of the terms, covenants and conditions of this Lease shall be deemed to be violations by TENANT of this Lease and that all remedies of CITY/DISTRICT for such violation, including termination of this Lease, shall immediately be enforceable by CITY/DISTRICT against TENANT. TENANT shall apply any and all monies received from any subtenant first to the payment of obligations of the subtenant to CITY/DISTRICT.

**Section 9.08 TENANT and Guarantor Remain Liable.**

Prior to approval by CITY/DISTRICT to any sublease hereof, TENANT shall agree to be primarily and jointly and severally liable to CITY/DISTRICT for all obligations due CITY/DISTRICT by any subtenant, including the payment of Rents, and TENANT shall agree that CITY/DISTRICT may proceed directly against TENANT for any obligation owing CITY/DISTRICT by the subtenant. If this Lease is guaranteed, neither the sublease nor CITY/DISTRICT'S approval thereof shall release the guarantor from its obligations pursuant to the guaranty.

**Section 9.09 Nondisturbance.**

On the terms set forth below, CITY/DISTRICT may enter into agreements with subtenants providing that in the event of any termination of this Lease prior to the expiration date, CITY/DISTRICT will not terminate or otherwise disturb the rights of the subtenant under such sublease, but will instead honor such sublease as if such agreement had been entered into directly between Landlord and such subtenant, conditioned upon such subtenant's agreement to attorn to Landlord and full performance of all obligations under the sublease in question ("Non-Disturbance Agreement"). CITY/DISTRICT agrees to execute a Non-Disturbance Agreement in connection with a particular sublease provided that Tenant provides CITY/DISTRICT with a copy of the sublease, and the Non-Disturbance Agreement is customary in form and substance and otherwise reasonably acceptable to CITY/DISTRICT.

## Article 10 DEFAULT AND TERMINATION

### **Section 10.01 Abandonment by TENANT.**

Should TENANT breach this Lease and abandon all or any part of the Premises prior to the scheduled expiration of the term of this Lease, CITY/DISTRICT may continue this Lease in effect by not terminating TENANT'S right to possession of the Premises, in which event CITY/DISTRICT shall be entitled to enforce all CITY/DISTRICT'S rights and remedies under this Lease, including the right to recover the Rent specified in this Lease as it becomes due under this Lease.

### **Section 10.02 Termination for Breach by TENANT.**

All covenants and agreements contained in this Lease are declared to be material conditions to this Lease and to the term hereby demised to TENANT. Should TENANT fail to perform any covenant, condition, or agreement contained in this Lease, except for payment of any Rent or other monetary amount due, and such failure is not cured within thirty (30) days after written notice thereof is served on TENANT, (provided, however, if the nature of the non-monetary default is such that it cannot reasonably be cured despite commercially reasonable efforts to do so during such 30-day period, then a default shall not arise provided TENANT commences such cure as soon as commercially and diligently prosecutes it to completion) then CITY/DISTRICT may terminate this Lease immediately, and in the event of such termination, TENANT shall have no further rights hereunder and TENANT shall thereupon forthwith remove from the Premises and shall have no further right or claim thereto and CITY/DISTRICT shall immediately thereupon have the right to re-enter and take possession of the Premises, subject only to appropriate legal process.

### **Section 10.03 Termination for Failure to Pay Rent.**

If any payment of Rent is not made as herein provided and such failure to pay is not cured within three (3) days after written notice thereof, CITY/DISTRICT shall have the option to immediately terminate this Lease; and in the event of such termination, TENANT shall have no further right or claim thereto and CITY/DISTRICT shall immediately thereupon have the right to re-enter and take possession of the Premises, subject only to appropriate legal process.

**Section 10.04 Lender May Cure Default.**

CITY/DISTRICT shall afford the Lender under any Permitted Leasehold Encumbrance of record with CITY/DISTRICT the right to cure any default by TENANT of the covenants, conditions, or agreements hereof, as provided in Article 4 of this Lease.

**Section 10.05 Attorneys' Fees.**

In the event the CITY/DISTRICT finds it necessary to retain an attorney in connection with the default by the TENANT or enforcement of any of the terms, conditions, and covenants of this Lease, even if litigation is not instituted, TENANT shall pay to CITY/DISTRICT its reasonable attorneys' fees and costs. Non-payment of attorneys' fees by TENANT within three (3) days of written notice shall give rise to an independent legal action by CITY/DISTRICT to collect same. If CITY/DISTRICT is successful in such legal action, CITY/DISTRICT shall also be entitled to attorney fees and costs for the collection action. To the extent that CITY/DISTRICT is represented by the CITY/DISTRICT Attorney, a reasonable sum for such attorneys' services will be included as attorneys' fees.

**Section 10.06 Damages for Breach.**

Should TENANT default in the performance of any covenant, condition or agreement contained in this Lease and the default be incurable or not be cured within the time period set forth hereinabove, then CITY/DISTRICT may terminate this Lease and:

- (1) Bring an action to recover from TENANT:
  - (a) The worth at the time of award of the unpaid rent which had been earned at the time of termination of the Lease;
  - (b) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination of the Lease until the time of award exceeds the amount of rental loss that TENANT proves could have been reasonably avoided;
  - (c) 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 rental loss that TENANT proves could be reasonably avoided; and
  - (d) Any other amount necessary to compensate CITY/DISTRICT for all detriment proximately caused by TENANT'S failure to perform its obligations under this Lease; and

(2) Bring an action, in addition to or in lieu of the action described in subparagraph (1) of this Section, to re-enter and regain possession of the Premises in the manner provided by the laws of unlawful detainer of the State of California then in effect.

**Section 10.07 Cumulative Remedies.**

The remedies available to CITY/DISTRICT in this Article shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Lease.

**Section 10.08 Waiver of Breach.**

The waiver by CITY/DISTRICT of any breach by TENANT of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by TENANT either of the same or a different provision of this Lease.

**Section 10.09 Surrender of Premises.**

On expiration or sooner termination of this Lease, TENANT shall surrender the Premises, and, subject to Section 4.05, all improvements in or on the Premises, and all facilities in any way appertaining to the Premises, to CITY/DISTRICT in good, safe, and clean condition, reasonable wear and tear accepted.

## **Article 11 MISCELLANEOUS**

**Section 11.01 Attorneys' Fees.**

Should any litigation be commenced between the parties to this Lease concerning the Premises, this Lease, or the rights and duties of either in relation thereto, the party, CITY/DISTRICT or TENANT, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted in the litigation, to a reasonable sum as and for its attorneys' fees in such litigation, which shall be determined by the court in such litigation or in a separate action brought for that purpose. The "prevailing" party shall mean the party who obtains substantially the relief sought by that party. To the extent that CITY/DISTRICT is represented by the CITY/DISTRICT Attorney, a reasonable sum for such attorneys' services will be included as attorneys' fees.

**Section 11.02 Notices.**

Any and all notice or demands by or from CITY/DISTRICT to TENANT, or TENANT to CITY/DISTRICT shall be in writing. They shall be served either personally, or by registered or certified mail. Any notice or demand to CITY/DISTRICT may be given to:

CITY  
City of Morro Bay  
Attn: City Manager  
955 Shasta Avenue  
Morro Bay, CA 93442

DISTRICT  
Cayucos Sanitary District  
Attn: General Manager  
P. O. Box 333  
Cayucos, CA 93430

with a copy to:

City of Morro Bay  
Attn: City Attorney  
955 Shasta Avenue  
Morro Bay, CA 93442

Timothy J. Carmel  
Carmel & Naccasha  
1410 Marsh Street  
San Luis Obispo, CA 93401

Any notice or demand to TENANT may be given at:

Morro Dunes Trailer Park and Campground Inc.  
1700 Embarcadero  
Morro Bay, CA 93442

Such addresses may be changed by written notice by either party to the other party.

**Section 11.03 Governing Law and Jurisdiction.**

This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision concerning this Lease arises. CITY/DISTRICT and TENANT consent to exclusive personal and subject matter jurisdiction in the Superior Court of the State of California in and for the County of San Luis Obispo, and each party waives any claim that such court is not a convenient forum.

Each party hereby specifically waives the provisions of California Code of Civil Procedure Section 394, and any successor statute thereto.

**Section 11.04 Partial Invalidity.**

Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

**Section 11.05 Modification.**

This Lease shall not be modified except pursuant to a written agreement executed by the CITY's Mayor and Clerk and DISTRICT's President and Clerk, pursuant to prior CITY Council and DISTRICT Board approval. Notwithstanding CITY/DISTRICT approval, no agreement shall become effective until such agreement is in fact executed by the Mayor and CITY Clerk and DISTRICT President and Clerk. TENANT understands that this Lease may not be modified by oral statements by any person representing the CITY/DISTRICT. TENANT specifically agrees not to rely on oral statements, purported oral waivers, or purported oral modifications and agrees not to rely upon purported written modifications unless they meet the requirements of this paragraph and are approved in writing pursuant to formal CITY Council and DISTRICT Board action and a subsequent written modification signed by the CITY's Mayor and Clerk and DISTRICT President and Clerk. If the title of any person authorized to act for CITY or DISTRICT under this Lease shall be changed during the term of this Lease, then the person who succeeds to substantially the same responsibilities with respect to the CITY and/ or DISTRICT shall have the authority to act for CITY and/ or DISTRICT under this Lease.

**Section 11.06 Time of Essence.**

Time is expressly declared to be the essence of this Lease.

**Section 11.07 Memorandum of Lease for Recording.**

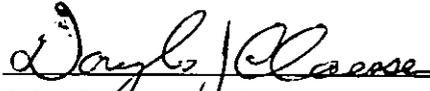
CITY/DISTRICT and TENANT shall, at the request of either at any time during the term of this Lease, execute a memorandum or "short form" of this Lease, which shall describe the parties, set forth a description of the Premises, specify the term of this Lease, and incorporate this Lease by reference.

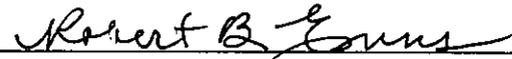
EXECUTED on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_,  
San Luis Obispo County, California.

CITY/DISTRICT

MORRO DUNES TRAILER PARK AND  
CAMPGROUND, INC.

  
MAYOR

  
DOUG CLAASSEN  
ITS: PRESIDENT

  
BOARD CHAIRPERSON

ATTEST:

 /   
CITY/DISTRICT CLERK

APPROVED AS TO FORM:

  
CITY ATTORNEY

  
DISTRICT COUNSEL

RESOLUTION NO. 11

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CAYUCOS SANITARY DISTRICT APPROVING A COMMERCIAL LEASE WITH MORRO DUNES TRAVEL TRAILER PARK & RESORT CAMPGROUNDS INC. FOR PROPERTY LOCATED AT 1700 EMBARCADERO ROAD, MORRO BAY, CALIFORNIA**

**WHEREAS**, the City of Morro Bay ("City") and the Cayucos Sanitary District ("District") are co-owners of certain real property located in the City of Morro Bay at 1700 Embarcadero (the "Property"); and

**WHEREAS**, the Property has been leased to Morro Dunes Trailer Park and Campground, Inc. ("Morro Dunes"), pursuant to a lease dated March 28, 1967 (the "1967 Lease"); and

**WHEREAS**, the 1967 Lease expired on April 1, 2007 and Morro Dunes has been a holdover tenant since then, pursuant to paragraph 22 of the 1967 Lease; and

**WHEREAS**, the City and District desire to continue to lease the Property to Morro Dunes, pursuant to the terms and conditions set forth in the attached Commercial Lease agreement (the "2008 Lease"); and

**WHEREAS**, the City approved the 2008 Lease on September 22, 2008 at a duly noticed Regular City Council Meeting; and

**WHEREAS**, the Cayucos Sanitary District Board of Directors finds that the approval of the 2008 Lease is exempt from environmental review, pursuant to CEQA Guidelines Section 15301.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Cayucos Sanitary District that the 2008 Lease, a copy of which is attached hereto and incorporated herein, is hereby approved and the Board President is hereby authorized to execute the 2008 Lease.

**PASSED AND ADOPTED** by the Board of Directors of the Cayucos Sanitary District at a regular meeting thereof held on the 15<sup>th</sup> day of October, 2008, by the following vote:

AYES: Enns, Fones, McHale, Lyon

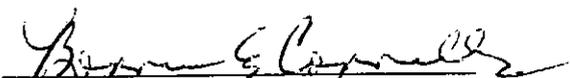
NOES: None

ABSENT: None

ABSTAIN: None

  
ROBERT ENNS, PRESIDENT

ATTEST:

  
DISTRICT CLERK



**BRATTON SOLAR INC.**  
PLACING SOLAR WHERE THE SUN DOES SHINE!  
**(559) 721-2144**  
CA No. 981116

## Performance & Financial Analysis

Prepared March 20, 2018 for

MORRO DUNES RV PARK  
1700 Embarcadero  
Morro Bay, CA 93442

Work Location:  
MORRO DUNES RV PARK  
1700 Embarcadero  
Morro Bay, CA 93442

**Prepared by Konstantin Chelyadin**  
Phone: (424) 233-9239 | Email: [kc@brattonsolarinc.com](mailto:kc@brattonsolarinc.com)

## Executive Summary

**Electric Utility Savings:** Anticipate a savings of approximately \$57,252 in electric bills (50%) at current utility rates in the first year. Savings will grow as electric utility rates are expected to rise 3.78% a year. The purchase of electric energy (kWh) from your utility is expected to be reduced by 50%.

Over 25 years, annual utility savings are anticipated to average \$91,075, for a total utility savings of \$2,276,866. After tax effects are applied, savings average \$61,020 annually or \$1,525,501 over the system life.

### Performance Summary

Solar Electric (PV) System: 151.5 kW DC (149.228 kW AC, 137.09 kW CEC) producing 272,636 kWh/Year.

### Purchase Price & Net Cost

**Contract Price: \$655,995**

Incentives to Customer: (\$196,799)

Net Purchase Cost: \$459,196

MACRS Bonus & Straight Line (\$168,786)(P.V.)

Depreciation:

Net-Present Cost: \$290,410

Includes present value (P.V.) of these future cash flows.

### Financial Ratios

Customer's Profitability Index: 2

Cashflow Payback: 6.8 years

Internal Rate of Return (IRR): 15%

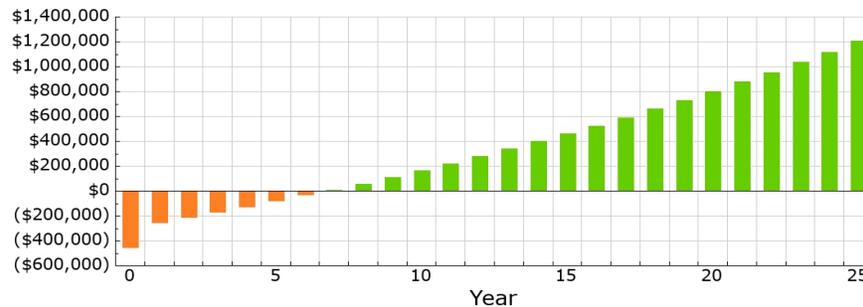
Net Present Value (NPV): \$479,817

Cash Gained over Life: \$1,210,181

- CO2 Saved over System Life: 5,589 tons. Equivalent to driving 11,178,000 auto miles

### Finance: Cash

Cumulative Cash Flow



# The Cost of Doing Nothing

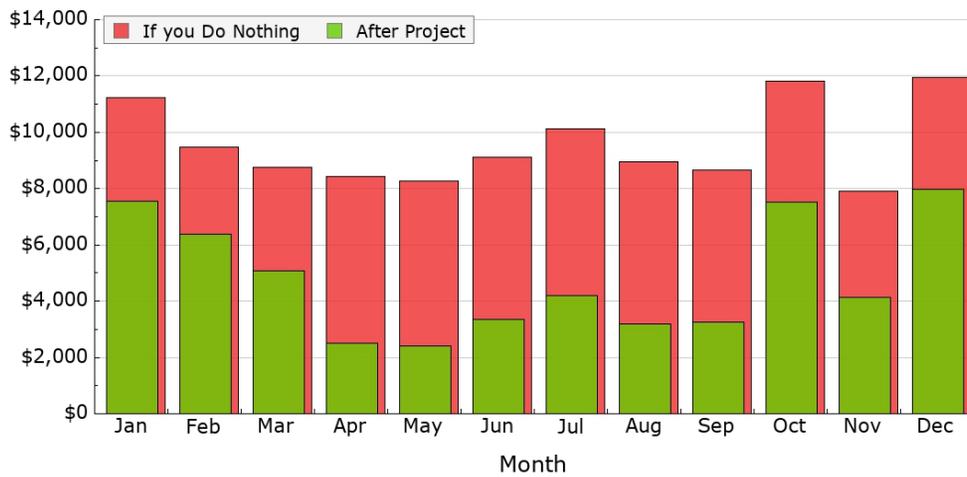
Utility Cost over Time



Your Hedge Against Utility Inflation: Your investment in this project will protect you from utility rate inflation.

# Utility Cost by Month

Utility Cost by Month (typical): Reduced 50%

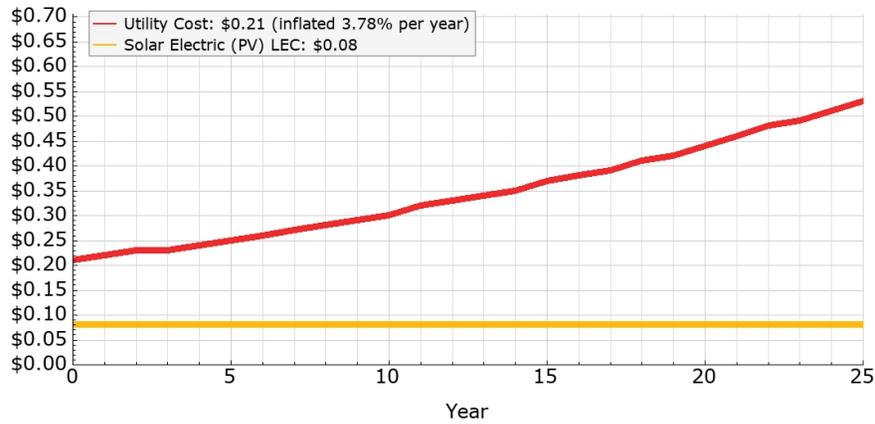


## Levelized Energy Cost (LEC)

Your Hedge Against Utility Inflation: Your investment in this project will protect you from utility rate inflation. Levelized Energy Cost (LEC) analysis provides us with a "hurdle rate" (the levelized energy cost) which can be compared to the expected change in utility rates (by way of utility rate inflation). LEC is the average lifetime cost of energy produced by a particular system. We can compare the LEC to the current utility rate and its expected change in price as time goes on. In this manner one can judge the investment as a "better bet" than utility rates to contain energy costs. Represented below is the average cost of utility energy versus the cost of energy produced (LEC) by your system over time.

### Electric: Levelized Energy Cost (LEC)

\$/kWh: Utility vs. System Levelized Energy Cost (LEC)



## Carbon Footprint

Your carbon footprint will be reduced. Over the life of your system 5,589 tons of carbon dioxide (CO<sub>2</sub>) will be eliminated from your footprint. Equivalent to:



**Planting 130,224 trees.**



**Driving reduced by 11,178,000 auto miles, or 570,078 gallons of gasoline.**



**Recycling 17,661 tons of waste instead of sending it to landfill.**



**Displacing CO<sub>2</sub> emissions from the annual electric use of 634 homes.**



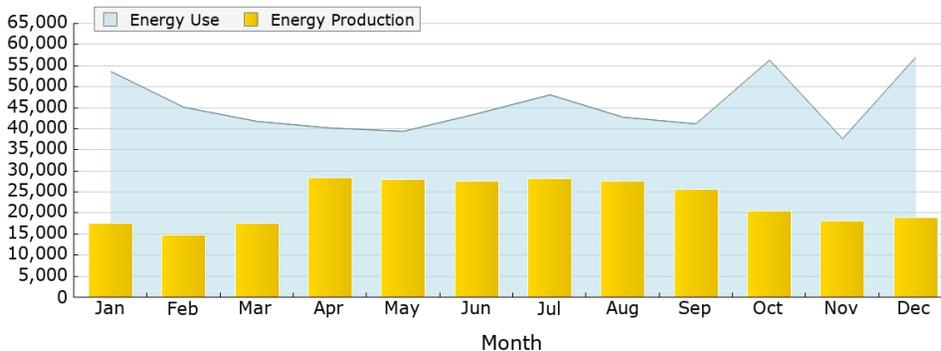
**5,446,041 pounds (2,723.0 tons) of coal burned.**



**and you will help avoid the use of up to 136,318,000 gallons of water by Thermoelectric Powerplants.**

## Solar Electric (PV) System Summary

Solar Electric (PV) kWh Production by Month (typical)



Tilt: 30° Azimuth: 180° 3" Air Gap  
 Shade reduces production: 0%

PV Panels: 505 x Canadian Solar, Model: CS6K-300MS

Inverters: 2 x SolarEdge Technologies, Model: SE66.6K

Total Panel Area: 8,811 sq-ft

System Peak Power: 151.5 kW DC (149.228 kW AC, 137.09 kW CEC)

Annual Production: 272,636 kWh. Supplying 50% of annual electric use

### Contract Price Summary: Solar Electric (PV) System

**Contract Amount: \$655,995** (\$4.33 per watt DC)

#### Incentives available to Customer in 1st Year

Federal Tax Credit (30% of Gross Cost at Installation): (\$196,799)

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**Net Cost at Install (after incentives): \$459,196**

Net Installed Price per Watt: \$3.03 per watt DC (\$3.08 per watt AC)

Present Value of Depreciation: \$168,786 (in today`s dollars)

---

Net-Present Cost: \$290,410

## Sensitivity Analysis: Utility Rate Inflation Scenarios

Sensitivity Analysis is a process of analyzing possible future events by considering alternative possible outcomes.

The average change in utility rates (inflation) over the system life is perhaps the variable which may most affect the return on your investment. The following table summarizes how utility rate inflation may impact your investment. The project, as quoted, is compared to utility rate inflation that averages -5%, 0% and +5% over the system life.

	<u>As Quoted</u>	<u>-5% Inflation</u>	<u>0% Inflation</u>	<u>+5% Inflation</u>
<b>Total Utility Savings:</b>	\$2,276,866	\$758,266	\$1,366,748	\$2,713,001
<b>Cash Gained over Life:</b>	\$1,210,181	\$192,720	\$600,403	\$1,502,391
<b>Return on Initial Cash Invested (IRR):</b>	15%	5.6%	11%	16.3%
<b>Wealth Created Over System Life (NPV):</b>	\$479,817	\$13,904	\$209,763	\$604,208

**Utility Inflation, as Quoted:** Electric Rates: 3.78%

## How to Interpret Financial Ratios and Measures

### A Measure of Security: Cashflow Payback: 6.8 years - 6.8 years (modified)

The most common measure of the security of a proposed investment is its payback, defined as the length of time until one gets one's money back. Cashflow Payback is when cumulative cash flow stays positive for good. Modified Cashflow Payback is when the cumulative cash in-flows exceed the total of all cash out-flows over the system life; future maintenance expenses are accommodated.

### Profitability Index: 2

What PI Means: Generally, if  $PI > 1$  then accept the project. If  $PI < 1$  then "qualitative" factors may justify the project.

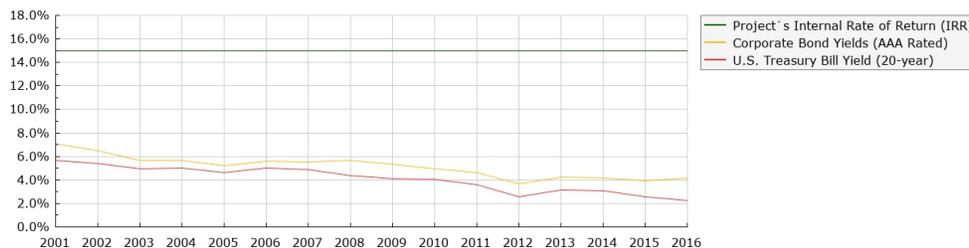
*Profitability Index (PI)* is a measure of investment efficiency. It identifies the relationship of investment to its return. Profitability Index (PI) is calculated as: (Net-Present Value of the Returns plus the Initial Investment) divided by the Initial Investment. For example: \$459,196 is invested and the NPV of the returns is \$479,817, then the  $PI = (\$459,196 + \$479,817) / \$459,196 = 2$ , or more generically, for every \$1 invested you received \$2 in return.

### Net Present Value (NPV): \$479,817.

What NPV Means: NPV is an indicator of how much value (wealth) an investment adds to the customer. If NPV is positive then the investment would add value. If NPV is zero or negative then other "qualitative" factors may be of adequate value to justify the project (for example, lengthening a swimming pool season). *Net Present Value (NPV)* is one way to account for the time value of money. NPV calculates the current value of each future cash flow. For example, \$1.00 received two years from now is equivalent to something less today, if it can be invested now at some interest rate. This allows us to "discount" the cash flows (whether positive or negative) that the proposed investment is expected to generate at various times in the future back to their equivalent value today (that is, their "present value"). If one then subtracts the cost of the proposed investment from the sum of the present values of the ongoing cash inflows, one obtains the net present value (NPV) of the investment.

### Internal Rate of Return (IRR): 15%

*Internal Rate of Return (IRR)* is a common measure of investment efficiency. Equivalent to the yield to maturity of a bond. The internal rate of return (IRR) is the annualized effective compounded rate of return earned on the invested capital.





## Measures of Predictability: Using "hurdle rates" Levelized Energy Cost (LEC)

### Solar Electric (PV): \$0.08 per kWh

Another dimension of concern about a proposed investment is the predictability of its anticipated costs and returns, which requires measures of the uncertainty associated with them. Levelized Energy Cost (LEC) analysis provides us with a "hurdle rate" (the levelized energy cost). LEC is the average lifetime cost of energy produced by a particular system. We can compare LEC to the current utility rate and its expected change in price as time goes on. In this manner one can judge the investment as a "better bet" than utility rates to contain energy costs.

**Assessing Option Value:** The option value of a proposed investment represents the value of future opportunities that would be made available only if the investment were made. Like the ante in a poker game, the investment may promise no return other than the opportunity to look at the cards being dealt, at which point one can either fold or "exercise the option" by making additional investments in an attempt to win the pot. To realize future value here new investments are not necessarily required to "exercise the options" - ownership is enough. In the case of renewable energy systems in general, there are primarily two opportunities, or options, which may have future value: Property value appreciation, and Renewable energy certificates (RECs or SRECs):

Renewable Energy and/or Carbon Credits or Certificate (REC or SREC): Renewable Energy Certificates (sometimes called "solar renewable energy credits/certificates" - SRECs, S-RECs, or simply RECs) are a new and evolving method to ascribe future financial value to a renewable energy system. RECs represent the bundle of legal rights to the "green" part of each unit of energy produced by a renewable energy system. This green part can be sold for a value, which generates additional revenue for the seller. These certificates can be sold and traded or bartered and the owner of the REC can claim to have purchased renewable energy.



## Utility Energy Summary: Electric

Electric Utility Rates	
Current Rate	Post Project Rate
Fixed Price per unit \$0.2100/kWh	Fixed Price per unit
Average Cost: \$0.21 per kWh	Average Cost: \$0.21 per kWh
Tiered Rate: No	Tiered Rate: No
Time-of-Use Rate: No	Time-of-Use Rate: No
Demand Charges: No	Demand Charges: No

### Summary of Utility & New Source Electricity

Electric by Month (kWh)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<u>Entered into Software (historical)</u>													
Monthly Use	53,536	45,176	41,752	40,206	39,338	43,453	48,157	42,706	41,236	56,331	37,667	56,892	546,450
Historical Cost	\$10,169	\$9,824	\$8,270	\$8,755	\$9,943	\$11,107	\$12,700	\$10,862	\$9,958	\$9,305	\$6,024	\$10,663	\$117,580
<u>Estimated by Software at Current Rates</u>													
Estimated Use	53,536	45,176	41,752	40,206	39,338	43,453	48,157	42,706	41,236	56,331	37,667	56,892	546,450
<b>Current Cost</b>	<b>\$11,243</b>	<b>\$9,487</b>	<b>\$8,768</b>	<b>\$8,443</b>	<b>\$8,261</b>	<b>\$9,125</b>	<b>\$10,113</b>	<b>\$8,968</b>	<b>\$8,660</b>	<b>\$11,830</b>	<b>\$7,910</b>	<b>\$11,947</b>	<b>\$114,755</b>
PV Production	(17,604)	(14,825)	(17,530)	(28,310)	(27,907)	(27,526)	(28,187)	(27,512)	(25,658)	(20,571)	(18,054)	(18,952)	
Post Project Use	35,932	30,351	24,222	11,896	11,431	15,927	19,970	15,194	15,578	35,760	19,613	37,940	273,814
<b>Post Project Cost</b>	<b>\$7,546</b>	<b>\$6,374</b>	<b>\$5,087</b>	<b>\$2,498</b>	<b>\$2,401</b>	<b>\$3,345</b>	<b>\$4,194</b>	<b>\$3,191</b>	<b>\$3,271</b>	<b>\$7,510</b>	<b>\$4,119</b>	<b>\$7,967</b>	<b>\$57,503</b>
<u>Production Self-Consumption Percent:</u>													
	55%	55%	49%	31%	34%	36%	39%	36%	33%	53%	38%	53%	

Minimum monthly meter fees may apply and are not included in this analysis.

## Cash Flow Details for the System

Cash Flows in Year	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
Gross Cost: PV	(655,995)				
O&M Cost: PV	0	(1,686)	(1,733)	(1,782)	(1,832)
<u>Reference:</u> Utility Bill Savings with Inflation Applied	0	59,416	61,430	63,512	65,663
Utility Bill Net Cash Savings after Tax Effects	0	39,809	41,158	42,553	43,994
<u>Solar Electric (PV) Incentives</u>					
Federal Tax Credit (30% of Gross Cost at Installation)	196,799	0	0	0	0
Total Incentives	196,799	0	0	0	0
Tax Savings from O&M Expense Deduction	0	556	572	588	605
Federal MACRS Bonus Depreciation Tax Savings	0	156,127	0	0	0
State Straight Line Depreciation Tax Savings	0	1,163	2,322	2,322	2,322
<b>Net Annual Cash Flow</b>	<b>(459,196)</b>	<b>195,969</b>	<b>42,319</b>	<b>43,681</b>	<b>45,089</b>
Cumulative Cash Flow	(459,196)	(263,227)	(220,908)	(177,227)	(132,138)

Net Annual Cash Flow is the sum of values in gray lines.

Cash Flows in Year	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>
O&M Cost: PV	(1,883)	(1,936)	(1,990)	(2,045)	(2,103)
<u>Reference:</u> Utility Bill Savings with Inflation Applied	67,887	70,183	72,557	75,010	77,546
Utility Bill Net Cash Savings after Tax Effects	45,484	47,023	48,613	50,257	51,956
Tax Savings from O&M Expense Deduction	621	639	657	675	694
State Straight Line Depreciation Tax Savings	2,322	2,322	2,322	2,322	2,322
<b>Net Annual Cash Flow</b>	<b>46,544</b>	<b>48,048</b>	<b>49,602</b>	<b>51,209</b>	<b>52,869</b>
Cumulative Cash Flow	(85,594)	(37,546)	12,056	63,265	116,134

Cash Flows in Year	<u>10</u>	<u>11</u>	<u>12</u>	<u>13</u>	<u>14</u>
O&M Cost: PV	(2,162)	(2,222)	(2,284)	(2,348)	(2,414)
<u>Reference:</u> Utility Bill Savings with Inflation Applied	80,165	82,872	85,668	88,558	91,544
Utility Bill Net Cash Savings after Tax Effects	53,711	55,524	57,398	59,334	61,334
Tax Savings from O&M Expense Deduction	713	733	754	775	797
State Straight Line Depreciation Tax Savings	2,322	2,322	2,322	1,163	0
<b>Net Annual Cash Flow</b>	<b>54,584</b>	<b>56,357</b>	<b>58,190</b>	<b>58,924</b>	<b>59,717</b>
Cumulative Cash Flow	170,718	227,075	285,265	344,189	403,906



## Cash Flow Details for the System

Cash Flows in Year	15	16	17	18	19
O&M Cost: PV	(2,482)	(2,551)	(2,623)	(2,696)	(2,771)
<u>Reference:</u> Utility Bill Savings with Inflation Applied	94,629	97,816	101,108	104,511	108,026
Utility Bill Net Cash Savings after Tax Effects	63,401	65,537	67,742	70,022	72,377
Tax Savings from O&M Expense Deduction	819	842	866	890	914
<b>Net Annual Cash Flow</b>	<b>61,738</b>	<b>63,828</b>	<b>65,985</b>	<b>68,216</b>	<b>70,520</b>
Cumulative Cash Flow	465,644	529,472	595,457	663,673	734,193

Cash Flows in Year	20	21	22	23	24
O&M Cost: PV	(2,849)	(2,929)	(3,011)	(3,095)	(3,182)
<u>Reference:</u> Utility Bill Savings with Inflation Applied	111,657	115,410	119,286	123,289	127,425
Utility Bill Net Cash Savings after Tax Effects	74,810	77,325	79,922	82,604	85,375
Tax Savings from O&M Expense Deduction	940	967	994	1,021	1,050
<b>Net Annual Cash Flow</b>	<b>72,901</b>	<b>75,363</b>	<b>77,905</b>	<b>80,530</b>	<b>83,243</b>
Cumulative Cash Flow	807,094	882,457	960,362	1,040,892	1,124,135

Cash Flows in Year	25	26	27	28	29
O&M Cost: PV	(3,271)	0	0	0	0
<u>Reference:</u> Utility Bill Savings with Inflation Applied	131,698	0	0	0	0
Utility Bill Net Cash Savings after Tax Effects	88,238	0	0	0	0
Tax Savings from O&M Expense Deduction	1,079	0	0	0	0
<b>Net Annual Cash Flow</b>	<b>86,046</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Cumulative Cash Flow	1,210,181	0	0	0	0



## Other Assumptions Used in this Analysis

**Customer Type:** Business/Commercial.

**Tax Effects Applied to Utility Savings:** As a business customer, utility savings will result in lower business expenses (a tax deduction or "write off") for utility services. Therefore we have reduced utility savings by your effective income tax rate (28.00% federal and 5.00% state).

**System Life:** PV System: 25 years. Inverters: 25 years.

**PV System Modeling Variables (PVWatts references):** System Losses: 9.5%, DC-to-AC Ratio: 1.14, Module Type: Premium (high efficiency), Inverter Efficiency: 98.50%.

**Performance Degradation and O&M Costs:** We have assumed performance will degrade by 0.75% per year due to soiling and general wear. Annual operating and maintenance (O&M) costs are inflated 2.80% per year, and are estimated as a percent of gross system price, as follows: Solar Electric (PV): 0.25%.

**Income Tax Rates:** Federal: 28.00%, State: 5.00%

**Annual Inflation Rates:** Consumer price index: 2.80%, Electric Rates: 3.78%

**Energy Metering Type:** Net Metering

**Net Excess Generation (NEG):** Monthly NEG credited at Utility Rate. Monthly NEG may be carried forward to the next month for application to future utility bills. Annual NEG Not sold.

**Discount Rate:** 5.00%. Used to estimate net present value of future cash flows.

**Depreciation Methods:** Federal: 100% Bonus MACRS Schedule. State: Straight-Line Schedule (12 yr).

Amounts Depreciated by Year	0	1	2	3	4
Federal (\$557,596 total)	\$0	\$557,596	\$0	\$0	\$0
State (\$557,596 total)	\$0	\$23,260	\$46,440	\$46,440	\$46,440

Amounts Depreciated by Year	5	6	7	8	9
State	\$46,440	\$46,440	\$46,440	\$46,440	\$46,440

Amounts Depreciated by Year	10	11	12	13	14
State	\$46,440	\$46,440	\$46,440	\$23,260	\$0

**Carbon Dioxide (CO2) Calculations:** The following assumptions are used to calculate carbon dioxide (CO2) reductions: Electricity: 1.64 lbs. CO2 per kWh. Natural Gas: 0.12 lbs. CO2 per cubic foot (12 lbs. per Therm). Fuel Oil: 22.29 lbs. CO2 per gallon. Propane: 12.17 lbs. CO2 per gallon. Trees Planted: 0.0429 tons CO2 per Tree planted (23.3 Trees/Ton CO2). Automobiles Saved: 1 lb CO2 per mile for medium passenger car (2,000 Miles/Ton CO2). Gallons Gasoline: 0.009812 tons CO2/gallon (102 Gal/Ton CO2). Landfill Tons: 3.16 tons CO2 per ton of waste recycled instead of landfilled. Single-family Homes (electric use): 8.82 tons CO2/home (0.11 Homes/Ton CO2). Tons of Coal Burned: 2.0525 lbs. of CO2 per lb. of Coal (2,000 lbs. per ton). Source: [www.epa.gov/cleanenergy/energy-resources/refs.html](http://www.epa.gov/cleanenergy/energy-resources/refs.html)



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CALIFORNIA

**Water used by Thermoelectric Powerplants:** Depending upon the technology used, natural gas and coal power plants withdraw up to 20 gallons of water for every kWh of energy produced and consume (via evaporation) about 0.47 gallons per kWh produced. Sources: <http://nrel.gov/docs/fy04osti/33905.pdf> and <http://www.wri.org/resources/charts-graphs/typical-range-water-withdrawals-and-consumption-thermoelectric-power-plants> which summarizes the Electric Power Research Institute's report *Water & Sustainability (Volume 3): U.S. Water Consumption for Power Production - The Next Half Century*

## PV Production by Year

PV system production will vary according to weather patterns, changes in obstacles that may shade the PV panels, and the like. Over time system production may also "degrade" due to general soiling and other effects of aging. The table below provides a range (+/- 20%) of typical annual production values for the system, by year, with an annual performance degradation of 0.75% included. The "Typical" values were used to provide this report.

<u>Year</u>	<u>Low Typical</u>	<u>Typical</u>	<u>High Typical</u>
1	218,109 kWh	272,636 kWh	327,163 kWh
2	216,473 kWh	270,591 kWh	324,709 kWh
3	214,837 kWh	268,546 kWh	322,256 kWh
4	213,201 kWh	266,502 kWh	319,802 kWh
5	211,566 kWh	264,457 kWh	317,348 kWh
6	209,930 kWh	262,412 kWh	314,895 kWh
7	208,294 kWh	260,367 kWh	312,441 kWh
8	206,658 kWh	258,323 kWh	309,987 kWh
9	205,022 kWh	256,278 kWh	307,533 kWh
10	203,386 kWh	254,233 kWh	305,080 kWh
11	201,751 kWh	252,188 kWh	302,626 kWh
12	200,115 kWh	250,144 kWh	300,172 kWh
13	198,479 kWh	248,099 kWh	297,719 kWh
14	196,843 kWh	246,054 kWh	295,265 kWh
15	195,207 kWh	244,009 kWh	292,811 kWh
16	193,572 kWh	241,964 kWh	290,357 kWh
17	191,936 kWh	239,920 kWh	287,904 kWh
18	190,300 kWh	237,875 kWh	285,450 kWh
19	188,664 kWh	235,830 kWh	282,996 kWh
20	187,028 kWh	233,785 kWh	280,542 kWh
21	185,392 kWh	231,741 kWh	278,089 kWh
22	183,757 kWh	229,696 kWh	275,635 kWh
23	182,121 kWh	227,651 kWh	273,181 kWh
24	180,485 kWh	225,606 kWh	270,728 kWh
25	178,849 kWh	223,562 kWh	268,274 kWh
<b>Totals</b>	<b>4,961,975 kWh</b>	<b>6,202,469 kWh</b>	<b>7,442,963 kWh</b>



## Renewable Resources

The following renewable resource assumptions were used to develop estimates for the project location. These are typical values based upon observed data over several decades. Actual values (and system performance) will vary from month to month, and from year to year, in accordance to weather and climate pattern changes.

Weather station referenced: "SAN LUIS CO RGNL" (California)

### Solar Resources: Flat-Plate, South-facing Tilted at Latitude

Month	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>
<b>kWh/m<sup>2</sup>/day</b>	4.546	4.111	4.354	7.25	6.773	6.875	6.859	6.829	6.805	5.266	4.808	4.976



Submittal of this list to the CTC does not preclude the City from making modifications due to changes in circumstances, such as budget, bidding or Council priorities. Those changes will be reported to the CTC in the project completion report. The obligation by the City is to spend SB1 funds appropriately and to not reduce the amount of general fund expenditures due to the Maintenance of effort requirements.

**ATTACHMENT**

1. Resolution 20-18

**RESOLUTION NO. 20-18**  
**A RESOLUTION OF THE CITY COUNCIL OF MORRO BAY APPROVING THE FISCAL**  
**YEAR 2018-2019 PROJECT LIST FOR SENATE**  
**BILL 1 (ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017) ROAD**  
**MAINTENANCE AND REHABILITATION ACCOUNT FUNDING**

**THE CITY COUNCIL**  
**City of Morro Bay, California**

**WHEREAS**, Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 in order to address the significant multi-modal transportation funding shortfalls statewide; and

**WHEREAS**, SB 1 includes accountability and transparency provisions that will ensure the residents of our City are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

**WHEREAS**, "the City must approve a list of all projects proposed to receive funding from the RMRA Account, created by SB 1 by resolution, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

**WHEREAS**, the City will receive an estimated \$191,000 in RMRA funding in Fiscal Year (FY) 2018-2019 from SB1; and

**WHEREAS**, the City undergoes a robust public process to ensure public input into the City's Capital Improvement Plan, Pavement Management Plan and transportation priorities in its budgeting process; and

**WHEREAS**, the City used a Pavement Management System to develop the SB 1 Project List to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the community's priorities for transportation investment; and

**WHEREAS**, the funding from SB 1 will help the City maintain and rehabilitate City streets in FY 2018-2019 and in future years; and

**WHEREAS**, the City's Pavement Management Plan found that the City streets and roads are in a "Fair" condition and this revenue will help maintain and with additional funding improve the quality of our road system; and

**WHEREAS**, if the Legislature and Governor failed to act, City streets County roads and State highways would have continued to deteriorate, having many and varied negative impacts on our community; and

**WHEREAS**, Cities and Counties own and operate more than 81 percent of streets and roads in California, and from the moment we open our front door to drive to work, bike to school, or walk to the bus station, people are dependent upon a safe, reliable local transportation network; and

**WHEREAS**, modernizing the local street and road system provide well-paying construction jobs and boosts local economies; and

**WHEREAS**, the local street and road system is also critical for farm to market needs, interconnectivity, multimodal needs, and commerce; and

**WHEREAS**, police, fire, and emergency medical services all need safe reliable roads to react quickly to emergency calls and a few minutes of delay can be a matter of life and death; and

**WHEREAS**, maintaining and preserving the local street and road system in good condition will reduce drive times and traffic congestion, improve bicycle safety, and make the pedestrian experience safer and more appealing, which leads to reduced vehicle emissions helping the State achieve its air quality and greenhouse gas emissions reductions goals; and

**WHEREAS**, restoring roads before they fail also reduces construction time which results in less air pollution from heavy equipment and less water pollution from site run-off; and

**WHEREAS**, the SB 1 Project List and overall investment in our local streets and roads with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using technology, materials and practices, will have significant positive co-benefits statewide.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California,

SECTION 1. The City Council hereby approves the SB1 Project List for RMRA funds provided in Attachment A.

SECTION 2. The City Council may approve funding in excess of the SB1 allocation for to the Project List in Attachment A in the FY 2018/2019 budget, as funding is available, in accordance with City Council goals and priorities.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay, California, at a regular meeting held on the 24<sup>th</sup> day of April 2018, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
JAMIE L IRONS, Mayor

ATTEST:

\_\_\_\_\_  
DANA SWANSON, City Clerk

Attachment A

SB1 Project List FY 18/19

Street	PCI	Start	End	Area (sqft)	Treatment	Estimated Life (years)	Cost Estimate
Barlow	44	Main	End	14,690	Chip Seal	6	\$ 15,244.96
Beachcomber	15	Yerba Buena	North End	4,840	Double Cape Seal	8	\$ 21,393.69
Coral	19	Alva Paul Crk	Java	4,860	Double Cape Seal	8	\$ 21,429.20
Coral	50	Indigo Cir	San Jacinto	22,275	Chip Seal	6	\$ 23,116.50
Juniper	43	North End	Elena	68,080	Chip Seal	6	\$ 70,651.91
Juniper	27	Elena St	Avalon St	51,030	Triple Cape Seal	10	\$ 76,318.20
Little Morro Ck Rd	29	Radcliff Street	City Limits	38,000	Triple Cape Seal	10	\$ 56,831.11
Main	31	Yerba Buena	Vashon	10,325	Triple Cape Seal	10	\$ 15,441.61
Morro	48	Pacific Street	Marina	13,200	Type 2 Micro Surfacing	4	\$ 3,960.00
Morro	50	Morro Bay Blvd	Pacific	13,200	Type 2 Micro Surfacing	4	\$ 3,960.00
Morro Bay Alley	8	Piney Way	Bernardo	8,475	Chip Seal	6	\$ 8,795.17
Panay	44	Beachcomber	End	9,765	Triple Cape Seal	10	\$ 14,604.10
Preston	17	Main	End	15,840	Double Cape Seal	8	\$ 40,924.80
Tahiti	32	Beachcomber	End	6,000	Triple Cape Seal	10	\$ 8,973.33
Tide	45	Island	Nevis	22,600	Double Cape Seal	8	\$ 52,927.56
Tide	45	Nevis	Vashon	27,400	Double Cape Seal	8	\$ 61,450.22
Tide	45	Vashon	Zanzibar	10,700	Double Cape Seal	8	\$ 31,798.44
Vashon	16	Beachcomber	End	5,300	Triple Cape Seal	10	\$ 7,926.44
Verdon	32	Sandalwood	Coral	8,600	Triple Cape Seal	10	\$ 12,861.78
West	42	Beach	Surf	14,700	Chip Seal	6	\$ 15,255.33
<b>Area weighted Average PCI= 49</b>				<b>275,565</b>			<b>\$ 548,619.40</b>

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AGENDA NO: A-7

MEETING DATE: April 24, 2018

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** April 17, 2018

**FROM:** Scott Collins, City Manager  
Rob Livick, Public Works Director

**SUBJECT:** Adoption of Resolution No. 19-18 Designating Authorized Representatives for FEMA and Cal OES Disaster Assistance

## RECOMMENDATION

Council adopt Resolution No. 19-18 authorizing execution of Governor’s Office of Emergency Services (Cal OES) Form 130 designating the City Manager, or Finance Director, or Public Works Director as Applicant’s Authorized Agents for all matters pertaining to State disaster assistance.

## ALTERNATIVES

There are no alternatives being offered.

## FISCAL IMPACT

By authorizing the designated officials to sign the FEMA/CalOES documents the City will receive \$53,538 to the City’s General Fund for reimbursement for costs incurred during the January/February 2017 storms. Additionally, the City will be eligible for up to \$72,894 in reimbursement for work to repair the erosion damage below the Harborwalk Bike and Pedestrian Bridge. Due to the Federal requirements, the City cannot be reimbursed for non-overtime costs or damage less than \$3,000.

## BACKGROUND/DISCUSSION

The City applies for assistance from Federal Emergency Management Agency (FEMA) and Cal OES when major disasters strike. FEMA administers federal disaster assistance programs, and Cal OES administers state disaster assistance programs.

The City of Morro Bay sustained approximately \$150,000 in costs related to the damages from the January/February 2017 winter storm events. This includes personnel costs, costs associated with tree removals, debris cleanup, damage to Monte Young Tennis Courts and the Black Hill radio site. The level of damages qualified the City to apply for disaster relief through Cal OES for Public Assistance Approval for Disaster #4301 and #4308 in the amount of \$126,432. The applications are approved pending submission of a Designation of Applicant’s Agent Resolution for Non-State Agencies (Cal OES 130) identifying the individuals authorized to execute documents on the City’s behalf. The Cal OES Resolution names by title City staff that can act on the City’s behalf for disaster relief for either federal assistance under Public Law 93-288 and/or state financial assistance under the California Disaster Assistance Act.

The last resolution approved by the City Council dated May 24, 2011, authorized the City Manager,

Prepared By: DS

Dept Review: RL

City Manager Review: SC

City Attorney Review: JWP

Finance Director or City Attorney as the Applicant's authorized agents for matters pertaining to State disaster assistance. In order to account for changing Council members and the needs of the agency, Resolutions are effective for a maximum of three (3) years following the date of approval; therefore, Resolution No. 38-11 approved in May 2011 is no longer valid. By approving this recommendation, the new Resolution will be in effect through 2021.

**CONCLUSION**

Staff recommends the Council designate the City Manager, or Finance Director, or Public Works Director as Applicant's Authorized Agents and authorize the City Clerk to execute and submit OES Form 130 for all open and future Disasters/Grants up to three (3) years following the date of approval.

**ATTACHMENTS**

1. Resolution No. 19-18
2. Cal OES Form 130

**RESOLUTION NO. 19-18**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
DESIGNATING THE CITY OF MORRO BAY'S AUTHORIZED AGENT(S)  
FOR NON-STATE AGENCIES AS REQUIRED BY THE  
CALIFORNIA OFFICE OF EMERGENCY SERVICES**

**THE CITY COUNCIL  
City of Morro Bay, California**

**WHEREAS**, the City of Morro Bay has applied for Public Assistance Grants available through Federal Emergency Management Agency ("FEMA") and the Governor's Office of Emergency Services ("Cal OES") for reimbursement of costs for emergency work and repair of facilities damaged by severe weather associated with the January and February 2017 Winter Storms; and

**WHEREAS**, the Governor's Office of Emergency Services ("Cal OES") administers the Public Assistance Grant program and has requested the City complete the Cal OES Form 130 in order for the City to receive reimbursement; and

**WHEREAS**, the Cal OES Form 130 "Designation of Applicant's Agent Resolution for Non-State Agencies" designates by title City staff that can act as the City's Authorized Agent on behalf of the City of Morro Bay to apply for the disaster relief financial assistance and to complete any necessary forms and paperwork required relating to the disaster relief request.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California:

SECTION 1. The City Clerk is hereby authorized to execute the attached "Designation of Applicant's Agent Resolution for Non-State Agencies" (OES Form 130) designating the City Manager, or the Finance Director, or the Public Works Director, as the City's Authorized Agents for all matters pertaining to state disaster assistance and assurances and agreements required.

SECTION 2. This is a universal resolution and is effective for all open and future disasters up to three years following the date of approval below.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 24<sup>th</sup> day of April 2018 on the following vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
JAMIE L. IRONS, Mayor

ATTEST:

\_\_\_\_\_  
DANA SWANSON, City Clerk

**DESIGNATION OF SUBRECIPIENT'S AGENT RESOLUTION  
Hazard Mitigation Grant Program and Pre-Disaster Mitigation Program**

BE IT RESOLVED BY THE \_\_\_\_\_ OF THE \_\_\_\_\_  
(Governing Body) (Name of Applicant)

THAT \_\_\_\_\_, OR  
(Title of Authorized Agent)

\_\_\_\_\_, OR  
(Title of Authorized Agent)

\_\_\_\_\_  
(Title of Authorized Agent)

is hereby authorized to execute for and on behalf of the \_\_\_\_\_, a public entity  
(Name of Subrecipient)

established under the laws of the State of California, this application and to file it with the California Governor's Office of Emergency Service. for the purpose of obtaining certain federal financial assistance under Public Law 93-288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, and/or state financial assistance under the California Disaster Assistance Act.

THAT the \_\_\_\_\_, a public entity established under the laws of the State of California,  
(Name of Subrecipient)

hereby authorizes its agent(s) to provide to the California Governor's Office of Emergency Service for all matters pertaining to such state disaster assistance the assurances and agreements required.

**Please check the appropriate box below:**

This is a universal resolution and is effective for all open and futures Disasters/Grants up to three (3) years following the date of approval below.

This is a Disaster/Grant specific resolution and is effective for only Disaster/Grant name/number(s) \_\_\_\_\_

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(Name and Title of Governing Body Representative)

\_\_\_\_\_  
(Name and Title of Governing Body Representative)

\_\_\_\_\_  
(Name and Title of Governing Body Representative)

**CERTIFICATION**

I, \_\_\_\_\_, duly appointed and \_\_\_\_\_ of  
(Name) (Title)

\_\_\_\_\_, do hereby certify that the above is a true and correct copy of a  
(Name of Applicant)

Resolution passed and approved by the \_\_\_\_\_ of the \_\_\_\_\_  
(Governing Body) (Name of Applicant)

on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

## **Cal OES Form 130** **Instructions**

**A new Designation of Applicant's Agent Resolution is required if the previously submitted document is older than three (3) years from the last date of Board/Council approval.**

When completing the Cal OES Form 130, Subrecipients should fill in the blanks on page 1. The blanks are to be filled in as follows:

### **Resolution Section:**

**Governing Body:** This is the individual or group responsible for appointing and approving the Authorized Agents. Examples include: Board of Directors, City Council, Board of Supervisors, etc.

**Name of Subrecipient:** This is the official name of the non-profit, agency, city, county or special district that has applied for the grant. Examples include: City of Sacramento; Sacramento County; or Los Angeles Unified School District.

**Authorized Agent:** These are the individuals that are authorized by the Governing Body to engage with the Federal Emergency Management Agency and the California Governor's Office of Emergency Service regarding grants applied for by the subrecipient. There are two ways of completing this section:

1. **Titles Only:** If the Governing Body so chooses, the titles of the Authorized Agents should be entered here, not their names. This allows the document to remain valid if an Authorized Agent leaves the position and is replaced by another individual. If "Titles Only" is the chosen method, this document must be accompanied by a cover letter naming the Authorized Agents by name and title. This cover letter can be completed by any authorized person within the agency (e.g.; City Clerk, the Authorized Agent, Secretary to the Director) and does not require the Governing Body's signature.
2. **Names and Titles:** If the Governing Body so chooses, the names and titles of the Authorized Agents should be listed. A new Cal OES Form 130 will be required if any of the Authorized Agents are replaced, leave the position listed on the document or their title changes.

**Governing Body Representative:** These are the names and titles of the approving board members. Examples include: Chairman of the Board, Superintendent, etc. The names and titles cannot be one of the designated Authorized Agents.

### **Certification Section:**

**Name and Title:** This is the individual that was in attendance and recorded the Resolution creation and approval. Examples include: City Clerk, Secretary to the Board of Directors, County Clerk, etc. This person cannot be one of the designated Authorized Agents to eliminate "Self Certification."

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AGENDA NO: A-8

MEETING DATE: April 24, 2018

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** April 18, 2018

**FROM:** Rob Livick, PE/PLS – Public Works Director/City Engineer

**SUBJECT:** Completion of FY17/18 Project No. MB2017-ST0: Community Development Block Grant (CDBG) Sidewalk Project

## RECOMMENDATION

Council receive and file this report and authorize an additional \$14,665.21 for unanticipated changes to the project due to existing conditions discovered during construction.

## ALTERNATIVES

Staff does not recommend any alternatives to the recommendation.

## FISCAL IMPACT

Budget for this project is funded mainly with federal aid from the Department of Housing and Urban Development (HUD), Community Development Block grant (CDBG) program along with local funds. Per City Council Resolution No. 75-15 and 26-17, the City, as a sub-recipient to San Luis Obispo County, received funding and a loan for FY2018. The FY17/18 budget included a transfer of \$42,818 from development impact and erroneously included \$5,514 as revenue from the general fund. The \$5,514 is a local expense that can be charged to the CDBG funds for program administration and is used for Community Development Department project oversight. The award of the construction reduced the request of impact fees, based on the bid price, to \$18,440. The following table summarizes the revenue and expenses for the project:

Item	Revenue	Expense
CDBG Funds	\$304,951.00	
Local Impact Fees	\$42,818.00	
CDBG Administration		\$5,514.00
Design Engineering Fees		\$26,009.71
Contactor Bid		\$308,739.50
Change Order 1 – Reduce sidewalk width in Residential Area		-\$11,407.50
Change Order 2 – Remove and Replace Existing Sidewalk due to drainage issues with new sidewalk		\$11,894.00
Change Order 3 – Additional Grading and Concrete		\$21,684.50
<b>Totals</b>	<b>\$347,769.00</b>	<b>\$362,434.21</b>
<b>Project Shortfall</b>		<b>\$14,665.21</b>

Prepared By: rl

Dept Review: RL

City Manager Review: \_SC\_\_\_\_\_

City Attorney Review: \_\_\_\_\_

Staff recommends funding the shortfall with the savings from the FY17/18 Pavement Project, which ended \$62,939.63 under budget. Proposed funding would come from the local sales tax allocation (Measure Q). This expenditure is consistent with the use of Measure Q funds, since this project included street perimeter improvements, curb and gutter, along with street pavement restoration.

### **BACKGROUND and DISCUSSION**

Since 2011, the City of Morro Bay (City) has participated with other cities and the County of San Luis Obispo as an “Urban County” for purposes of U.S. Department of Housing and Urban Development (HUD) entitlement funding of Community Development Block Grant (CDBG) funds. City Council Resolution No. 75-15 authorized execution of a three-way agreement between the Cities of Morro Bay, Atascadero, and San Luis Obispo County on October 14, 2016, which allowed for an advance of future years’ allocation of CDBG funding.

This project entailed furnishing and supplying labor, materials, tools, equipment, transportation, and construction services to install sidewalks, curb and gutter, and accessible curb ramps in the City, in accordance with City’s Standard Drawings and the California Building Code where no sidewalk or curb ramp currently exist, or is not compliant to today’s Federal requirements, per the project plans.

The City used a combination of CDBG and local funds specifically to install sidewalk, curb and gutters at the following locations identified below:

1. Market Street between Beach & Dunes, east side, place approximately 455 square-feet of sidewalk and new driveway approach.
2. Main Street between Marina & Driftwood, west side, place approximately 730 square-feet of sidewalk, 385 lineal feet of curb and gutter, ADA curb ramp, and new driveway approach.
3. Main Street between Marina & Driftwood, east side, place approximately 1160 square-feet of sidewalk, 190 lineal feet of curb and gutter, 2 ADA curb ramps, and 2 new driveway approaches.
4. Marina Street between Main Street & Morro, south side, place approximately 635 square-feet of sidewalk and new driveway approach.
5. Napa Street between Dunes & Harbor, east side, place approximately 450 square-feet of sidewalk, 10 lineal feet of curb and gutter, 1 ADA curb ramp, and 1 new driveway approach.
6. Dunes Street between Napa & Shasta, south side, place approximately 1670 square-feet of sidewalk, 160 lineal feet of curb and gutter, 1 ADA curb ramp, and 1 new driveway approach.
7. Shasta Avenue between Dunes & Harbor, west side, place approximately 900 square-feet of sidewalk and 68 lineal feet of curb and gutter.
8. Dunes Street between Napa & Monterey, north side, place approximately 680 square-feet of sidewalk, 160 lineal feet of curb and gutter, 1 ADA curb ramp, and 1 new driveway approach.
9. Dunes Street between Napa & Monterey, south side, place approximately 660 square-feet of sidewalk, 1 ADA curb ramp, and 2 new driveway approaches.

During construction several irregularities were determined with the project layout. The design plans, in order to save costs, were prepared in house without the benefit of a topographic survey. This is typical with sidewalk projects that fill in short gaps between existing sidewalk improvements, such was the case on Dunes, Shasta, Harbor and Napa. The stretch of sidewalk to be installed along Main Street did not have existing improvements that the contractor could

match up to at either end of that portion of the project and requested the City provide additional vertical and horizontal control and design information. Since this is outside the normal scope of the contractor's responsibility, the City engaged Rick Engineering to prepare new plans based on a field topographic survey for the Main Street portion of the project. The changes to the project resulted in \$14,665.21 in cost for unanticipated additional engineering, grading, concrete removal, and paving.

**CONCLUSION**

DOD Construction completed this first project delivery with minimum disruption to the community and only requested changes where there was insufficient information to perform the requested work. Staff accepts the project and will release the retention payment thirty days after filing a Notice of Completion. The need for additional design work resulted in additional costs above the approved budget amount, and thus staff is seeking funds, from the savings in the PMP project and specifically the Measure Q portion, to cover the gap.

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AGENDA NO: A-9

MEETING DATE: April 24, 2018

# Staff Report

**TO:** Honorable Mayor and City Council      **DATE:** April 18, 2018  
**FROM:** Rob Livick, PE/PLS – Public Works Director/City Engineer  
**SUBJECT:** Completion of FY17/18 Project No. MB2018-ST01: Pavement Management Project (PMP)

**RECOMMENDATION**

Council receive and file this report.

**ALTERNATIVES**

Staff does not recommend any alternatives to the recommendation.

**FISCAL IMPACT**

The approved budget for this second delivery of the City’s multi-year Indefinite Delivery Indefinite Quantity (IDIQ) project was funded in the FY 2017/2018 budget with revenues generated by the City’s Measure Q sales tax which accounts for \$530,000; the State of California SB1-RMRA fund which accounts for \$61,000; the USHA fund which accounts for \$245,000; and the CalRecycle Grant program which accounts for \$90,917. The total estimated project cost was \$926,917 in the FY17/18 budget.

Item	Revenue	Expense
Local Sales Tax	\$530,000	
SLOCOG – Urban State Highway Account (USHA)	\$245,000	
SB1	\$61,000	
CalRecycle Asphalt Rubber Grant	\$90,917	
Contacto Cost		\$782,591.26
Construction Engineering – GHD/Omni-Means		45,408.56
CalRecycle Grant Surplus (Only for Tire Derived Asphalt Products)/. Remainder will be used in FY 18/19 PMP		35,984.55
<b>Totals</b>	<b>\$926,917</b>	<b>\$863,984.37</b>
<b>Project Surplus</b>		<b>\$62,932.63</b>

he reduction in CalRecycle grant was due to a reduction in estimated quantities of materials that are grant eligible. Since the CalRecycle grant has a multi-year performance the City will be able to apply the balance to FY 18/19 PMP.

The net result is \$62,932.63 under the budgeted amount. Staff recommends that portion of this amount be applied to the underfunded CDBG sidewalk project (Item A-8 on this Agenda).

Prepared By: <u>rl</u>	Dept Review: <u>RL</u>
City Manager Review: <u>SC</u>	City Attorney Review: _____

**BACKGROUND and DISCUSSION**

The two-year (with optional additional two-years) contract for this project was originally awarded to Pavement Coating Company of Jurupa Valley, CA, by City Council on October 25, 2016. This current project (Addendum 1, awarded on September 24, 2017) entailed furnishing and supplying labor, materials, tools, equipment, transportation, and services necessary to complete subject project, which included, but was not limited to, treatment of existing pavement with slurry and or scrub sealing, chip/cape sealing, and micro/macro-surfacing of 7.3 centerline miles of road work or approximately 15-percent of the City's streets. All work performed was conducted in strict conformance to applicable federal, state, and local safety regulations. Payment was made in accordance with Caltrans Payment specifications using actual field quantities. Unit prices for this delivery order is based on the unit prices established by the initial bid.

**CONCLUSION**

Pavement Coatings Company has completed the second project delivery. Staff accepts the Project and shall release the retention payment thirty days after filing a Notice of Completion. Staff will be evaluating the two-year's performance by Pavement Coatings and will be making a recommendation on exercising the optional additional contract period with any future updates.



AGENDA NO: A-10

MEETING DATE: April 24, 2018

# Staff Report

**TO:** Honorable Mayor and City Council      **DATE:** April 16, 2018

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Adoption of Resolution No. 21-18 Approving an Interim Lease Agreement Between the City of Morro Bay and TLC Family Enterprises for Lease Site 87-88/87W-88W, Located at 883 Embarcadero Road, and Formerly Known as “Off the Hook” Restaurant

### RECOMMENDATION

Staff recommend the City Council adopt Resolution No. 21-18, approving an interim lease agreement for Lease Site 87-88/87W-88W, as proposed, with TLC Family Enterprises.

### ALTERNATIVES

Council may elect not to approve Resolution No. 21-18 for the lease agreement as-proposed, and direct staff accordingly.

### FISCAL IMPACT

Under the interim lease agreement as-proposed with TLC, monthly rent for the site will be \$3,000/month, with two-months’ rent credit to account for the excess costs necessary to clean and make the vacated sections of the premises habitable. Although there is a percent gross rent provision in this interim lease, due to the largely vacant state of the site and its current condition as left by the previous master tenant, it is unlikely sufficient gross revenue will be generated on this site during its term to produce percent rents.

The monthly rent under the previous lease agreement and master tenant was ~\$2,650/month.

### BACKGROUND

The lease for Lease Site 87-88/87W-88W expired on March 31, 2018. In August 2017, TLC was granted Consent of Landowner (COL) authority to redevelop Lease Site 87-88/87W-88W through a request for proposals process. The COL contains certain “milestones” or timeline performance requirements TLC must meet to maintain its validity. In addition to the COL, Council directed staff to negotiate an interim agreement with TLC to occupy and manage the lease site during the planning and permitting process, ultimately to be replaced by a long-term lease.

At the December 12, 2017 City Council meeting, review of the performance of TLC on several COL requirements was conducted. Those were: evidence of available financing, submission of professionally-prepared business and marketing plans and evidence of Centennial Project coordination and financial commitment, At that time, TLC’s submissions were deemed responsive to the COL requirements, and they were allowed to continue with the redevelopment process per their proposal. Since December 12, all timeline milestone requirements are met, with the next milestone being August 31, 2018, where TLC must have completed Concept Plan approval by the Planning Commission and

Prepared By: <u>EE</u>	Dept Review: <u>EE</u>
City Manager Review: <u>SC</u>	City Attorney Review: <u>JWP</u>

City Council. Once Concept Plan approval is obtained, TLC must negotiate and execute a new lease agreement, to replace this interim one, by October 25, 2018.

On April 10, 2018, staff sought Council authority and direction in closed session to negotiate an interim agreement with TLC.

## **DISCUSSION**

In order to take maximum advantage of the upcoming summer season, TLC must clean, prep and market the entirety of the premises as soon as possible, and sublease as much square footage as possible given the current circumstances with the building's condition and short-term nature of any tenancy. TLC is prepared to enter into the interim lease agreement as-proposed. Those terms will not jeopardize their longer-term financial or operational outlook to redevelop the site as they have anticipated.

The proposed interim lease agreement with TLC is based on the City's standard lease template, modified to fit the current situation, and contains the following significant lease section element highlights:

1. Section 1.01, Term: April 1, 2018 to October 26, 2018. That termination date coincides with the final date by which TLC and the City must have negotiated a new lease for the premises.

In addition, the lease provides for any subtenants and Under the Sea Gallery (operated by TLC) to carry-on their tenancy to October 31, 2019, if TLC fails to meet the conditions of the COL and the lease terminates, or the lease terminate for another reason. That provision will allow any subtenants and TLC to continue to operate on the site, while the City moves forward with next steps.

2. Section 2.01, Minimum Rent: the minimum guaranteed rent will be \$3,000 per month, with no CPI or reappraisal adjustments due to its short duration.

In addition, beginning with the commencement date, no rent will be due for a two-month period to accommodate the unanticipated costs necessary to make the restaurant and upstairs spaces habitable due to the condition of the property left by the previous tenant. That credit requires proof of receipts or invoices for services rendered.

3. Section 2.02, Percentage Rent: 3% of all gross revenues to accommodate the short-term nature of the tenancy and to provide a "start-up" incentive commensurate with past practice on other leases.
4. Section 3.01, Permitted Uses: uses are consistent with the old lease and previous uses on the premises.
5. Section 3.03, Operation of Business – Hours of Operation: lease recognizes it will be difficult to obtain full-time subtenants for the currently vacant restaurant and upstairs spaces and keep them open during the hours stipulated, and states instead TLC must use good faith effort to utilize all portions of the premises.

In addition, TLC is required to maintain the two restrooms on the premises available during normal business hours for public use, provided the restaurant portion of the premises is open, or if the restroom space can be safely cordoned-off from the restaurant space if the restaurant space goes unoccupied. Finally, TLC must utilize all the patio and open-air portions of the

premises and keep all buildings and public areas neat and clean.

6. Section 3.04, Competition: acknowledges and approves TLC has a retail business on the Embarcadero similar to “Under the Sea Gallery.”
7. Section 4.04, Ownership of Improvements: allows TLC to remove trade fixtures, appliances and machinery placed on the premises by TLC, with prior written acknowledgement of the City, to enable tenant to reuse same for the redevelopment project.
8. Section 6.01, Maintenance by TLC: provides the City is responsible for any repairs, as deemed necessary by the City, of seawalls, revetments or bulkheads during the duration of the interim lease.
9. Section 6.05, Tenant’s Duty to Restore Premises, Section 6.07, Termination of Lease for Destruction and Section 6.08, Destruction Due to Risk Not Covered by Insurance: normal leases provide for replacement of improvements in the event of a natural disaster, and to what extent the TLC must rebuild. This interim lease recognizes it is short-term and the site is destined for demolition and redevelopment; hence, those sections have been modified accordingly.
10. Section 13.01, TLC’s Obligation to Redevelop Site: acknowledges this is an interim lease to allow the TLC to manage and operate the site until replaced by a permanent lease contingent upon continuation of the redevelopment project, in addition to memorializing pertinent COL language sections.

### **CONCLUSION**

Approval of this interim lease agreement is the most efficient way for the City to have the site managed with active operations, which is important for this portion of the Embarcadero to continue to thrive. It was in TLC’s business and financial plans to operate the site in this manner; and this interim lease takes into account the circumstances surrounding the state the site was left from the previous tenant.

Staff, therefore, recommend approval of this ~seven-month interim lease agreement with TLC to put them in full control of the site now until such time the next significant milestones in the COL are due. The goal is for this interim agreement to be replaced by a new, long-term agreement, after Concept Plan approval for TLC’s redevelopment proposal occurs. Staff is hopeful that important goal will be met.

### **ATTACHMENTS**

1. Resolution 21-18
2. Interim Lease Agreement for Lease Site 87-88/87W-88W

**RESOLUTION NO. 21-18**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
APPROVING AN INTERIM LEASE AGREEMENT  
FOR LEASE SITE 87-88/87W-88W, LOCATED AT 833 EMBARCADERO**

**THE CITY COUNCIL  
City of Morro Bay, California**

**WHEREAS**, the City of Morro Bay is the lessor of certain properties on the Morro Bay Waterfront described as City Tideland leases and properties; and

**WHEREAS**, TLC Family Enterprises (“Tenant”) has received Consent of Landowner (“COL”) approval for their proposed redevelopment of Lease Site 87-88/87W-88W (the “Premises”); and

**WHEREAS**, City desires to lease Premises to Tenant on an interim basis until such time Tenant completes Concept Plan approval for its redevelopment proposal and negotiates a new long-term lease agreement; and

**WHEREAS**, Tenant proposes to manage, operate and maintain the Premises until site redevelopment occurs, subject to the conditions of the COL.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California, as follows:

1. The attached Interim Lease Agreement for Lease Site 87-88/87W-88W is hereby approved.
2. The Mayor is hereby authorized to execute the Interim Lease Agreement.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 24<sup>th</sup> day of April, 2018 on the following vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
Jamie L. Irons, Mayor

ATTEST:

\_\_\_\_\_  
Dana Swanson, City Clerk

## **L E A S E**

This INTERIM LEASE (“this Lease”) is made and entered into by and between the CITY OF MORRO BAY, a municipal corporation of the State of California herein called CITY and TLC Family Enterprises, Inc., a California corporation, herein called TENANT (CITY and TENANT are sometimes collectively referred to as the Parties and individually as the Party.).

### **WITNESSETH**

WHEREAS, the State of California granted certain tide and submerged lands located within the CITY limits of CITY to the County of San Luis Obispo and to its successors, being Chapter 1076, Statutes of 1947, as amended by Chapter 413, Statutes of 1955, Chapter 1874, Statutes of 1957, and Chapter 70, Statutes of 1960, first extraordinary session; which Statutes may be amended from time to time by the Legislature of the State of California; all of which Statutes are expressly recognized and agreed to be in full force and effect by the Parties; and

WHEREAS, the Parties hereto recognize and agree that on July 17, 1964, the CITY of Morro Bay, Lessor herein, succeeded to all of the right, title and interest of the County of San Luis Obispo in and to all of the tide and submerged lands conveyed to said County by the State of California pursuant to the above-mentioned acts; and

WHEREAS, judgment has been entered on October 14, 1968, in the case of CITY of Morro Bay, Plaintiff, versus County of San Luis Obispo, and State of California, Defendants, by the Superior Court of the State of California in and for the County of San Luis Obispo, #30417, adjudging and decreeing, among other things, that the title to said tide and submerged lands so conveyed by the State of California to the County of San Luis Obispo in trust, as set forth above, passed automatically to the CITY of Morro Bay upon the date of its incorporation as a CITY on the 17th day of July, 1964; and

WHEREAS, TENANT accepts the within Lease with full knowledge there is no warranty of title in and to the within described premises by CITY to TENANT; and

WHEREAS, in order to develop and improve Morro Bay Harbor and to assist in carrying out the provisions of the tideland grant as aforesaid, and in order to provide facilities for the accommodation of those using Morro Bay Harbor, CITY desires to lease to TENANT the within described property upon the terms and conditions set forth herein; and

WHEREAS, if this Lease is not otherwise terminated, then the Parties intend to work to negotiate to replace this Lease with another lease, if all the requirements of that certain Consent of Owner, dated February 28, 2018, and signed by the Parties (COL) are timely met.

NOW, THEREFORE, in consideration of the covenants to be performed and the rental to be paid by TENANT to CITY, CITY leases to TENANT, and TENANT leases from CITY, all of the following premises (herein collectively referred to as the Premises) in the CITY of Morro Bay, County of San Luis Obispo, State of California, described as follows: Lease Sites 87-88/87W-88.

This property is delineated on Parcel Map of the CITY of Morro Bay No. 68-30, which map was recorded on October 10, 1968, in Book 3, Page 10 of Parcel Maps in the Office of the County Recorder, San Luis Obispo County, California. A copy of said Map is attached hereto as Exhibit A and made a part hereof by reference.

## **Article 1 FIXED TERM**

### **Section 1.01 Term.**

The term of this Lease shall be deemed to be a period commencing as of April 1, 2018 (the "Commencement Date") and shall terminate, without notice, on October 26, 2018, unless sooner terminated, as herein provided or extended by mutual agreement of the Parties. Notwithstanding the foregoing, the Parties agree, if this Lease is terminated for any reason, and (i) if TENANT is in good standing regarding the terms of this Lease, then CITY and TENANT shall negotiate in good faith a new lease solely for TENANT to continue to operate Under the Sea Gallery in the downstairs portion of the Premises currently occupied by Under the Sea Gallery through October 31, 2019, and (ii) if any subtenant and sublease are approved by CITY for the Premises and is in good standing regarding its sublease, then CITY will allow the subtenant to remain through October 31, 2019, but that subtenant will then become a tenant of CITY under terms and conditions of a lease similar to the sublease approved by CITY.

### **Section 1.02 No Extensions.**

Requests for continued use of the Premises shall be treated as an application for a new lease and shall require appropriate application to the CITY with all required supporting information and documents, CITY Council approval and the execution of a new CITY lease, containing the then most current terms, covenants, conditions and rent schedules.

**Section 1.03 Hold Over.**

If TENANT holds the Premises after the expiration of the term of this Lease with the consent of the CITY, express or implied, then such holding over (in the absence of a written agreement between CITY and TENANT with respect thereto) shall be deemed to create a tenancy from month-to-month, terminable on thirty-days' written notice from either Party to the other, at a monthly rental equal to two hundred percent (200%) of the total Rent for the month immediately preceding the expiration of this Lease, and otherwise subject to each and every term, covenant and condition of this Lease.

**Section 1.04 Replacement.**

As of the Commencement Date of this Lease, this Lease shall extinguish and replace every prior lease between CITY and TENANT respecting the Premises, if any. Any right or interest held by the TENANT pursuant to any existing lease with respect to the Premises which is not granted pursuant to this Lease shall be extinguished as of the Commencement Date of this Lease.

## **Article 2 RENT**

**Section 2.01 Annual Minimum Rent.**

TENANT agrees to pay to CITY a minimum guaranteed annual rental for the use and occupancy of the Premises in the amount of \$3,000 per month (the "Minimum Rent"), payable in advance commencing on April 1 and then on the first day of each month during the term of this Lease; provided, that the Minimum Rent shall be waived for April and May to the extent TENANT shows proof, satisfactory to the Harbor Director, TENANT has paid, to third parties, at least \$6,000 for necessary cleaning, repair and maintenance to render the currently vacant Premises habitable and rentable. All Rent, including the Minimum Rent and the Percentage Rent, shall be paid in lawful money of the United States of America, without offset or deduction and shall be paid to CITY at the Harbor Department located at 1275 Embarcadero, Morro Bay, California, or at such other place or places CITY may from time to time designate by written notice delivered to TENANT.

**Section 2.02 Percentage Rent.**

A. In addition to the Minimum Rent, TENANT agrees to pay to CITY at the time and in the manner hereinafter specified, as additional Rent for the use and occupancy of the

Premises, a sum equal to three percent (3%) of TENANT'S Gross Sales, hereinafter defined, less the amount of the Minimum Rent paid pursuant to this Lease (the "Percentage Rent").

B. The term "Gross Sales," as used herein, shall mean (subject to the exceptions and authorized deductions as hereinafter set forth), the total selling price and the total gross amount received by TENANT from all rentals, merchandise sold and services rendered in, on or from the Premises by TENANT, its sublessees, licensees, or concessionaires, both for cash and on credit including, but not limited to, rentals of dockage space, leasing and servicing operations and ticket sales, and if on credit whether or not payment be actually made therefore, all charges for services, alterations or repairs made in or upon the Premises; the gross amount received by TENANT for merchandise sold pursuant to orders received in the Premises, though filled elsewhere; and the gross amount received by TENANT from any and all other sources of income derived from the business conducted upon the Premises.

C. Notwithstanding the other provisions of Section 2.04, the term "Gross Sales" shall not include the following items, and such items may be deducted from Gross Sales to the extent they have been included therein or have been included in a prior computation of Gross Sales or for which a Percentage Rent has been paid under this Lease to CITY:

- (1) Credits and refunds made to customers for merchandise returned or exchanged;
- (2) Any sales or excise taxes otherwise includable in Gross Sales as defined in this Section because such taxes are part of the total selling price of merchandise or services rendered in, from, or on the Premises, where TENANT must account for and remit the taxes to the government entity or entities by which they are imposed; and
- (3) With respect to credit card sales, fees retained or withheld by the issuer and/or merchant bank pursuant to TENANT'S credit card acceptance agreement, and
- (4) Rental payments to TENANT from sublessees whose total gross sales are included in gross sales computations.

D. TENANT shall keep or cause to be kept full, complete, and accurate records, and books of account in accordance with accepted accounting practices showing the total amount of Gross Sales, as defined herein, made each calendar month in, on or from the Premises. TENANT shall keep said records and books of account within San Luis Obispo County and shall notify CITY in advance of their location at all times. Furthermore, TENANT shall at the time of sale and in the presence of the customer cause the full selling price of each piece of merchandise, each rental received and each service rendered in, on or from the Premises to be recorded in a cash register or cash registers that have cumulative totals and are sealed in accordance with standard commercial practices. Said records, books of account and cash register tapes, including any sales tax reports that TENANT may be required to furnish any government or governmental agency shall at all reasonable times be open to the inspection of CITY, CITY'S auditor, or other

authorized representative or agent of CITY. TENANT consents to the release of sales tax information to CITY and on demand will furnish to CITY a copy of the sales tax reports, quarterly reports and any audit reports of sales for confidential internal use of the CITY in determining Gross Sales for TENANT. TENANT consents and authorizes CITY to request such information directly from the State Board of Equalization or other state agency with which sales tax information is filed.

E. By July 31 of each year, TENANT shall furnish CITY with a statement, to be certified by TENANT as current, true and accurate, which shall set forth the Gross Sales of each department, sublessee, licensee and concession operating in, on or from the Premises for the previous twelve (12) calendar months, ending June 30, just concluded, and the authorized deductions, if any, therefrom; and with it TENANT shall pay to CITY the amount of the Percentage Rent which is due to CITY as shown thereby. If TENANT shall at any time cause an audit of sales of TENANT'S business to be made by a public accountant, TENANT shall furnish CITY with a copy of said audit without cost or expense to CITY. CITY may, once in any twelve-month period, cause an audit of the business of TENANT to be made by a public accountant of CITY'S own selection. TENANT shall, upon receiving written notice of CITY'S desire for such an audit deliver and make available all such books, records and cash register tapes to the public or certified public accountant selected by CITY. Furthermore, TENANT shall promptly on demand reimburse CITY for the full cost and expense of said audit, should the audit disclose that the questioned statement or statements understated Gross Sales by five percent (5%) or more but less than ten percent (10%). In the event that an audit performed at CITY'S request discloses that TENANT understated Gross Sales by less than 5%, the cost of such audit shall be paid by CITY. In the event that any audit or other review of records discloses that the amounts reported as Gross Sales was understated by TENANT by ten percent (10%) or more, CITY shall not only be entitled to recover from TENANT all costs of audit and review but shall also be entitled to recover from TENANT a penalty equal to two times the Percentage Rent due pursuant to this Lease on such unreported amounts. Whenever any audit discloses that Gross Sales were understated by any amount, TENANT shall immediately pay the additional Percentage Rent therein shown to be payable by TENANT to CITY, together with interest at the Default Rate thereon, from the date the Percentage Rent was payable until the date paid.

F. CITY shall be entitled at any time within five (5) years after the receipt of any such Percentage Rent payment, to question the sufficiency of the amount thereof and/or the accuracy of the statement or statements furnished by TENANT to justify the same. For the purpose of enabling CITY to check the accuracy of any such statement or statements, TENANT shall for said period of five (5) years after submission to CITY of any such statement keep all of TENANT'S records, including sales tax returns, all cash register tapes and other data which in

any way bear upon or are required to establish in detail TENANT'S Gross Sales and any authorized deductions therefrom as shown by any such statements and shall upon request make the same available to CITY for examination.

**Section 2.03 Reimbursements.**

If TENANT fails to perform any term or covenant of this Lease, CITY may, but is not obligated to, perform such term or covenant, and TENANT shall reimburse CITY therefore as additional Rent hereunder. As an illustration and not as a limitation, if TENANT fails to procure the insurance required by this Lease, CITY may, but is not obligated to, obtain such insurance, with the cost of the premiums being due to CITY upon demand as additional Rent.

**Section 2.04 Penalty and Interest.**

(1) If any Rent is not received within ten (10) days following the date on which the Rent first became due, TENANT shall pay a late penalty of ten percent (10%) of the amount of the Rent in addition to the Rent.

(2) In addition to the penalty, TENANT shall pay interest at the rate of one percent (1%) per month or fraction thereof or the maximum amount permitted by law as of the date this Lease is signed, whichever is greater (the "Default Rate"), on the amount of the Rent, exclusive of the penalty, from the date on which Rent first became delinquent until paid. The term "Rent" includes any sums advanced by the CITY and any unpaid amounts due from TENANT to the CITY.

## **Article 3 USE OF PREMISES**

**Section 3.01 Permitted Uses.**

The Premises shall, during the term of this Lease, be used for the purpose of operating and conducting thereon and therein the uses permitted by, and in compliance with, all Conditional Use Permits applicable to the Premises, as may be amended from time to time, and for no other purpose. At the commencement date of this Lease, such uses include Restaurant, bar, retail sales, docks for commercial and pleasure boats, seafood market and office space.

**Section 3.02 Unauthorized Use.**

TENANT agrees to allow only those uses authorized in Section 3.01 hereinabove and any unauthorized use thereof shall constitute a breach of this Lease and shall, at the option of CITY, terminate this Lease.

**Section 3.03 Operation of Business - Hours of Operation.**

Failure to actively and diligently conduct the business authorized herein constitutes a breach of the agreement and shall, at the option of CITY, terminate this lease.

(1) TENANT shall during the term of this Lease conduct retail sales business of the nature specified in Section 3.01 of this Lease in the downstairs portion of the Premises in an efficient and diligent manner and keep the Premises open for the conduct of business continuously and without interruption for at least six hours each day of the year except one day each week and legal holidays. This provision shall not apply if the Premises shall be closed and the business of TENANT is temporarily shut down for a period not to exceed fourteen (14) calendar days in any calendar year to make necessary repairs, maintenance or other construction deemed necessary by TENANT. This provision shall not apply if the Premises shall be closed and the business of TENANT is temporarily shut down as authorized or required by the CITY Manager or on account of strikes, walkouts, or causes beyond the control of TENANT or for not more than three (3) days out of respect to the memory of an officer, employee, or close relative of any officer or employee of TENANT.

(2) TENANT shall operate TENANT'S business on the Premises with due diligence and efficiency and in like manner as comparable businesses operated in the CITY or the coastal area of San Luis Obispo County, so as to produce the maximum amount of Gross Sales and gross receipts from services which may be produced from TENANT'S business; and TENANT at all times shall carry on Premises, a stock or merchandise of such size, character, and quality as is reasonable, designed to produce the maximum return to TENANT, when the sale of merchandise is a permitted use under this Lease.

Notwithstanding the foregoing, CITY understands and agrees the portions of the Premises which were formerly occupied by Off the Hook restaurant (the "Restaurant Space"), and the upstairs spaces, are now vacant and in need of rehabilitation before they can be properly occupied. Based on that, CITY agrees TENANT will use its best good faith effort to do what is necessary to make those areas usable, as soon as possible. CITY and TENANT also agree if that is not possible, then TENANT shall at least do the following:

(1) Repair, as needed, and maintain the two restrooms for public use during regular business hours for the Restaurant Space; provided, that if the Parties agree the restrooms can be safely cordoned off from the rest of the Restaurant Space, then the restricted access shall be installed and maintained by TENANT and the two restrooms shall be open for public use during the

regular business hours for the downstairs portion of the Premises currently occupied by Under the Sea Gallery,

(2) Allow the use of the patio/open air portions of that area to be used by the public similar to the Harbor Walk and

(3) Improve, to the reasonable approval of the Harbor Director, the aesthetics, housekeeping and utility of all the publicly viewable portions of the façade areas and common public open spaces on the Premises.

**Section 3.04 Competition.**

During the term of this Lease, TENANT shall not directly nor indirectly acquire or establish any similar or competing business within a radius of five (5) miles from the location of the Premises; provided, however, that TENANT may, with prior written approval from CITY, own or operate more than one business, whether or not competing and similar along the Embarcadero upon CITY lease sites. The purpose of this Section is to prevent and prohibit TENANT from reducing revenue to CITY by diverting business from the operation at the Premises to another similar business owned by TENANT within the CITY, but not upon a CITY lease site from which CITY is paid rent based on Gross Sales. In accordance with this Section, CITY hereby approves TENANT'S current operations at 725 Embarcadero (Rose's Landing).

**Section 3.05 Hazardous Materials.**

(1) TENANT shall not transport, use, store, maintain, generate, dispose, release, treat or discharge any "Hazardous Material" (as defined below) upon or about the Premises (such activities being hereafter referred to as "Hazardous Materials Activities"), nor permit TENANT'S employees, agents, or contractors to engage in Hazardous Materials Activities upon or about the Premises, except as allowed by applicable law. The term "Hazardous Material" for purposes hereof shall mean any chemical, substance, material or waste or component thereof which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, material or waste or component thereof by any federal, state or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body. All Hazardous Materials Activities at the Premises shall be conducted strictly in accordance with all applicable laws and regulations. If TENANT shall transport any hazardous waste from the Premises, then such transportation shall be done only by a contractor duly licensed to haul hazardous waste and shall use only a duly licensed disposal site approved by TENANT'S liability insurer.

(2) TENANT shall promptly notify CITY of: (i) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to

the presence of any Hazardous Material on the Premises or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any party against TENANT or the Premises relating to any loss or injury resulting from any Hazardous Material on or from the Premises, and (iii) any matters where TENANT is required by applicable law to give a notice to any governmental or regulatory authority respecting any Hazardous Material on the Premises. CITY shall have the right (but not the obligation) to inspect the Premises, to take such remedial action on the Premises, as CITY may deem appropriate, and to join and participate, as a party, in any legal proceedings or actions affecting the Premises initiated in connection with any environmental, health or safety law.

(3) If any Hazardous Material is released, discharged or disposed of by TENANT or its employees, agents or contractors, on or about the Premises in violation of the foregoing provisions, then TENANT shall immediately notify CITY. CITY may elect either to take such remedial action as CITY deems appropriate, in which event TENANT shall reimburse CITY for all costs thereof within ten (10) days after demand, or direct TENANT to perform such remediation. If CITY directs TENANT to perform the remediation, then TENANT shall immediately take such remedial action, as CITY shall direct. TENANT shall, properly and in compliance with applicable laws clean up and remove the Hazardous Material from the Premises and any other affected property at TENANT'S expense. If CITY directs TENANT to perform remediation hereunder and if TENANT shall fail to comply with the provisions of this Section within five (5) days after written notice by CITY, or such shorter time as may be required by applicable law or in order to minimize any hazard to persons or property, then CITY may (but shall not be obligated to) arrange for such compliance directly or as TENANT'S agent through contractors or other parties selected by CITY at TENANT'S expense (without limiting CITY'S other remedies under this Lease or applicable law).

**Section 3.06 Tidelands Trust.**

TENANT shall use and occupy the Premises in strict compliance with the Tidelands Trust purposes under which the Premises or any portion thereof are held by CITY pursuant to the grants from the State of California as set forth in this Lease.

**Section 3.07 Compliance with Law.**

TENANT shall, at no cost to CITY, comply with all of the requirements of all local, municipal, county, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, and shall faithfully observe in the use of the Premises all local, municipal and county ordinances and state and federal statutes, rules, regulations and orders now

in force or which may hereafter be in force (collectively, "Legal Requirements") provided that TENANT shall not be required to comply with any Legal Requirement imposed by the CITY that would substantially deprive TENANT of a material benefit under this lease unless such Legal Requirement has been imposed or required by a county, state or federal authority. The judgment of any court of competent jurisdiction, or the admission of TENANT in any action or proceeding against TENANT, whether CITY is a party thereto or not, TENANT has violated any such Legal Requirement in the use of the Premises shall be conclusive of that fact as between CITY and TENANT.

**Section 3.08 Waste or Nuisance.**

TENANT shall not commit or permit the commission by others of any waste on the Premises; TENANT shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined by law on the Premises; and TENANT shall not use or permit the use of the Premises for any unlawful purpose.

**Section 3.09 Use by CITY.**

(1) Subject to TENANT's rights hereunder to possession of the Premises, CITY may grant licenses to, or otherwise authorize, other persons and entities permitting uses of the Morro Bay Harbor.

(2) CITY also retains and reserves for itself, its successors and assigns, all oil, gas, petroleum and other mineral or hydrocarbon substances in and under the lands leased hereby together with right to prospect and extract all such substances.

## **Article 4 CONSTRUCTION, ALTERATION AND REPAIRS**

**Section 4.01 Construction Approval.**

(1) TENANT shall not make or permit any other person to make any alterations or structural additions or structural modifications to the Premises or to any structure thereon or facility appurtenant thereto if the cost thereof shall exceed ten thousand dollars (\$10,000), without the prior written consent of CITY. The consent to be obtained pursuant to this Section 4.01(1) shall be requested from the Harbor Director, or the City's designee, for CITY. If the Harbor Director or any future successor to the duties of the City's Harbor Director, or the City's designee, gives such consent to proceed, it is understood that such consent is given by CITY only in its capacity as the landlord under this Lease and not as the permit-issuing

authority. TENANT remains obligated to obtain any needed building permits and comply with all applicable planning processes.

(2) Where required by the Morro Bay Municipal Code, California Coastal Act, Corps of Engineers or any other state or federal agency having authority over the proposed project, then all Conditional Use Permits, Concept Plans, Precise Plans, Coastal Development Plans, and any other required plans or permits shall be applied for and approved prior to any construction, alteration or repairs.

**Section 4.02 Construction Bond.**

(1) Prior to the commencement of any construction the cost of which is greater than the amount of one hundred thousand dollars (\$100,000), TENANT shall file with the Morro Bay CITY Clerk a final detailed Civil Engineer's, Registered Architect's or Licensed and Bonded General Contractor's estimate of the cost of construction and installation of improvements on the Premises. Said estimate must be submitted to the CITY Engineer for approval. TENANT shall file with the Morro Bay CITY Clerk a faithful performance bond, in a form and issued by a corporate surety company satisfactory to CITY, in an amount satisfactory to CITY but not in excess of one hundred percent (100%) of the final detailed cost estimate, securing the faithful performance of TENANT or its contractor in the completion of said construction.

(2) TENANT shall also file with the Morro Bay CITY Clerk a labor and materials bond, in a form and issued by a corporate surety company satisfactory to CITY, in an amount satisfactory to CITY but not in excess of one hundred percent (100%) of the final detailed cost estimate, securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of said construction.

(3) In lieu of the above referenced bonds, TENANT may post cash deposits or may make other mutually satisfactory arrangements to guarantee the completion of construction projects. In the event the contractor bonds the project, CITY may be named as additional indemnitee to comply with these requirements.

**Section 4.03 Mechanics' Liens.**

At all times during the term of this Lease, TENANT shall keep the Premises and all buildings, installations and other improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises. TENANT further agrees to at all times, save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with any improvement, repairs, or alterations on the Premises, and the cost of defending against

such claims, including reasonable attorneys' fees. Should TENANT fail to pay and discharge or cause the Premises to be released from such liens or claim of liens within ten (10) days after the filing of such lien or levy, TENANT shall upon written notification be required to immediately deposit with CITY a bond conditioned for payment in full of all claims on which said lien or levy has been filed. Such bond shall be acknowledged by TENANT as principal and by a company or corporation, licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety. The beneficiary of any security instrument which instrument is on record with CITY, shall have the right to file such a bond on behalf of TENANT. CITY shall have right to post and keep posted on the Premises notices of non-responsibility and any other notices that may be provided by law or which CITY may deem proper for the protection of CITY and Premises from such liens. TENANT shall give CITY notice at least twenty (20) days prior to commencement of any work on the Premises to afford CITY the opportunity to post such notices.

**Section 4.04 Ownership of Improvements.**

The Parties agree title to all buildings, structures, installations and improvements of any kind or other property on the Premises, however occurring, vests in CITY, with the exception of trade fixtures, appliances, machines or other personal property (i) installed on Premises by TENANT and (ii) to which CITY and TENANT, agree to in writing prior to installation, title is vested in TENANT. The Parties agree, at the termination of this Lease, however occurring, TENANT shall have sixty (60) days thereafter to remove from the Premises all trade fixtures, appliances and machines installed on Premises by TENANT and other personal property title of which is vested in TENANT, as provided hereunder, (TENANT Property). If TENANT fails to remove from the Premises any TENANT Property as required by the previous sentence, then title to the TENANT Property not so removed shall vest in CITY and TENANT shall not remove same.

**Article 5 LEASEHOLD MORTGAGES**

TENANT shall not mortgage, securitize or hypothecate this leasehold interest in whole or any part without the prior written approval of CITY as evidenced by a resolution of the City Council of CITY.

## **Article 6 REPAIRS, MAINTENANCE AND RESTORATION**

### **Section 6.01 Maintenance by TENANT.**

At all times during the term of this Lease, TENANT shall, at TENANT'S own cost and expense, keep and maintain all improvements now or hereafter on the Premises in good order and repair and in a safe and clean condition; provided, that CITY shall be responsible for repair, CITY determines are necessary, of any seawalls, revetments or bulkheads on the Premises. Furthermore, TENANT shall, at TENANT'S own cost and expense, maintain at all times during the term of this Lease the whole of the Premises in a clean, sanitary, neat and orderly condition. CITY may, at the sole option of CITY, clean and clear the Premises, at TENANT'S cost and expense, in the event TENANT fails to clean and clear the Premises in accordance with this Section to the satisfaction of CITY after fifteen (15) days' written notice to TENANT from CITY of CITY'S intent to exercise this option.

### **Section 6.02 Legal Requirements.**

At all times during the term of this Lease, TENANT, at no cost to CITY, shall:

(1) Make all alterations, additions, or repairs to the Premises or the improvements or facilities on the Premises required by any Legal Requirements (as defined in Section 3.07 above) now or hereafter made or issued;

(2) Observe and comply with all Legal Requirements now or hereafter made or issued respecting the Premises or the improvements or facilities located thereon;

(3) Obtain all required permits pursuant to the Morro Bay Municipal Code or State law prior to the initiation of any repair or maintenance activity; and

(4) Indemnify and hold CITY and the property of CITY, including the Premises, free and harmless from any and all liability, loss, damages, fines, penalties, claims and actions resulting from TENANT'S failure to comply with and perform the requirements of this section.

### **Section 6.03 Failure to Repair.**

In the event failure to repair results in a hazardous or unsafe condition, CITY shall have the right and option but not the obligation to close and prohibit access to the unsafe portion of the Premises until such repairs are completed and accomplished and the Premises rendered safe for public use. In addition, if TENANT fails to repair any hazardous or unsafe condition within ten (10) days of written notice thereof from CITY, CITY shall have the right, but not the obligation, to perform such repair at TENANT'S expense. TENANT shall reimburse CITY for any such repair undertaken by CITY, promptly upon CITY'S demand, as additional Rent. Failure by

CITY to enforce any of the provisions of this Article shall not constitute a waiver of these provisions and CITY may at any time enforce all of the provisions of this Article, requiring all necessary repairs, rebuilding or replacement.

**Section 6.04 Inspection by CITY.**

CITY or CITY'S agents, representatives, or employees may enter the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether TENANT is complying with the terms of this Lease and for the purpose of doing other lawful acts that may be necessary to protect CITY'S interest in the Premises under this Lease or to perform CITY'S duties under this Lease.

**Section 6.05 TENANT'S Duty to Restore Premises.**

(1) If at any time during this Lease, any improvements now or hereafter on the Premises are damaged or destroyed in whole or in part by the elements, or any other cause not the fault of TENANT or CITY and such destruction makes uninhabitable, any portion of the Premises at which TENANT or its sublessees are located, as reasonably determined by CITY'S Building Official, then this Lease shall terminate upon written notice from either Party.

(2) Any and all insurance proceeds that become payable at any time during the term of this Lease because of damage to or destruction of any improvements on the Premises shall be paid to CITY, except for those proceeds payable for TENANT Property.

## **Article 7 INDEMNITY AND INSURANCE**

**Section 7.01 Indemnity Agreement.**

(1) TENANT shall indemnify and hold CITY, and the property of CITY (including the Premises and any improvements now or hereafter on the Premises), and the CITY'S officers, officials, employees and volunteers harmless from any and all liability, claims, loss, damages, and expenses, including attorney fees and litigation expenses, resulting from TENANT'S occupation and use of the Premises or any negligent act or omission of the TENANT or any of its subtenants, employees, contractors or anyone for whom TENANT may be liable, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

(a) The death or injury of any person, including TENANT or any person who is an employee or agent of TENANT, or by reason of the damage to or destruction of any property, including property owned by TENANT or by any person who is an employee or agent of TENANT, from any cause whatever while such person or property is in or on the Premises or

in any way connected with the Premises or with any of the improvements or personal property on the Premises;

(b) The death or injury of any person, including TENANT or any person who is an employee or agent of TENANT, or by reason of the damage to or destruction of any property, including property owned by TENANT or any person who is an employee or agent of TENANT, caused or allegedly caused by either (i) the condition of the Premises or any improvement placed on the Premises by TENANT, or (ii) any act or omission on the Premises by TENANT or any person in, on, or about the Premises with or without the permission and consent of TENANT;

(c) Any work performed on the Premises or materials furnished to the Premises at the instance or request of TENANT or any person or entity acting for or on behalf of TENANT;

(d) TENANT'S failure to perform any provision of this Lease or to comply with any Legal Requirement imposed on TENANT or the Premises.

(2) TENANT'S obligations pursuant to this Section to indemnify and hold harmless do not extend to any liability, claim, loss, damage or expense arising from CITY'S active negligence or willful misconduct.

**Section 7.02 Liability Insurance.**

During the term of this Lease, TENANT shall maintain at its cost Commercial General Liability insurance with coverages at least as broad as ISO Forms labeled "City of Morro Bay Insurance requirements for Lessees", Certificate of Insurance – City of Morro Bay", and "Additional Insureds – Managers or Lessors of Premises" attached hereto as Exhibit B and made a part hereof as may be updated or changed from time to time at the sole discretion of the CITY, insuring against claims for bodily injury (including death), property damage, contractual liability, personal injury and advertising injury occurring on the Premises or from operations located in any part of the Premises. Such insurance shall afford protection in amounts no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage, provided that if insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Premises or the general aggregate limit shall be twice the occurrence limit stated in this Section. All liability insurance carried by TENANT hereunder shall name CITY, its officers, officials, employees and volunteers as additional insureds, and shall be primary insurance with respect to such additional insureds. TENANT shall include all its subtenants as insureds under TENANT's liability policies or shall furnish

separate certificates and endorsements for each subtenant. All coverages for subtenants shall comply with all requirements of this Article Seven.

**Section 7.03 Worker's Compensation.**

TENANT shall maintain at TENANT'S own expense and keep in full force and effect during the term of this Lease, Worker's Compensation Insurance as provided by law. Said insurance shall contain a waiver of subrogation rights against CITY. TENANT shall also maintain employer's liability insurance with minimum coverage of \$1,000,000 per accident for bodily injury or disease.

**Section 7.04 Property Insurance.**

TENANT shall, at its cost, at all times during the term of this Lease keep all improvements and other structures on the Premises, as well as any and all additions, improvements and betterments thereto, insured for one hundred percent (100%) of their full replacement cost with no co-insurance provision against loss or destruction by the perils covered by "all risk" (excluding earthquake) property damage insurance policies. Any loss payable under such insurance shall be payable to TENANT, CITY, and any Lender under a Leasehold Encumbrance pursuant to Article 5 of this Lease, as their interests may appear, and such proceeds shall be used and applied in the manner required by Article 6 of this Lease.

**Section 7.05 Additional Coverage.**

TENANT shall also maintain, at its expense, the insurance described in this Section 7.05.

(1) If TENANT has (or is required by any Legal Requirement to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then TENANT shall maintain liquor liability coverage in appropriate amounts. TENANT shall require any subtenant who has (or is required by any Legal Requirement to have) a liquor license and who is selling or distributing alcoholic beverages on the Premises, to maintain such coverage.

(2) TENANT shall maintain "all risk" (excluding earthquake) property damage insurance covering TENANT's personal property located at the Premises, in amounts not less than the full replacement value of such personal property. CITY shall have no interest in the proceeds of such insurance.

(3) TENANT shall, at TENANT's own expense, obtain and maintain any additional insurance coverages that CITY may reasonably require. As illustration only and not as a limitation, in appropriate circumstances such additional insurance may include increased general

liability limits, business interruption coverage, business automobile liability, boiler and machinery insurance and/or builder's risk insurance. However, TENANT shall not be required to maintain additional coverages that are in excess of those typically maintained by similarly situated tenants in the Morro Bay area.

**Section 7.06 General Requirements.**

Except as specifically provided to the contrary, all the insurance required pursuant to this Article Seven shall be subject to the requirements of this Section 7.06.

(1) Maintenance of proper insurance coverage is a material element of this Lease and failure to maintain or renew coverage or to provide evidence of coverage and/or renewal may be treated by the CITY as a material breach of contract. TENANT shall forward the CITY specifications and forms to TENANT'S insurance agent for compliance.

(2) CITY may at any time require TENANT to increase the minimum coverage limits for insurance required by this Lease, but every such increase shall be reasonable under the circumstances.

(3) All policies shall be issued by insurance companies authorized to issue such insurance in California, with an A.M. Best's rating of no less than A: VII.

(4) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees and volunteers; or the TENANT shall provide a financial guarantee satisfactory to CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(5) Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be cancelled or reduced, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to CITY.

(6) TENANT shall furnish CITY with certificates and amendatory endorsements effecting the coverage required by this Lease. The endorsements shall be on forms provided by CITY or on other than CITY's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by CITY before use of the Premises, and promptly following any renewal or replacement. CITY reserves the right at any time to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

(7) TENANT's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be excess of TENANT's insurance and shall not contribute with it.

**Section 7.07 No Subrogation.**

TENANT agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, TENANT shall look solely to its insurance for recovery. TENANT hereby grants to the CITY, on behalf of any insurer providing insurance to either TENANT or CITY with respect to TENANT'S occupancy of the Premises, a waiver of any rights to subrogation which any such insurer of said TENANT may acquire against the CITY by virtue of the payment of any loss under such insurance. Each insurance policy required under this Lease including those insuring TENANT against claims, expense, or liability for injury to persons or property shall provide that the insurer shall not acquire by subrogation any right to recovery which TENANT has expressly waived in writing prior to the occurrence of the loss.

**Section 7.08 TENANT'S Waiver.**

TENANT hereby waives any right of recovery against CITY for each claim, expense, liability, or business interruption, or other loss, except where caused by CITY'S active negligence or willful misconduct. TENANT agrees that to the extent that TENANT fails to acquire insurance, TENANT shall not have any claim against CITY for any loss that results from a risk or peril that would have been included in such insurance.

**Section 7.09 Insurance Not a Limit.**

The insurance requirements of this Article Seven are independent of, and do not limit or modify, TENANT'S indemnification and other obligations pursuant to this Lease.

## **Article 8 TAXES AND FEES**

**Section 8.01 TENANT to Pay Taxes.**

TENANT shall pay, before delinquency, all taxes and assessments levied upon or assessed to TENANT on the Premises by reason of this Lease or of any equipment, appliances, improvement, or other development of any nature whatsoever, erected, installed, or maintained by TENANT or by reason of the business or other activity of TENANT upon or in connection with the Premises. TENANT shall pay all possessory interest taxes applicable to the Premises.

**Section 8.02 TENANT to Pay License and Permit Fees.**

TENANT shall pay any fees imposed by law for licenses or permits for any business or activities including construction by TENANT upon the Premises.

**Section 8.03 Utilities.**

TENANT shall pay, or cause to be paid, and hold CITY and the property of CITY, including the Premises, free and harmless from all charges for the furnishing of gas, water, electricity, telephone service, and for other public utilities to the Premises during the term of this Lease and for the removal of garbage and rubbish from the Premises during the term of this Lease.

## **Article 9 CONDEMNATION**

**Section 9.01 Total Condemnation.**

If title and possession to all of the Premises is permanently taken for any public or quasi-public use under any statute, or by the right of eminent domain, then this Lease shall terminate on the date that possession of the Premises is taken, and both CITY and TENANT shall thereafter be released from all obligations, including Rent, all of which shall be prorated to the date of termination, except those specified in Section 9.02 of this Lease.

**Section 9.02 Condemnation Award.**

Any compensation or damages awarded or payable because of the permanent taking of all or any portion of the Premises by eminent domain shall be allocated between CITY and TENANT as follows:

(1) All compensation or damages awarded or payable for the taking by eminent domain of any land that is part of the Premises shall be paid to and be the sole property of CITY free and clear of any claim of TENANT or any person claiming rights to the Premises through or under TENANT.

(2) All compensation or damages awarded or payable which is specifically attributed by the taking party to the "good will" of TENANT'S business shall be paid to and be the sole property of TENANT.

(3) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of the Premises taken by eminent domain where only a portion of the Premises is taken by eminent domain, and TENANT is not entitled to or does not

terminate this Lease, shall be applied in the manner specified in Section 9.04 toward the replacement of such improvements with equivalent new improvements on the remaining portions of the Premises.

(4) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of the Premises taken by eminent domain where this Lease is terminated because of the taking by eminent domain, whether all or only a portion of the Premises is taken by eminent domain, shall be allocated between CITY and TENANT as follows:

(a) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this Lease that has, at the time of the taking, not expired shall belong to and be the sole property of TENANT.

(b) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this Lease that has, at the time of the taking, expired shall belong to and be the sole property of CITY.

(c) The term "time of taking" as used in this Section shall mean 12:01 a.m. of the date that the agency or entity exercising the eminent domain power, takes, title, or the date that it takes physical possession of the portion of the Premises, whichever shall first occur.

(5) Any severance damages awarded or payable because only a portion of the Premises is taken by eminent domain shall be the sole and separate property of CITY.

**Section 9.03 Termination for Partial Taking.**

If, during the term of this Lease, title and possession of only a portion of the Premises is taken for any public or quasi-public use under any statute, or by right of eminent domain, then TENANT may, at TENANT'S option, terminate this Lease by serving written notice of termination on CITY within ninety (90) days after TENANT has been deprived of actual physical possession of the portion of the Premises taken for such public use. This Lease shall terminate on the first day of the calendar month following the calendar month in which the notice of termination described in this section is served on CITY. On termination of this Lease pursuant to this Article, all subleases and subtenancies in or on the Premises or any portion of the Premises created by TENANT under this Lease shall also terminate and the Premises shall be delivered to CITY free and clear of all such subleases and subtenancies, provided, however, that CITY may, at CITY'S option, by mailing written notice to a subtenant allow any subtenant to attorn to CITY and continue such subtenant's occupancy on the Premises as a TENANT of

CITY. On termination of this Lease pursuant to this section, however, both CITY and TENANT shall be released from all obligations under this Lease, except those specified in Section 9.02 of this Lease.

**Section 9.04 Rent Abatement for Partial Taking.**

If, during the term of this Lease, title and possession of only a portion of the Premises is taken under the power of eminent domain by any public or quasi-public agency or entity and TENANT does not terminate this Lease, then this Lease shall terminate as to the portion of the Premises taken under eminent domain on the date actual physical possession of the portion taken by eminent domain is taken by the agency or entity exercising the eminent domain power. Furthermore, the Rent payable under this Lease shall, as of that time be reduced in the same proportion of the Premises taken by eminent domain bears to the full value of the Premises at that time; provided however, that TENANT shall make a good faith effort to replace any improvements or facilities with equivalent new facilities on the remaining portion of the Premises and do all other acts at TENANT'S own cost and expense required by the eminent domain taking to make the remaining portion of the Premises fit for the use specified in this Lease.

**Section 9.05 Conveyance in Lieu of Eminent Domain.**

A voluntary conveyance by CITY, with the consent of TENANT, of title to all or a portion of the Premises to a public or quasi-public agency or entity in lieu of and under threat by such agency or entity to take the same by eminent domain proceedings shall be considered a taking of title to all or such portion of the Premises under the power of eminent domain subject to the provisions of this Article.

**Section 9.06 Temporary Taking.**

If the possession of the Premises or any portion thereof should be taken under the power of eminent domain by any public or quasi-public agency or entity for a limited period not extending beyond the term of this Lease, then this Lease shall not terminate (except as provided in this Section 9.06) and TENANT shall continue to perform all its obligations hereunder, except only to the extent that TENANT is prevented from performing such obligations by reason of such taking. TENANT shall be entitled to receive the entire amount of compensation or damages awarded because of such temporary taking. If a temporary taking extends for more than thirty-six (36) months, then TENANT shall have the right to terminate this Lease, and TENANT shall be entitled to receive, out of the compensation or damages awarded because of

such temporary taking, the amount that is attributable to the period of time up until the effective date of TENANT'S termination of this Lease.

## **Article 10 ASSIGNMENT AND SUBLEASING**

### **Section 10.01 No Assignment Without CITY'S Consent.**

Except as provided in this Article 10, TENANT shall not assign or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Premises or any of the improvements that may now or hereafter be constructed or installed on the Premises without the express written consent of CITY evidenced by resolution first had and obtained. Any assignment or transfer by TENANT without the prior written consent of CITY, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of CITY, terminate this Lease. A consent by CITY to one assignment shall not be deemed to be a consent to any subsequent assignment of this Lease by TENANT. CITY shall not unreasonably nor arbitrarily withhold its approval to the assignment or transfer of this Lease to an assignee who is financially reliable and qualified to conduct the business for which this Lease was granted. It is mutually agreed TENANT'S qualifications are a part of the consideration for granting of this Lease and TENANT does hereby agree to maintain active control and supervision of the operation conducted on the Premises.

### **Section 10.02 Change of Ownership as Assignment.**

For purposes of this Article 10, the following transactions will be deemed to be assignments or transfers:

(1) If TENANT is a partnership or limited liability company:

(a) A change in ownership effected voluntarily, involuntarily, or by operation of law, within a twelve-month (12-month) period, of twenty-five percent (25%) or more of the partners or members or twenty-five percent (25%) or more of the partnership or membership interests; or

(b) The dissolution of the partnership or limited liability company without its immediate reconstitution.

(2) If TENANT is a closely held corporation (i.e., one whose stock is not publicly held and not traded through an exchange or over the counter):

(a) The sale or other transfer, within a twelve-month (12-month) period, of more than an aggregate of twenty-five percent (25%) of the voting shares of TENANT (other than to immediate family members by reason of gift or death); or

(b) The dissolution, merger, consolidation, or other reorganization of TENANT.

**Section 10.03 Application for Assignment.**

A condition of an assignment shall be that TENANT shall file with the CITY an application to assign the leasehold prepared by the prospective assignee. Concurrently with filing the application, TENANT shall pay a reasonable fee associated with the cost of processing said application, in cash or certified or cashier's check to enable CITY adequately to investigate the proposed assignee's qualifications as a permitted assignee. CITY shall not be required to account for the use of the sum paid. If the proposed assignee's net worth on the date of assignment is not sufficient to reasonably guarantee successful operation of the Premises in compliance with all applicable CITY, County, State and federal requirements, CITY may withhold approval of the assignment or condition it upon TENANT'S guarantee of such assignee's obligations hereunder for such period as CITY deems advisable. Net worth shall mean the amount by which the total of all assets shall exceed the total of all liabilities as determined in accordance with general accepted accounting principles as approved by CITY'S auditor, or other authorized representative or agent.

**Section 10.04 Probate Transfer of Assignment.**

If TENANT is an individual, nothing herein contained will prevent the transfer of this Lease by will, or by operation of law under the intestacy provisions of the California Probate Code as it may be amended from time to time. Probate sale of the leasehold interest will not be permitted without the consent of the CITY, evidenced by resolution, first had and obtained.

**Section 10.05 No Sublease Without CITY'S Consent.**

TENANT shall not sublease the whole nor any part of the Premises, or license, permit, or otherwise allow any other person (the employees of TENANT excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of CITY'S Harbor Director, or any future successor to the duties of the City'S Harbor Director. A consent to one subletting, occupation, licensing or use shall not be deemed to be a consent to any subsequent subletting, occupation, licensing or use by another person. Any sublease or license without CITY'S written consent shall be void, and shall at CITY'S option, terminate this Lease. CITY shall not

unreasonably nor arbitrarily withhold its consent to sublet to one who is qualified and financially reliable. CITY'S consent to any occupation, use, or licensing shall be in CITY'S sole and absolute discretion. Notwithstanding any provisions herein to the contrary, the terms "assignment," "subletting," "occupation," or "use," shall not be construed or interpreted to mean or include the temporary, short term renting or leasing of boat slips, motel, hotel, or apartment accommodations on the premises.

**Section 10.06 Subtenant Subject to Lease Terms.**

Any and all subleases shall be expressly made subject to all the terms, covenants, and conditions of this Lease. Subject to Section 1.01, the term of any sublease shall not extend beyond the term of this Lease. Subject to Sections 1.01 and 10.09, termination of this Lease prior to the expiration of this Lease term shall also terminate any and all subleases. A breach of the terms of this Lease by a subtenant shall constitute a breach on the part of TENANT and shall subject both the subtenant and TENANT to all the remedies provided to CITY herein and by law. Failure by any subtenant to report Gross Sales or to pay Percentage Rent due from subtenant shall constitute a breach of this lease. TENANT hereby agrees to and does guarantee payment of such Percentage Rent due by a subtenant under the terms of this lease.

**Section 10.07 Consent Form Agreement.**

Prior to any consent by CITY'S Harbor Director to any sublease hereof, TENANT shall cause to be executed between TENANT and any subtenant an agreement making the CITY a third-party beneficiary, in a form acceptable to CITY'S Harbor Director, whereby the subtenant agrees to be bound by all of the terms, covenants and conditions of this Lease. Further, it is agreed by TENANT any default by the subtenant of any of the terms, covenants and conditions of this Lease shall be deemed to be violations by TENANT of this Lease and that all remedies of CITY for such violation, including termination of this Lease, shall immediately be enforceable by CITY against TENANT. TENANT shall apply any and all monies received from any subtenant first to the payment of obligations of the subtenant to CITY.

**Section 10.08 TENANT and Guarantor Remain Liable.**

Prior to approval by CITY to any sublease hereof, TENANT shall agree to be primarily and jointly and severally liable to CITY for all obligations due CITY by any subtenant, including the payment of rents, and TENANT shall agree that CITY may proceed directly against TENANT for any obligation owing CITY by the subtenant. If this Lease is guaranteed, neither

the sublease nor CITY'S approval thereof shall release the guarantor from its obligations pursuant to the guaranty.

**Section 10.09 Nondisturbance.**

On the terms set forth below, CITY may enter into agreements with subtenants providing that in the event of any termination of this Lease prior to the expiration date, CITY will not terminate or otherwise disturb the rights of the subtenant under such sublease, but will instead honor such sublease as if such agreement had been entered into directly between Landlord and such subtenant, conditioned upon such subtenant's agreement to attorn to Landlord and full performance of all obligations under the sublease in question ("Non-Disturbance Agreement"). CITY agrees to execute a Non-Disturbance Agreement in connection with a particular sublease provided that Tenant provides CITY with a copy of the sublease, and the Non-Disturbance Agreement is customary in form and substance and otherwise reasonably acceptable to CITY.

## **Article 11 DEFAULT AND TERMINATION**

**Section 11.01 Abandonment by TENANT.**

If TENANT breaches this Lease and abandons all or any part of the Premises prior to the scheduled expiration of the term of this Lease, CITY may continue this Lease in effect by not terminating TENANT'S right to possession of the Premises, in which event CITY shall be entitled to enforce all CITY'S rights and remedies under this Lease including the right to recover the Rent specified in this Lease as it becomes due under this Lease.

**Section 11.02 Termination for Breach by TENANT.**

All covenants and agreements contained in this Lease are declared to be conditions to this Lease and to the term hereby demised to TENANT. Should TENANT fail to perform any covenant, condition, or agreement contained in this Lease, except for payment of any Rent or other monetary amount due, and such failure is not cured within thirty (30) days after written notice thereof is served on TENANT, then CITY may terminate this Lease immediately, and in the event of such termination, TENANT shall have no further rights hereunder and TENANT shall thereupon forthwith remove from the Premises and shall have no further right or claim thereto and CITY shall immediately thereupon have the right to re-enter and take possession of the Premises, subject only to appropriate legal process.

**Section 11.03 Termination for Failure to Pay Rent.**

If any payment of Rent is not made as herein provided and such failure to pay is not cured within three (3) days after written notice thereof is served on the TENANT, CITY shall have the option to immediately terminate this Lease; and in the event of such termination, TENANT shall have no further right or claim thereto and CITY shall immediately thereupon have the right to re-enter and take possession of the Premises, subject only to appropriate legal process.

**Section 11.04 Lender May Cure Default.**

CITY shall afford the Lender under any Leasehold Encumbrance of record with CITY the right to cure any default by TENANT of the covenants, conditions, or agreements hereof, as provided in Article 5 of this Lease.

**Section 11.05 Attorneys' Fees.**

In the event the CITY finds it necessary to retain an attorney in connection with the default by the TENANT or enforcement of any of the terms, conditions, and covenants of this Lease, even though litigation is not instituted, TENANT shall pay to CITY its reasonable attorneys' fees. Non-payment of attorneys' fees by TENANT within three (3) days after written notice is served on TENANT shall give rise to an independent legal action by CITY to collect same. If CITY is successful in such legal action, CITY shall also be entitled to attorney fees and costs for the collection action. To the extent that CITY is represented by the City Attorney, a reasonable sum for such attorneys' services will be included as attorneys' fees.

**Section 11.06 Damages for Breach.**

If TENANT defaults in the performance of any covenant, condition or agreement contained in this Lease and the default be incurable or not be cured within the time period set forth hereinabove, then CITY may terminate this Lease and:

- (1) Bring an action to recover from TENANT:
  - (a) The worth at the time of award of the unpaid rent which had been earned at the time of termination of this Lease;
  - (b) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination of this Lease until the time of award exceeds the amount of rental loss that TENANT proves could have been reasonably avoided;

(c) 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 rental loss that TENANT proves could be reasonably avoided; and

(d) Any other amount necessary to compensate CITY for all detriment proximately caused by TENANT'S failure to perform its obligations under this Lease; and

(2) Bring an action, in addition to or in lieu of the action described in subparagraph (1) of this Section, to re-enter and regain possession of the Premises in the manner provided by the laws of unlawful detainer of the State of California then in effect.

**Section 11.07 Cumulative Remedies.**

The remedies available to CITY in this Article shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Lease.

**Section 11.08 Waiver of Breach.**

The waiver by CITY of any breach by TENANT of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by TENANT either of the same or a different provision of this Lease.

**Section 11.09 Surrender of Premises.**

On expiration or sooner termination of this Lease, TENANT shall surrender the Premises, and, subject to Section 4.04, all improvements in or on the Premises, and all facilities in any way appertaining to the Premises, to CITY in good, safe, and clean condition, reasonable wear and tear excepted.

## **Article 12 MISCELLANEOUS**

**Section 12.01 Attorneys' Fees.**

If any litigation is commenced between the Parties concerning the Premises, this Lease, or the rights and duties of either in relation thereto, then the Party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted in the litigation, to a reasonable sum as and for its attorneys' fees and court costs in such litigation, which shall be determined by the court in such litigation or in a separate action brought for that purpose. The "prevailing" party shall mean the Party who obtains substantially the relief sought by that Party.

**Section 12.02 Notices.**

Any and all notice or demands by or from CITY to TENANT, or TENANT to CITY, shall be in writing. They shall be served either personally, or by registered or certified mail. Any notice or demand to CITY may be given to:

City of Morro Bay  
Attn: Harbor Director  
1275 Embarcadero  
Morro Bay, CA 93442

with a copy to:

City of Morro Bay  
Attn: City Manager  
City Hall  
595 Harbor Street  
Morro Bay, CA 93442

Any notice or demand to TENANT may be given at:

TLC Family Enterprises, Inc.  
665 Kings Avenue  
Morro Bay, CA 93442

Such addresses may be changed by written notice by either party to the other Party.

**Section 12.03 Governing Law and Jurisdiction.**

This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision concerning this Lease arises. CITY and TENANT consent to exclusive personal and subject matter jurisdiction in the Superior Court of the State of California in and for the county where the Premises are located, and each Party waives any claim that such court is not a convenient forum. Each Party hereby specifically waives the provisions of California Code of Civil Procedure Section 394, and any successor statute thereto.

**Section 12.04 Binding on Successors.**

Subject to the provisions herein relating to assignment and subletting each and all of the terms, conditions, and agreements herein contained shall be binding upon and inure to the benefit of the successors and assigns of any and all of the Parties; and all of the Parties shall be jointly and severally liable hereunder.

**Section 12.05 Partial Invalidity.**

Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

**Section 12.06 Sole and Only Agreement.**

This Lease and the COL, including all exhibits incorporated by reference, constitutes the sole and only agreements between CITY and TENANT respecting the Premises and the leasing of the Premises to TENANT. Any other agreements or representations respecting the Premises and their leasing to TENANT by CITY, which are not expressly set forth in this Lease, are null and void. This lease terms herein specified correctly set forth the obligations of CITY and TENANT as of the date of this Lease. No modification, amendment, or alteration of this Lease shall be valid unless it is in writing and signed by the Parties.

**Section 12.07 Modification.**

This agreement shall not be modified except pursuant to a written agreement executed by the MAYOR and CITY CLERK pursuant to prior CITY Council approval. Notwithstanding CITY Council approval, no agreement shall become effective until such agreement is in fact executed by the MAYOR and CITY CLERK. TENANT understands that this agreement may not be modified by oral statements by any person representing the CITY including the MAYOR and CITY CLERK. TENANT specifically agrees not to rely on oral statements, purported oral waivers, or purported oral modifications and agrees not to rely upon purported written modifications unless they meet the requirements of this paragraph and are approved in writing pursuant to formal City Council action and a subsequent written modification signed by the MAYOR and CITY CLERK. If the title of any person authorized to act for CITY under this Lease shall be changed during the term of this Lease, then the person who succeeds to substantially the same responsibilities with respect to the CITY shall have the authority to act for CITY under this Lease.

**Section 12.08 Time of Essence.**

Time is expressly declared to be the essence of this Lease.

**Section 12.09 Memorandum of Lease for Recording.**

CITY and TENANT shall, at the request of either at any time during the term of this Lease, execute a memorandum or "short form" of this Lease, which shall describe the Parties, set

forth a description of the leased premises, specify the term of this Lease, and incorporate this Lease by reference.

### **Article 13 SPECIAL PROVISIONS PECULIAR TO THIS LEASE SITE**

The following provisions apply to this Lease site only:

#### **Section 13.01 TENANT'S Obligation to Redevelop Site**

TENANT has proposed a major redevelopment project for the Premises (Proposed Redevelopment) and was granted the COL and the Parties intend this Lease to be an interim lease; (i) to allow TENANT to manage and operate the Premises and cause some use of the previous restaurant portion of the Premises and (ii) for the Parties an opportunity to negotiate a permanent lease for the Premises, all while TENANT is processing permits and completing design/development of the Proposed Redevelopment. TENANT agrees it shall be a material default and breach of this Lease if TENANT fails to meet the following time frames for the Proposed Redevelopment.

1. TENANT must obtain Concept Plan approval from the Planning Commission and City Council on or before August 31, 2018 at 4:00 p.m. or this Consent of Landowner Agreement will expire on September 1, 2018.
2. TENANT, after obtaining Concept Plan approval by the Planning Commission and City Council, shall negotiate in good faith with CITY for a new lease for the Premises. Upon execution of the new lease, the COL shall no longer be of any effect, and the new lease will replace this Lease. If a new lease is not executed by the Parties on or before October 25, 2018, then the COL shall expire on October 26, 2018; and, unless this Lease is extended by mutual agreement of the Parties, the provisions of Section 1.03 shall apply.

EXECUTED on April \_\_, 2018, at Morro Bay, San Luis Obispo County, California.

CITY OF MORRO BAY

TCL Family Enterprises, Inc., a California corporation

\_\_\_\_\_  
MAYOR

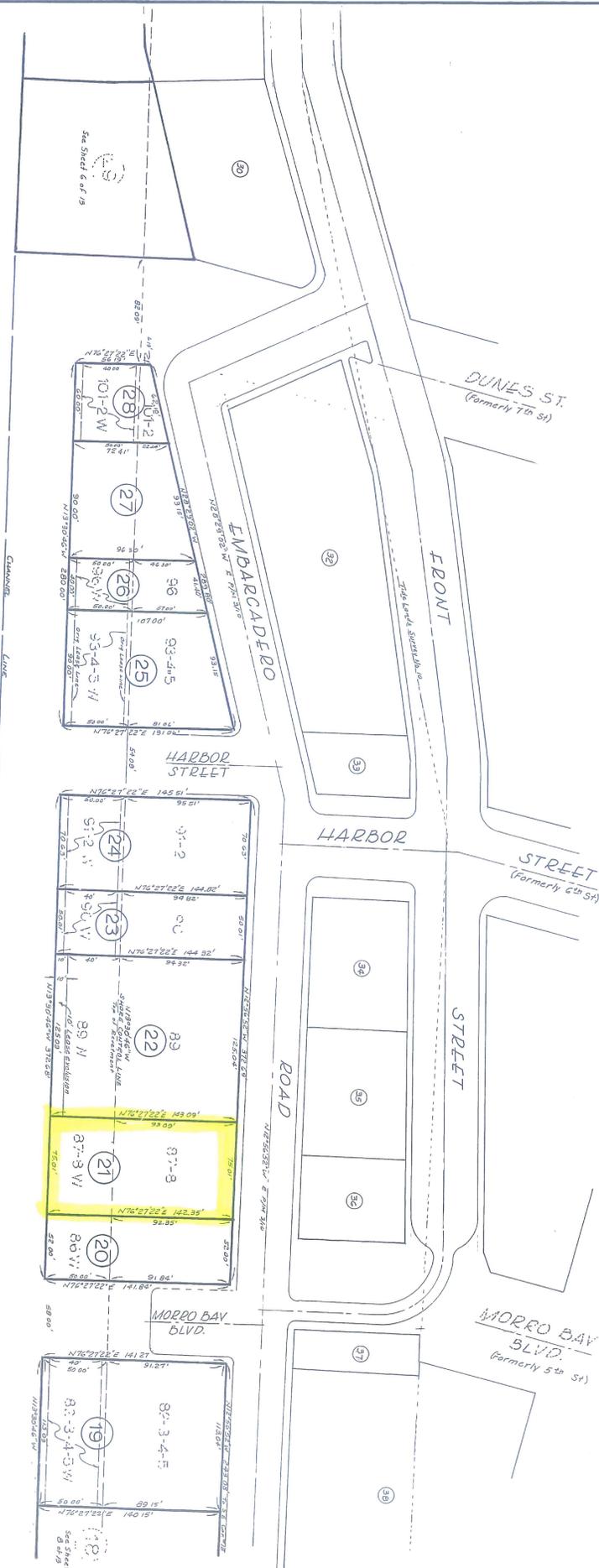
By: \_\_\_\_\_

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

ATTEST:

\_\_\_\_\_  
CITY CLERK

EXHIBIT A  
COPY OF PARCEL MAP



LEASE SITES MAP  
 CITY OF MORRO BAY, SAN LUIS OBISPO CO., CALIF  
 Scale 1" = 50'

GARING, TAYLOR, & ASSOC., INC.  
 Arroyo Grande, California  
 May, '72  
 7205-72

**L E A S E**

by and between

the CITY OF MORRO BAY

("CITY")

and

TLC FAMILY ENTERPRISES

("TENANT")

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# EXHIBIT B

## CITY OF MORRO BAY

595 Harbor St.  
Morro Bay, CA 93442  
(805) 772-6200  
FAX (805) 772-7329

### INSURANCE REQUIREMENTS FOR LESSEES (NO AUTO RISKS)

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

#### *Minimum Scope of Insurance*

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for lessees with employees).
3. Property insurance against all risks of loss to any tenant improvements or betterments.

#### *Minimum Limits of Insurance*

Lessee shall maintain limits no less than:

1. General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
3. Property Insurance: Full replacement cost with no coinsurance penalty provision.

City of Morro Bay  
Insurance Requirements for Lessees

***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

***Other Insurance Provisions***

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of that part of the premises leased to the Lessee.
2. The Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

***Verification of Coverage***

Lessee shall furnish the City with original certificates and amendatory **endorsements** effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the City **before** use of City premises. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

City of Morro Bay  
Insurance Requirements for Lessees

***Sub-lessee***

Lessee shall include all sub-lessees as insureds under its policies or shall furnish separate certificates and endorsements for each sub-lessee. All coverages for sub-lessees shall be subject to all of the requirements stated herein.

Insurance\SpecC  
Rev. 8/01

City of Morro Bay  
Insurance Requirements for Lessees

Reproduction of Insurance Services Office, Inc. Form

**INSURER:** ISO Form CG 20 11 11 85 (Modified)  
**POLICY NUMBER:** Commercial General Liability  
**ENDORSEMENT NUMBER:**

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED -- MANAGERS OR LESSORS OF PREMISES**

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART.

**SCHEDULE**

1. Designation of Premises (Part Leased to You):
2. Name of Person or Organization (Additional Insured): City of Morro Bay
3. Additional Premium:

(If no entry appears above, the information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**WHO IS AN INSURED** (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization shown in the schedule.

Modifications to ISO form CG 20 11 11 85:

1. The Insured scheduled above includes the Insured's elected or appointed officers, officials, employees and volunteers.
2. This insurance shall be primary as respects the Insured shown in the schedule above, or if excess, shall stand in an unbroken chain of coverage excess of the Named Insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the Insured scheduled above shall be in excess of this insurance and shall not be called upon to contribute with it.
3. The insurance afforded by this policy shall not be canceled except after thirty days prior written notice by certified mail return receipt requested has been given to the City.

\_\_\_\_\_  
Signature-Authorized Representative

\_\_\_\_\_  
Address

CG 20 11 11 85 Insurance Services Office, Inc. Form (Modified)  
Insurance\Form#3  
Rev. 8/01

01181.0024/466264.5 JWP  
Spec C



AGENDA NO: C-1

MEETING DATE: April 24, 2018

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** April 16, 2018

**FROM:** Scott Collins, City Manager

**SUBJECT:** Discussion and Direction on Community Choice Energy

## RECOMMENDATION

Staff recommends the City Council:

1. Authorize the City Manager to work with the City of San Luis Obispo to develop a request for proposal for the provision of services to conduct a formal study and develop an implementation plan for a regional Community Choice Energy (CCE) program; and
2. Direct staff to return to City Council with regular updates on the progress of the study and implementation plan, with the deadline of September 2018 for formal discussion of creating a Joint Powers Authority agreement with the City of San Luis Obispo.

## ALTERNATIVES

1. Pause or discontinue all discussion and participation in CCE and keep the status quo with PG&E providing the community's energy needs.
2. Pursue a partnership with the Monterey Bay Community Power Community Choice Aggregation program.
3. Direct staff to release a Request for Proposal for a Morro Bay only CCE Program.

## FISCAL IMPACT

There is a minimal fiscal risk to the City at this point. If a CCE program is implemented, then the City would have the opportunity to share in any cost savings, *i.e.* shareholder revenue, for the purchased power. That revenue could be used to reinvest in energy programs. The City would incur approximately \$2,000 in costs to purchase the electricity load data from PG&E. The selected consultant, if the City participates in the selection of a consultant with the City of San Luis Obispo, would assume all other study, implementation plan and start-up costs.

## BACKGROUND/ DISCUSSION

CCE, also known as Community Choice Energy is a state policy that enables local governments to aggregate electric power demand within their jurisdictions in order to procure alternative energy supplies, while maintaining the existing electricity provider for transmission and distribution services. CCE programs have been authorized in the state since 2003. Once formed, a city would determine the sources of energy, but would partner with the local utility — PG&E in Morro Bay — to provide electricity transmission, maintenance and billing. The day to day experience of the customer is the same, meaning services continue to be provided by PG&E and the only difference is the energy is purchased through the CCE. Per the State's requirements for greenhouse gas reduction, all cities must meet a 33 percent baseline of renewable energy by 2020. PG&E has

01181.0001/276727.1

Prepared By: SC

Dept Review: \_\_\_\_\_

City Manager Review: \_\_\_\_\_

City Attorney Review: JWP

stated 27 percent of its electricity came from solar, wind and other renewable resources in 2014.

Currently, there are nine CCE programs in operation in California: five in the San Francisco Bay Area, one in Humboldt County, and three in the greater Los Angeles area. More than 20 jurisdictions are actively studying or developing CCE programs, with several programs expected to launch in 2018. All of the operational and in-development CCE programs conducted feasibility studies that suggested CCE would be economically viable for their communities.

### **Initial Interest in CCE**

City Council received a presentation in 2013 from SLO Clean Energy, which is a coalition of San Luis Obispo (SLO) County leaders and volunteers, committed to local clean energy for communities within SLO County. SLO Clean Energy requested City Council consider joining with other local jurisdictions to explore the economic benefits, risks, and feasibility of creating a CCE in SLO County. City Council adopted Resolution No. 47-13 (attached) which states the City's general interest in exploring a CCE and appointed a Council sub-committee. In December 8, 2015, City Council incorporated the decision whether to pursue a CCE into the 2016-2018 City Goals (report attached). Staff was further directed to reach out to SLO County to advise of the City's interest in pursuing a CCE.

### **Feasibility Studies**

SLO County and other partners have worked on several options for a CCE and conducted feasibility studies in partnership with other agencies to determine the viability of a CCE. The main two efforts include: 1) the Intra-County Study – which is a pro-bono “initial feasibility study” prepared by Pilot Power Group designed to provide high-level assessment of CCE feasibility within SLO County, and 2) the Tri-County Feasibility Study – which is a multi-jurisdictional feasibility study providing detailed analysis of eight geographical scenarios across SLO, Santa Barbara, and Ventura Counties (including the city jurisdictions within those counties).

The findings of the Intra-County study found there is high probability a new CCE program would cover its costs, generate net revenue, and maintain rate competitiveness with PG&E across a variety of scenarios. The Tri-County study concluded a newly created regional CCE program that spans the three counties is not likely viable in terms of the CCE program's ability to provide competitive rates and remain a solvent organization (both studies attached).

The studies did not consider the viability of joining an existing CCE, which is another option for cities such as Morro Bay. Of the in-development CCE's, Monterey Bay Community Power is the only one within PG&E service territory and the City could pursue joining that effort (to be discussed later in this report).

### **2018 Discussions of CCE**

Most recently, City Council reaffirmed its desire to pursue a CCE as a City-objective for 2018 during its annual goals and objectives process. In addition, at its December 12, 2017, Study Session, SLO City Council directed its staff to pursue forming a new CCE, in conjunction with other interested jurisdictions in SLO County and/or in PG&E territory of Santa Barbara County. If that option proves infeasible, then City of SLO staff are to pursue joining an existing CCE such as

Monterey Bay Community Power or other comparable alternatives.

Since that time, SLO's Mayor sent a letter to City jurisdictions within SLO County (attachment) to determine if there is interest among Morro Bay and other regional partners to participate in a joint CCE. They have requested City Council formally consider joining that effort to explore formation of a CCE program to start as soon as 2019. The City of SLO has offered to provide primary initial staffing resources for pursuit of a CCE. Initial steps include conducting and contracting for formation and operational support using existing models and a multi-vendor services RFP, wherein vendors are sought that will defer compensation, until the program generates revenue and then forming a Joint Powers Authority (JPA) amongst the participating cities. The key milestone, is to develop an agreed upon CCE Implementation Plan and submit to the California Public Utilities Commission (CPUC) for review by December 31, 2018.

Following receipt of that letter from the City of SLO, I discussed this regional opportunity with the SLO City Manager. I then met several times with newly hired City of SLO Sustainability Manager, Chris Read. The discussions included expectations for our City, in terms of staff time and financial contributions to the feasibility study and JPA formation, as well as project time line, deliverables, risks and discussion of pros and cons of the various alternatives to a JPA approach.

In addition to partnering with the City of SLO, this report provides several alternatives for City Council's consideration and direction to staff. Those other options include forming a Morro Bay CCE program that only includes our City, joining an existing CCE, or taking a pause and continuing to monitor options. Staff has provided a quick analysis of the various options, with proposed next steps associated with each option.

### **Option 1: Partner with City of SLO**

Preliminary analysis conducted by the City of SLO demonstrate there is a high probability of payback through pursuit of a local CCE. In a partnership, the cities would create a JPA to operate the CCE, and share in the decisions about power purchase agreements, local energy projects, operations and staffing. The main benefits of a local partnership are that the City of Morro Bay would maintain local control, gain economies of scale by partnering with a larger City with a far greater number of PG&E rate payers, and have the future option of leveraging wind farming should that become a reality locally. The cons include a slower implementation process, potential additional risk to the City, and it would be more staff intensive than some of the other options.

The next steps in a potential partnership with the City of SLO would include the City of SLO preparing a Request for Proposal (RFP) to contract with a firm to energy and technical services for design and operation of CCE program. The City Council of SLO will consider this at their May 15, 2018 meeting. Should their staff receive direction to move forward, the RFP will be released later in May, with proposals reviewed in June and a selection made in July. Staff representatives from the City of Morro Bay will be able to provide comments on the RFP document and participate in the evaluation and selection process. The successful proposer will undertake the development and launch of the program at their own risk and would receive on-going operation fees after and contingent upon the successful launch of the CCE program. If the City undertook this approach it would essentially mean no costs, short of \$2,000 to purchase electricity load data, would be borne by the City until revenues from the operating CCE program are received.

The initial phase of the successful proposer's work would be to conduct an overall cost-benefit analysis and technical analysis to determine viability of a joint CCE. At that point, sometime in September 2018, the respective City Councils of Morro Bay and SLO will make the determination to either move forward together, form separate CCE, join existing an CCE, pause or shelve the effort all together. If a decision is made to move forward together, the cities would then begin the process of entering into a JPA, which would need approval from both City Councils. The successful proposer would then undertake all functions necessary to comply with CPUC regulations related to launching a CCE program. The main deliverable is submission of the CCE implementation plan to the California Public Utilities Commission (CPUC) by December 31, 2018.

Based upon the recently issued CPUC Resolution E-4907, agencies much submit an Implementation Plan to the CPUC by January 1, 2019 in order to begin serving customers in 2020. Thus, if the City pursues a CCE with City of SLO, or on its own or with an existing CCE, it would need to submit its formal interest via an Implementation Plan by the end of this year to begin service in 2020. Should a decision be made to pause this year, the City would then need to submit a plan by January 1, 2020 to begin service in 2021, and so on with each delay.

The City of SLO will be seeking a decision from the Morro Bay City Council to help inform their next steps at their May 15, 2018 meeting. The City of SLO is prepared to move forward on its own to create a CCE should the City of Morro Bay decline to partner formally at this time.

### **Option 2: Form Individual CCE**

Using similar components of the model described above, the City could pursue a CCE on its own. The main benefits extended to the City would be local control. The cons of this approach include additional risk to the City, intensive use of staff resources and loss of economies of scale by going it alone. The next steps for this option would include issuing an RFP for services to conduct the feasibility analysis and create the Implementation Plan to submit to the CPUC prior to January 1, 2019, to begin services in 2020. It's not clear that these dates would be obtainable given the work plan already developed for the remainder of 2018.

### **Option 3: Join Existing CCE**

The only in-development CCE in the PG&E service territory is the Monterey Bay Community Power (MBCP), which consists of a Joint Powers Authority between the Counties of Monterey, Santa Cruz, and San Benito. MBCP has already obtained all the financing and funding needed to operate and is projecting approximately \$39 million in net revenue in its first year of operation (partial year, 2018), and approximately \$40-50 million in net revenue in its first full year of operation (2019). The agency has discretion to set its rates to be identical to PG&E rates with customer credits issued annually or quarterly depending upon customer class, and their standard electricity portfolio is 100% carbon free by purchasing from hydroelectricity sources.

According to MBCP, the cost for the City of Morro Bay to join MBCP would be approximately \$25,000 - \$50,000 to cover consultant costs associated with amending MBCP's Implementation Plan and resubmittal to the CPUC for re-certification. Should the City pursue this option, they would need to work with MBCP on negotiating its voting power, and then have the MBPC submit the Implementation Plan to the CPUC by the end of 2018. The City of Morro Bay would then be able to provide service in 2020.

The pros for joining the MBCP is its relatively cost effective, low risk, and would not be staff intensive. The cons for this approach include significant loss of local control, as the City would have just one vote, at best, among many, to make decisions with regard power purchase agreements and use of revenue for local energy projects.

**Option 4: Pause**

The City could decide to pause or discontinue pursuit of a CCE. The main benefit of taking a pause is that a potential new and better CCE model could emerge. This field is relatively new and prone to disruptions that can bring additional benefits to future CCE participants. Conversely, the City would lose out on the opportunity to purchase greener energy sooner, as well as potential economic benefits of participating in a CCE. In addition, the regulatory environment is rapidly changing and may preclude future options for the City of Morro Bay.

**Comparison of Options**

City Council has several options to consider and the following graphic, created by the City of SLO to help their Council understand the pros and cons of the various options, should help in determining the best course of action.

	Speed	Cost	Risk	Local Control	Regionalism <sup>1</sup>
<b>Form a New CCE Program</b>					
City of Morro Bay Only	Med	Low-High	Med/High	High	Low
City of SLO + Morro Bay	Med	Low/Med	Med	Med	Med
Monitor/Join Tri-County Effort <sup>2</sup>	Slow	Med	Med	Med	High
<b>Join an Existing Program</b>					
	Fast	Low	Low	Low	Low
<b>Discontinue or Pause Pursuit</b>					
	n/a	n/a	n/a	n/a	n/a

<sup>1</sup> A regional approach (multiple jurisdictions) to reducing Greenhouse Gas Emissions in San Luis Obispo

<sup>2</sup> At this time the results of the new study are unknown

## Questions for City Council Consideration

Staff has provided the following focused questions to facilitate City Council direction to help guide the City Council in their deliberations.

Questions for City Council direction		
	Yes	No
<b>A. Pursuit of Community Choice Energy (CCE)</b>		
1. Continue pursuit of CCE		
2. Pause pursuit of CCE		
3. Discontinue pursuit of CCE		
<b>B. Form a new Community Choice Energy program?</b>		
1. City of Morro Bay Only?		
2. City of Morro Bay and SLO?		
3. Continue to monitor the tri-county effort and possibly join Santa Barbara?		
<b>C. Join an Existing Program?</b>		
1. Monterey Bay Community Power or research additional alternatives outside of PG&E service territory?		
<b>D. Evaluation Factors</b>		
1. What criterion or set of criteria should be prioritized in evaluating CCE options?		
a. Renewable portfolio		
b. Pricing		
c. Governance (i.e. local control vs. ease/cost of administration)		
d. Risk tolerance		
e. Other		

## Staff Recommendation

City staff recommends pursuing the option to partner with City of San Luis Obispo to create a CCE, as it allows for local control without the need to expend significant staff and General Fund resources. City Council will have more information this summer regarding the viability of the partnership and can make a decision in September about moving forward with a JPA. There is no cost for this option, beyond \$2,000 for load data. Should it be determined in September that this option is not viable the City can pause or pursue an alternative option.

## **CONCLUSION**

CCA offers many benefits to the community. Initial feasible studies have determined that a local CCE is viable, but more information is required prior to moving forward with an implementation plan. Staff recommends partnering with the City of San Luis Obispo on an RFP to obtain the services of a firm to conduct the required analysis to make an informed decision in September about moving forward with a JPA or pause or move in a new direction on a CCE.

## **ATTACHMENTS**

1. City Council Resolution 47-13
2. Staff Report – December 7, 2015 City Council Meeting
3. Intra-County CCE Feasibility Study
4. Tri-County CCE Feasibility Study
5. Letter from San Luis Obispo Mayor Harmon, February 2, 2018

**RESOLUTION NO. 47-13****RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
CONFIRMING CITY OF MORRO BAY'S PARTICIPATION IN A  
COMMUNITY CHOICE AGGREGATION (CCA) FEASIBILITY STUDY****THE CITY COUNCIL  
City of Morro Bay, California**

**WHEREAS**, the Morro Bay City Council has demonstrated its commitment to increasing energy efficiency, and to supporting more broad availability and use of local renewable power sources within the City; and

**WHEREAS**, Community Choice Aggregation (CCA) is a mechanism through which an authority, represented by participating local governments within its jurisdiction, procures electrical power on behalf of its residential and commercial customers; and

**WHEREAS**, Pacific Gas & Electric Company (PG&E) remains an important partner, responsible for reliable delivery of power and enhancement and maintenance of grid infrastructure; and

**WHEREAS**, the Morro Bay City Council has identified CCA as a potential strategy that could be very effective in helping the City meet its AB32 greenhouse gas reduction targets; and

**WHEREAS**, Community Choice Aggregation, if determined to be technically and financially feasible, could provide substantial environmental and economic benefits to all residents and businesses in the City of Morro Bay; and.

**WHEREAS**, Community Choice Aggregation provides the opportunity to fund and implement a wide variety of energy related programs of interest to the community; and

**WHEREAS**, in addition to technical and financial feasibility, it is important to determine whether there is adequate public support for Community Choice Aggregation; and

**WHEREAS**, it is intended for the CCA Exploration Advisory Committee (CEAC) to be an advisory group comprised of local agency staff, local elected officials or their designees, and members of the public with expertise in energy, financial and/or organizational mechanisms; with the charge to develop CCA feasibility information and to advise the Morro Bay City Council and participating local agencies; and

**WHEREAS**, determining technical and financial feasibility requires obtaining and analyzing energy load data from PG&E, and conducting public education and outreach.

**NOW, THEREFORE, BE IT RESOLVED** by the Morro Bay City Council that:

1. The City of Morro Bay agrees to participate in an inter-jurisdictional effort to investigate the feasibility of Community Choice Aggregation (CCA), including support for efforts by a CCA Exploration Advisory Committee (CEAC) to guide preparation of a feasibility study, without obligation of the expenditure of any City Funds unless separately authorized in a future action by the Morro Bay City Council.
2. The Morro Bay City Council authorizes an individual (City staff or City Council member) to participate as a member of the CEAC.
3. The City Manager is authorized to execute the appropriate documentation to allow the CEAC and its technical consultants to request energy usage load data from PG&E so it may be analyzed as part of the feasibility study
4. Adoption of this Resolution in no way binds or otherwise obligates the City of Morro Bay to participate in a Community Choice Aggregation program.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 10<sup>th</sup> day of September, 2013, by the following vote:

AYES: Irons, C. Johnson, N. Johnson, Leage, Smukler,

NOES: None

ABSENT: None

ATTEST:

  
\_\_\_\_\_  
JAMIE L. IRONS, Mayor

  
\_\_\_\_\_  
JAMIE BOUCHER, City Clerk



the economic benefits, risks and feasibility of creating a CCA in SLO County. Other regions in California are also exploring creating a CCA including Monterey, Santa Cruz and San Benito Counties, along with the communities within those counties.

Based on the presentation from SLO Clean Energy, in September 2013, the City Council adopted Resolution 47-13 which stated the City Council's interest in exploring CCA and appointed representation (Mayor Irons/Councilperson Smukler) to participate in the steering committee. It did not commit or otherwise bind the City to participate in a CCA, if one were established; however, it could result in a future request in a contribution from the General Fund if the organization was not able to secure private funds to cover the feasibility study. SLO Clean Energy continues to work to establish a CCA in San Luis Obispo County.

In September of this year, the Council received a presentation from California Clean Power Corporation (CCP) which proposed to contract with the City to provide staff resources to assist the City with operating a new model to establish a CCA. The representative from CCP discussed the economic, local control and environmental benefits of CCA. The economic benefit is achieved by not paying the profit portion for the electric power bill to the for-profit regional provider. The three legs of the CCA stool that need to be balanced are rates, revenue, and renewables; those three legs are balanced locally. CCP is a duly registered California corporation since October 23, 2014, that promotes the triple bottom line social, environmental and financial aspects of projects. CCP provides the technical expertise and support communities need to manage a CCA, which could also be provided by increasing City staffing or other delivery models. CCP purports to be able provide CCA benefits to small communities, which would be otherwise infeasible.

In the draft report prepared by CCP regarding Community Choice, it provided background on CCA and how it has worked in other areas such as Marin and Sonoma counties, along with Community Choice Programs in other states. The report also touches on the financial risks associated with a CCA due to the energy market pricing volatility, regulatory and legislative risk. Financial risk is the primary concern, due to market volatility and if rate increases are required can lead to customer leakage from the CCA program back to PG&E as an energy provider. That risk is somewhat mitigated in that fixed price renewables provide a buffer against wholesale market energy pricing. The report also uses the specific PG&E electric usage data from Morro Bay to determine cost benefit of the CCA program and opines, creating a CCA on its own is not feasible since the energy load of Morro Bay is too small to generate sufficient program revenue to support the required expenses. The report concludes, through regionalization of a CCA either by forming partnerships with other jurisdictions or partnering with a firm such as CCP, Morro Bay could realize the benefits of a CCA.

#### *Other Community Choice Efforts in the County*

In April, the San Luis Obispo City Council passed a resolution in support of exploring a CCA program with other interested municipalities such as other cities and San Luis Obispo County.

On October 6, the County Board of Supervisors voted to look at two options to participate in a CCA program. The first was to prepare a feasibility study being led by Santa Barbara County. Ventura County was also invited and has agreed to participate. Santa Barbara County has requested San Luis

Obispo County contribute \$50,000 to the feasibility study, which would include all of San Luis Obispo County and all cities if they desire to participate. It is not known whether the seven cities would be willing to participate or contribute to the costs for participation. San Luis Obispo County would be an equal partner in the feasibility study. Ventura County has also contributed \$50,000, which includes the unincorporated county and ten cities. The contract with Santa Barbara County and the exact details of the scope of work for the feasibility study would be developed after participation was authorized. The second option the County Board approved was to join with the City of San Luis Obispo to participate in an inter-jurisdictional pre-feasibility study for a CCA program within the county of San Luis Obispo. The pre-feasibility study is offered at no cost by CCP and CCA program partners and includes analysis of regional energy usage data from PG&E.

### **CONCLUSION**

CCA offers many benefits to the community, but is not without its risks and may result in higher energy costs for the community. It is clear by the preliminary analysis provided by CCP, a CCA program for Morro Bay is only feasible and the risk is mitigated through a regional program with other jurisdictions or through partnerships with a firm like CCP, but with the loss of some self determination.

### **ATTACHMENTS**

1. City Council Resolution 47-13
2. Community Choice Program – Feasibility Report, June 2015



2017

# Abbreviated Technical Review of Community Choice Energy

CITY OF SAN LUIS OBISPO AND UNINCORPORATED COUNTY OF SAN  
LUIS OBISPO

PILOT POWER GROUP | 8910 University Center Lane, Suite 520 San Diego, CA 92122

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## Executive Summary

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California Community Choice Energy (CCE) laws and regulations allow cities and counties to procure electricity for their residents, businesses and municipal facilities. A CCE program provides citizens with an alternative to a single monopoly electric supplier and local control over a number of key electric procurement related choices. The local control can result in rate savings, cleaner energy, local economic development, customized programming, and many other community-based possibilities.

Adopted in 2002, California Assembly Bill 117 (AB 117), as later supplemented in 2011 by California Senate Bill 790, provides the broad framework under which CCE operates. Under AB 117, local governments procure electricity for retail customers aggregated within their boundaries, while the investor-owned utility (IOU) continues to provide transmission, distribution, metering, billing, payment collection, customer care, and other services.

When a CCE is ready to begin service to customers, all of the CCE jurisdictional customers are automatically enrolled in the CCE electric procurement service. Any customer who prefers to continue to receive procurement service from the IOU may, without penalty, opt-out of the CCE. Because the CCE is now procuring electricity for the CCE customer, the charge for the CCE electric procurement appears on the IOU bill, along with an additional charge called the Power Charge Indifference Adjustment (PCIA). The PCIA is imposed on CCE customers to ensure that customers opting out of CCE service are not financially impacted by the formation and operation of the CCE.

Since Marin Clean Energy launched in 2010, seven additional CCE programs have become operational. About half a dozen CCE programs are very close to launching, and much more are under serious consideration. Nearly all of the operational, and most of the planned, CCE programs are multi-jurisdictional joint powers authorities. The City of Lancaster has, however, operated a single-jurisdiction CCE for almost three years, and plans for other single-jurisdiction CCE programs are currently underway.

This abbreviated technical review is provided to the County of San Luis Obispo (SLO County) and the City of San Luis Obispo (SLO City) as a preliminary evaluation of the financial viability of establishing a CCE program. However, this review is by no means a complete analysis of a CCE. If SLO County, SLO City or both elect to take the next steps in moving forward with establishing a CCE, it is strongly encouraged that a full technical analysis and review be completed by a management consulting firm to determine the feasibility of establishing a CCE.

There are several initial assumptions used in the “baseline” feasibility model. These assumptions include an uncollected factor of 0.25%; the opt-out rate of 20%; and renewable purchase to follow the standard RPS schedule. There is no consideration is made for rate stabilization fund, project and programming fund, or accounting for debt service. These items would have to come out of available headroom and are specific to each CCE structure. It is best to establish a “baseline” and make adjustments to the model from the baseline. This way one can identify the impact of making a change to the model.

The review evaluates the financial viability of a City, County and Combined CCE program by:

- Forecasting the electricity load requirements and potential customers by class;
- Estimating the costs of procuring the electric supply;

- Estimating the costs of administering the CCE program;
- Evaluating the impact of changes to the review assumptions on the projected feasibility outcomes by completing two scenarios based on the renewable content and customer rate reduction.

Two (2) scenarios were completed for each jurisdiction, identifying the possible headroom available to the CCE:

- Scenario 1 – Renewable Portfolio Standard (RPS) Compliant
- Scenario 2 - 50% Renewable Energy

A summary of the results of the expected outcomes and sensitivity analysis is outlined below:

Year	Criteria	City		County		County and City	
		Scenario 1	Scenario 2	Scenario 1	Scenario 2	Scenario 1	Scenario 2
2018	Probability Revenue is > \$0.00	76%	65%	63%	48%	67%	51%
	Expected Revenue*	\$1,615,225	\$854,189	\$2,285,884	\$198,967	\$3,908,504	\$1,060,548
	Certainty Level**	45.29%	46.63%	45.46%	46.80%	47.09%	46.67%
2018-2022	Probability Revenue is > \$0.00	100%	100%	100%	99%	100%	98%
	Expected Revenue	\$14,093,511	\$10,834,614	\$27,171,335	\$18,248,709	\$41,260,248	\$29,078,711
	Certainty Level	58.69%	58.11%	58.94%	58.77%	59.59%	58.72%
2018-2027	Probability Revenue is > \$0.00	100%	100%	100%	100%	100%	100%
	Expected Revenue	\$34,330,515	\$29,331,450	\$70,516,335	\$56,847,625	\$104,815,718	\$86,147,916
	Certainty Level	87.25%	86.98%	86.62%	87.01%	86.51%	87.61%
	Potential rate reduction***	5.58%	4.77%	4.26%	3.44%	4.62%	3.80%

\* "Expected Revenue" indicates the net revenue as predicted by the model

\*\* "Certainty level" indicates probability of net revenue equaling or exceeding the expected model outcome

\*\*\* "Potential rate reduction" provides a rough estimate of annual reduction across all rate classes if all net revenue were applied to reducing rates

The results of the feasibility model provided positive headroom for all years, for all scenarios and jurisdictions. In Scenario 1 the most headroom is made available for the CCE. This scenario, in all jurisdictions, provides the minimum renewable energy needed to remain compliant with the RPS rules outlined by the California Public Utilities Commission (CPUC). The CCE portfolio content will have 29% renewable energy beginning in 2018 and will increase by 2% each and every year thereafter. Scenario 1 assumes as close to what the IOU's renewable energy portfolio would be over a ten-year period.

The primary difference between the County results and the City results is the size of load and number of accounts. The County energy load is much larger than the City energy load, with the largest contributors being large commercial and agriculture making up approximately 43.3% of the overall load. Whereas, the City energy load is relatively evenly split between residential, small, medium and large commercial customer.

In Scenario 2, there was positive headroom for all years and for all jurisdictions. However, as expected, the headroom has decreased due to the higher percentage of renewable energy in the portfolio, increasing to 50% for all years. The cost of renewable energy is purchased at a premium to the cost of system energy. However, the CCE still have available headroom and would be rate competitive with the IOU.

The certainty level is relatively the same between jurisdictions. However, the certainty level is slightly higher in Scenario 2 versus Scenario 1 due to the higher component of system energy which is more volatile than renewable energy. Although, both renewable energy and system energy is subject to market fluctuation.

## Model Assumptions

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The Model has the flexibility to modify multiple assumptions, the Baseline assumptions are highlighted in red. Furthermore, the descriptive statistics are provided on any variable that was allowed to fluctuate during the sensitivity analysis.

- Rate Reduction – 0%, unless the scenario requires it
- Uncollected Factor – 0.25%
- Opt-out Rate – 20%, sensitivity analysis allows opt-out rate to fluctuate using a normal distribution with parameters: mean 20% and standard deviation 2.0%
- Renewable Purchase – Standard RPS schedule, unless the scenario requires a specific percentage
- GHG Purchase – 0%
- Rate Stabilization Fund – 0%
- Renewable Category 2 Override – No
- Opt-up 100% Renewable Program – 0%
- NP15 On Peak – Sensitivity analysis allows on-peak prices to fluctuate using a lognormal distribution with parameters: mean \$37.77, the standard deviation of \$8.25, and coefficient to NP 15 Off Peak of 0.98. Statistical information based on historical NP 15 On Peak prices between 2009 – 2016.
- NP15 Off Peak - Sensitivity analysis allows off-peak prices to fluctuate using a lognormal distribution with parameters: mean \$29.50, the standard deviation of \$8.16, and coefficient to NP 15 On Peak of 0.98. Statistical information based on historical NP 15 Off Peak prices between 2009 – 2016.

## Scenarios

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Two (2) scenarios were completed for SLO City, SLO County, and SLO City and County combined. Each scenario identified the possible headroom available to the CCE. All scenarios consisted of a combination of renewable energy component and some level of rate reduction.

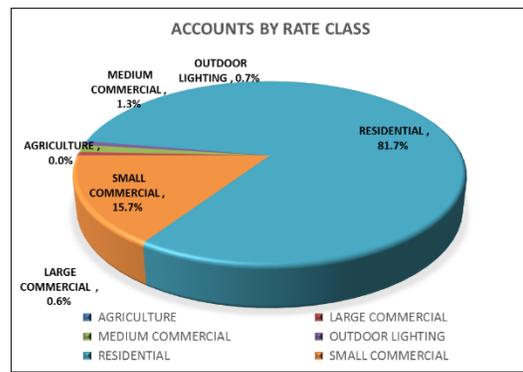
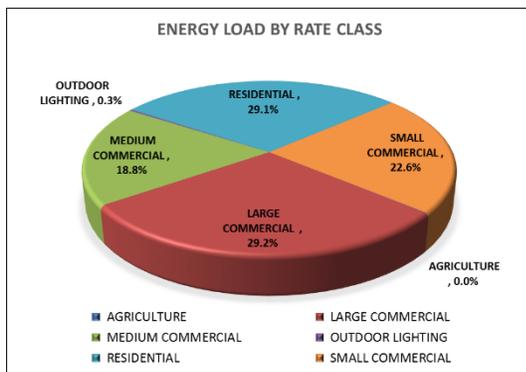
- Scenario 1 - RPS Compliant (following the CPUC RPS Compliance Rules) and zero rate reduction are given to customers. This scenario is considered the baseline.
- Scenario 2 - 50% Renewable Energy and zero rate reduction given to customers.

## City of San Luis Obispo

Based on historical utility load data provided by Pacific Gas & Electric (PG&E), the total annual load was 271,342 MWh with 22,971 accounts. Direct Access load was removed from the analysis since it is unknown whether a Direct Access customer would elect to participate in the CCE. The consumption between rate class is relatively evenly distributed between small commercial, medium commercial, large commercial, and residential ranging from 51,000 MWh to 79,000 MWh. However, looking at accounts by rate class, the majority of the accounts are residential at 18,764 or 81.7%.

Rate Class	Annual MWh	Rate Class Percentage
AGRICULTURE	125	0.0%
LARGE COMMERCIAL	79,152	29.2%
MEDIUM COMMERCIAL	51,091	18.8%
OUTDOOR LIGHTING	821	0.3%
RESIDENTIAL	78,895	29.1%
SMALL COMMERCIAL	61,259	22.6%
<b>Total</b>	<b>271,342</b>	<b>100.0%</b>

Rate Class	Bundled Accounts	Rate Class Percentage
AGRICULTURE	10	0.0%
LARGE COMMERCIAL	137	0.6%
MEDIUM COMMERCIAL	305	1.3%
OUTDOOR LIGHTING	160	0.7%
RESIDENTIAL	18,764	81.7%
SMALL COMMERCIAL	3,595	15.7%
<b>Total</b>	<b>22,971</b>	<b>100.0%</b>



Using the data provided, the model increases load and accounts year-over-year by 0.25% and 0.50%, respectively. The growth assumptions were provided by the California Energy Commission (CEC) California Energy Demand Forecast for 2015 – 2025. A baseline opt-out rate of 20% was utilized for all rate classes for all years, resulting in a decrease of overall accounts remaining in the CCE. Although other CCEs has experienced lower opt-out rates, it is believed 20% is a conservative case to use in the feasibility analysis. The sensitivity analysis does allow the opt-out rate to fluctuate between 15% and 25%. At launch, following the increases in load and accounts by 2018, there would be ~18,543 accounts remaining in the CCE. The annual retail load associated with the accounts remaining would be ~219,406 MWh in the first year of the CCE, but would marginally increase year-over-year due to increased customer accounts and load. The total CAISO required load would be ~231,935 in the first year, the delta between retail load and CAISO load is considered the energy waste resulting from the transmission of electrical energy across power lines or line losses.

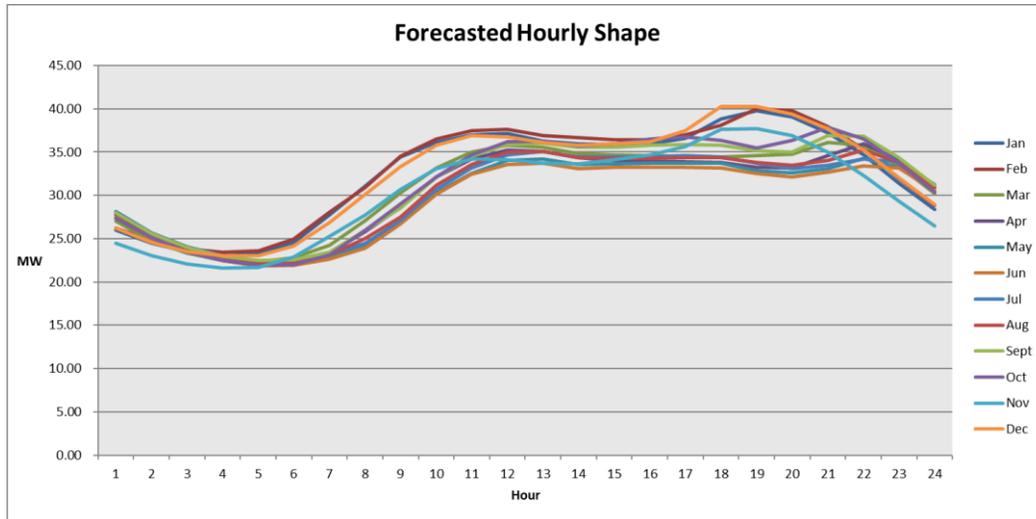
Customer Load (MWh)	2018	2019	2020	2021	2022	2023
Residential	64,067	64,388	64,709	65,033	65,358	65,685
Small Commercial	49,746	49,995	50,245	50,496	50,748	51,002
Medium Commercial	41,489	41,696	41,905	42,114	42,325	42,536
Large Commercial	64,276	64,597	64,920	65,245	65,571	65,899
Agricultural	100	100	100	100	100	100
Lighting	821	821	821	821	821	821
<b>Total Retail Load (MWh)</b>	<b>219,406</b>	<b>220,499</b>	<b>221,597</b>	<b>222,700</b>	<b>223,809</b>	<b>224,923</b>
<b>Total CAISO Load (MWh)</b>	<b>231,935</b>	<b>233,090</b>	<b>234,250</b>	<b>235,417</b>	<b>236,589</b>	<b>237,767</b>

Customer Accounts	2018	2019	2020	2021	2022	2023
Residential	15,124	15,162	15,200	15,238	15,276	15,314
Small Commercial	2,898	2,905	2,912	2,919	2,927	2,934
Medium Commercial	244	244	244	244	244	244
Large Commercial	110	110	110	110	110	110
Agricultural	8	8	8	8	8	8
Lighting	160	160	160	160	160	160
<b>Total Accounts</b>	<b>18,543</b>	<b>18,588</b>	<b>18,634</b>	<b>18,679</b>	<b>18,724</b>	<b>18,770</b>

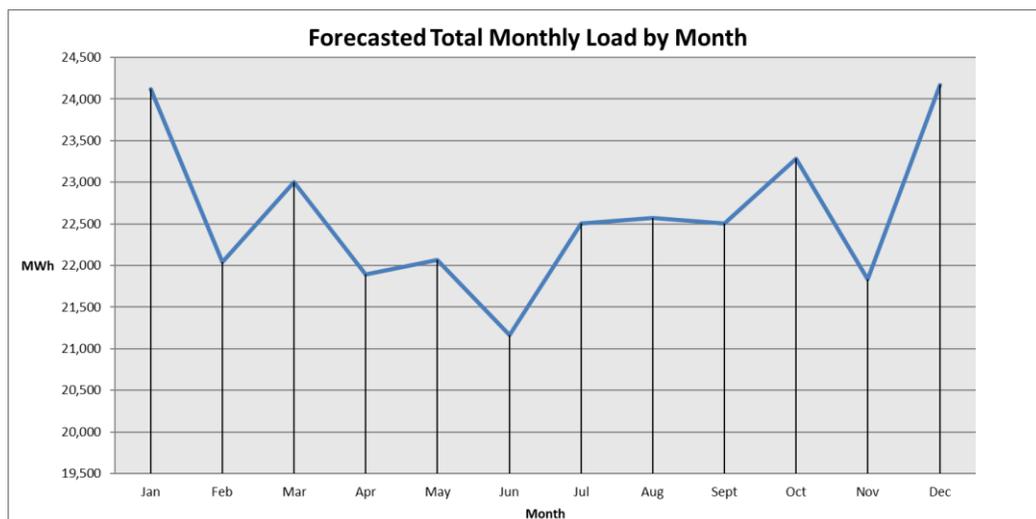
## Load Profile and Shape

It is the responsibility of the CCE to procure energy and related services. Forecasting, profiling, and risk management are the primary tasks conducted for energy procurement. In doing so, one must evaluate the load data provided by the utility.

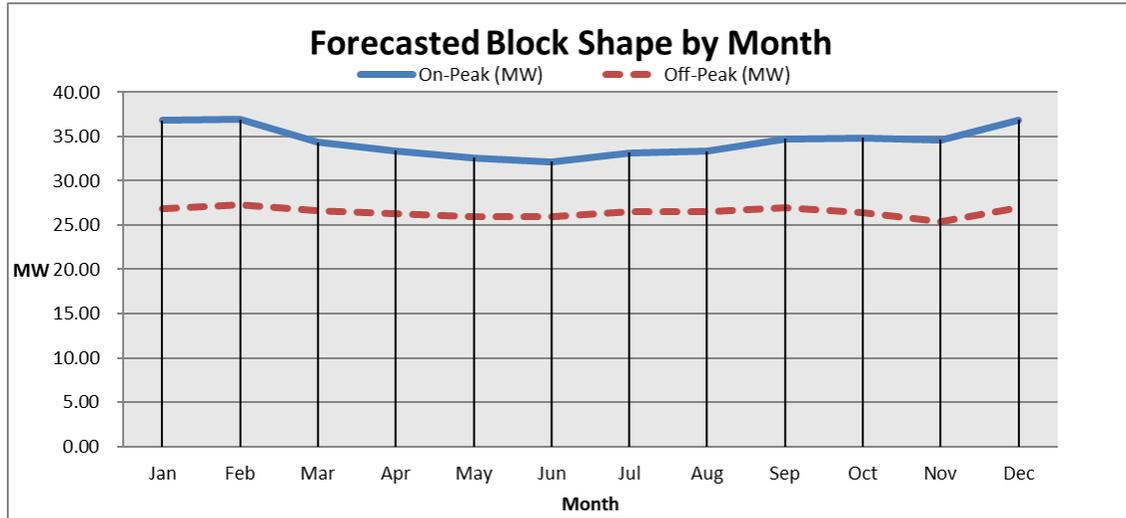
Using data provided by PG&E, we are able to illustrate the forecasted hourly load shape by month. The Forecasted Hourly Shape graph demonstrates the expected load consumed in each hour over a 24-hour period by month. As expected, there is a higher demand for energy during the peak demand over a day.



Furthermore, we are able to illustrate the forecasted total monthly load over the calendar year. As expected, there is a higher expected consumption during the winter months due to shorter daylight hours.

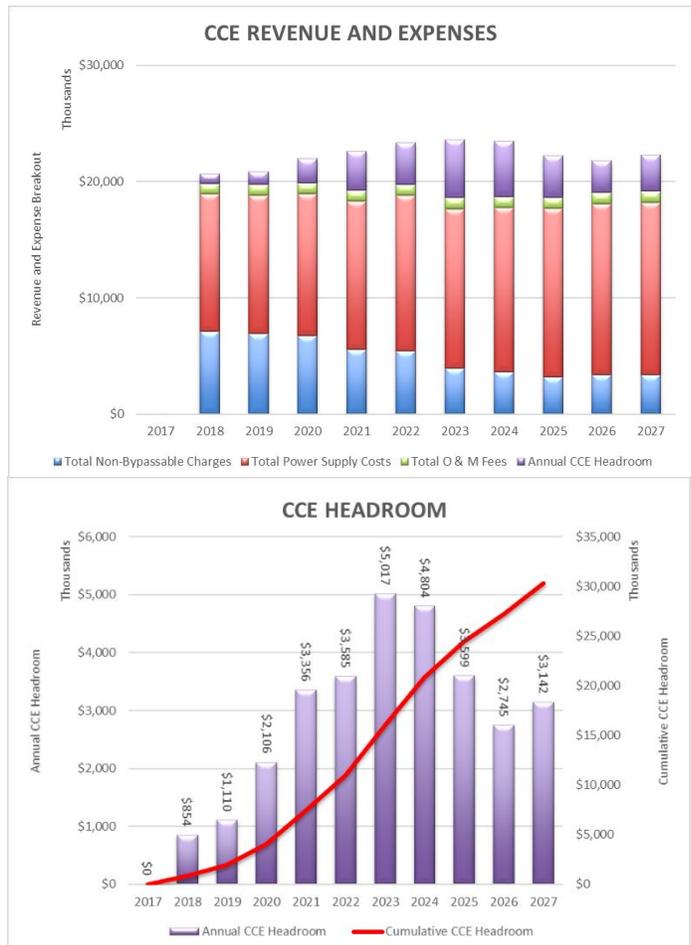


Finally, we are able to illustrate the forecasted on-peak and off-peak block shape by month. This information is vital when purchasing block energy from the wholesale market.



### Scenario 1 – RPS Compliant (Baseline)

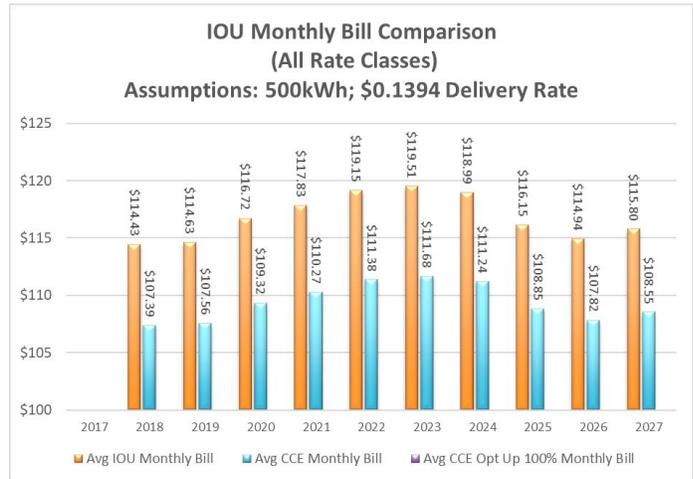
The RPS Compliant or baseline scenario would demonstrate the profitability of the CCE if it followed the minimum RPS requirement outlined by the CPUC. In the CCE Revenue and Expense charge, each colored section represents the fees associated with a CCE. The purple section is the net CCE revenue or headroom off the CCE. The largest expense associated with a CCE is power supply costs, identified in the red section. The blue section represents non-bypassable charges, which are fees associated with the PG&E and include, but limited to, franchise fees, PCIA charges, and DWR Bond fees. The non-bypassable charges are forecasted to decline with the elimination of the bond fee, and the cost of PG&E’s resources is increasing. However, if prices decline further, that would have upward pressure on the PCIA charges, putting pressure on headroom for the CCE. In the simulation analysis, the PCIA is allowed to fluctuate due to changes in the market prices. Finally, the green section represents O&M fees associated with running a CCE. As no structure has been outlined



by the county or city, an average of cost was applied similarly to the administrative costs associated with Sonoma Clean Power and Marin County Energy. The CCE Headroom chart provides a closer view of the forecasted year-over-year annual headroom for the CCE. The red line is the cumulative CCE headroom over the ten-year period.

### Alternative - RPS Compliant with a Rate Reduction

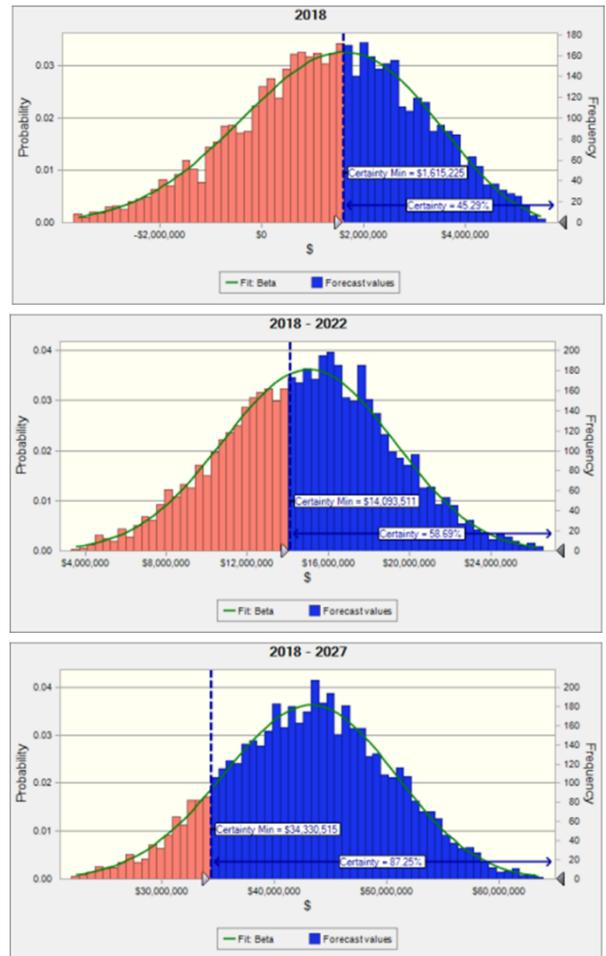
As an alternative to Scenario 1, any available headroom could be applied as a rate reduction over a 10-year period. When applying the available headroom as a rate reduction, the CCE will have zero (\$0) at the end of the 10 years. This provides an average rate reduction of 5.58% over the 10 years. When comparing a customer's monthly billing, the rate reduction lowers the monthly bill by an average of \$88.91 per annum over a ten-year period. The chart illustrates the average monthly invoice, across all rate classes and a consumption of 500 kWh per month and a delivery rate of \$0.1394 per kWh.



## Simulation Analysis

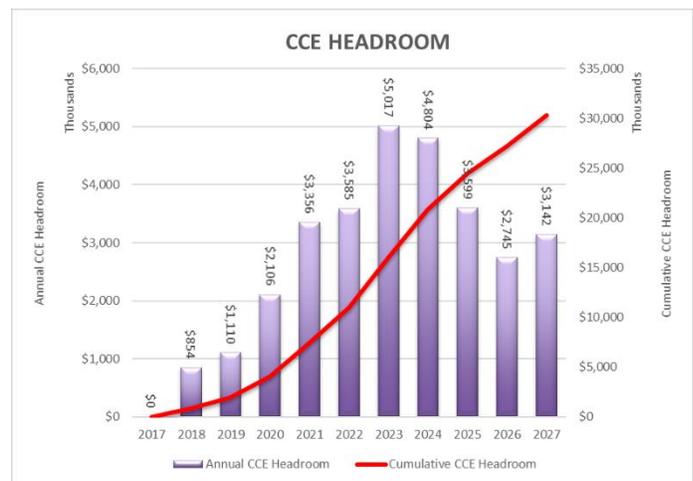
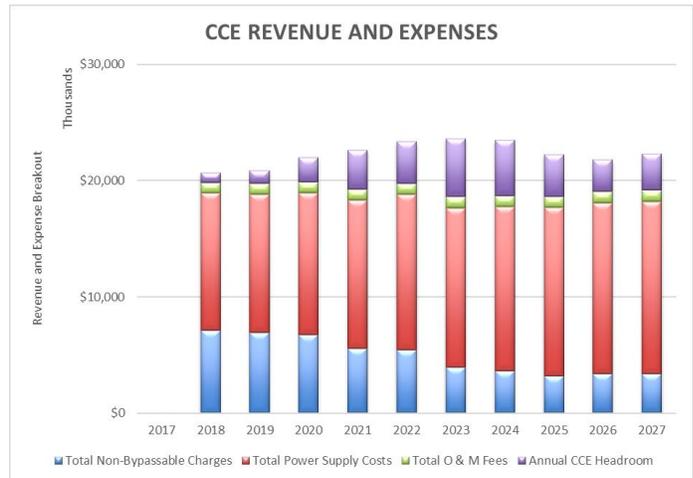
Compared with many other CCA feasibility studies, this abbreviated study takes a modified approach to sensitivity analysis, instead of the conventional low-medium-high approach, this study utilizes a Monte Carlo simulation to determine a range of values and probabilities. The Monte Carlo simulation randomly generates a range of values for the assumption that has been pre-defined. The inputs feed into defined forecast cells, providing a range of possible outcomes, which are expressed as a distribution graph. The distribution can be used to provide an estimate of the probability or certainty of a particular outcome. Pilot considers this approach to provide a more accurate and meaningful analysis.

For the sensitivity, three periods of cumulative CCE headroom are highlighted in the analysis: year 2018, years 2018-2022, and years 2018-2027. Allowing variables such as opt-out rates and forward prices on system generation to fluctuate, the probability of 2018 City CCE headroom to be greater than the expected outcome is 45.29%. The modeled expected headroom is \$1,615,225, with a mean of \$1,334,612 and a median of \$1,402,297. The probability of the City 2018-2022 CCE headroom to be greater than the modeled expected outcome of \$14,093,511 is 58.69%, with a mean of \$14,947,479 and a median of \$15,059,219. Finally, the probability of the City CCE 2018-2027 headroom to be greater than the modeled expected outcome of \$34,330,315 is 87.25%, with a mean of \$42,904,220 and a median of \$43,084,122.



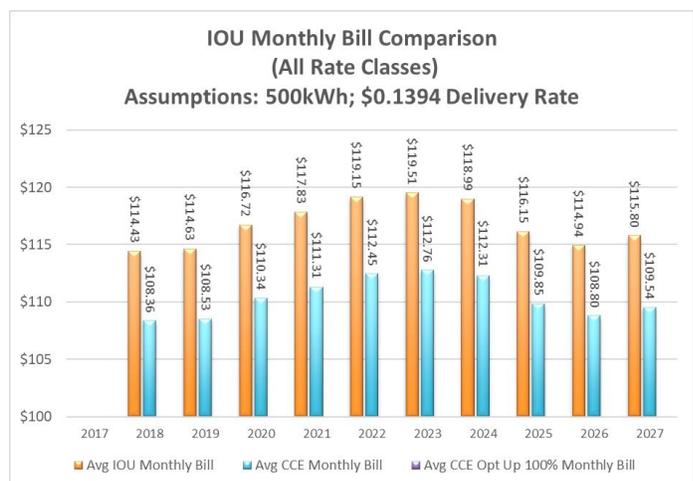
## Scenario 2 – 50% Renewable Energy

In the second scenario, the renewable component has increased to 50% exceeding the RPS requirements outlined by the CPUC. There is no rate reduction applied in this scenario. Under the higher renewable energy scenario, the headroom for the CCE falls by ~\$761,000 each year. The lower headroom is due to the cost or premium paid to purchase additional renewable energy over and above the RPS compliance requirement.



## Alternative – 50% Renewable Energy with a Rate Reduction

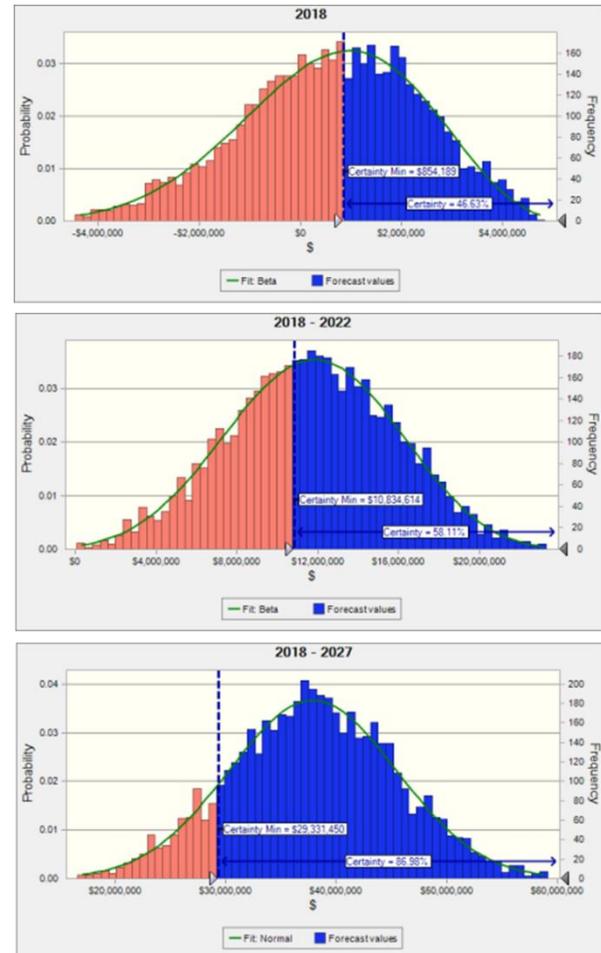
As an alternative in Scenario 2, any available headroom could be applied as a rate reduction over a 10-year period. When applying the available headroom as a rate reduction, the CCE will have zero (\$0) at the end of the 10 years. This provides an average rate reduction of 4.77% over the 10 years. When comparing a customer's monthly billing, the rate reduction lowers the monthly bill by an average of \$76.68 per annum over a ten-year period. The chart illustrates the average monthly invoice, across all rate classes and a consumption of 500 kWh per month and a delivery rate of \$0.1394 per kWh.



## Simulation Analysis

We performed a sensitivity analysis on multiple variables that are key to determine a probability of a specific outcome, in this case, forecasted headroom. Using a statistical modeling simulation software, we were able to derive probabilistic frequency curves. These curves are formulated by running thousands of trials of the model which allow the key variables to fluctuate based on specific parameters.

For the sensitivity, again three periods of cumulative CCE headroom are highlighted in the analysis: year 2018, years 2018-2022, and years 2018-2027. Allowing variables such as opt-out rates and forward prices on system generation to fluctuate, the probability of 2018 City CCE headroom to be greater than the expected outcome is 46.63%. The modeled expected headroom is \$854,189, with a mean of \$617,382 and a median of \$707,329. The probability of the City 2018-2022 CCE headroom to be greater than the modeled expected outcome of \$10,834,614 is 58.11%, with a mean of \$11,690,356 and a median of \$11,686,958. Finally, the probability of the City CCE 2018-2027 headroom to be greater than the modeled expected outcome of \$29,331,450 is 86.98%, with a mean of \$37,866,887 and a median of \$37,893,785.

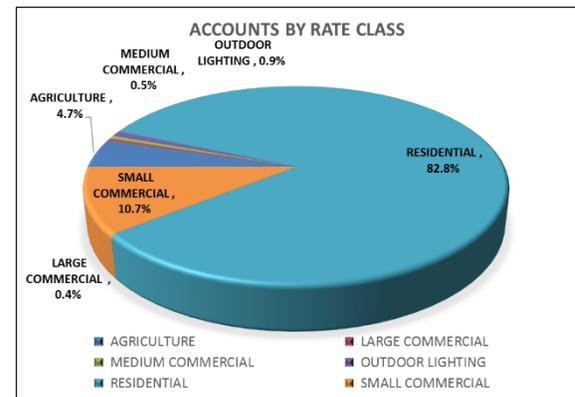
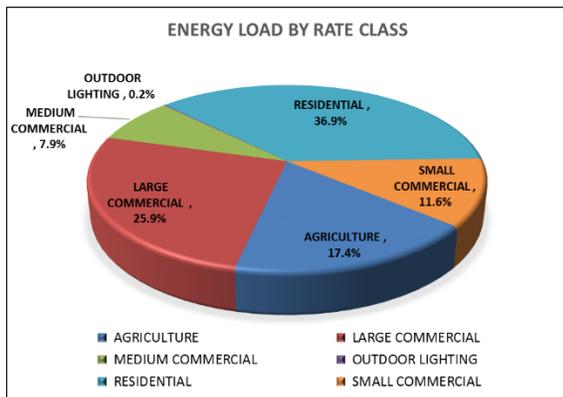


# Unincorporated County of San Luis Obispo

Based on historical utility load data provided by PG&E, the total annual load was 745,275 MWh with 58,801 accounts. Direct Access load was removed from the analysis since it is unknown whether a Direct Access customer would elect to participate in the CCE. As expected, the consumption between rate classes would vary from the City data. Large commercial and agricultural load is taking a larger segment of consumption at 25.9% and 17.4%, respectively, followed by residential customer load at 36.9%. However, looking at accounts by rate class, the majority of the accounts are residential at 48,676 or 82.8%.

Rate Class	Annual MWh	Rate Class Percentage
AGRICULTURE	129,855	17.4%
LARGE COMMERCIAL	193,117	25.9%
MEDIUM COMMERCIAL	59,149	7.9%
OUTDOOR LIGHTING	1,272	0.2%
RESIDENTIAL	275,069	36.9%
SMALL COMMERCIAL	86,813	11.6%
<b>Total</b>	<b>745,275</b>	<b>100.0%</b>

Rate Class	Bundled Accounts	Rate Class Percentage
AGRICULTURE	2,767	4.7%
LARGE COMMERCIAL	212	0.4%
MEDIUM COMMERCIAL	305	0.5%
OUTDOOR LIGHTING	525	0.9%
RESIDENTIAL	48,676	82.8%
SMALL COMMERCIAL	6,316	10.7%
<b>Total</b>	<b>58,801</b>	<b>100.0%</b>



Using the data provided, the model increases load and account year-over-year by 0.25% and 0.50%, respectively. The growth assumptions were provided by the California Energy Commission (CEC) California Energy Demand Forecast for 2015 – 2025. A baseline opt-out rate of 20% was utilized for all rate classes for all years, resulting in a decrease overall accounts remaining in the CCE. Other CCEs has experienced lower opt-out rates. However, it is believed 20% is a conservative case to use in the feasibility analysis. The sensitivity analysis does allow the opt-out rate to fluctuate between 15% and 25%. At launch following the increases in load and accounts by 2018, there would be ~47,477 accounts remaining in the CCE. The annual retail load associated with the accounts remaining would be ~601,400 MWh in the first year of the CCE, but would marginally increase year-over-year due to increased customer accounts and load. The total CAISO required load would be ~636,013 in the first year, the delta between retail load and CAISO load is considered line loss. Line loss is energy waste resulting from the transmission of electrical energy across power lines.

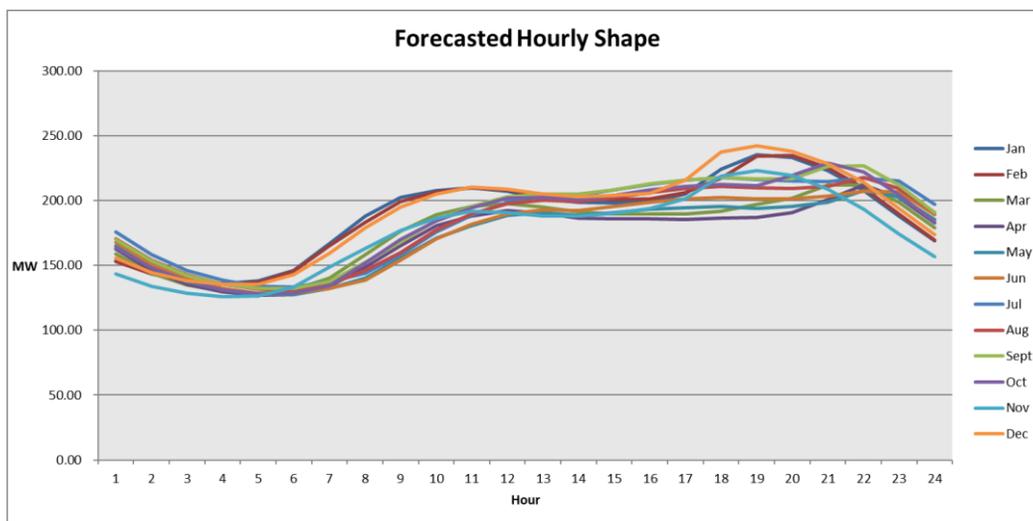
Customer Load (MWh)	2018	2019	2020	2021	2022	2023
Residential	223,372	224,489	225,612	226,740	227,873	229,013
Small Commercial	70,498	70,850	71,204	71,560	71,918	72,278
Medium Commercial	48,033	48,273	48,514	48,757	49,001	49,246
Large Commercial	156,823	157,607	158,395	159,187	159,983	160,783
Agricultural	103,884	103,884	103,884	103,884	103,884	103,884
Lighting	1,272	1,272	1,272	1,272	1,272	1,272
<b>Total Retail Load (MWh)</b>	<b>601,400</b>	<b>603,881</b>	<b>606,375</b>	<b>608,881</b>	<b>611,400</b>	<b>613,931</b>
<b>Total CAISO Load (MWh)</b>	<b>636,013</b>	<b>638,639</b>	<b>641,279</b>	<b>643,931</b>	<b>646,597</b>	<b>649,276</b>

Customer Accounts	2018	2019	2020	2021	2022	2023
Residential	39,234	39,332	39,430	39,529	39,627	39,726
Small Commercial	5,091	5,104	5,116	5,129	5,142	5,155
Medium Commercial	244	244	244	244	244	244
Large Commercial	170	170	170	170	170	170
Agricultural	2,214	2,214	2,214	2,214	2,214	2,214
Lighting	525	525	525	525	525	525
<b>Total Accounts</b>	<b>47,477</b>	<b>47,587</b>	<b>47,698</b>	<b>47,810</b>	<b>47,921</b>	<b>48,033</b>

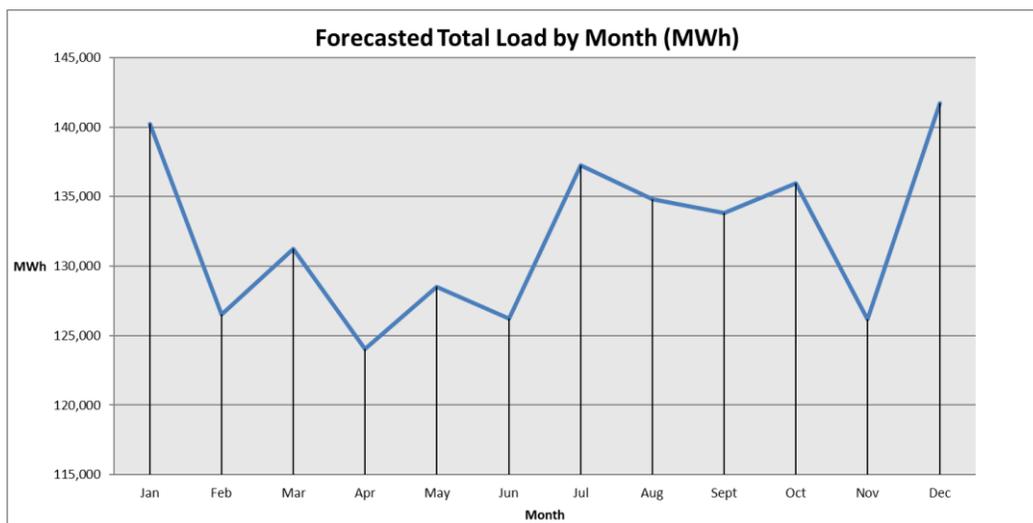
### Load Profile and Shape

It is the responsibility of the CCE to procure energy and related services. Forecasting, profiling, and risk management are the primary tasks conducted for energy procurement. In doing so, one must evaluate the load data provided by the utility.

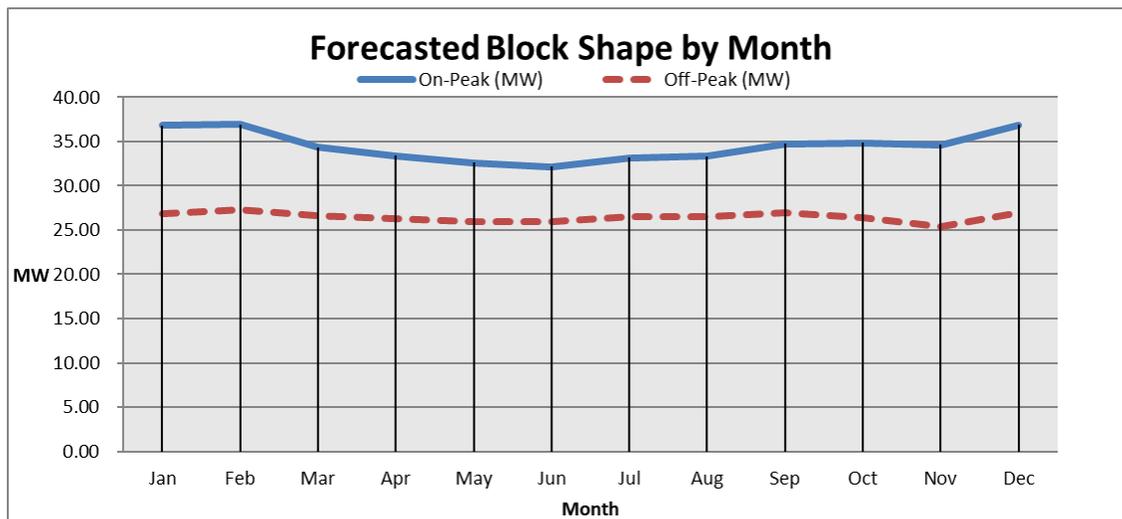
Using data provided by PG&E, we are able to illustrate the forecasted hourly load shape by month. The Forecasted Hourly Shape graph demonstrates the expected load consumed in each hour over a 24-hour period by month. As expected, there is a higher demand for energy during the peak demand over a day.



Furthermore, we are able to illustrate the forecasted total monthly load over the calendar year. As expected, there is a higher expected consumption during the winter months due to shorter daylight hours. As well as, higher expected consumption during the summer months, possibly due to A/C usage in the inland region.

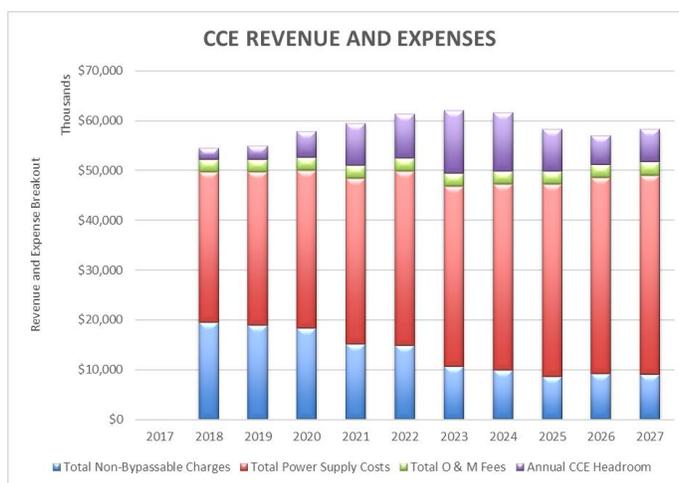


Finally, we are able to illustrate the forecasted on-peak and off-peak block shape by month. This information is vital when purchasing block energy from the wholesale market.

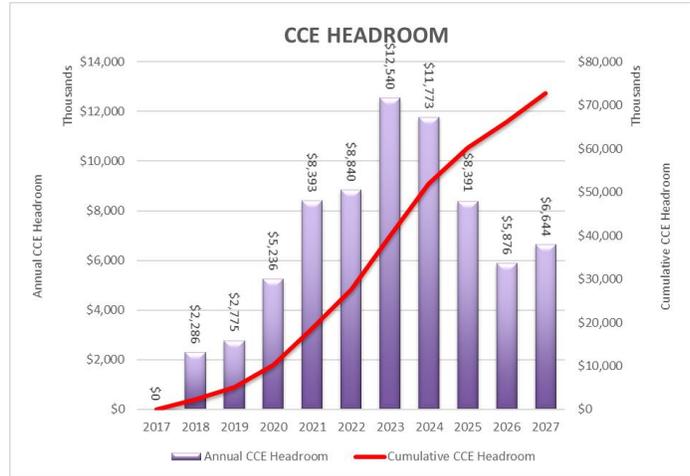


### Scenario 1 – RPS Compliant (Baseline)

The RPS Compliant or baseline scenario demonstrates the profitability of the CCE if it only followed the minimum RPS requirement outlined by the CPUC. In the CCE Revenue and Expense charge, each colored section represents the fees associated with a CCE. The purple section is the net CCE revenue or headroom off the CCE. The largest expense associated with a CCE is power supply costs, identified in the red section. The blue section represents non-bypassable charges, which are fees associated with the PG&E and include, but limited to, franchise fees, PCIA charges, and DWR Bond fees. The non-bypassable charges are forecasted to decline with the elimination of the bond fee, and the cost of PG&E’s resources is increasing. However, if prices decline further, that would have upward pressure on the PCIA charges, putting pressure on headroom for the CCE. In the simulation analysis, the PCIA is allowed to fluctuate due to changes in the market prices. Finally, the green section represents O&M fees associated with running a CCE. As no structure has been outlined by the county or city, an average of cost was applied similarly to the administrative costs associated with Sonoma Clean Power and Marin County Energy.

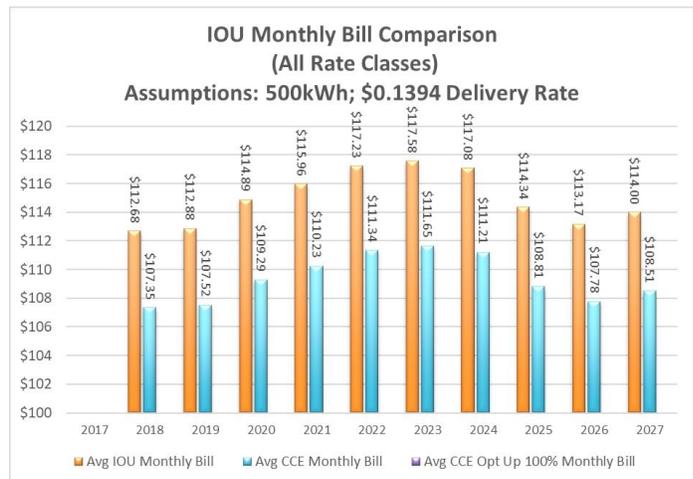


The CCE Headroom chart illustrates a closer view of the forecasted year-over-year annual headroom for the CCE. The red line is the cumulative CCE headroom.



### Alternative - RPS Compliant with a Rate Reduction

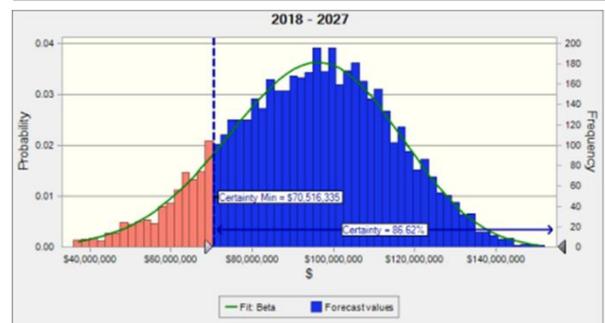
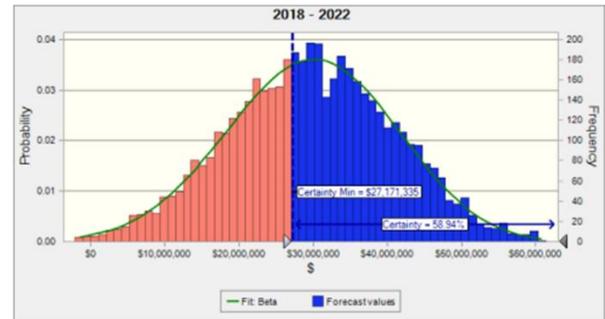
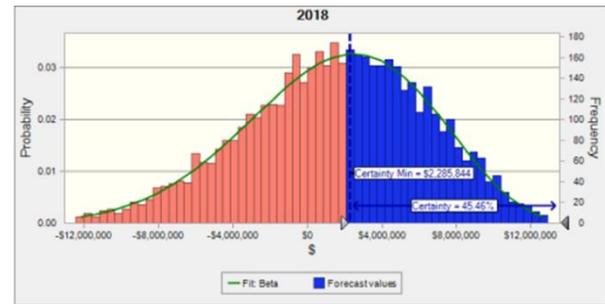
As an alternative to Scenario 1, any available headroom could be applied as a rate reduction over a 10-year period. When applying the available headroom as a rate reduction, the CCE will have zero (\$0) at the end of the 10 years. This provides an average rate reduction of 4.26% over the 10 years. When comparing a customer's monthly billing, the rate reduction lowers the monthly bill by an average of \$67.36 per annum over a ten-year period. The chart illustrates the average monthly invoice, across all rate classes and a consumption of 500 kWh per month and a delivery rate of \$0.1394 per kWh.



## Simulation Analysis

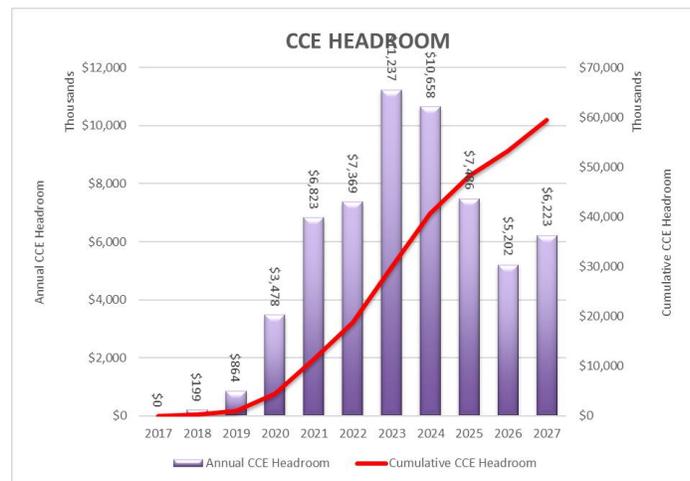
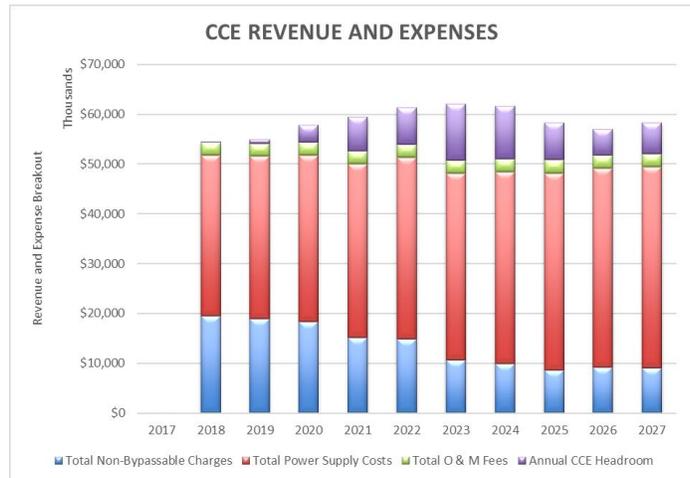
We performed a sensitivity analysis on multiple variables that are key to determine a probability of a specific outcome, in this case, forecasted headroom. Using a statistical modeling simulation software, we were able to derive probabilistic frequency curves. These curves are formulated by running thousands of trials of the model which allow the key variables to fluctuate based on specific parameters.

For the sensitivity, again three periods of cumulative CCE headroom are highlighted in the analysis: year 2018, years 2018-2022, and years 2018-2027. Allowing variables such as opt-out rates and forward prices on system generation to fluctuate, the probability of 2018 City CCE headroom to be greater than the expected outcome is 45.46%. The modeled expected headroom is \$2,285,884, with a mean of \$1,447,631 and a median of \$1,709,989. The probability of the City 2018-2022 CCE headroom to be greater than the modeled expected outcome of \$27,171,335 is 58.94%, with a mean of \$29,629,721 and a median of \$29,633,252. Finally, the probability of the City CCE 2018-2027 headroom to be greater than the modeled expected outcome of \$70,516,335 is 86.62%, with a mean of \$93,924,794 and a median of \$94,947,213.



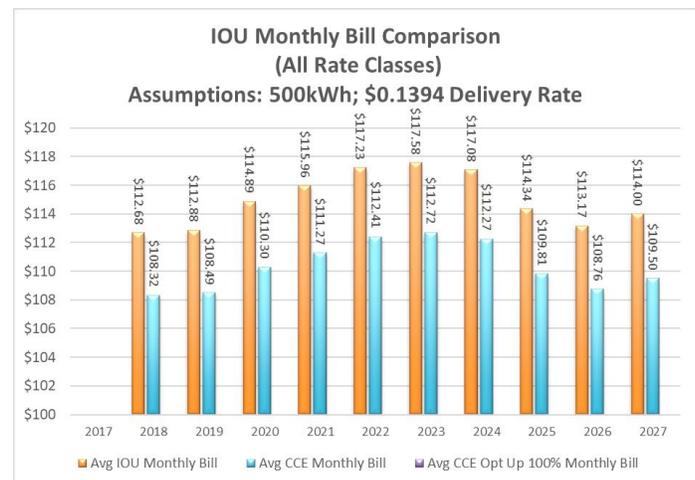
## Scenario 2 – 50% Renewable Energy

In Scenario 2, the renewable component has increased to 50% exceeding the RPS requirements outlined by the CPUC. There is no rate reduction applied in this scenario. Under the higher renewable energy scenario, the headroom for the CCE falls by ~\$2,090,000 each year. The lower headroom is due to the cost or premium paid to purchase additional renewable energy than the RPS compliance requirement.



## Alternative – 50% Renewable Energy with a Rate Reduction

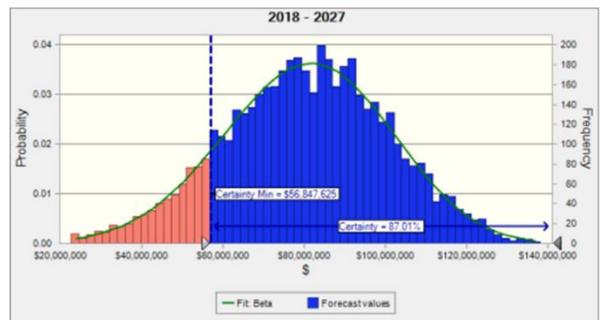
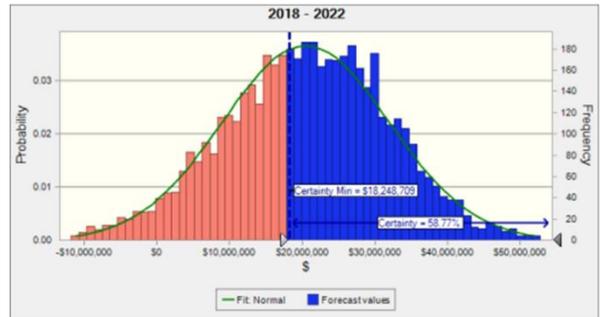
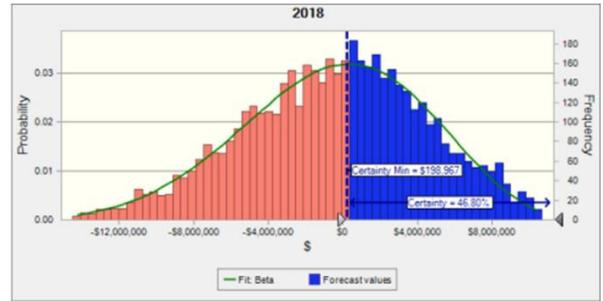
As an alternative to Scenario 2, any available headroom is applied as a rate reduction over a 10-year period. When applying the available headroom as a rate reduction, the CCE will have zero (\$0) at the end of the 10 years. This provides an average rate reduction of 4.26% over the 10 years. When comparing a customer's monthly billing, the rate reduction lowers the monthly bill by an average of \$55.13 per annum over a ten-year period. The chart illustrates the average monthly invoice, across all rate classes and a consumption of 500 kWh per month and a delivery rate of \$0.1394 per kWh.



## Simulation Analysis

We performed a sensitivity analysis on multiple variables that are key to determine a probability of a specific outcome, in this case, forecasted headroom. Using a statistical modeling simulation software, we were able to derive probabilistic frequency curves. These curves are formulated by running thousands of trials of the model which allow the key variables to fluctuate based on specific parameters.

For the sensitivity, again three periods of cumulative CCE headroom are highlighted in the analysis: year 2018, years 2018-2022, and years 2018-2027. Allowing variables such as opt-out rates and forward prices on system generation to fluctuate, the probability of 2018 City CCE headroom to be greater than the expected outcome is 46.80%. The modeled expected headroom is \$198,967, with a mean of (\$508,772) and a median of (\$236,488). The probability of the City 2018-2022 CCE headroom to be greater than the modeled expected outcome of \$18,248,709 is 58.77%, with a mean of \$20,470,588 and a median of \$20,812,001. Finally, the probability of the City CCE 2018-2027 headroom to be greater than the modeled expected outcome of \$56,847,625 is 87.01%, with a mean of \$80,311,648 and a median of \$80,636,845.

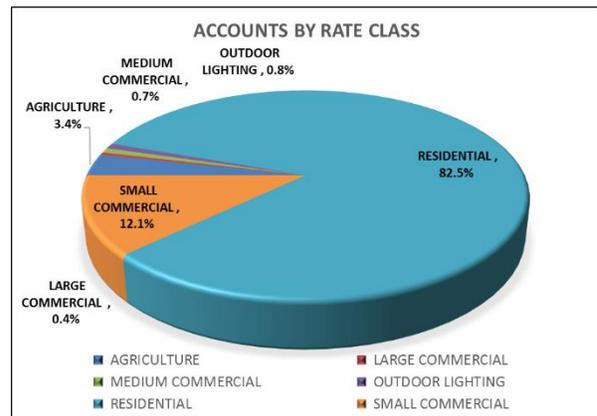
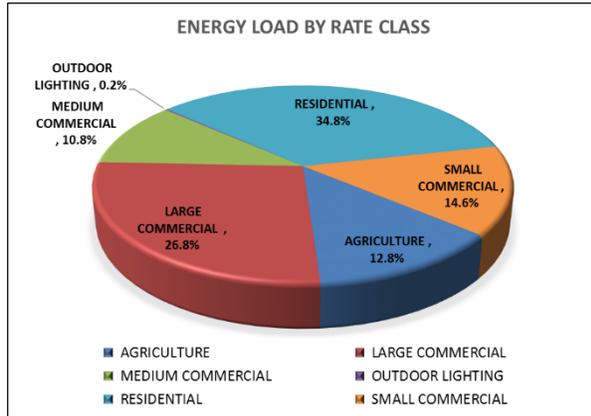


## City and Unincorporated County of San Luis Obispo, combined

Finally, based on historical utility load data provided by PG&E, the total annual load was 1,016,617 MWh with 81,772 accounts. Direct Access load was removed from the analysis since it is unknown whether a Direct Access customer would elect to participate in the CCE. As expected, the consumption between rate classes from the Combined data varies from the segregated City and County datasets. Large commercial and residential load is taking a larger segment of consumption at 26.8% and 34.8%, respectively, followed by agriculture load at 17.4%. However, looking at accounts by rate class, the majority of the accounts are residential at 67,440 or 82.5%.

Rate Class	Annual MWh	Rate Class Percentage
AGRICULTURE	129,980	12.8%
LARGE COMMERCIAL	272,269	26.8%
MEDIUM COMMERCIAL	110,240	10.8%
OUTDOOR LIGHTING	2,093	0.2%
RESIDENTIAL	353,963	34.8%
SMALL COMMERCIAL	148,072	14.6%
<b>Total</b>	<b>1,016,617</b>	<b>100.0%</b>

Rate Class	Bundled Accounts	Rate Class Percentage
AGRICULTURE	2,777	3.4%
LARGE COMMERCIAL	349	0.4%
MEDIUM COMMERCIAL	610	0.7%
OUTDOOR LIGHTING	685	0.8%
RESIDENTIAL	67,440	82.5%
SMALL COMMERCIAL	9,911	12.1%
<b>Total</b>	<b>81,772</b>	<b>100.0%</b>



Using the data provided, the model increases load and account year-over-year by 0.25% and 0.50%, respectively. The growth assumptions were provided by the California Energy Commission (CEC) California Energy Demand Forecast for 2015 – 2025. A baseline opt-out rate of 20% was utilized for all rate classes for all years, resulting in a decrease of overall accounts remaining in the CCE. Other CCEs have experienced lower opt-out rates. However, it is believed 20% is a conservative case to use in the feasibility analysis. The sensitivity analysis does allow the opt-out rate to fluctuate between 15% and 25%. At launch following the increases in load and accounts by 2018, there would be ~66,020 accounts remaining in the CCE. The annual retail load associated with the accounts remaining would be ~820,807 MWh in the first year of the CCE, but would marginally increase year-over-year due to increased customer accounts and load. The total CAISO required load would be ~867,948 in the first year, the delta between retail load and

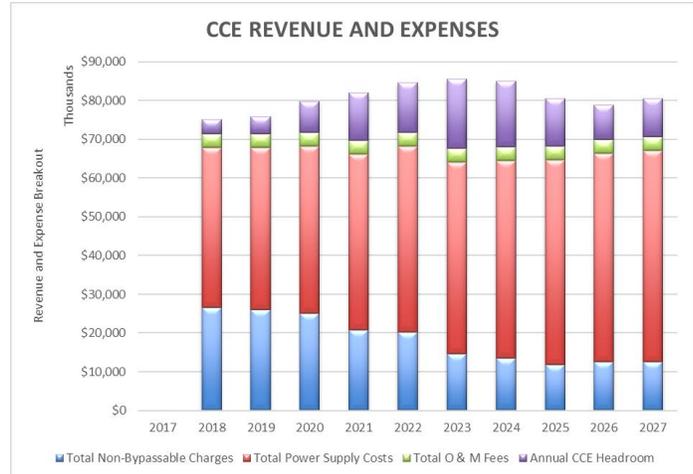
Customer Load (MWh)	2018	2019	2020	2021	2022	2023
Residential	287,440	288,877	290,321	291,773	293,232	294,698
Small Commercial	120,243	120,845	121,449	122,056	122,666	123,280
Medium Commercial	89,521	89,969	90,419	90,871	91,325	91,782
Large Commercial	221,098	222,204	223,315	224,432	225,554	226,681
Agricultural	103,984	103,984	103,984	103,984	103,984	103,984
Lighting	2,093	2,093	2,093	2,093	2,093	2,093
<b>Total Retail Load (MWh)</b>	<b>820,807</b>	<b>824,380</b>	<b>827,972</b>	<b>831,581</b>	<b>835,209</b>	<b>838,854</b>
<b>Total CAISO Load (MWh)</b>	<b>867,948</b>	<b>871,730</b>	<b>875,530</b>	<b>879,349</b>	<b>883,187</b>	<b>887,045</b>

Customer Accounts	2018	2019	2020	2021	2022	2023
Residential	54,358	54,494	54,630	54,766	54,903	55,041
Small Commercial	7,988	8,008	8,028	8,048	8,069	8,089
Medium Commercial	488	488	488	488	488	488
Large Commercial	279	279	279	279	279	279
Agricultural	2,222	2,222	2,222	2,222	2,222	2,222
Lighting	685	685	685	685	685	685
<b>Total Accounts</b>	<b>66,020</b>	<b>66,176</b>	<b>66,332</b>	<b>66,489</b>	<b>66,646</b>	<b>66,803</b>

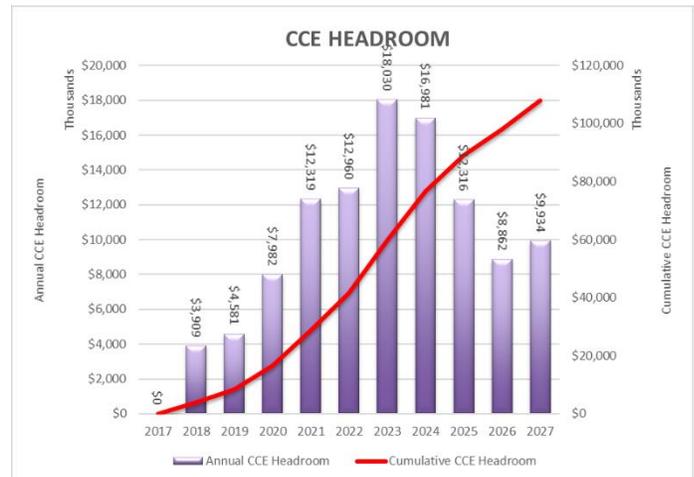
CAISO load is considered line loss. Line loss is energy waste resulting from the transmission of electrical energy across power lines.

## Scenario 1 – RPS Compliant (Baseline)

The RPS Compliant or baseline scenario demonstrates the profitability of the CCE if it only followed the minimum RPS requirement outlined by the CPUC. In the CCE Revenue and Expense charge, each colored section represents the fees associated with a CCE. The purple section is the net CCE revenue or headroom off the CCE. The largest expense associated with a CCE is power supply costs, identified in the red section. The blue section represents non-bypassable charges, which are fees associated with the PG&E and include, but limited to, franchise fees, PCIA charges, and DWR Bond fees. The non-bypassable charges are forecasted to decline with the elimination of the bond fee, and the cost of PG&E’s resources is increasing. However, if prices decline further, that would have upward pressure on the PCIA charges, putting pressure on headroom for the CCE. In the simulation analysis, the PCIA is allowed to fluctuate due to changes in the market prices. Finally, the green section represents O&M fees associated with running a CCE. As no structure, has been outlined by the county or city, an average of cost was applied similarly to the administrative costs associated with Sonoma Clean Power and Marin County Energy.

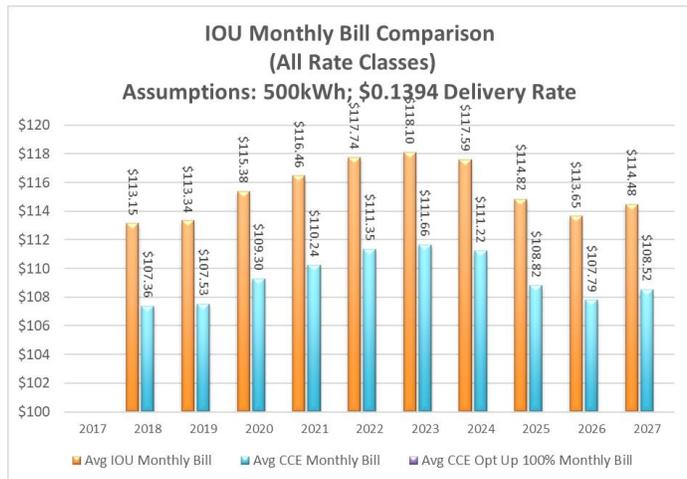


The CCE Headroom chart illustrates a closer view of the forecasted year-over-year annual headroom for the CCE. The red line is the cumulative CCE headroom.



### Alternative - RPS Compliant with a Rate Reduction

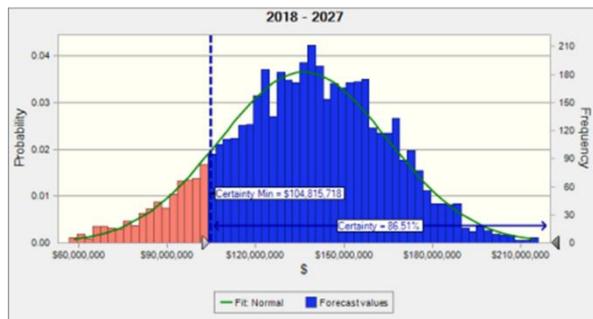
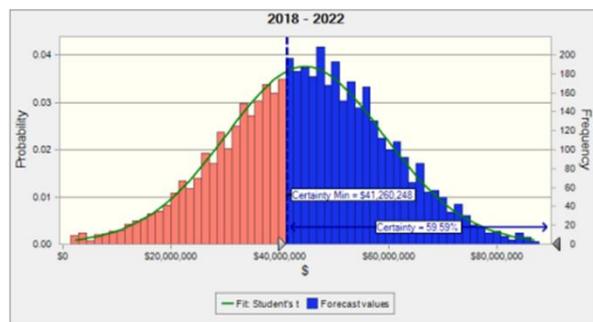
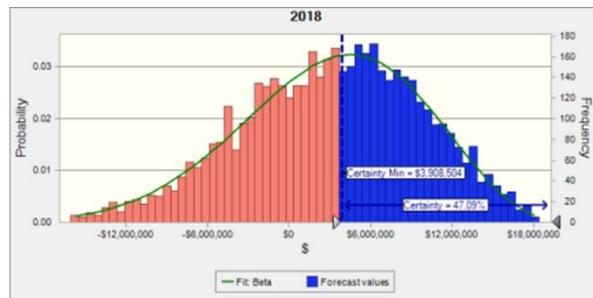
As an alternative to Scenario 1, any available headroom is applied as a rate reduction over a 10-year period. When applying the available headroom as a rate reduction, the CCE will have zero (\$0) at the end of the 10 years. This provides an average rate reduction of 4.62% over the 10 years. When comparing a customer's monthly billing, the rate reduction lowers the monthly bill by an average of \$73.11 per annum over a ten-year period. The chart illustrates the average monthly invoice, across all rate classes and a consumption of 500 kWh per month and a delivery rate of \$0.1394 per kWh.



### Simulation Analysis

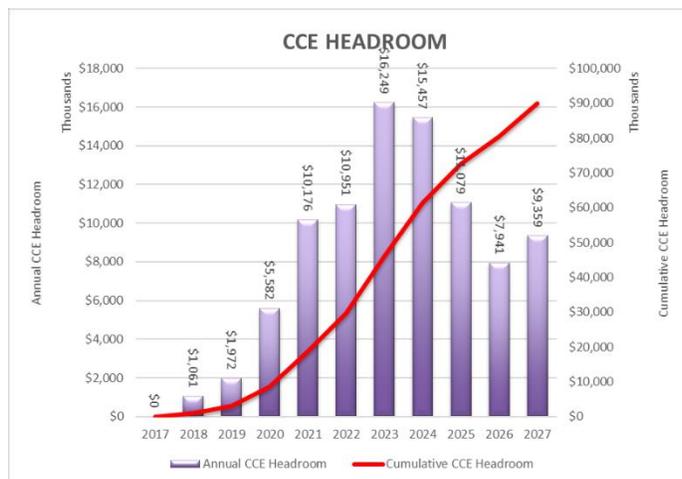
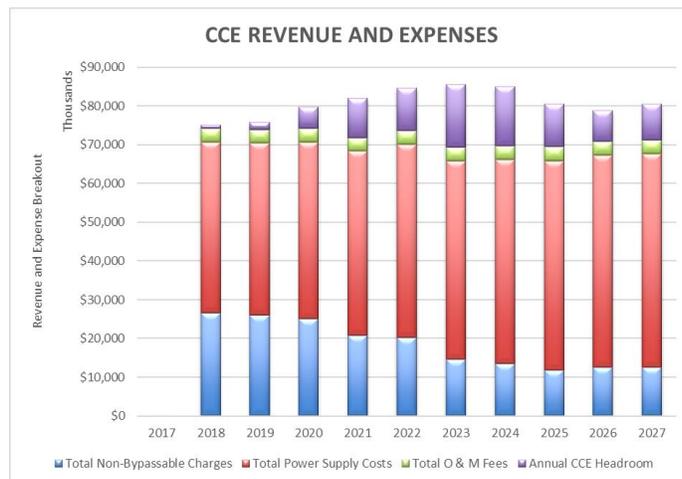
We performed a sensitivity analysis on multiple variables that are key to determine a probability of a specific outcome, in this case, forecasted headroom. Using a statistical modeling simulation software, we were able to derive probabilistic frequency curves. These curves are formulated by running thousands of trials of the model which allow the key variables to fluctuate based on specific parameters.

Again, we focused on three outcomes: 2018 headroom, 2018-2022 cumulative headroom, and 2018-2027 cumulative headroom. Allowing variables such as opt-out rates and forward prices on system generation to fluctuate, the probability of 2018 City CCE headroom to be greater than the expected outcome is 47.09%. The modeled expected headroom is \$3,908,504, with a mean of \$3,009,003 and a median of \$3,427,841. The probability of the City 2018-2022 CCE headroom to be greater than the modeled expected outcome of \$41,260,248 is 59.59%, with a mean of \$44,588,691 and a median of \$44,826,288. Finally, the probability of the City CCE 2018-2027 headroom to be greater than the modeled expected outcome of \$86,147,916 is 87.61%, with a mean of \$136,352,526 and a median of \$137,544,563.



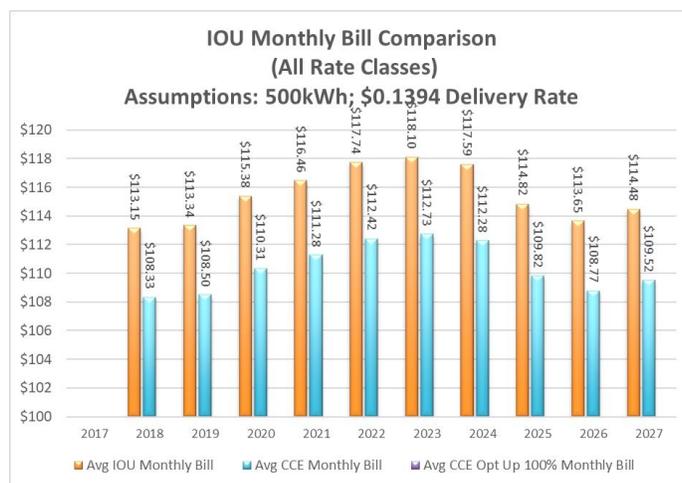
## Scenario 2 – 50% Renewable Energy

In the third scenario, the renewable component has increased to 50% exceeding the RPS requirements outlined by the CPUC. There is no rate reduction applied in this scenario. Under the higher renewable energy scenario, the headroom for the CCE falls by ~\$2,850,000 each year. The lower headroom is due to the cost or premium paid to purchase additional renewable energy than the RPS compliance requirement.



## Alternative – 50% Renewable Energy with a Rate Reduction

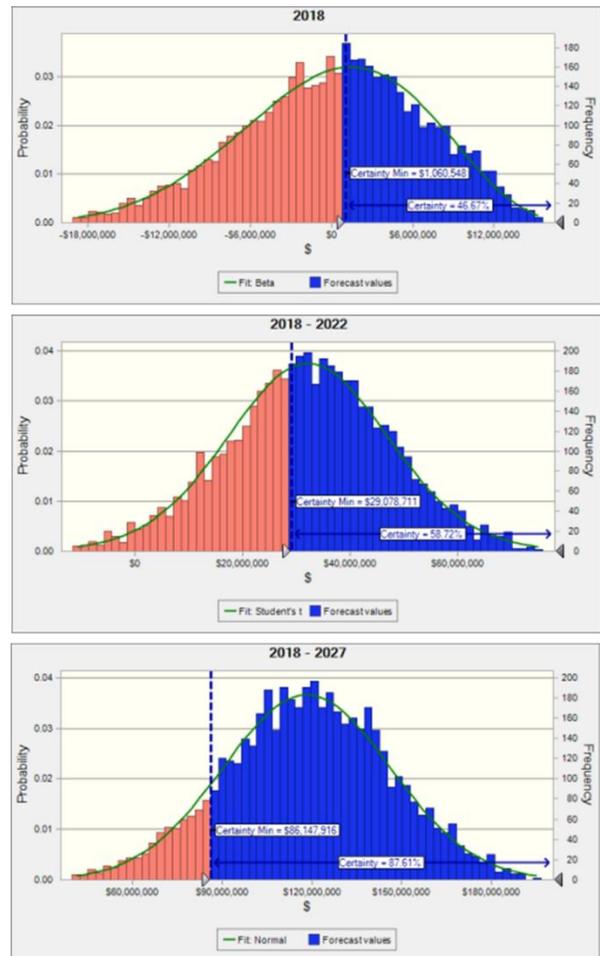
As an alternative to Scenario 2, any available headroom is applied as a rate reduction over a 10-year period. When applying the available headroom as a rate reduction, the CCE will have zero (\$0) at the end of the 10 years. This provides an average rate reduction of 3.80% over the 10 years. When comparing a customer's monthly billing, the rate reduction lowers the monthly bill by an average of \$60.88 per annum over a ten-year period. The chart illustrates the average monthly invoice, across all rate classes and a consumption of 500 kWh per month and a delivery rate of \$0.1394 per kWh.



## Simulation Analysis

We performed a sensitivity analysis on multiple variables that are key to determine a probability of a specific outcome, in this case, forecasted headroom. Using a statistical modeling simulation software, we were able to derive probabilistic frequency curves. These curves are formulated by running thousands of trials of the model which allow the key variables to fluctuate based on specific parameters.

Again, we focused on three outcomes: 2018 headroom, 2018-2022 cumulative headroom, and 2018-2027 cumulative headroom. Allowing variables such as opt-out rates and forward prices on system generation to fluctuate, the probability of 2018 City CCE headroom to be greater than the expected outcome is 46.67%. The modeled expected headroom is \$1,060,548, with a mean of \$52,607 and a median of \$473,368. The probability of the City 2018-2022 CCE headroom to be greater than the modeled expected outcome of \$29,078,711 is 58.72%, with a mean of \$32,098,164 and a median of \$32,303,954. Finally, the probability of the City CCE 2018-2027 headroom to be greater than the modeled expected outcome of \$86,147,916 is 87.61%, with a mean of \$118,194,123 and a median of \$118,589,650.



## Glossary of Terms

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**aMW:** Average annual Megawatt. A unit of energy output over a year that is equal to the energy produced by the continuous operation of one megawatt of capacity over a period of time (8,760 megawatt-hours).

**Basis Difference (Natural Gas):** The difference between the price of natural gas at the Henry Hub natural gas distribution point in Erath, Louisiana, which serves as a central pricing point for natural gas futures, and the natural gas price at another hub location (such as for Southern California).

**Buckets:** Buckets 1-3 refer to different types of renewable energy contracts according to the Renewable Portfolio Standards requirements. Bucket 1 are traditional contracts for delivery of electricity directly from a generator within or immediately connected to California. These are the most valuable and make up the majority of the RECS that are required for LSEs to be RPS compliant. Buckets 2 and 3 have different levels of intermediation between the generation and delivery of the energy from the generating resources.

**Bundled Customers:** Electricity customers who receive all their services (transmission, distribution and supply) from the Investor-Owned Utility.

**CAISO:** The California Independent System Operator. The organization is responsible for managing the electricity grid and system reliability within the former service territories of the three California IOUs.

**California Energy Commission (CEC):** The state regulatory agency with primary responsibility for enforcing the Renewable Portfolio Standards law as well as a number of other, electric-industry related rules and policies.

**California Public Utilities Commission (CPUC):** The state agency with primary responsibility for regulating IOUs, as well as Direct Access (ESP) and CCE entities.

**Capacity Factor:** the ratio of an electricity generating resource's actual output over a period of time to its potential output if it were possible to operate at full nameplate capacity continuously over the same period. Intermittent renewable resources, like wind and solar, typically have lower capacity factors than traditional fossil fuel plants because the wind and sun do not blow or shine consistently.

**Category 1:** renewable energy and Renewable Energy Certificates (REC's) from an RPS eligible facility that is directly interconnected to the distribution or transmission grid within California

**Category 2:** renewable energy and REC's from an RPS eligible facility but cannot be delivered to a California balancing authority without substituting electricity from another source.

**Category 3:** procurement of unbundled RECs only or not meeting the conditions of Category 1 and 2.

**Category 2 Override:** the pro forma model will exchange Category 2 renewables for Category 1 renewables.

**Climate Zone:** A geographic area with distinct climate patterns necessitating varied energy demands for heating and cooling.

**Coincident Peak:** Demand for electricity among a group of customers that coincides with peak total demand on the system.

**Community Choice Aggregation:** Method available through California law to allow Cities and Counties to aggregate their citizens and become their electric generation provider.

**Community Choice Energy:** A City, County or Joint Powers Agency procuring wholesale power to supply to retail customers.

**Congestion Revenue Rights (CRRs):** Financial rights that are allocated to Load Serving Entities to offset differences between the prices where their generation is located and the price that they pay to serve their load. These rights may also be bought and sold through an auction process. CRRs are part of the CAISO market design.

**Consumption:** The use of energy or the amount of energy consumed by an individual or organization.

**Demand Response (DR):** Electric customers who have a contract to modify their electricity usage in response to requests from a utility or other electric entity. Typically, will be used to lower demand during peak energy periods, but may be used to raise demand during periods of excess supply.

**Direct Access:** Large power consumers which have opted to procure their wholesale supply independently of the IOUs through an Electricity Service Provider.

**DWR Bond Charge:** an imposed bond charge to recover Department of Water Resources (DWR) bond costs from bundled customers.

**EEl (Edison Electric Institute) Agreement:** A commonly used enabling agreement for transacting in wholesale power markets.

**Electric Service Providers (ESP):** An alternative to traditional utilities. They provide electric services to retail customers in electricity markets that have opened their retail electricity markets to competition. In California the Direct Access program allows large electricity customers to optout of utility-supplied power in favor of ESP-provided power. However, there is a cap on the amount of Direct Access load permitted in the state.

**Electric Tariffs:** The rates and terms applied to customers by electric utilities. Typically have different tariffs for different classes of customers and possibly for different supply mixes.

**Enterprise Model:** When a City or County establish a CCE by themselves as an enterprise within the municipal government.

**Federal Tax Incentives:** There are two Federal tax incentive programs. The Investment Tax Credit (ITC) provides payments to solar generators. The Production Tax Credit (PTC) provides payments to wind generators.

**Feed-in Tariff:** A tariff that specifies what generators, who are connected to the distribution system, are paid.

**Forward Prices:** Prices for contracts that specify a future delivery date for a commodity or other security. There are active, liquid forward markets for electricity to be delivered at a number of Western electricity trading hubs, including NP15 which corresponds closely to the price location which the City of Davis will pay to supply its load.

**Implied Heat Rate:** A calculation of the day-ahead electric price divided by the day-ahead natural gas price. Implied heat rate is also known as the 'break-even natural gas market heat rate, because only a natural gas generator with an operating heat rate (measure of unit efficiency) below the implied heat rate value can make money by burning natural gas to generate power. Natural gas plants with a higher operating heat rate cannot make money at the prevailing electricity and natural gas prices.

**Integrated Resource Plan:** A utility's plan for future generation supply needs.

**Investor-Owned Utility:** For profit regulated utilities. Within California there are three IOUs -

Pacific Gas and Electric, Southern California Edison and San Diego Gas and Electric.

**ISDA (International Swaps and Derivatives Association):** Popular form of bilateral contract to facilitate wholesale electricity trading.

**Joint Powers Agency (JPA):** A legal entity comprising two or more public entities. The JPA provides a separation of financial and legal responsibility from its member entities.

**Load Data:** Detailed information related to energy consumption by an individual, organization, or community.

**Load Forecast:** A forecast of expected load over some future time horizon. Short-term load forecasts are used to determine what supply sources are needed. Longer-term load forecasts are used for budgeting and long-term resource planning.

**Marginal Unit:** An additional unit of power generation to what is currently being produced. At an electric power plant, the cost to produce a marginal unit is used to determine the cost of increasing power generation at that source.

**MRTU:** CAISO's Market Redesign and Technology Upgrade. The redesigned, nodal (as opposed to zonal) market that went live in April of 2009.

**Net Energy Metering:** The program and rates that pertain to electricity customers who also generate electricity, typically from rooftop solar panels.

**Non-Coincident Peak:** Energy demand by a customer during periods that do not coincide with maximum total system load.

**Non-Renewable Power:** Electricity generated from non-renewable sources or that does not come with a Renewable Energy Credit (REC).

**NP15:** Refers to a wholesale electricity pricing hub - North of Path 15 - which roughly corresponds to PG&E's service territory. Forward and Day-Ahead power contracts for Northern California typically provide for delivery at NP15. It is not a single location, but an aggregate based on the locations of all the generators in the region.

**Off Peak:** time when demand for electricity is low between the hours of 11:00 pm to 6:59 am during the week days and 24 hours during the weekends.

**On-Bill Repayment (OBR):** Allows electric customers to pay for financed improvements such as energy efficiency measures through monthly payments on their electricity bills.

**On-Peak:** time when demand for electricity is high between the hours 7:00 am and 10:59 pm during the weekdays.

**Operate on the Margin:** Operation of a business or resource at the limit of where it is profitable.

**Opt-Out:** Community Choice Aggregation is, by law, an opt-out program. Customers within the borders of a CCE are automatically enrolled within the CCE unless they proactively opt-out of the program.

**Power Charge Indifference Adjustment (PCIA):** A charge applied to customers who leave IOU service to become Direct Access or CCE customers. The charge is meant to compensate the IOU for costs that it has previously incurred to serve those customers.

**PPA (Power Purchase Agreement):** The standard term for bilateral supply contracts in the electricity industry.

**Rate Stabilization Fund:** an amount allocated into a reserve fund to be utilized to offset higher potential higher rates during rate setting.

**Renewable Energy Credits (RECs):** The renewable attributes from RPS-qualified resources which must be registered and retired to comply with RPS standards.

**Resource Adequacy (RA):** The requirement that a Load-Serving Entity own or procure sufficient generating capacity to meet its peak load plus a contingency amount (15 percent in California) for each month.

**RPS (Renewable Portfolio Standards):** The state-based requirement to procure a certain percentage of load from RPS-certified renewable resources.

**Scheduling Coordinator:** An entity that is approved to interact directly with CAISO to schedule load and generation. All CAISO participants must be or have an SC.

**Scheduling Agent:** A person or service that forecasts and monitors short term system load requirements and meets these demands by scheduling power resource to meet that demand.

**Spark Spread:** The theoretical gross margin of a gas-fired power plant from selling a unit of electricity, having bought the fuel required to produce this unit of electricity. All other costs (capital, operation and maintenance, etc.) must be covered from the spark spread.

**Supply Stack:** Refers to the generators within a region, stacked up according to their marginal cost to supply energy. Renewables are on the bottom of the stack and peaking gas generators on the top. Used to provide insights into how the price of electricity is likely to change as the load changes.

**Total CAISO Load:** the total electricity need to procure from the CAISO taking in consideration for line losses. Line losses is wasted electric energy due to inherent inefficiencies or defects in the distribution or transmission system.

**Total Retail Load:** the total electricity consumed by consumers (residential and commercial) in a given period.

**Uncollected Factor:** a model parameter allocating a percentage of revenue as uncollectable, otherwise considered bad debt.

**Weather-Adjusted:** Normalizing energy use data based on differences in the weather during the time of use. For instance, energy use is expected to be higher on extremely hot days when air conditioning is in higher demand than on days with comfortable temperature. Weather adjustment normalizes for this variation.

**Wholesale Power:** Large amounts of electricity that are bought and sold by utilities and other electric companies in bulk at specific trading hubs. Quantities are measured in MWs, and a standard wholesale contract is for 25 MW for a month during heavy-load or peak hours (7am to 10 pm, Mon-Sat), or light-load or off-peak hours (all the other hours).

FOR THE CENTRAL COAST REGION

# TECHNICAL FEASIBILITY STUDY ON COMMUNITY CHOICE AGGREGATION

FINAL REPORT  
AUGUST 2017



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# EXECUTIVE SUMMARY

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# Executive Summary

## A. Community Choice Aggregation Overview

Community Choice Aggregation (CCA) is a program for local jurisdictions in California to procure electricity supply for, and develop energy resources to serve, jurisdictional customers. According to the Local Government Commission,<sup>1</sup> the most common reasons for forming a CCA program are to:

- Increase use of renewable generation,
- Exert control over rate setting,
- Stimulate economic growth, and
- Lower rates.

When a CCA is formed, the local incumbent electric investor-owned utility (IOU) continues to deliver power through its transmission and distribution facilities to customers within its service territory. The IOU also provides monthly customer metering and billing services. The local CCA program procures the electric commodity and sells it to its customers, with the intent that the electricity is less expensive, more local, and/or uses more renewable generation than the current utility alternative. The two components, delivery and generation, already appear separately on customer bills. The incumbent utility continues to provide billing services, but the CCA's generation rate replaces the IOU's generation rate on customer bills.

Jurisdictions in California have formed CCA programs in efforts to provide constituents the option to be served with a greater mix of renewable and carbon-free energy generation than is provided by the incumbent utility. Eight CCA programs are currently operational in California, with ten more launching in 2018. At least 17 additional jurisdictions are exploring and/or are in the planning stages for CCA.

## B. Study Scope and Purpose

This technical feasibility Study for CCA for the Central Coast Region (Study) was directed by the Advisory Working Group (AWG), which was formed by eleven governments in the Santa Barbara, San Luis Obispo, and Ventura County (Tri-County) Region. The Advisory Working Group collectively has named the potential CCA "Central Coast Power." The Study's purpose is to advise and guide the Tri-County Region in understanding the feasibility of forming a new CCA program. This Study considers required startup and operational processes and evaluates multiple

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*Ten local governments joined with the County of Santa Barbara to fund this Study, and the following jurisdictions formed an Advisory Working Group in December 2015:*

- *Unincorporated San Luis Obispo County*
  - *Unincorporated Santa Barbara County, plus:*
    - o *City of Carpinteria*
    - o *City of Santa Barbara*
  - *Unincorporated Ventura County, plus:*
    - o *City of Camarillo*
    - o *City of Moorpark*
    - o *City of Ojai*
    - o *City of Simi Valley*
    - o *City of Thousand Oaks*
    - o *City of Ventura*
-

procurement scenarios to determine whether a CCA program in the Tri-County Region is: a) financially feasible; and b) will meet its stated policy objectives. The Study results do not necessarily apply to one or more of the Tri-County local governments joining an existing CCA program.

This Study evaluates the financial and economic viability of a CCA by:

- Forecasting the CCA electricity demand requirements (load) and potential customers by class;
- Estimating the costs of procuring the necessary electricity supply; and
- Projecting the costs of starting up and administering a CCA program.

The Study also enumerates the potential benefits and associated risks of a CCA program and discusses implementation requirements.

### C. Energy Procurement and Study Scenarios

Energy procurement is complex and the total cost of procurement is subject to changes in both market conditions (price) and consumption (volume). Load Serving Entities (LSEs)—IOUs, CCAs, and Electricity Service Providers (ESPs)—must manage both load forecasting and energy procurement with a robust risk management approach to account for the dynamic and volatile nature of power markets and load.

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*Throughout the report, the term LSE is used to provide illustrative trends that are affecting the Tri-County Region as a whole, regardless of whether the electricity is provided by an IOU, ESP or CCA program. For our purposes, a CCA program is a subset of the more broad LSE term.*

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Given the uniqueness of multiple municipalities partnering to commission this feasibility Study, the Advisory Working Group established eight geographic participation scenarios. These eight scenarios were selected to explore the feasibility of different sizes and configurations for the CCA program and the potential effect of customer demographics. Although the entire Tri-County Region may not ultimately pursue CCA, certain jurisdictions may decide to move forward with CCA. The eight participation scenarios defined for this Study are:

1. All Tri-County Region
2. AWG Jurisdictions
3. All San Luis Obispo County
4. Unincorporated San Luis Obispo County
5. All Santa Barbara County
6. Unincorporated Santa Barbara County
7. All Ventura County
8. City of Santa Barbara

In addition to the eight participation scenarios, three renewable energy content scenarios were considered. All scenarios include a customer option to opt-up to a 100% renewable energy product. For the purposes of this Study, 2% of customers were assumed to opt-up to the 100% renewable option. The three renewable energy content scenarios are as follows:

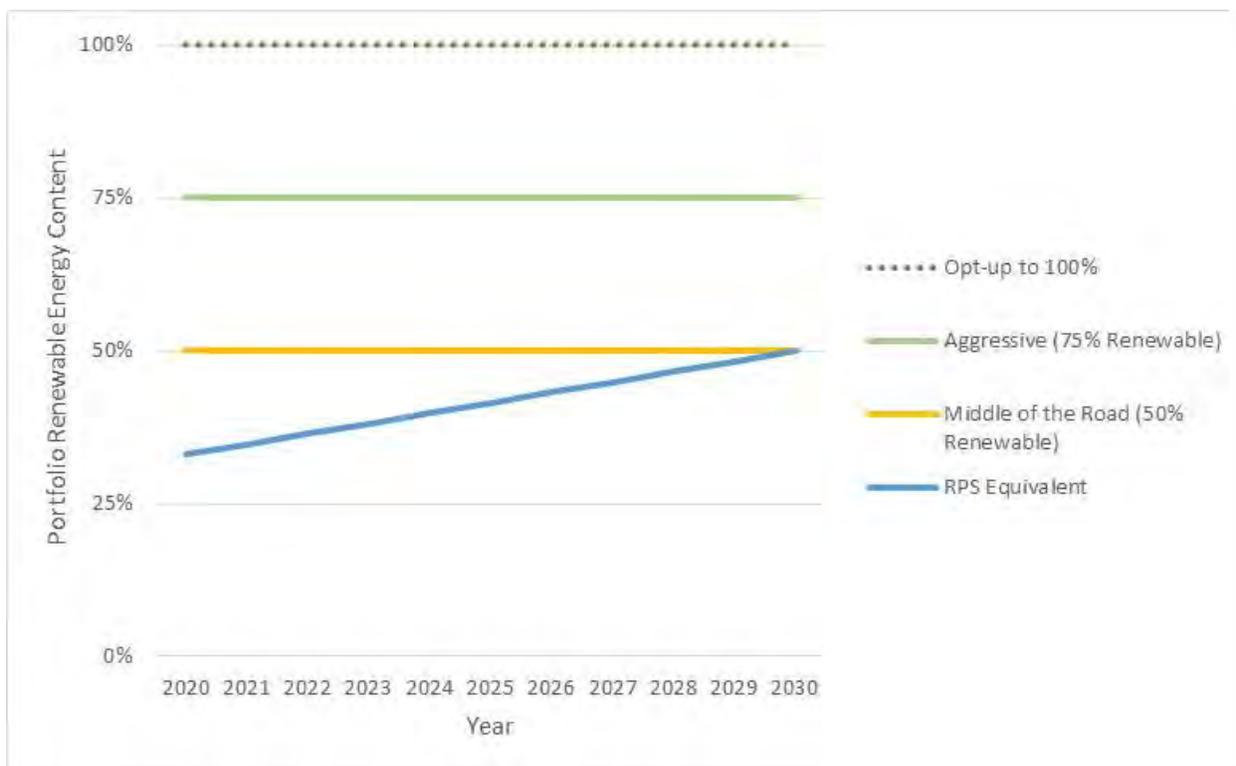
## Executive Summary

- **RPS Equivalent:** This scenario assumes that Central Coast Power would offer its base electricity product to all customers starting at 33% renewable content in 2020 and ramping up to 50% renewable content by 2030 in alignment with the California minimum Renewable Portfolio Standard (RPS).<sup>2</sup>
- **Middle of the Road:** This scenario assumes that Central Coast Power would offer its base electricity product to all customers using 50% renewable content for the entire Study period.
- **Aggressive:** This scenario assumes that Central Coast Power would offer its base electricity product to all customers using 75% renewable content for the entire Study period.

This Study evaluates an eleven-year period from 2020 to 2030, although a potential CCA program could begin earlier than 2020. Figure ES-1 illustrates how the renewable energy content in the RPS Equivalent scenario grows over time, and in the other two scenarios remains constant across the Study period. These three scenarios were chosen to illustrate the relative differences in cost given different levels of renewable supply content. Actual CCA implementation may choose to follow a progression of increasing renewable generation over that period based on cost competitiveness. For example, Central Coast Power CCA may launch in 2020 with 50% renewable content and progress to 75% renewable content by 2030, assuming it can do so at a cost advantage to the IOUs.

To enhance report readability, the main body of this report presents results for the AWG Jurisdictions participation scenario, for the RPS Equivalent, Middle of the Road, and Aggressive renewable energy content scenarios. Detailed results for the other seven participation scenarios are provided in Appendices C, and E through J.

Figure ES-1 Renewable Energy Content Modeled in this Study



The fundamental operational role of a CCA is to forecast customer electricity needs and procure energy and associated energy related services. Power procurement consists of forecasting and risk management tasks. Power procurement planning and day-to-day decision making rely heavily on short-term and long-term forecasts of consumer demand for power. The procurement function must also evaluate and assess the inherent risks associated with demand forecasting and develop appropriate risk mitigation strategies. Though no one can predict future energy demand with 100% certainty, logical, data-driven, industry-standard methodologies to forecasting are available to provide a realistic outlook of energy demand under a variety of future scenarios. Brief discussions covering the forecasts for customer power demand and power procurement costs are provided in the following segments.

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*The fundamental operational role of a CCA is to forecast customer electricity needs and procure energy and associated energy related services.*

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*Energy is measured in several units throughout this study: kilowatt-hours (kWh), which is the unit used on customer bills; megawatt-hours (MWh), where 1 MWh equals 1,000 kWh; and gigawatt-hours (GWh), where 1 GWh equals 1,000 MWh or 1,000,000 kWh.*

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### D. Customer Demand

As shown in Figure ES-2, Ventura County is the largest electricity consumer of the three counties considered in this Study, followed by Santa Barbara and San Luis Obispo Counties. Collectively, customers in the incorporated cities in San Luis Obispo and Ventura Counties consume more electricity than customers in the unincorporated county. The reverse is true in Santa Barbara County.

Figure ES-2 Annual Demand in Gigawatt-hours (GWh) by County

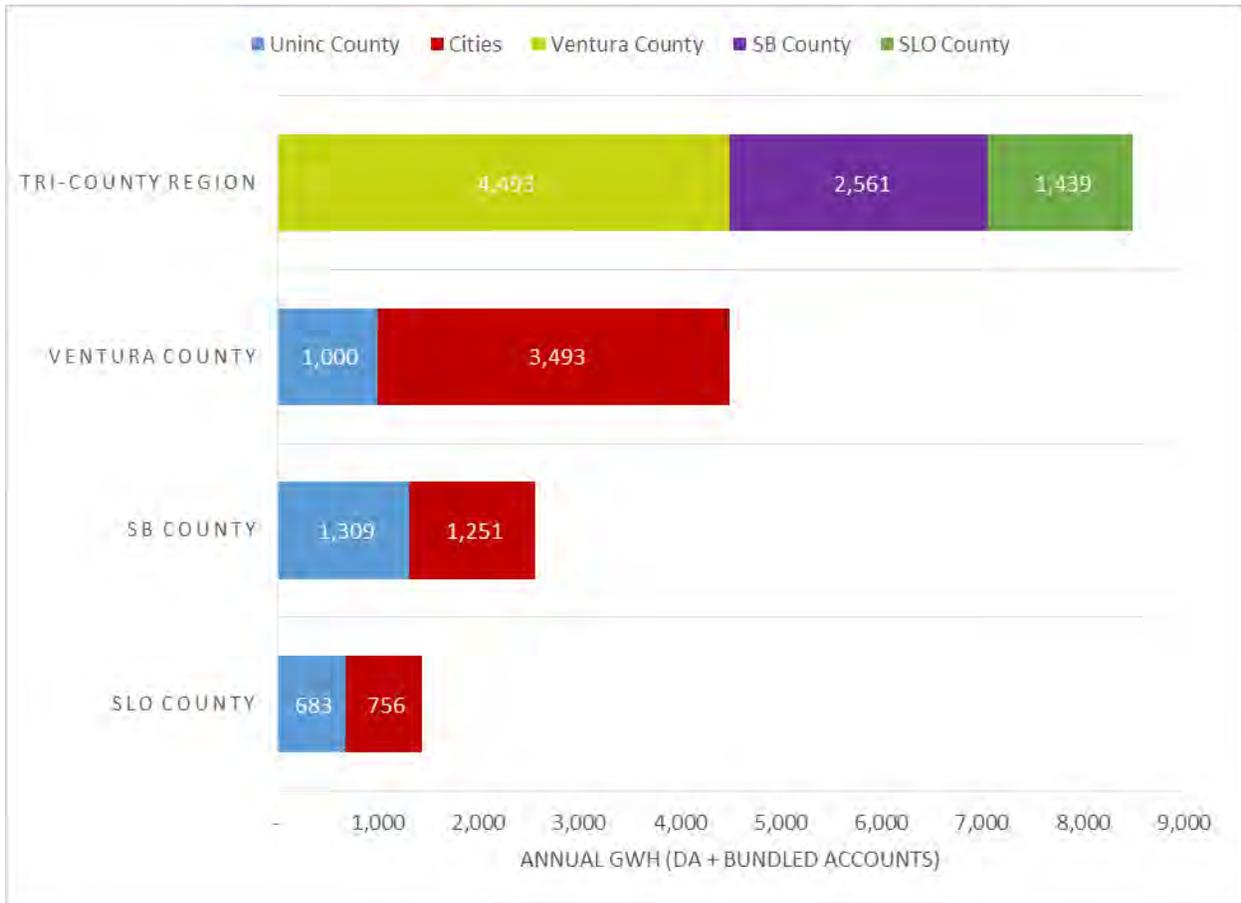
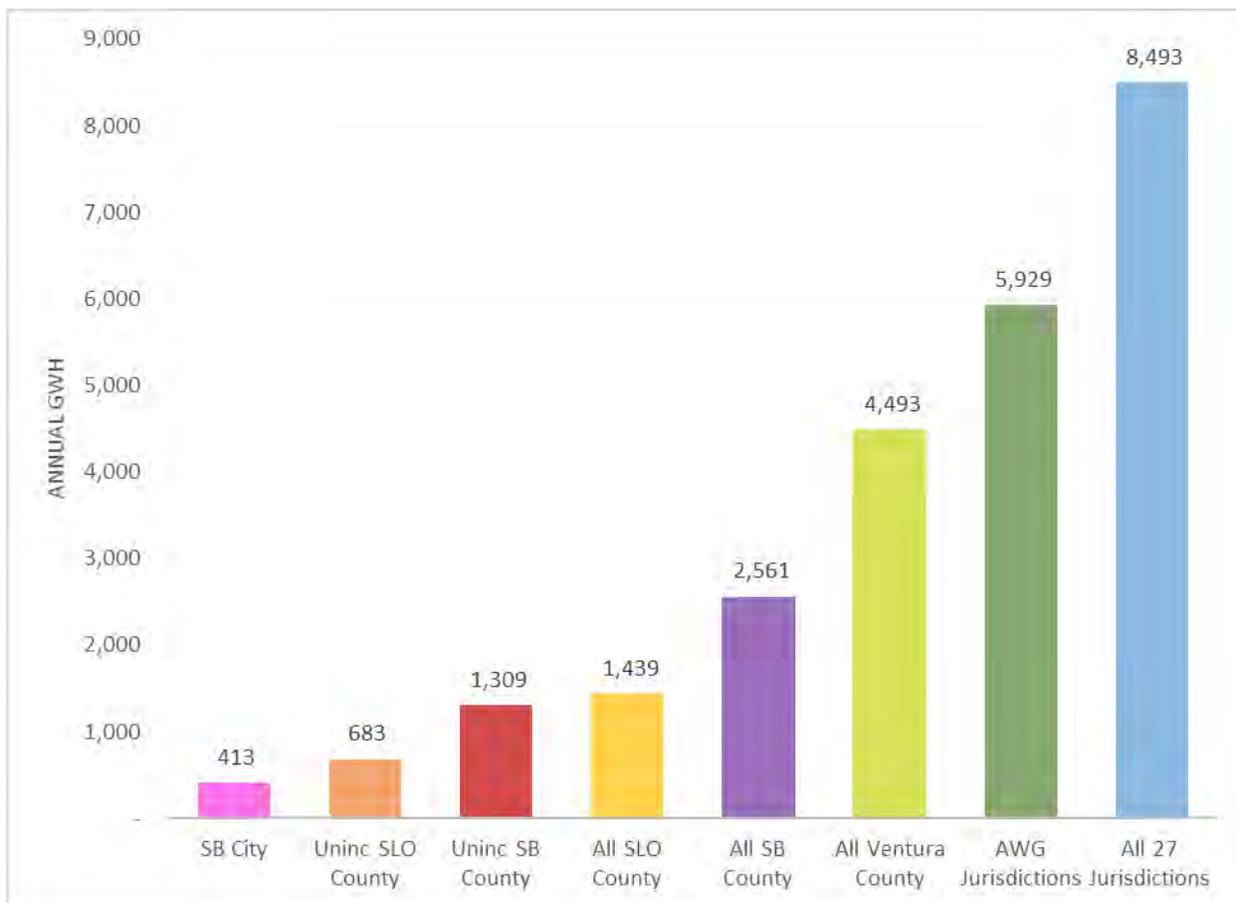


Figure ES-3 shows the annual electricity consumption for each of the Study’s eight geographic participation scenarios. The consumption and number of accounts generally mirror each other, with the exception of unincorporated San Luis Obispo and Santa Barbara Counties.

Figure ES-3 Annual Demand in GWh for Each Geographic Participation Scenario



Electricity consumption is forecasted to grow moderately over the Study period, however continued customer adoption of distributed generation (DG) solar photovoltaic (PV) is expected to offset this growth. DG PV reduces the amount of energy that needs to be provided by the potential CCA. Figure ES 4 illustrates the growth of customer-owned DG PV since the year 2000 and illustrates a forecast for additional DG PV capacity if this trend continues. Table ES I lists the forecasted annual energy consumption, annual DG PV generation, and the annual net load (consumption-generation) served by the potential CCA for the AWG Jurisdictions participation scenario. In summary, a Central Coast Power CCA would likely sell less electricity each year given customer DG PV adoption.

Figure ES-4 California Solar Initiative Incentivized Customer-Owned Solar Photovoltaic in the Region with 2030 Forecast

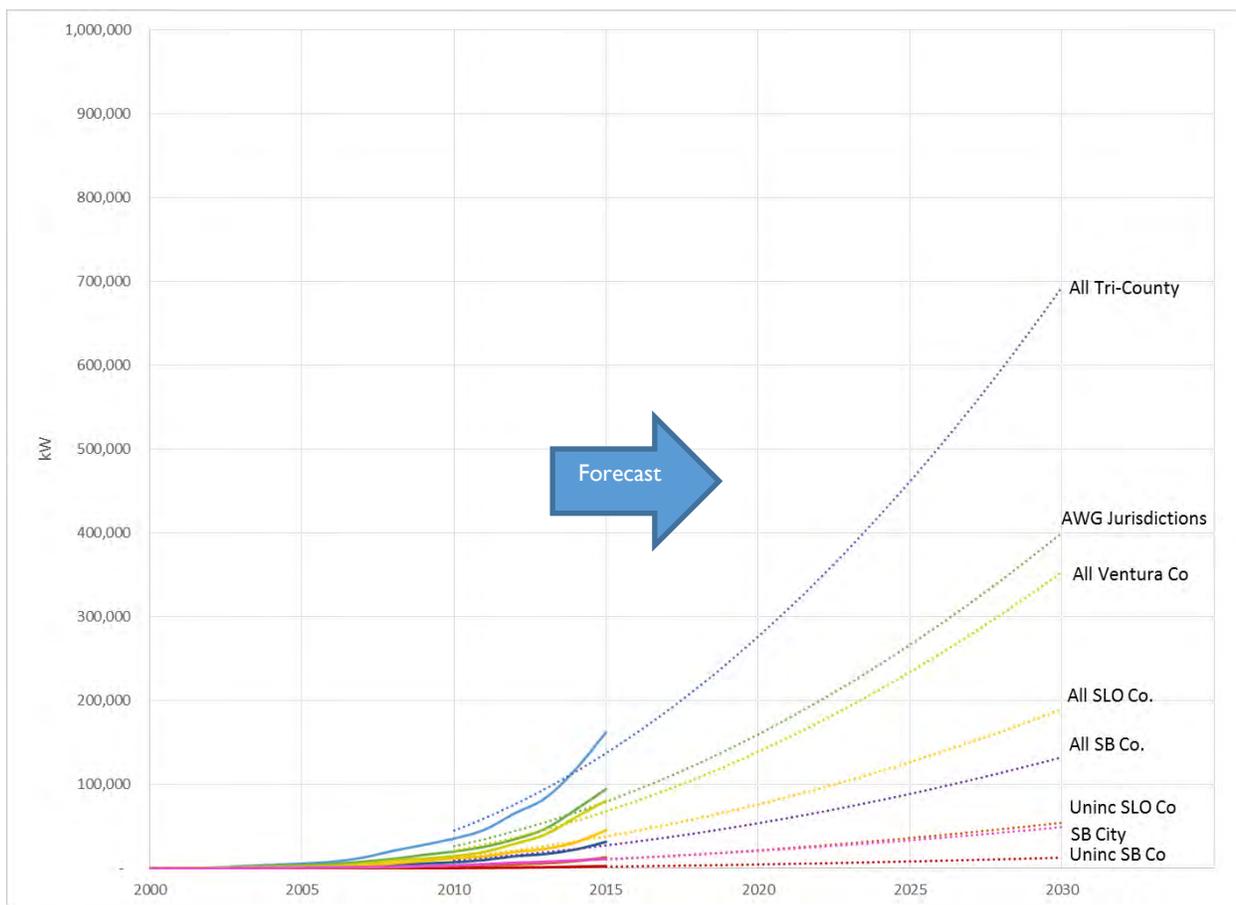


Table ES-1 Load, Distributed Generation, and Net Load Forecast, AWG Jurisdictions Participation Scenarios

Year	Annual Energy Consumption (MWh)	Annual DG Generation (MWh)	Annual Net Load Served by LSE (MWh)
2020	6,698,164	164,987	6,533,177
2021	6,735,965	202,979	6,532,985
2022	6,777,276	244,414	6,532,862
2023	6,811,982	287,988	6,523,995
2024	6,868,761	335,074	6,533,686
2025	6,888,329	381,954	6,506,375
2026	6,930,669	431,948	6,498,721
2027	6,971,608	483,660	6,487,948
2028	7,026,296	538,288	6,488,008
2029	7,047,280	592,489	6,454,791
2030	7,085,173	650,280	6,434,893

As explained in Section II Technical and Financial Analysis, the increasing amount of DG PV also creates more volatile customer load due to the variable nature of its energy output. Solar generation depends on solar irradiance, which can fluctuate significantly over very short periods of time (within seconds) due to weather patterns and resulting cloud cover.

### **E. Power Procurement Cost Forecasts**

CCAs, like all LSEs, satisfy customer demand for electricity by managing a power supply portfolio, a collection of supply-side resources. For the purposes of this Study, a power supply portfolio is designed to acquire two distinct commodities: energy, typically measured in MWh, and resource adequacy capacity, typically measured in megawatts (MW). Energy resources include natural gas generation, RPS compliant renewable energy generation, energy storage, and California Independent System Operator (CAISO) day-ahead and real-time market purchases. Resource adequacy is used to make sure there is sufficient capacity to produce electricity during peak demand periods.

This Study projects decreasing costs for all energy resources considered, except for energy procured in the CAISO markets, where average pricing remains constant and large fluctuations are due to variability in renewable generation for both utility scale resources and customer-owned DG PV. Actual CAISO real-time market prices from January 2014 through October 2016 for the Tri-County Region average around \$36 per megawatt-hour (MWh). However, the range of prices around that mean varied greatly, reaching a high of \$4,377 per MWh during shortages of supply relative to demand, and a low of -\$1,277 per MWh—meaning that CAISO will pay participants to take power—when supply exceeds demand. The high level of DG PV penetration in California, combined with solar and wind energy’s variable nature, accounts for much of this market volatility. This Study has modeled renewable resource variability and the CCA’s associated exposure to CAISO market prices.

Table ES-2 presents the Study forecast for the average annual power procurement cost for the AWG Jurisdictions participation scenario for the three renewable supply scenarios. As can be seen in these data, the average cost of power procurement for the CCA rises as more renewable energy content is added because renewable generation is forecast to be more expensive than alternative non-renewable resources, despite a slight downward trend in renewable energy prices.

*Table ES-2 Average Annual Power Procurement Costs (\$ per MWh), AWG Jurisdictions Scenarios*

Year	RPS Equivalent	Middle of the Road (50% Renewable)	Aggressive (75% Renewable)
2020	\$67	\$74	\$87
2021	\$66	\$74	\$85
2022	\$66	\$74	\$85
2023	\$66	\$72	\$85
2024	\$66	\$72	\$84
2025	\$66	\$71	\$84
2026	\$67	\$70	\$84
2027	\$68	\$70	\$84
2028	\$68	\$69	\$83
2029	\$68	\$69	\$82
2030	\$68	\$69	\$81

The total energy requirements served by various power supply options, including PPAs, the CAISO day-ahead and real-time markets, among others, change depending on scenario, however, the price of each option does not. This is what would be expected in actuality, as the amount of energy procured by the CCA would have little to no bearing on the prevailing PPA and market prices on a long-term basis.

In support of the power procurement cost forecast, data from the U.S. Department of Energy’s Energy Information Administration’s Annual Energy Outlook 2017,<sup>3</sup> which provides estimates of renewable generation costs on a regional basis, were examined. This data is used by utilities, energy consultancies, and others to help understand current and future energy-related pricing trends and is based on real-world project construction, financing, ownership, and ongoing operations and maintenance costs. Table ES-3 shows the various costing components for a new solar photovoltaic project and a new wind project, assuming they are installed on sites where there is no need to work within the constraints imposed by existing buildings or infrastructure (greenfield projects). This cost data supports all-in pricing at around \$67 per MWh for wind resources and \$101 per MWh for solar PV resources.

Table ES-3 Energy Information Administration Cost Estimates for New Wind and Solar Energy Resources in California

Description	Wind Farm – Onshore	Utility-Scale Photovoltaic
Configuration	100 MW; 56 turbines at 1.79 MW each	20 MW, Alternating Current, Fixed Tilt
Installation Type	Greenfield Installation	Greenfield Installation
Total Capacity (MW)	100	20
Capacity Factor (National Average, Jan. 2016-Apr. 2017)	36.59%	26.76%
Total Project Cost, California-Mexico Region (\$ per kW-installed)	\$2,010	\$2,578
Total Project Cost, California-Mexico Region (\$)	\$201,000,000	\$51,560,000
Variable O&M (\$ per MWh)	\$ -	\$ -
Fixed O&M (\$ per kW-year)	\$46.71	\$21.66
Weighted Average Cost of Capital (%)	5.50%	5.50%
Debt Finance Term (years)	20	20
Financing Costs per Year (\$)	\$16,819,545	\$4,314,506
Fixed O&M Costs per Year (\$)	<u>\$4,671,000</u>	<u>\$433,200</u>
Total Project Costs per Year (\$)	\$21,490,545	\$4,747,706
Energy Production per Year (MWh)	320,528	46,884
<b>Per Unit Cost (\$ per MWh)</b>	<b>\$67.05</b>	<b>\$101.27</b>

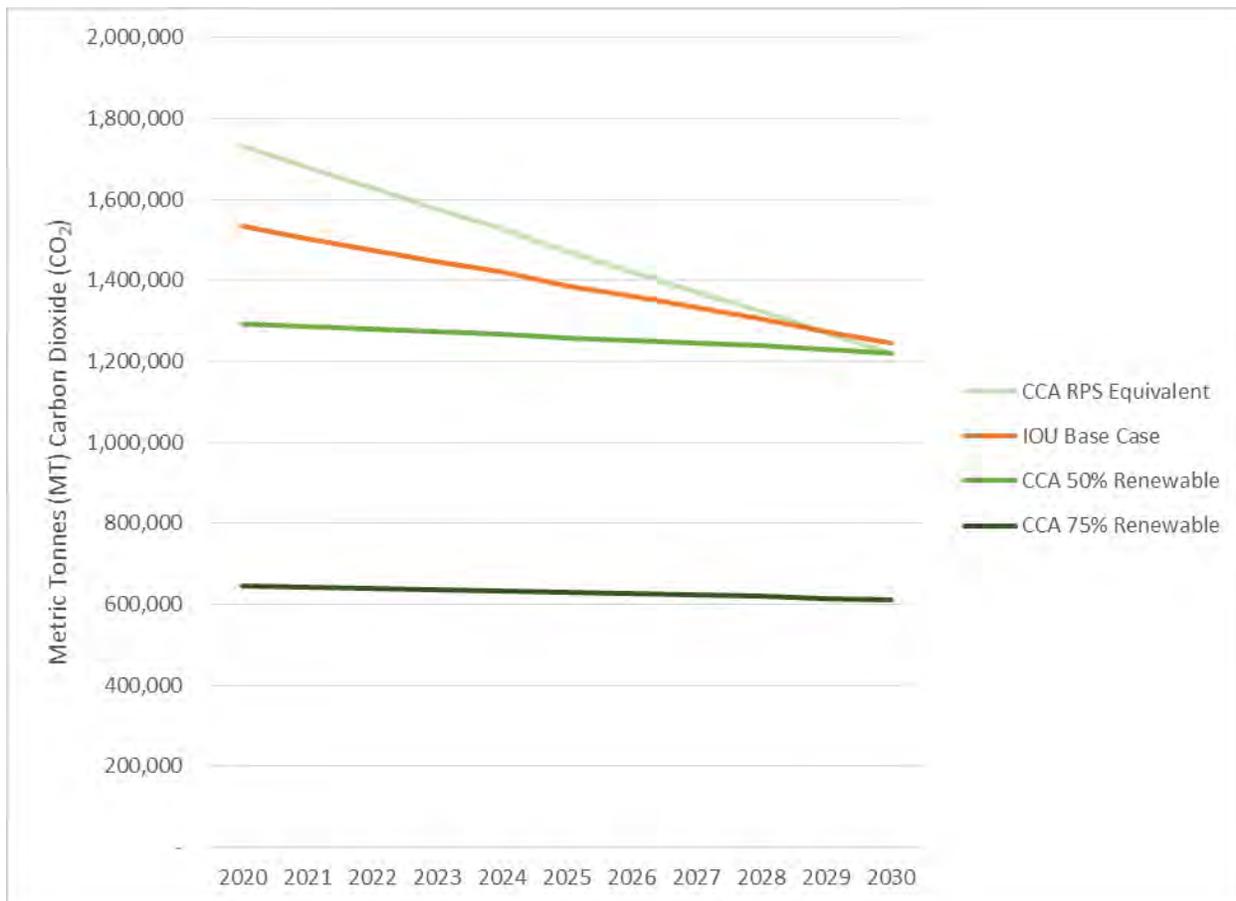
Like all energy price forecasts, the one used within the Study—just as those used within other CCA feasibility studies—may or may not accurately reflect actual future conditions, which are unknown and not predictable. Various market drivers may change resulting in different outcomes from those assumed here. The forecast used herein is a reasonable estimate for the purposes of analyzing the feasibility of CCA within the Tri-County Region, but no warranties as to the accuracy of forecast prices for power purchase agreements or CAISO market commodities are implied or should be inferred. For example, large hydroelectric generation resources owned and managed by the IOUs were not significantly utilized during the recent drought years through 2016. Rainfall in the winter of 2016-2017 filled the hydroelectric reservoirs, enabling a low cost, carbon-neutral generation resource for the IOUs. Generally speaking, all other things being equal, increased hydro production will lower IOU generation revenue requirements and could have a dampening effect on IOU rates, potentially lowering the rates required for the CCA to be competitive.

## F. Greenhouse Gas Emissions Impact

This Study also evaluated the greenhouse gas (GHG) emissions impact of the renewable energy content of the CCA’s portfolio—including the 100% renewable energy product assumed to be chosen by 2% of customers—relative to that of the incumbent IOUs, Southern California Edison (SCE) and Pacific Gas and Electric (PG&E). For the purposes of this comparison, the IOU Base Case assumes the IOUs will progress from currently published 2020 RPS levels of renewable generation linearly to the 50% RPS goal in 2030. Although each IOU may elect to exceed RPS requirements as they have in recent history and relative to 2020 requirements, for example PG&E submitted a joint proposal to decommission the El Diablo nuclear power station and voluntarily reach 55% RPS by 2031,<sup>4</sup> neither IOU has publicly stated firm plans to exceed RPS targets. California is currently considering Senate Bill 100, which would increase the renewable energy mandate to: 50% by December 31, 2026 and 60% by December 31, 2030.<sup>5</sup> Figure ES-5 summarizes

the GHG impact analysis results for the IOU renewable scenario and three CCA renewable scenarios.

Figure ES-5 GHG Emissions Impact Analysis, AWG Jurisdictions Participation Scenarios



Large hydroelectric generation resources owned and managed by the IOUs do not count towards RPS goals and were also not significantly utilized during the recent drought years through 2016. Rainfall in the winter of 2016-2017 filled the hydroelectric reservoirs enabling a low cost, carbon-neutral generation component for the IOUs. In addition, the pumped hydro energy storage that can balance the variability of other sources of renewable generation also relies on rain to fill reservoirs. Future rainfall and drought conditions are unknown, and therefore the future utilization of large hydroelectric generation by the IOUs cannot be predicted. Additional use of hydro resources or increases to the IOU RPS content would result in lower GHG emissions for the IOUs, potentially decreasing the additional GHG reduction benefit of the CCA program.

### G. Cost of Service and Financial Pro Forma Analysis

The cost of service analysis relied on traditional utility ratemaking principles and followed an industry standard methodology for creation of a financial pro forma to forecast the future economic and financial performance of the CCA program. The Study assessed financial feasibility in terms of the ability of the CCA program to realistically deliver competitive costs for customers while paying its substantial start-up

and agency formation costs and ongoing operating expenses.

*The Test Year is the future annualized period for which operating costs are analyzed and rate proxies established. The Study Test Year is based on forecasts of CCA operating conditions for years 2022, 2023, and 2024 and represents a twelve-month period of normalized operations selected to evaluate the cost of service for each customer class and the adequacy of rate proxies to provide sufficient revenue.*

The first step in the cost of service analysis was developing the projected CCA program revenue requirement: the amount of revenue required to cover the costs of the CCA program, including all operating and non-operating expenses, debt-service payments, a contingency allotment, a working capital reserve, and a rate stabilization fund. The revenue requirement was based on a comprehensive accounting of all pertinent costs and projections of customer participation; assumptions and input development are described later in this report. Cost assumptions relied on historical publicly-available information, power cost forecasts conducted for this Study, data provided by PG&E and SCE, and subject matter expertise gained working with a host of public utilities and similar organizations. Table ES-4 summarizes the CCA program Test Year revenue requirements for the AWG Jurisdictions participation scenarios

Table ES-4 Test Year CCA Revenue Requirements, AWG Jurisdictions Participation Scenarios

Description	AWG Jurisdictions Participation Scenarios		
	RPS Equivalent	Middle of the Road	Aggressive
<b>REVENUE REQUIREMENT</b>			
<b>Baseload</b>			
Total Operating Expenses Excluding Power Costs	\$ 10,146,683	\$ 10,256,373	\$ 10,482,215
Total Non-Operating Expenses	16,959,517	18,158,147	20,239,969
Power Costs	461,419,035	489,933,855	549,930,521
Contingency/Rate Stabilization Fund	\$ 54,171,111	\$ 57,535,423	\$ 64,613,615
<b>BASELOAD REVENUE REQUIREMENT</b>	<b>\$ 542,696,345</b>	<b>\$ 575,883,798</b>	<b>\$ 645,266,320</b>
<b>Opt-up to 100% RPS</b>			
Total Operating Expenses Excluding Power Costs	\$ 207,075	\$ 209,314	\$ 213,923
Total Non-Operating Expenses	346,113	370,574	413,061
Power Costs	12,617,576	12,617,576	12,617,576
Contingency/Rate Stabilization Fund	\$ 1,105,533	\$ 1,174,192	\$ 1,318,645
<b>OPT-UP TO 100% RPS REVENUE REQUIREMENT</b>	<b>\$ 14,276,297</b>	<b>\$ 14,371,657</b>	<b>\$ 14,563,205</b>
<b>TOTAL REVENUE REQUIREMENT</b>	<b>\$ 556,972,642</b>	<b>\$ 590,255,454</b>	<b>\$ 659,829,525</b>

CCA program customer participation was assumed to be constant for each participation scenario across the three renewable energy content scenarios examined. For all scenarios, an opt-out rate of 15% was used for all rate classes for all years, meaning that 15% of bundled customers by load in each rate class were assumed to opt out of the CCA program.<sup>6</sup> This 15% opt-out rate is in addition to an estimated 23.5% of AWG Jurisdictions scenario load that represents typically large commercial customers who are

likely to remain with their existing Direct Access (DA) ESP. Other CCA feasibility studies have supported the assertion that opt-out rates, within a reasonable range, have little bearing on CCA feasibility. Figure ES-6 and Figure ES-7 summarize Test Year customer accounts by rate class and Test Year customer usage by rate class for the AWG Jurisdictions participation scenarios, respectively. Average CCA Test Year customer profiles for the three AWG Jurisdictions participation scenarios are provided in Table ES-5.

Figure ES-6 Test Year CCA Customer Accounts, AWG Jurisdictions Participation Scenarios

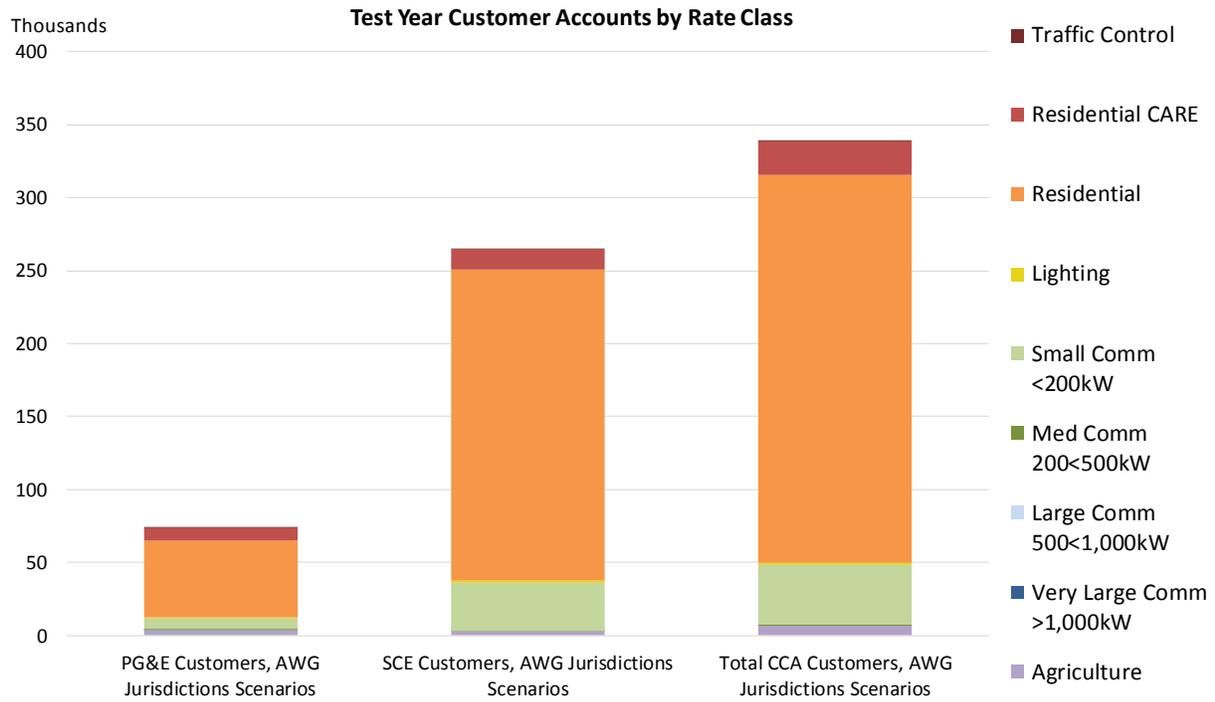
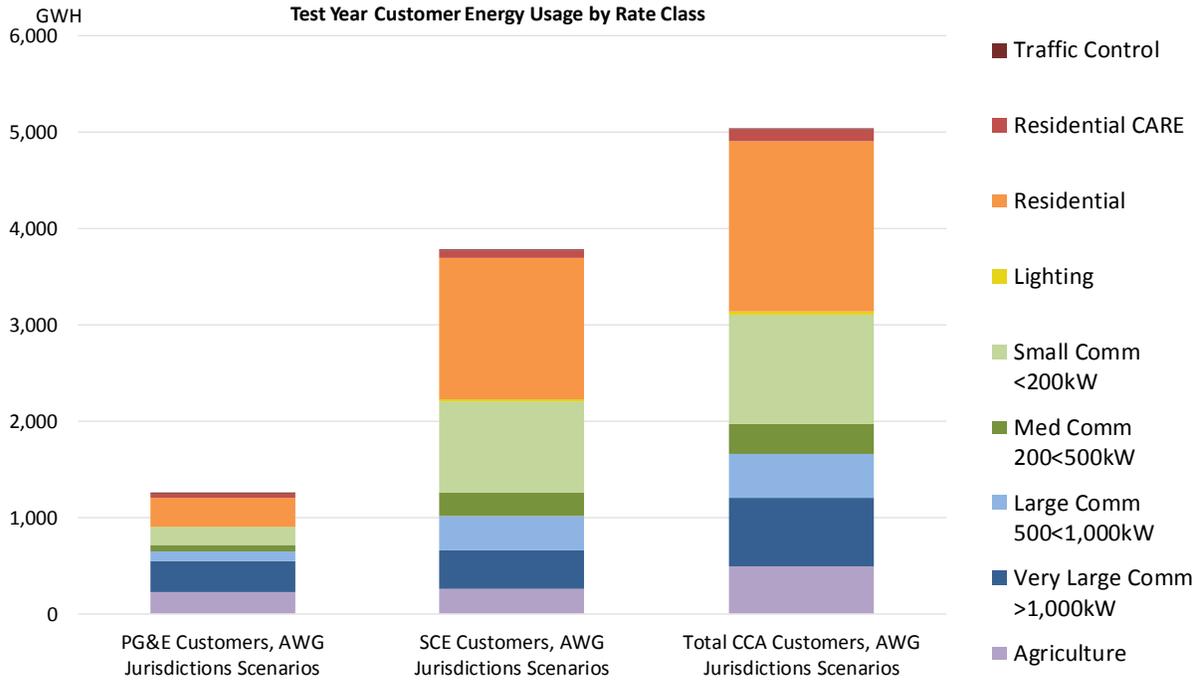


Figure ES-7 Test Year CCA Customer Usage, AWG Jurisdictions Participation Scenarios



## Executive Summary

Table ES-5 Test Year CCA Customer Accounts and Usage, AWG Jurisdictions Participation Scenarios

Line	Description	Test Year		
		Accounts	Annual Load (MWh)	Average Monthly Load (kWh/Account)
1	<b>BASELOAD</b>			
2	Agriculture	6,454	490,772	6,337
3	Very Large Comm >1,000kW	13	718,495	4,673,350
4	Large Comm 500<1,000kW	405	441,022	90,742
5	Med Comm 200<500kW	576	297,829	43,094
6	Small Comm <200kW	40,034	1,124,051	2,340
7	Lighting	1,757	26,357	1,250
8	Residential	256,812	1,709,325	555
9	Residential CARE	22,929	124,036	451
10	Traffic Control	841	2,811	278
11	<b>TOTAL BASELOAD</b>	<b>329,821</b>	<b>4,934,699</b>	<b>1,247</b>
12	<b>OPT-UP TO 100% RPS (MWH)</b>			
13	Agriculture	-	-	-
14	Very Large Comm >1,000kW	-	-	-
15	Large Comm 500<1,000kW	9	10,071	90,742
16	Med Comm 200<500kW	29	15,106	43,094
17	Small Comm <200kW	538	15,106	2,340
18	Lighting	-	-	-
19	Residential	9,078	60,425	555
20	Residential CARE	-	-	-
21	Traffic Control	-	-	-
22	<b>TOTAL OPT-UP TO 100% RPS</b>	<b>9,655</b>	<b>100,708</b>	<b>869</b>
23	<b>TOTAL CCA</b>	<b>339,476</b>	<b>5,035,407</b>	<b>1,236</b>
	<b>CUSTOMERS OPTING UP TO 100% RENEWABLES</b>		<b>Portion of Opt Up</b>	<b>Portion of Total CCA</b>
24	Agriculture		0%	0.00%
25	Very Large Comm >1,000kW		0%	0.00%
26	Large Comm 500<1,000kW		10%	0.20%
27	Med Comm 200<500kW		15%	0.30%
28	Small Comm <200kW		15%	0.30%
29	Lighting		0%	0.00%
30	Residential		60%	1.20%
31	Residential CARE		0%	0.00%
32	Traffic Control		0%	0.00%
33	<b>TOTAL</b>		<b>100%</b>	<b>2.00%</b>

While rate design was not part of the Study scope, based on the detailed pro forma analysis, CCA rate proxies by customer class by IOU jurisdiction were developed. Rate proxies represent the amount of revenue by customer class required to make the CCA financially solvent, based on the Test Year. Based on this analysis, CCA baseline customers would have all-in rate proxies that are higher than both PG&E and SCE for most rate classes for all participation and renewable energy content scenarios examined. Table ES-6 through Table ES-8 present the generation rate differences between the CCA and PG&E and SCE for the AWG Jurisdictions participation scenarios for the RPS Equivalent, Middle of the Road, and Aggressive renewable energy content scenarios. The generation portion of customers' bills is the only cost component for which the CCA competes with the incumbent utilities. Customer billing and delivery charges (transmission and distribution) are the same for both CCA and IOU bundled customers. Generation rate comparisons are provided for the first five years of the Study period by rate class.<sup>7</sup> The

total anticipated bill impact to residential customers in 2020 is included in Table ES 9.

*Table ES-6 Generation Rate Comparisons for PG&E, SCE, and CCA, AWG Jurisdictions RPS Equivalent Renewable Energy Content Scenario*

Rate Class	2022		2023		2024		2025		2026	
	CCA Rates	PG&E Rates								
Agriculture	0.1175	0.0742	0.1175	0.0753	0.1175	0.0749	0.1175	0.0747	0.1175	0.0754
Commercial/Industrial Small <200kW	0.1183	0.1049	0.1183	0.1065	0.1183	0.1059	0.1183	0.1055	0.1183	0.1065
Commercial/Industrial Medium 200<500 kW	0.1190	0.1097	0.1190	0.1113	0.1190	0.1107	0.1190	0.1103	0.1190	0.1114
Commercial/Industrial Large 500<1000 kW	0.1145	0.1107	0.1145	0.1124	0.1145	0.1118	0.1145	0.1114	0.1145	0.1124
Residential	0.1220	0.1003	0.1220	0.1018	0.1220	0.1013	0.1220	0.1009	0.1220	0.1018
Residential CARE	0.1152	0.0936	0.1152	0.0950	0.1152	0.0945	0.1152	0.0941	0.1152	0.0950
Residential Solar Choice	0.1920	0.1265	0.1920	0.1284	0.1920	0.1277	0.1920	0.1272	0.1920	0.1284
<b>Weighted Average</b>	<b>0.1193</b>	<b>0.0961</b>	<b>0.1193</b>	<b>0.0975</b>	<b>0.1193</b>	<b>0.0970</b>	<b>0.1193</b>	<b>0.0967</b>	<b>0.1193</b>	<b>0.0976</b>
<b>CCA Rate Premium/ (CCA Savings)</b>	<b>24.10%</b>		<b>22.27%</b>		<b>22.92%</b>		<b>23.37%</b>		<b>22.22%</b>	

Rate Class	CCA Rates	SCE Rates								
	Agriculture	0.1050	0.0543	0.1050	0.0551	0.1050	0.0548	0.1050	0.0547	0.1050
Commercial/Industrial Small <200kW	0.1072	0.0922	0.1072	0.0936	0.1072	0.0931	0.1072	0.0927	0.1072	0.0936
Commercial/Industrial Medium 200<500 kW	0.1064	0.0837	0.1064	0.0850	0.1064	0.0845	0.1064	0.0842	0.1064	0.0850
Commercial/Industrial Large 500<1000 kW	0.1057	0.0777	0.1057	0.0789	0.1057	0.0785	0.1057	0.0782	0.1057	0.0789
Residential	0.0999	0.0712	0.0999	0.0723	0.0999	0.0719	0.0999	0.0716	0.0999	0.0723
Residential CARE	0.0924	0.0635	0.0924	0.0645	0.0924	0.0641	0.0924	0.0639	0.0924	0.0645
Residential Green Tariff	0.1199	0.1127	0.1199	0.1144	0.1199	0.1138	0.1199	0.1134	0.1199	0.1144
<b>Weighted Average</b>	<b>0.1034</b>	<b>0.0776</b>	<b>0.1034</b>	<b>0.0788</b>	<b>0.1034</b>	<b>0.0784</b>	<b>0.1034</b>	<b>0.0781</b>	<b>0.1034</b>	<b>0.0788</b>
<b>CCA Rate Premium/ (CCA Savings)</b>	<b>33.23%</b>		<b>31.26%</b>		<b>31.97%</b>		<b>32.44%</b>		<b>31.21%</b>	

## Executive Summary

Table ES-7 Generation Rate Comparisons for PG&E, SCE, and CCA, AWG Jurisdictions Middle of the Road Renewable Energy Content Scenario

Rate Class	2022		2023		2024		2025		2026	
	CCA Rates	PG&E Rates								
Agriculture	0.1242	0.0742	0.1242	0.0753	0.1242	0.0749	0.1242	0.0747	0.1242	0.0754
Commercial/Industrial Small <200kW	0.1250	0.1049	0.1250	0.1065	0.1250	0.1059	0.1250	0.1055	0.1250	0.1065
Commercial/Industrial Medium 200<500 kW	0.1257	0.1097	0.1257	0.1113	0.1257	0.1107	0.1257	0.1103	0.1257	0.1114
Commercial/Industrial Large 500<1000 kW	0.1212	0.1107	0.1212	0.1124	0.1212	0.1118	0.1212	0.1114	0.1212	0.1124
Residential	0.1287	0.1003	0.1287	0.1018	0.1287	0.1013	0.1287	0.1009	0.1287	0.1018
Residential CARE	0.1219	0.0936	0.1219	0.0950	0.1219	0.0945	0.1219	0.0941	0.1219	0.0950
Residential Solar Choice	0.1987	0.1265	0.1987	0.1284	0.1987	0.1277	0.1987	0.1272	0.1987	0.1284
<b>Weighted Average</b>	<b>0.1260</b>	<b>0.0961</b>	<b>0.1260</b>	<b>0.0975</b>	<b>0.1260</b>	<b>0.0970</b>	<b>0.1260</b>	<b>0.0967</b>	<b>0.1260</b>	<b>0.0976</b>
<b>CCA Rate Premium/ (CCA Savings)</b>	<b>31.06%</b>		<b>29.13%</b>		<b>29.82%</b>		<b>30.29%</b>		<b>29.08%</b>	

Rate Class	CCA Rates	SCE Rates								
Agriculture	0.1117	0.0543	0.1117	0.0551	0.1117	0.0548	0.1117	0.0547	0.1117	0.0552
Commercial/Industrial Small <200kW	0.1139	0.0922	0.1139	0.0936	0.1139	0.0931	0.1139	0.0927	0.1139	0.0936
Commercial/Industrial Medium 200<500 kW	0.1132	0.0837	0.1132	0.0850	0.1132	0.0845	0.1132	0.0842	0.1132	0.0850
Commercial/Industrial Large 500<1000 kW	0.1124	0.0777	0.1124	0.0789	0.1124	0.0785	0.1124	0.0782	0.1124	0.0789
Residential	0.1066	0.0712	0.1066	0.0723	0.1066	0.0719	0.1066	0.0716	0.1066	0.0723
Residential CARE	0.0991	0.0635	0.0991	0.0645	0.0991	0.0641	0.0991	0.0639	0.0991	0.0645
Residential Green Tariff	0.1266	0.1127	0.1266	0.1144	0.1266	0.1138	0.1266	0.1134	0.1266	0.1144
<b>Weighted Average</b>	<b>0.1102</b>	<b>0.0776</b>	<b>0.1102</b>	<b>0.0788</b>	<b>0.1102</b>	<b>0.0784</b>	<b>0.1102</b>	<b>0.0781</b>	<b>0.1102</b>	<b>0.0788</b>
<b>CCA Rate Premium/ (CCA Savings)</b>	<b>41.87%</b>		<b>39.78%</b>		<b>40.53%</b>		<b>41.04%</b>		<b>39.72%</b>	

Table ES-8 Generation Rate Comparisons for PG&E, SCE, and CCA, AWG Jurisdictions Aggressive Renewable Energy Content Scenario

Rate Class	2022		2023		2024		2025		2026	
	CCA Rates	PG&E Rates								
Agriculture	0.1382	0.0742	0.1382	0.0753	0.1382	0.0749	0.1382	0.0747	0.1382	0.0754
Commercial/Industrial Small <200kW	0.1390	0.1049	0.1390	0.1065	0.1390	0.1059	0.1390	0.1055	0.1390	0.1065
Commercial/Industrial Medium 200<500 kW	0.1397	0.1097	0.1397	0.1113	0.1397	0.1107	0.1397	0.1103	0.1397	0.1114
Commercial/Industrial Large 500<1000 kW	0.1352	0.1107	0.1352	0.1124	0.1352	0.1118	0.1352	0.1114	0.1352	0.1124
Residential	0.1426	0.1003	0.1426	0.1018	0.1426	0.1013	0.1426	0.1009	0.1426	0.1018
Residential CARE	0.1359	0.0936	0.1359	0.0950	0.1359	0.0945	0.1359	0.0941	0.1359	0.0950
Residential Solar Choice	0.2026	0.1265	0.2026	0.1284	0.2026	0.1277	0.2026	0.1272	0.2026	0.1284
<b>Weighted Average</b>	<b>0.1399</b>	<b>0.0961</b>	<b>0.1399</b>	<b>0.0975</b>	<b>0.1399</b>	<b>0.0970</b>	<b>0.1399</b>	<b>0.0967</b>	<b>0.1399</b>	<b>0.0976</b>
<b>CCA Rate Premium/ (CCA Savings)</b>	<b>45.56%</b>		<b>43.41%</b>		<b>44.18%</b>		<b>44.70%</b>		<b>43.35%</b>	

Rate Class	CCA Rates	SCE Rates								
Agriculture	0.1258	0.0543	0.1258	0.0551	0.1258	0.0548	0.1258	0.0547	0.1258	0.0552
Commercial/Industrial Small <200kW	0.1280	0.0922	0.1280	0.0936	0.1280	0.0931	0.1280	0.0927	0.1280	0.0936
Commercial/Industrial Medium 200<500 kW	0.1272	0.0837	0.1272	0.0850	0.1272	0.0845	0.1272	0.0842	0.1272	0.0850
Commercial/Industrial Large 500<1000 kW	0.1265	0.0777	0.1265	0.0789	0.1265	0.0785	0.1265	0.0782	0.1265	0.0789
Residential	0.1208	0.0712	0.1208	0.0723	0.1208	0.0719	0.1208	0.0716	0.1208	0.0723
Residential CARE	0.1132	0.0635	0.1132	0.0645	0.1132	0.0641	0.1132	0.0639	0.1132	0.0645
Residential Green Tariff	0.1308	0.1127	0.1308	0.1144	0.1308	0.1138	0.1308	0.1134	0.1308	0.1144
<b>Weighted Average</b>	<b>0.1242</b>	<b>0.0776</b>	<b>0.1242</b>	<b>0.0788</b>	<b>0.1242</b>	<b>0.0784</b>	<b>0.1242</b>	<b>0.0781</b>	<b>0.1242</b>	<b>0.0788</b>
<b>CCA Rate Premium/ (CCA Savings)</b>	<b>59.94%</b>		<b>57.58%</b>		<b>58.43%</b>		<b>59.00%</b>		<b>57.52%</b>	

Figure ES-8 and Figure ES-9 graphically depict the difference in generation rates between the CCA and PG&E and the CCA and SCE, respectively, for the AWG Jurisdictions scenario for the three renewable content scenarios.

Figure ES-8 CCA and PG&E Generation Rate Comparison Summary for AWG Jurisdictions Participation Scenarios

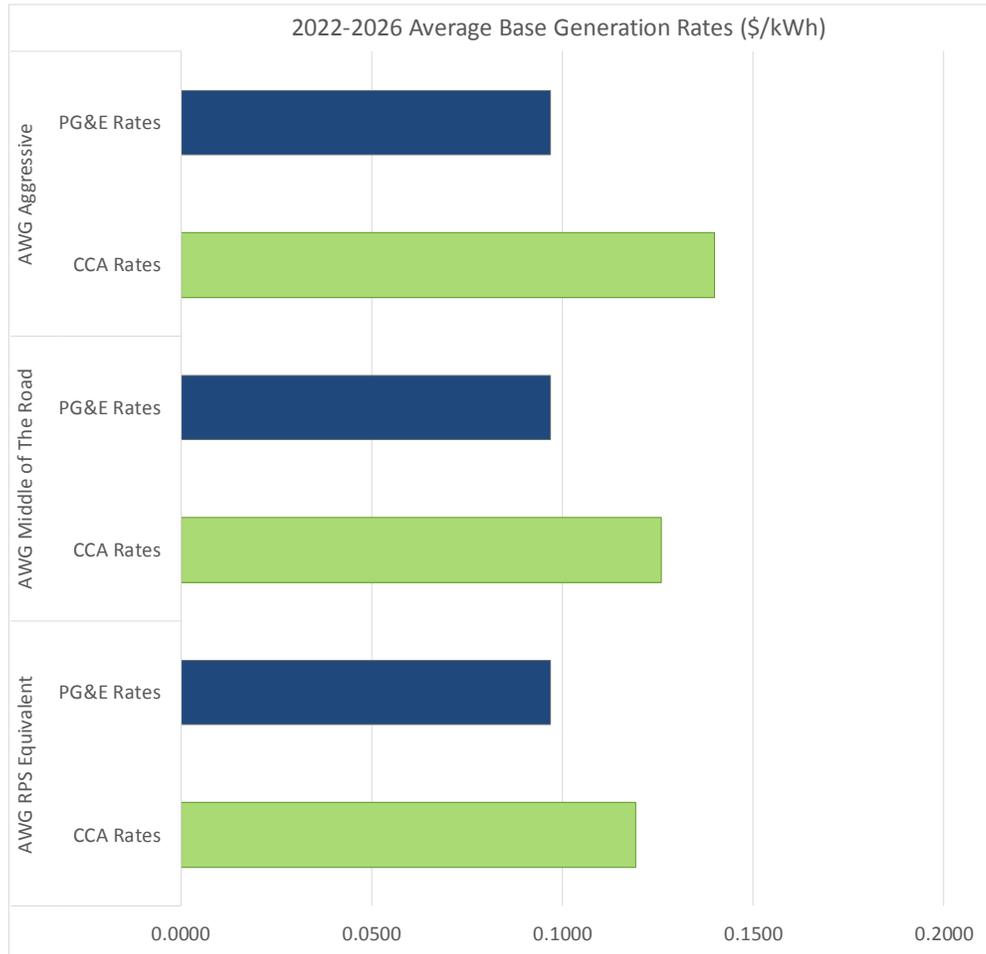


Figure ES-9 CCA and SCE Generation Rate Comparison Summary for AWG Jurisdictions Participation Scenarios

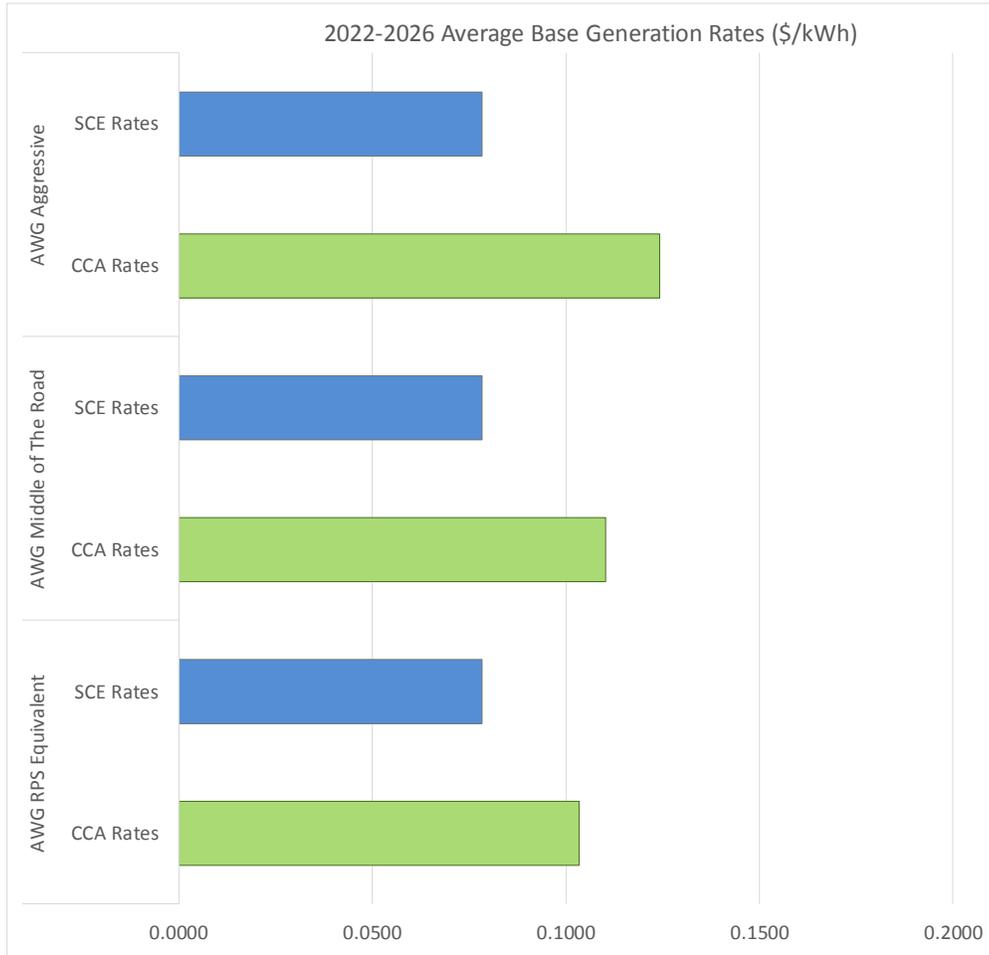


Table ES-9 shows the percentage change in average generation rates and the monetary change in monthly Residential bills for CCA customers versus PG&E and SCE, and the percent change in GHG emissions for all rate classes. This data is presented for year 2020. The previous Tables ES-6 through ES-8 present weighted average rate impacts across all seven customer classes examined for years 2022-2026.

## Executive Summary

Table ES-9 Summary of Forecasted Residential Class Outcomes by Renewable Energy Content Scenario, AWG Jurisdictions Participation Scenarios, Year 2020

Participation Scenario	Included Jurisdictions	Renewable Energy Content	Pacific Gas & Electric		Southern California Edison		Proportional GHG Comparison
			Generation Rate Comparison (% Increase/Decrease for CCA Customers)	Monthly Bill Comparison (\$ Increase/Decrease for CCA Customers)	Generation Rate Comparison (% Increase/Decrease for CCA Customers)	Monthly Bill Comparison (\$ Increase/Decrease for CCA Customers)	
All Tri-County Region	All San Luis Obispo County All Santa Barbara County All Ventura County	RPS Equivalent	22%	\$11.25	41%	\$14.55	6%
		50%	29%	\$14.62	51%	\$17.93	-9%
		75%	43%	\$21.72	71%	\$25.05	-55%
Advisory Working Group Jurisdictions	San Luis Obispo County Santa Barbara County Carpinteria Santa Barbara Ventura County Camarillo Moorpark Ojai Simi Valley Thousand Oaks Ventura	RPS Equivalent	22%	\$12.21	41%	\$16.08	6%
		50%	29%	\$15.92	50%	\$19.79	-9%
		75%	43%	\$23.68	70%	\$27.64	-55%
All San Luis Obispo County	Arroyo Grande Atascadero Grover Beach Morro Bay Paso Robles Pismo Beach San Luis Obispo Unincorporated SLO County	RPS Equivalent	29%	\$12.07			7%
		50%	36%	\$14.89			-9%
		75%	51%	\$20.77			-54%
Unincorporated San Luis Obispo County	Unincorporated SLO County	RPS Equivalent	35%	\$15.70			7%
		50%	42%	\$18.77			-9%
		75%	56%	\$25.21			-54%
All Santa Barbara County	Buellton Carpinteria Goleta Guadalupe Santa Barbara Santa Maria Solvang Unincorporated Santa Barbara County	RPS Equivalent	24%	\$11.15	45%	\$14.53	7%
		50%	31%	\$14.27	55%	\$17.69	-9%
		75%	45%	\$20.78	75%	\$24.22	-55%

## Executive Summary

Participation Scenario	Included Jurisdictions	Renewable Energy Content	Pacific Gas & Electric		Southern California Edison		Proportional GHG Comparison
			Generation Rate Comparison (% Increase/Decrease for CCA Customers)	Monthly Bill Comparison (\$ Increase/Decrease for CCA Customers)	Generation Rate Comparison (% Increase/Decrease for CCA Customers)	Monthly Bill Comparison (\$ Increase/Decrease for CCA Customers)	
Unincorporated Santa Barbara County	Unincorporated Santa Barbara County	RPS Equivalent	26%	\$15.08	47%	\$19.29	7%
		50%	33%	\$18.97	56%	\$23.23	-9%
		75%	47%	\$27.11	76%	\$31.44	-54%
All Ventura County	Camarillo Fillmore Moorpark Ojai Oxnard Port Hueneme Santa Paula Simi Valley Thousand Oaks Ventura Unincorporated Ventura County	RPS Equivalent			41%	\$15.87	6%
		50%			50%	\$19.54	-10%
		75%			70%	\$27.35	-55%
City of Santa Barbara	Santa Barbara	RPS Equivalent			69%	\$17.91	6%
		50%			78%	\$20.42	-10%
		75%			100%	\$25.98	-55%

Table ES-10 shows annual operating results for the AWG Jurisdictions participation scenario for the RPS Equivalent renewable energy content scenario. Net operating margins are negative for all years of the Study period; meaning revenues are not sufficient to cover total operating and non-operating expenses plus the contingency and rate stabilization fund. In the initial years of the study period, this is due to the phasing in of customers and a lag in revenues versus expenditures. In later years, this revenue insufficiency is caused by rates remaining unchanged even though the CCA experiences an increase in operating costs. Rates were not increased because the CCA rate proxies were not competitive with IOU rates from the onset of the Study through 2026. Raising rates would make them less competitive. Although working capital initially is adequate, given the current debt assumptions that include a long-term bond financing in year 2020 of \$288 million, starting in year 2024, working capital declines below targeted amounts and continues to decrease. The combination of increasingly negative net margins and a shortage of working capital would indicate the need for a rate increase around year 2026, again which would further harm the CCA program's rate competitiveness relative to the IOUs. Table ES-11 presents this data for the AWG Jurisdictions Middle of the Road renewable energy content scenario and Table ES-12 presents this data for the AWG Jurisdictions Aggressive renewable energy content scenario. Generally speaking, results for these alternate renewable energy content scenarios are similar to the RPS Equivalent scenario, although

## Executive Summary

net margins and working capital deficiencies are better due to the higher rate proxies, which are set at the beginning and remain constant throughout the study period. Rate increases would still be required, but around the 2028 timeframe.

*Table ES-10 CCA Annual Operating Results, AWG Jurisdictions RPS Equivalent Scenario*

Year	Operating Revenues (\$000s)	Total Operating Expenses Plus Contingency/ Rate Stabilization Fund (\$000s)	Non-Operating Revenues/ (Expenses) (\$000s)	Debt Service (\$000s)	Net Margin <sup>1</sup> (\$000s)	Working Capital Fund (\$000s)	Working Capital Target (\$000s)	Working Capital Surplus/ (Deficiency) (\$000s)	Working Capital Surplus/ (Deficiency) (%)
	a	b	c	d	a - b + c - d	e	f	e - f	(e/f)-1
2020	110,694	139,109	1,145	11,515	(38,785)	211,653	47,077	164,575	350%
2021	445,293	469,267	2,227	11,515	(33,262)	189,905	159,570	30,335	19%
2022	545,838	533,627	2,046	17,276	(3,018)	186,887	181,993	4,894	3%
2023	556,361	541,735	2,028	17,276	(621)	186,266	184,808	1,458	1%
2024	556,922	543,639	1,925	17,276	(2,067)	184,199	185,916	(1,716)	-1%
2025	555,121	543,720	1,985	17,276	(3,889)	180,310	186,453	(6,143)	-3%
2026	554,190	551,493	1,903	17,276	(12,676)	167,634	189,470	(21,836)	-12%
2027	553,316	556,757	1,721	17,276	(18,995)	148,639	191,885	(43,246)	-23%
2028	553,165	566,687	1,396	17,276	(29,401)	119,238	195,934	(76,697)	-39%
2029	550,808	569,985	1,183	17,276	(35,270)	83,967	198,148	(114,181)	-58%
2030	548,923	581,521	386	17,276	(49,488)	34,479	203,224	(168,745)	-83%
NPV of Net Margin:					(176,175)				

<sup>1</sup> Net Margin includes Net Operating Income less Debt Service. The net present value (NPV) of the

Net Margin is determined using a 4% discount rate and is as of Year 2020. The discount rate is equal to the interest rate on the long-term debt.

*Table ES-11 CCA Annual Operating Results, AWG Jurisdictions Middle of the Road Scenario*

Year	Operating Revenues (\$000s)	Total Operating Expenses Plus Contingency/ Rate Stabilization Fund (\$000s)	Non-Operating Revenues/ (Expenses) (\$000s)	Debt Service (\$000s)	Net Margin <sup>1</sup> (\$000s)	Working Capital Fund (\$000s)	Working Capital Target (\$000s)	Working Capital Surplus/ (Deficiency) (\$000s)	Working Capital Surplus/ (Deficiency) (%)
	a	b	c	d	a - b + c - d	e	f	e - f	(e/f)-1
2020	117,525	150,875	1,235	12,330	(44,445)	223,724	50,583	173,141	342%
2021	472,491	504,655	2,323	12,330	(42,170)	193,883	170,117	23,766	14%
2022	579,072	568,848	2,082	18,499	(6,192)	187,691	192,494	(4,803)	-2%
2023	590,222	575,366	2,044	18,499	(1,600)	186,092	194,836	(8,745)	-4%
2024	590,817	570,966	1,962	18,499	3,314	189,406	194,067	(4,662)	-2%
2025	588,906	566,609	2,098	18,499	5,896	195,302	193,284	2,019	1%
2026	587,918	570,586	2,132	18,499	966	196,268	195,171	1,096	1%
2027	586,991	571,282	2,109	18,499	(681)	195,587	196,227	(640)	0%
2028	586,831	576,506	1,991	18,499	(6,182)	189,405	198,875	(9,470)	-5%
2029	584,330	574,978	2,033	18,499	(7,113)	182,292	199,652	(17,361)	-9%
2030	582,330	581,643	1,541	18,499	(16,270)	166,022	203,279	(37,257)	-18%
NPV of Net Margin:					(100,693)				

<sup>1</sup> Net Margin includes Net Operating Income less Debt Service. The net present value (NPV) of the

Net Margin is determined using a 4% discount rate and is as of Year 2020. The discount rate is equal to the interest rate on the long-term debt.

Table ES-12 CCA Annual Operating Results, AWG Jurisdictions Aggressive Scenario

Year	Operating Revenues (\$000s)	Total Operating Expenses Plus Contingency/ Rate Stabilization Fund (\$000s)	Non-Operating Revenues/ (Expenses) (\$000s)	Debt Service (\$000s)	Net Margin <sup>1</sup> (\$000s)	Working Capital Fund (\$000s)	Working Capital Target (\$000s)	Working Capital Surplus/ (Deficiency) (\$000s)	Working Capital Surplus/ (Deficiency) (%)
	a	b	c	d	a - b + c - d	e	f	e - f	(e/f)-1
2020	131,724	168,193	1,428	13,746	(48,788)	250,176	55,745	194,431	349%
2021	528,600	562,520	2,607	13,746	(45,059)	218,863	187,370	31,493	17%
2022	647,505	633,619	2,361	20,623	(4,375)	214,487	211,809	2,679	1%
2023	659,933	646,015	2,318	20,623	(4,388)	210,100	215,901	(5,801)	-3%
2024	660,598	637,896	2,227	20,623	4,307	214,407	214,025	381	0%
2025	658,462	633,821	2,370	20,623	6,388	220,795	213,325	7,469	4%
2026	657,357	640,581	2,395	20,623	(1,452)	219,343	216,041	3,302	2%
2027	656,320	642,137	2,343	20,623	(4,096)	215,247	217,353	(2,106)	-1%
2028	656,142	648,050	2,187	20,623	(10,344)	204,903	220,206	(15,303)	-7%
2029	653,345	646,843	2,185	20,623	(11,936)	192,967	221,079	(28,111)	-13%
2030	651,109	652,739	1,647	20,623	(20,605)	172,362	224,476	(52,114)	-23%
					NPV of Net Margin:	(120,434)			

<sup>1</sup> Net Margin includes Net Operating Income less Debt Service. The net present value (NPV) of the Net Margin is determined using a 4% discount rate and is as of Year 2020. The discount rate is equal to the interest rate on the long-term debt.

## H. Feasibility Outcome Summary

*In no participation or renewable energy content scenario were the CCA program’s rates competitive with PG&E or SCE. Given the underperformance of the CCA in terms of being rate competitive, consistently having negative net margins, and failing to meet the target for working capital, the CCA under the assumptions used in the Study is neither reliably solvent nor financially feasible.*

The two primary factors driving forecasted feasibility results for the CCA include: 1) the competitiveness of CCA rates against PG&E and SCE rates; and 2) the long-term financial viability of the enterprise. Under all participation scenarios, because the rate comparisons show most rate classes paying more for power supplied by the CCA than from the incumbent utilities and because the CCA does not maintain sufficient revenues and working capital throughout the Study period, the CCA is deemed infeasible. Regarding rate competitiveness, forecasted CCA revenue requirements are primarily driven by power procurement costs and the Cost Responsibility Surcharge (CRS), which consists of the Competitive Transition Charge (CTC), the Department of Water Resources Bond Charge (DWR-BC), and the Power Cost Indifference Adjustment (PCIA). Together, these two components represent 78% of the total of the overall

projected CCA revenue requirement and are thus primary drivers of rate competitiveness against the two incumbent utilities.

Recent historical movements in the CRS and the allocation of incumbent utility revenue requirements between generation and delivery (i.e., transmission and distribution) appear to disadvantage the CCA program. The delivery portion of customers’ bills is paid equally by CCA and bundled IOU customers. Generally speaking, in recent years the incumbent utilities appear to have been shifting costs from generation to delivery, as discussed in more detail in Section II.E.I Feasibility Drivers. The CCA only competes against the incumbent utilities on generation. Given the assumptions of this Study, SCE and PG&E forecasted generation rates are not high enough to support CCA feasibility at the forecasted level of CCA power procurement and operational costs. Regarding long-term financial viability, the CCA would

need additional rate increases around the year 2026 timeframe to maintain adequate working capital and increase net margins, further decreasing rate competitiveness.

### I. Sensitivity Analysis Results

Upon completion of the Study outcomes for each participation and renewable energy content scenario, additional sensitivity cases were examined against the AWG Jurisdictions participation scenario to determine how changes in key inputs affect feasibility outcomes. These sensitivities included: (1) Decreases in power procurement costs; (2) Increases in IOU rate escalation; and (3) Decreases in staffing costs. Each sensitivity was examined individually to determine the point at which the CCA could be feasible. As discussed in more detail in Section II.E.2, Pro Forma Sensitivity Analysis, in order for the CCA to be feasible:

- Power procurement costs would have to decrease 40% over the Study forecast, or
- PG&E and SCE rates would have to escalate at an additional 4.0% per year above the Study forecast.

A staffing cost reduction alone is not expected to affect program feasibility. Although not examined as part of this Study, some combination of changes to the Study assumptions could result in a more feasible outcome. Like all feasibility studies, assumptions used herein are based on a forecast of future conditions which may or may not occur. Various market and regulatory drivers may change resulting in different outcomes from those assumed herein. The assumptions used in the Study are reasonable for the purposes of analyzing the feasibility of CCA within the Tri-County Region, but no warranties as to the accuracy of outcomes are implied or should be inferred.

FOR THE CENTRAL COAST REGION

# TECHNICAL FEASIBILITY STUDY ON COMMUNITY CHOICE AGGREGATION

APPENDIX L:  
PEER REVIEW  
AND RESPONSE  
AUGUST 2017



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# **APPENDIX L**

## **PEER REVIEW AND RESPONSE**

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## APPENDIX L: PEER REVIEW AND RESPONSE

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## **Appendix L: Peer Review and Response**

This Appendix provides the initial and extended peer reviews conducted by MRW and Associates, LLC of the Technical Feasibility Study on CCA for the Central Coast Region and the response of Willdan Financial Services and EnerNex to the initial peer review.

### **I. MRW and Associates Peer Review**

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## MEMORANDUM

To: Jennifer Cregar, Project Supervisor, Energy and Sustainability Initiatives, County of Santa Barbara

From: Mark Fulmer, David Howarth, Jeremy Waen, and Anna Casas Llopart

**Subject: Peer Review of “Technical Feasibility Study on Community Choice Aggregation for Central Coast Region” Draft Report dated May, 2017**

Date: May 31, 2017

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In late 2015, the County of Santa Barbara Board of Supervisors authorized funds to perform a Draft Study and directed staff to explore regional interest in Community Choice Aggregation (CCA). Ten local governments joined with the County of Santa Barbara to fund the Draft Study, and the following jurisdictions formed an Advisory Working Group (AWG) in December 2015. The CCA Feasibility Study was requested to provide an in-depth technical, economic, and financial analyses of the potential costs, benefits, and risks of CCA for the Tri-county region (Santa Barbara, Ventura, and San Luis Obispo counties) under a variety of future outcomes, or scenarios. The Draft Study is intended to provide policy makers, stakeholders, and electricity consumers information for assessing the feasibility of a CCA program for the Tri-County region.

On May 14, 2017, the County provided MRW & Associates, LLC (MRW) a draft report entitled “Technical Feasibility Study on Community Choice Aggregation for Central Coast Region” Draft Report dated May 10, 2017 (the Draft Study), and requested MRW to provide a professional peer review of the Draft Study. This memorandum provides MRW’s review. Beyond the Summary of Conclusions, it is organized around the 10 questions concerning the Draft Study to which the County asked MRW to respond.

### Summary of Conclusions

The Draft Study considered eight CCA composition scenarios, each with differing community memberships, ranging from the “All Tri-County Region” to the City of Santa Barbara alone (See Table ES-XIII). Like the Draft Study, MRW’s review effort concentrated on the AWG Jurisdictions scenario.

Overall, the Draft Study is detailed and comprehensive. Its assessment of loads and load forecast are thorough and reasonable, and it provides an in-depth look into potential CCA operations.

Unlike prior recent CCA technical studies, the Draft Study concluded that CCA was not economically feasible even when only the state-required minimum renewable energy content was assumed. MRW's focused its review to identify areas where the Draft Study was potentially overly conservative or made questionable assumptions that might explain why its conclusion was negative while others have been affirmative.

In this regard, MRW identified several areas where Willdan, the Draft Study's author, should consider revising its assumptions:

1. **CCA Renewable power contracts.** The Draft Study's use of utility-average renewable contract prices does not reflect the most recently-reported contract prices and does not reflect the general downward trend in renewable prices seen over the past few years.
2. **"Uncollectible expenses."** The Study assumed from 5% to 8% of the revenues due to the CCA from its customers could not be collected. This is an order-of-magnitude higher than that experienced by either MCE Clean Energy (MCE),<sup>1</sup> the longest-running CCA in the state, or Sonoma Clean Power (SCP), the second longest-running CCA in the state. CCAs do not observe the same level of uncollectible accounts as the IOUs due because CCAs are allowed to return non-paying accounts to the corresponding IOU's bundled service.
3. **Administrative labor costs.** The number of employees assumed in the pro forma analyses, as well as their compensation, appear high relative to operating California CCAs.
4. **CCA service fees.** The incumbent utilities—Southern California Edison (SCE) and Pacific Gas and Electric (PG&E)—charge CCAs in their respective territories certain fees for billing conducted on behalf of the CCA as well as meter and data management. While the Draft Study reflects current tariffed rate for these services, it does not account for the proposed dramatic uncontested reductions being presented by both utilities. Similarly, it is unclear whether the ESP service fees section of the Draft Study properly accounts for critical operational services such as data management and scheduling coordination.
5. **Assumed reserves funding.** Beyond working capital, CCAs typically develop a "rate stabilization reserve fund" which can be drawn upon in years' where the CCA might not otherwise be able to meet its rate targets. The Draft Study pro forma analysis appears to assume that approximately \$78 million (14% of total expenses) is contributed each year, rather than setting a target (e.g., 15% of annual expenses), taking 3 to 5 years to achieve the fund, and then eliminate further contributions until replenishment is needed.
6. **PG&E and SCE Rate Forecasts.** A fundamental concern is that the forecast of SCE and PG&E rates is disconnected from the forecast of CCA rates. The utility rates against which the CCA rates are compared are simply the current rates escalated at 0-0.5%. It does not account for: (i) SCE's or PG&E's actual supply portfolio, (ii) the two utilities' status with respect to State's renewable power content mandates, (iii) fuel price trends, or (iv) any other underlying fundamentals. In particular, there is no explicit connection between the utilities' generation

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<sup>1</sup> MCE began serving customers in May 2010 to select areas within Marin County. Presently serves approximately 255,000 accounts located within all of Marin and Napa Counties, as well as select cities within Contra Costa County (Richmond, San Pablo, El Cerrito, Lafayette, and Walnut Creek) and the City of Benicia in Solano County. MCE serves a diverse customer base in terms of geographic, ethnic and socio-economic backgrounds.

rates and the CCA generation cost, even though they would be purchasing from the same wholesale market and vying for the same incremental renewable generation sources.

We are also concerned that the Draft Study assumes that the franchise fees (i.e., utility taxes) that would flow to the respective cities' and counties' general funds if SCE or PG&E were providing service is assumed to instead flow to the CCA. This treatment should be verified by the AWG or corrected.

Lastly, we recommend that sensitivity cases used to explore the impact of lower SCE and PG&E rates and higher exit fees consider a wider range of potential values.

## Responses to Questions

### 1. Does the Study consider all pertinent factors to determine current and future electric energy requirements of the CCA?

The Draft Study notes, "...historical utility level consumption data for 2001-2016 was pulled from EIA Form 861 for both PG&E and SCE. This data was analyzed and a logarithmic line of best fit was created and extended through 2030. This data was then compared with the California Energy Commission's long-term procurement plan (LTPP)(sic) load forecasts, which are available through 2025 for the respective planning areas. Because the two sources showed very different results by 2030, the average between the LTPP sales projection and the EIA consumption data forecast was utilized for the load forecast for Central Coast Power."

The curve fit showed a much lower load growth rate than that from the CEC. Draft Study forecast shows modest load growth. That is, natural load growth from increased economic activity is generally offset by efficiency and behind-the-meter customer generation (e.g., rooftop solar).

Particularly given the relatively short time frame in which it conducts the economic analysis, this load forecast is reasonable.

**Direct Access (DA):** Since DA customers are not likely to join a CCA due to an existing contract with an Electric Service Provider (ESP), for purposes of this Draft Study DA customers have been excluded from the load forecast.

**Opt-out 15% base assumption.** The Draft Study assumes that 15% of the eligible customers will opt-out of the CCA and remain on bundled utility service. This value is conservative relative to the actual opt-out rates experienced with the most recent CCAs.

### 2. Does the Study incorporate current power market conditions and reasonable projections of expected future conditions?

The Draft Study provides a comprehensive review of current power market conditions, including a qualitative summary of power procurement considerations (e.g., renewable portfolio standard (RPS), resource adequacy and storage) as well as a quantitative analysis of recent historical pricing for

renewable energy, natural gas generation and California Independent System Operator (CAISO) day-ahead and real-time wholesale electricity markets. The Draft Study presents data on current expectations regarding the relative levelized cost of energy for different generation technologies and recent declines in solar photovoltaic (PV) costs. The Draft Study also presents data showing trends in utility RPS compliance costs, as reported annually to the California legislature (i.e., the Padilla report) and in the Biennial RPS reports.

**Renewable Energy Procurement.** To forecast CCA renewable energy procurement costs, the Draft Study consultants developed a best-fit logarithmic curve using average utility RPS compliance costs depicted in Figure ES-40 of the Draft Study. The resulting RPS price forecast is likely a conservative estimate of CCA renewable energy procurement costs. This is because the data used to forecast RPS price trends do not necessarily reflect the market in which the CCA will operate since the data reflect utility procurement costs for energy delivered during a particular year. The renewable energy portfolios of utilities include contracts struck over a period of time during which technology costs have been rapidly decreasing. As a result, the decline in average costs incurred by the utilities for renewable energy deliveries has lagged behind the decline in costs for new (incremental) resources. This point is referred to in footnote 97 of the Draft Study, which quotes an explanation by California Public Utilities Commission (CPUC) staff.

The 2016 Padilla report,<sup>2</sup> issued May 1, 2017, presents time-of-delivery-adjusted renewable energy prices for bundled RPS contracts approved in 2016. The prices are aggregated to avoid revealing confidential data, and for SCE include wind, geothermal and biomass contracts in addition to solar. The weighted average prices for contracts approved in 2016 are \$0.059/kWh for PG&E and \$0.061/kWh for SCE, well below the average 2016 expenditures of \$0.11/kWh and \$0.094/kWh, respectively. The prices of contracts approved in 2016 are approximately 30% below the average RPS PPA cost of \$88/MWh assumed in the Report for 2020.

Since the CCA would be making RPS contract purchases at current and future market prices that are lower than the average utility RPS compliance cost as reflected in Figure ES-40, the Draft Study has likely overestimated RPS PPA costs in the *pro forma* analysis.

The Monte Carlo model used for the Draft Study is useful for reflecting uncertainty in forecasts of procurement costs, by providing a statistically characterized range around this base forecast. The report does not provide information concerning the way in which RPS price uncertainty was characterized in the Monte Carlo model, so it is not possible to review the reasonableness of these assumptions.

**Natural Gas Generation.** In the case of natural gas generation prices, the Draft Study fit a curve to 2002-2016 CAISO market implied prices to forecast prices for the period through 2035. Based on this analysis, natural gas generation costs are forecast to decrease by 25% from \$41/MWh in 2020 to \$31/MWh in 2030. This trend analysis may be underestimating natural gas generation costs over the long term by not differentiating between trends in market heat rates (the implied rate of conversion of natural gas energy to electricity, in Btu/kWh) and natural gas prices, which may be driven by different market dynamics not captured by the trend analysis. Natural gas prices are relatively low at present. In its 2017

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[http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About\\_Us/Organization/Divisions/Office\\_of\\_Governmental\\_Affairs/Legislation/2017/Final%20-%20Padilla%20Report%20-%20RPS%20Costs%202017.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/Office_of_Governmental_Affairs/Legislation/2017/Final%20-%20Padilla%20Report%20-%20RPS%20Costs%202017.pdf)

Annual Energy Outlook, the Energy Information Administration forecasts natural gas prices for electricity generation in the Pacific region to increase by an average of 3.5% per year between 2020 and 2030. Based on this forecast of natural gas prices, the forecast of natural gas generation costs used in the Draft Study suggests market heat rates will decrease by more than half between 2020 to 2030, or a compound average rate of -6.1%. While there may be downward pressure on market heat rates as additional renewable energy sources are brought on line, a 6% per year reduction in market heat rate is likely not sustainable since it would be difficult for natural gas generators to recover costs. The Draft Study would likely benefit from a review of this assumption and the associated discussion of the forecast. As with the RPS cost forecast, additional information on how natural gas price uncertainty was reflected in the Monte Carlo model would be needed to assess reasonableness.

**Other Cost Components.** Following the cost of RPS procurement and natural gas generation, resource adequacy (RA) represents the remaining significant component of CCA procurement costs. The Draft Study provides a reasonable forecast of RA costs. The remaining components, including CAISO day-ahead and real-time markets and storage procurement represent a small fraction of total costs, just 2% in the 50% RPS case. The forecasts used in the Draft Study for these cost components appear reasonable.

### 3. Are the estimates of the GHG emissions intensity of the CCA scenarios relative to the incumbent investor-owned utilities (IOUs), namely Pacific Gas and Electric Company (PG&E) and Southern California Edison (SCE), reasonable and adequate?

The Draft Study's projections of CCA greenhouse gas emissions are generally reasonable. Figure 1 below replicates "Table ES-XL (sic) Jurisdictions scenario CO2 output comparison with IOU base case and trend" from the Draft Study. Note that the IOU Base Case line (orange) converges with the CCA 50% RPS line (green) by 2030. This reflects the fact that in 2030 the IOUs would be meeting the 50% RPS requirement in 2030, the same renewable content as the CCA. However, implicit in this figure is that the CCA also can procure non-RPS compliant carbon-free power (i.e., large hydroelectric) in an equal share to that which SCE and PG&E have. This is particularly important with respect to PG&E, which has significant nuclear and large hydroelectric resources<sup>3</sup>. Note also that this figure assumes that PG&E meets its goal of replacing the output of the retiring Diablo Canyon Nuclear Power Plant (2022-2023) with carbon-free resources.

The "IOU Trend" line in the figure (yellow) is interesting and provides a conservative benchmark against which the CCA's GHG emissions can be compared. However, it should not be used to provide the basis for a GHG analysis.

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<sup>3</sup> Note that the power content labels included in the Draft Study for the two IOUs are for 2015, which due to the drought conditions understates the typical hydroelectric output and thus overstates the IOUs' GHG emissions.

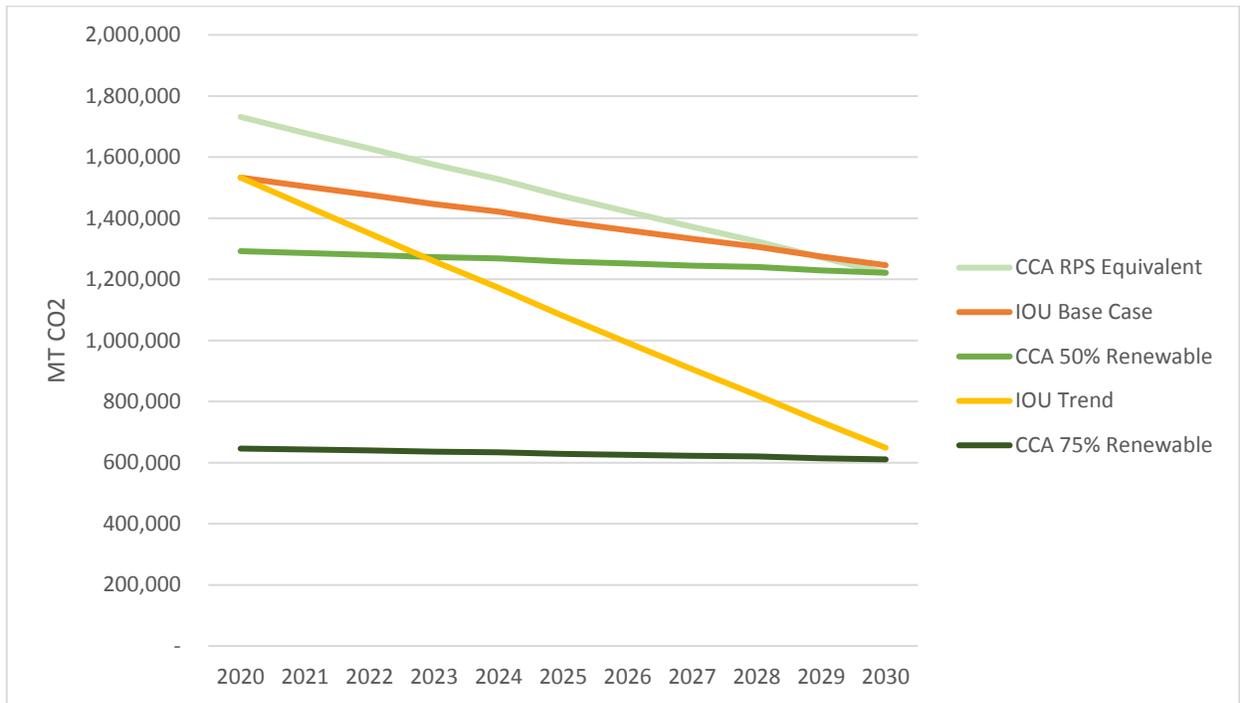


Figure 1: Greenhouse Gas Emissions

Consistent with other CCA analyses conducted or peer reviewed by MRW, the Draft Study illustrates that if a CCA wishes to reduce GHG emissions relative to remaining with the incumbent utility while maintaining competitive rates, it would need to explicitly contract for non-RPS complying, GHG-free power: that generated by large hydroelectric or nuclear facilities.

4. Does the Draft Study consider all pertinent factors in projecting future PG&E and SCE rates for comparison to CCA costs/payment/rate projections?

MRW finds there are areas where the Draft Study can be improved and refined with respect to the forecast of PG&E and SCE rates.

**Error in Current IOU Rates.** Table 1 compares current PG&E rates as presented in both the Draft Study and PG&E’s 5011-E-A advice letter. While some rates are reasonably similar, others, particularly the medium and large commercial and industrial rates, are not. The difference between these rates is attributable to the study’s use of differing “billing determinants.”<sup>4</sup> It appears the Draft Study assumes a

<sup>4</sup> “Billing Determinants” are the usage values one multiplies times the rates to arrive at the total bill. For residential customers, it is just the number of kilowatt-hours consumed. For large accounts, this include the seasonal on - peak and off peak use (in kilowatt-hours) as well as the maximum demand (kilowatts) that occur during various periods throughout the day and year.

17% load factor for Commercial/Industrial Large rate class; instead the average load factor for this rate class should be in the range of 45%-65%.<sup>5</sup> This should be corrected.

**Table 1: Comparison of Draft Study’s estimated PG&E rates to PG&E’s actual rates**

PG&E (¢/kWh)			
Rate Class	Schedule	Draft Study	Advice letter 5011-E-A
Agriculture	AG-5B	14.0	16.6
Very Large Commercial >1,000kW	E-20-T	10.9	11.7
Commercial/Industrial Large 500<1000 kW	<b>E-19SV</b>	<b>33.5</b>	<b>17.8</b>
Commercial/Industrial Medium 200<500 kW	<b>A-10S</b>	<b>24.3</b>	<b>20.4</b>
Commercial/Industrial Small <200kW	A-1	22.2	23.0
Residential	E-1	23.1	23.1
Residential CARE	EL-1	13.6	13.7

Table 2 below provides a similar comparison for SCE rates presented in the Draft Study relative to MRW’s estimated average rates. As was the case with Table 1, the rate differences occurring in Table 2 are due to differences in how the billing determinants are calculated. For example, for Commercial/Industrial Small, the Draft Study assumes a 11% load factor; instead the average load factor for this rate class should be in the range of 35-55%.

**Table 2: Comparison of Draft Study’s estimated SCE rates to MRW’s estimates of SCE rates**

SCE (¢/kWh)			
Rate Class	Schedule	Draft Study	MRW estimates
Agriculture	TOU-PA-3	12.5	12.7*
Very Large Commercial >1,000kW	TOU-8 -T Option B	8.5	9.1
Commercial/Industrial Large 500<1000 kW	<b>TOU-8 -P Option B</b>	<b>28.2</b>	<b>12.8</b>
Commercial/Industrial Medium 200<500 kW	<b>GS3-RTIME</b>	<b>17.5</b>	<b>14.5**</b>
Commercial/Industrial Small <200kW	<b>GS2-RTIME</b>	<b>31.3</b>	<b>16.9***</b>
Residential	D	19.6	19.4
Residential CARE	D-CARE	12.1	12.1

\* Average rate for agriculture rate class

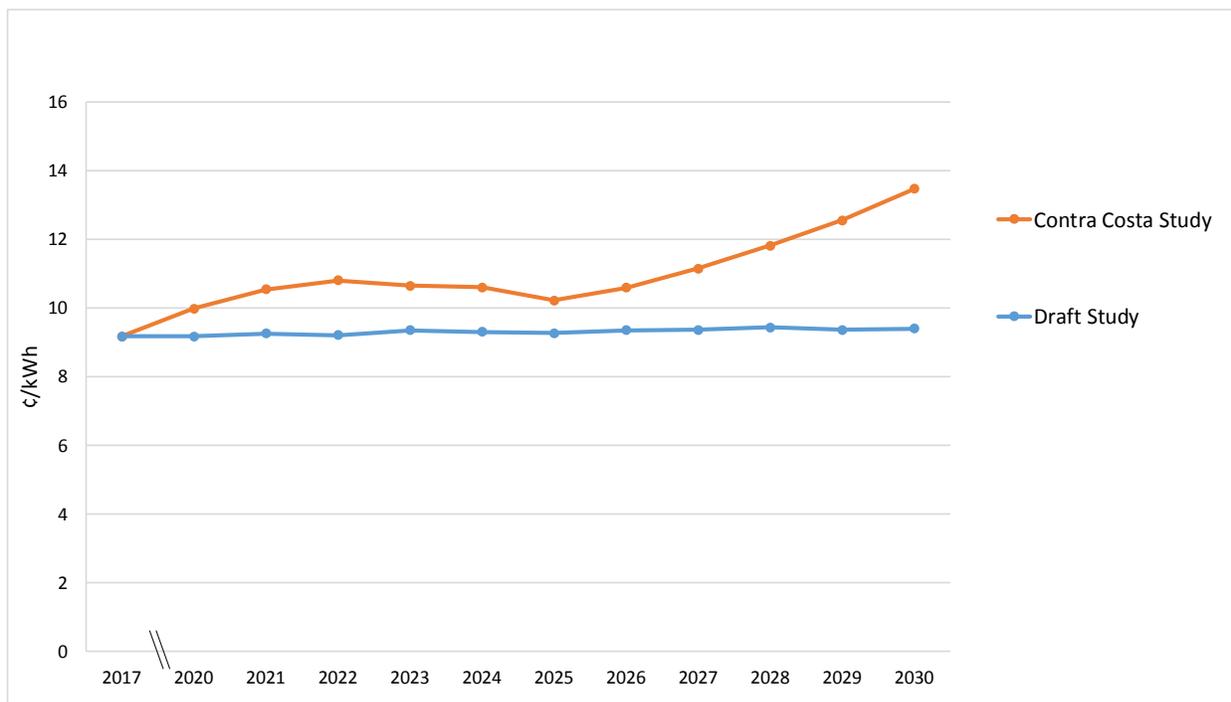
\*\* Rate for GS3-TOU-Option B

\*\*\* Rate for GS2 –Option B

<sup>5</sup> “Load Factor” reflects how much the customer uses relative to its peak demand. A customer who uses power at its peak demand level all time would have a “load factor” of 100%. Because large customer rates have per kW demand charges, the higher the load factor, the more kilowatt-hours the demand charges are averaged over and thus the lower the rate. Thus, there is a large difference between the average rate of a customer with a low load factor, like 17%, and a higher one, such as 65% or higher.

**a. IOU Rates Forecasts**

Figure 2 compares the PG&E generation rate forecast done by MRW for the CCA Technical Study for Contra Costa County<sup>6</sup> (Contra Costa Study) and the Draft Study. In both cases the current generation rate, 2017, is based on the weighted average of Central Coast CCA Scenario 2 PG&E rate using the class averages generation rates from AL 5011-E-A. The Draft Study forecasted 0% annual increase between 2017 and 2020, and -0.25% between 2020 and 2030. This is based on the Draft Study’s annual increase of the power costs calculated using the Monte Carlo simulation. Instead, the Contra Costa Study forecast was developed on a fundamentals basis, considering PG&E’s generation portfolio, contracts, power markets, etc., and resulted in an annual average increase of 3% from 2017 to 2030. More precisely, the Contra Costa Study forecasts a 1.5% annual increase between 2017 and 2022, followed by a 1.5% annual decrease between 2023 and 2025 (due to the Diablo Canyon retirement), and finally a 5% annual increase between 2026 and 2030.



**Figure 2: Comparison of Draft Study’s and MRW’s forecasts of PG&E generation rates**

Furthermore, the Draft Study extends its calculated escalator for generation rates to non-generation rates. This is concerning because there is no direct relation between the cost drivers for generation and non-generation utility services.

<sup>6</sup> <http://www.cccounty.us/DocumentCenter/View/43588>

5. Does the Draft Study consider all pertinent factors in presenting a reasonably accurate investor-owned utility (IOU) vs. CCA cost/payment comparison?

Our concerns regarding escalation of the PG&E and SCE delivery rate raised in response to Question 4 would not be material if the same delivery rate is used for both the utility and CCA rates. However, it is not clear from the Draft Study report that a common delivery rate was used in the comparison of SCE and PG&E rates and CCA costs. As noted above, the utility rate forecasts were based on the escalation of both the generation and delivery rates. What would be helpful would be a comparison table that showed, either on a class basis or on a system average basis the following (in \$/kWh):

YEAR	PG&E/SCE			CCA					i=(h-a)/a
	a	b	c = a+b	d = a	e	f	g	h = d+e+f+g	
	Delivery Rate	Generation rate	Total Rate	Delivery Rate	Ave. Power Cost	Other Costs	PCIA	Total Rate	Pct. difference
2022									
2023									
2024									
2025									
2026									
...									

6. Do the pro forma analyses consider all pertinent factors in projecting CCA’s operating results?

Yes. However, the Draft Study may be treating the franchise fee revenues incorrectly. Franchise fees are a percentage of utility customers’ bills that are paid to cities or counties for the nonexclusive right to install and maintain equipment on streets and public rights of way (e.g., power poles, underground power or gas lines). The Draft Study assumes that the franchise fees collected by PG&E and SCE from CCA customers will be diverted from the general fund into the CCA. MRW is not aware of other CCAs diverting the franchise fee revenue stream from the participant’s general fund to the CCA. The AWG should verify that this is an acceptable treatment before it is included as a CCA revenue source. If it is not, or is at all questionable, franchise fee revenue should be removed from the pro forma analysis.

Second, it is not clear that the franchise fees are correct. The rate modeling shows particularly high SCE franchise fees as part of the CCA rates: around 9% of CCA revenue. Later, and in the pro forma, the franchise fees are subtracted out.

**Power Costs:** As discussed above, there is a great deal of uncertainty in forecasts of power costs. The base forecast of RPS procurement costs is likely conservative, while the forecasted costs of natural gas generation may be lower than expected over the forecast period. To the extent that the pro forma analyses include Monte Carlo simulation model results, the pro forma results may reasonably reflect the

expected range of power costs. It is difficult to assess the reasonableness of the Monte Carlo simulation model analyses with information presented in the Report.

**Other Operating Costs.** Operating costs consist of all costs directly associated with provision of the business services and activities of the CCA—namely procuring and providing power to customers. The Draft Study thoroughly presented the operating costs of a hypothetical CCA.

Salaries & Wages: Both the 45 FTE staff proposal and the average fully loaded salary costs seem excessive for this proposed CCA. MCE has the largest staff of any CCA present and this is largely due to two factors 1) they were the first CCA to form so resource sharing with other CCAs was not an option until very recently, and 2) they are engaged in administering Energy Efficiency programs utilizing ratepayer funds. The former is important because subsequent CCAs are finding they can operate with much leaner staffing than MCE. The latter is important to consider because the EE programs utilize a separate revenue stream from electricity sales. Additionally, EE (and customer facing programs in general) commands a higher staffing requirement than other core operations within a CCA. Additionally, based on this Draft Study the average loaded proposed salary for the Central Coast Power CCA would be \$156,743. Whereas based on MCE's projected FY 2016/17 financials their average fully loaded salary is \$116,983. As a result, both factors cause the "Salaries and Wages" expense category to be significantly larger than would be prudent for a new CCA organization.

As such, we suggest that Willdan consider the following revisions:

- 1) Adjust the anticipated FTE downward (perhaps 20-30 FTE), especially at the upper end of the staffing spectrum.
- 2) Adjusting the proposed salary costs downward.

IOU Service Charges: Based on analysis it appears the Draft Study uses a \$0.83/MWh/month multiplier to determine both PG&E's and SCE's service charges. Furthermore, this multiplier has a 2% annual escalator applied. These assumptions seem problematic. First, PG&E and SCE have notably different Meter Data Management Agent (MDMA) and Bill-Ready fees. (Note that MDMA charges are on a per meter per month basis. Bill-Ready charges are on a per customer per month basis.) PG&E's present MDMA fee is dramatically higher than SCEs, though PG&E is proposing in its present General Rate Case (GRC) Phase 2 to dramatically reduce this fee from \$7.67 to \$0.14. PG&E has differing Bill-Ready fees based upon whether the CCA's charges appear on a separate page of the bill or not. In contrast SCE has differing Bill-Ready fees depending upon whether the bill is delivered via printed or electronic means. Furthermore, both PG&E and SCE have proposals before the CPUC to reduce these charges because they observe increasing numbers of departing load customers over which these sorts of costs can be spread. There is no reason to believe this trend won't continue as more CCAs form. As a result, IOU Service Charges seem a bit overestimated.

The PG&E and SCE CCA Start Up and Opt-Out charges that also roll-up into this total IOU Service Charges category seem reasonable and do not require revising. As such, we recommend that Willdan consider the following revisions:

- 1) Use PG&E's and SCE's proposed revised MDMA and Bill-Ready fees that are likely to be effective well before 2020 to more accurately approximate the resulting PG&E and SCE Service Fees.
- 2) Either keep these fees level or approximate some small de-escalation factor to account for the likelihood that these fees will further reduce as more load departs and as these metering and billing departments of the utilities adapt to automate these processes.

ESP Charges: It was difficult to understand and extrapolate the various types of ESP services and related charges that could be used to justify the \$1.50/account/month multiplier used to determine these overall charges. MCE presently has contracted a \$1.15/account/month fee for Data Management services with Calpine. Scheduling Coordination is a separate service that also fits under this "ESP Charges" category and would add to the costs as well. It appears that this \$1.50/account/month factor is in the correct ballpark to approximate these types of costs; however, it is difficult to say if this figure is too high or too low.

As such, we recommend that Willdan consider looking to existing CCAs' public contract information to better approximate Data Management and Scheduling Coordination costs under this category.

Jurisdictional Administration: It is atypical for a CCA to reimburse the local jurisdictions for staff-time spent interfacing with the CCA. The one area where this might be practiced is with Single Jurisdiction (rather than Joint Powers Authority) CCAs where staff is shared between local government and CCA operations. Even in those cases this "Jurisdictional Administration" category seems to overlap with the Salary & Wages category. As a result, these costs should not be considered part of the CCA's operating expenses. We therefore recommend that Willdan consider excluding these costs from the Operation Expenses analysis.

Uncollectable Accounts: Per the draft report it appears that a 5% uncollectable accounts rate is assumed for PG&E accounts and an 8% uncollectable accounts rate is assumed for SCE accounts. Neither rate seems reasonable. First and foremost, CCA uncollectable account rates are not directly comparable to IOU uncollectable account rates. If a CCA customer account is repeatedly uncollected or under-collected it permitted practice to return that customer's account to bundled utility service.<sup>7</sup> As such, CCAs observe a significantly lower uncollectable accounts rate than IOUs. For example, MCE presently observes a 0.5% uncollectable accounts rate for its 255,000 customer accounts across its four-county service area.<sup>8</sup> SCP also observes and plans for

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<sup>7</sup> PG&E and SCE Electric Rule 23 section Q.2 both state: "[PG&E/SCE] shall not disconnect electric service to the customer for the non-payment of CCA charges. In the event of non-payment of CCA charges by the customer, the CCA may submit a CCASR requesting transfer of the service account to [PG&E/SCE] Bundled Service according to Section M.

<sup>8</sup> See MCE fiscal year 2015/16 audited financial statements: <https://www.mcecleanenergy.org/wp-content/uploads/2016/09/MCE-Audited-Financial-Statements-2015-2016.pdf>

a 0.5% uncollectable accounts rate.<sup>9</sup> As a result, the “Uncollectable Accounts” operating expense category is significantly overestimated.

As such, we recommend that Willdan consider adjusting the uncollectable accounts rate downward from 5% for PG&E accounts and 8% for SCE accounts to 0.5% for both PG&E and SCE accounts.

PCIA: Included in operating costs is the Power Cost Indifference Amount (PCIA). The PCIA is the state-mandated fee that SCE and PG&E imposes on all departed load (including CCA customers) to ensure that the rates of utility customers who do not—or cannot—choose CCA service do not increase because of CCA. The Draft Study relies upon a forecast of the PCIA rate from the utilities’ green tariff forecasts. Because the PCIA is difficult to accurately forecast, this assumption is not unreasonable, but as noted later, must be thoroughly explored in sensitivity analyses.

**Non-Operating Costs.** Non-operating costs include initial capital outlays for longer-living assets required to get the CCA up and running as well as the associated debt issuance and annual debt service required to fund the CCA. Non-Operating Costs also include a contingency/rate stabilization fund. The Draft Study thoroughly presented the non-operating costs of a hypothetical CCA.

The Study also assumes an initial long-term bond issuance for working capital equal to 5 months cash flow plus the rate stabilization fund. MRW is concerned that the debt amount appears to be unnecessarily high. Prior CCAs have started with an initial cash infusion of something closer to 3-4 months of cash flow only, and used rate revenue to build up the rate stabilization fund. Second, the Draft Study does not note who might issue the long-term bonds. The CCA, as a brand-new entity, would not have the financial history to issue long term bonds. Existing California CCAs have relied upon shorter-term loans (3-5 years) for the initial (smaller) working capital infusion and relied upon rate revenue to (slowly) fund the rate stabilization account.

Figure 3 depicts the contingency/rate stabilization fund proposed in the Draft Study for the Central Coast CCA. This fund is calculated every year as a sum of 10% of the total operating expenses (excluding power procurement costs) and 17% of the total power procurement costs. Based on this calculation, the contingency/rate stabilization fund increases every year and ultimately accumulates to \$778 million dollars in 2030. The blue bars within Figure 3 illustrate this annual accumulation of the contingency/rate stabilization fund (even without the amount that seemed to be assumed in the initial bond).

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<sup>9</sup> See SCP fiscal year 2014/15 audited financial statements: <https://sonomacleanpower.org/wp-content/uploads/2015/01/08b-2015-and-2014-Final-Audited-Financials.pdf>

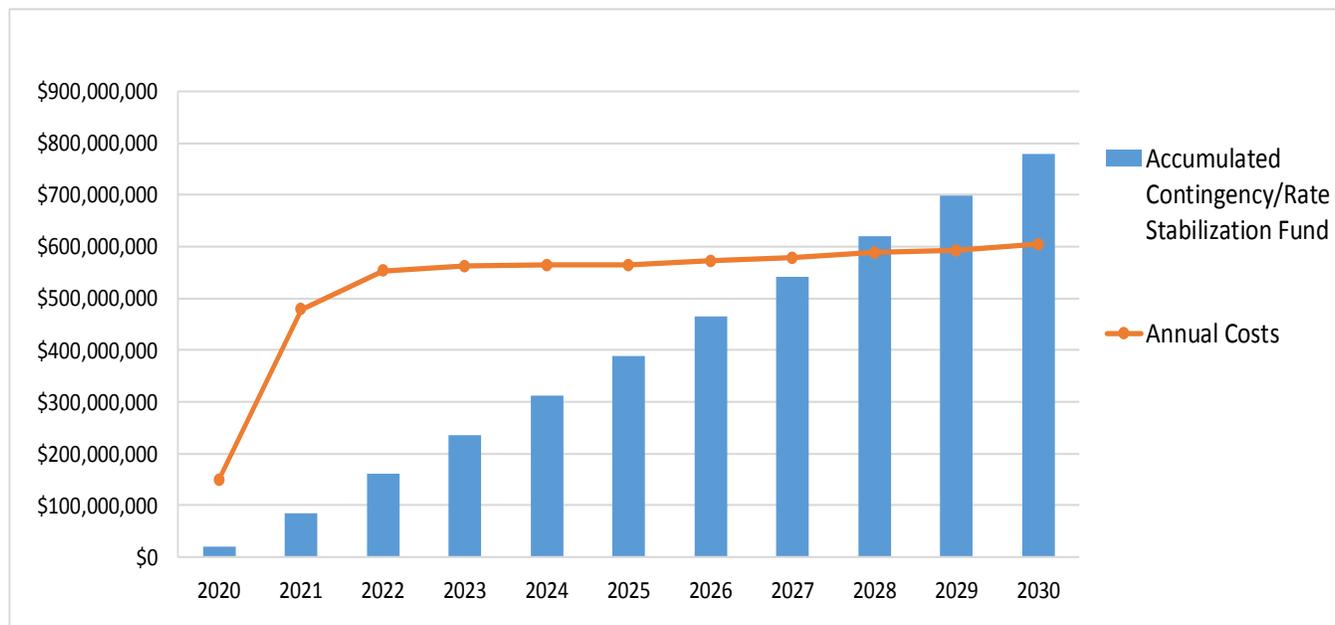


Figure 3: Draft Study's proposed Central Coast contingency/rate stabilization fund

The Contra Costa Study also accounted for a contingency/rate stabilization fund. A crucial difference is that the Contra Costa Study applied an accumulation cap of 15% of the annual operating cost to the contingency/rate stabilization fund. In this case once this cap is reached, no further revenues would be diverted to the contingency/rate stabilization fund unless the reserve funds were withdrawn. Creating a contingency/rate stabilization fund is critical for smooth CCA operations, but revenue allocations to this fund must be balanced against the ongoing need for the CCA's rates to remain competitive with the local utility's rates.

In the case of the Contra Costa Study, MRW proposed using the contingency/rate stabilization fund to adjust the CCA's generation rates so that it could remain competitive with PG&E rates. During periods when the total CCA customer rate (*i.e.* the CCA costs plus the PG&E exit fee) was below the projected PG&E generation rate, the Contra Costa Study proposed increasing the CCA rates upwards to layaway revenue into the contingency/rate stabilization fund up to the 15% cap, while still maintaining a discount. During periods when the total CCA customer rate would otherwise exceed the projected PG&E generation rate, the Contra Costa Study proposed drawing upon the revenue surplus within the contingency/rate stabilization fund to offset some of the costs that would otherwise have to be recovered from CCA customers through the CCA generation rate.

Based on this methodology, the Contra Costa CCA would meet the 15% cap for its contingency/rate stabilization fund during the first three years of operation. After those first three years, there would be minimal additions to the fund due to load growth.

Figure 4 illustrates MRW's proposed accumulation of revenues for the Contra Costa CCA's contingency/rate stabilization fund.

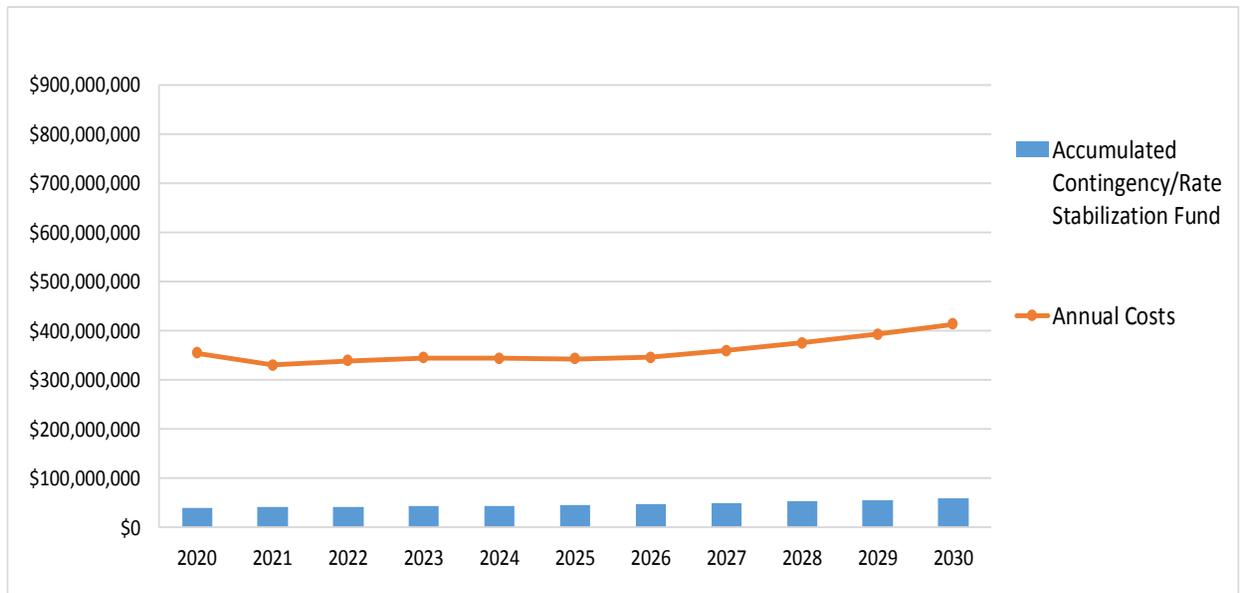


Figure 4: Contingency/rate stabilization fund accumulations for the Contra Costa CCA Study

**Pro-forma results and rate comparisons**

Figure 5 presents a graphical summary of Draft Study’s pro-forma results for its Central Coast Scenario 2.<sup>10</sup> The vertical bars represent the CCA total cost per kilowatt-hour, the green line represents the fixed CCA rate (inclusive of the PCIA but not delivery charges or franchise fees), and the red line represents the IOU average generation rate for the total CCA load. Power costs (in orange) represent on average for 2020-2030 approximately 60% of the total costs. The PCIA (in yellow) represents 13% of the total costs during this same period, and other costs<sup>11</sup> (in blue) represent 28%.

Based on Figure 5, the formation of the Central Coast CCA seems infeasible for two reasons: 1) the IOU average rate is lower than the CCA average rate and 2) the negative difference between the CCA rate and the CCA total cost.

Note, the IOU average rate is lower in the Draft Study than rates presented in other CCA feasibility studies based exclusively within PG&E’s service area, because 67% of the total potential load for the Central Coast CCA is within SCE’s service area. Presently, SCE generation rates are lower than PG&E’s generation rates (e.g. on average SCE generation rates are 6.8¢/kWh and PG&E’s are 9.2¢/kWh).

<sup>10</sup> We have kept the franchise fee, CTC, DWB, and all the delivery services charges out of the analysis.

<sup>11</sup> Other costs include: salaries and wages, IOU service charges, ESP charges, other start-up costs, professional services, jurisdictional administration, other operating expenses, uncollectable amounts, contingency/ rate stabilization fund, non-operating expenses, interest earnings, unrestricted funds, and debt service.

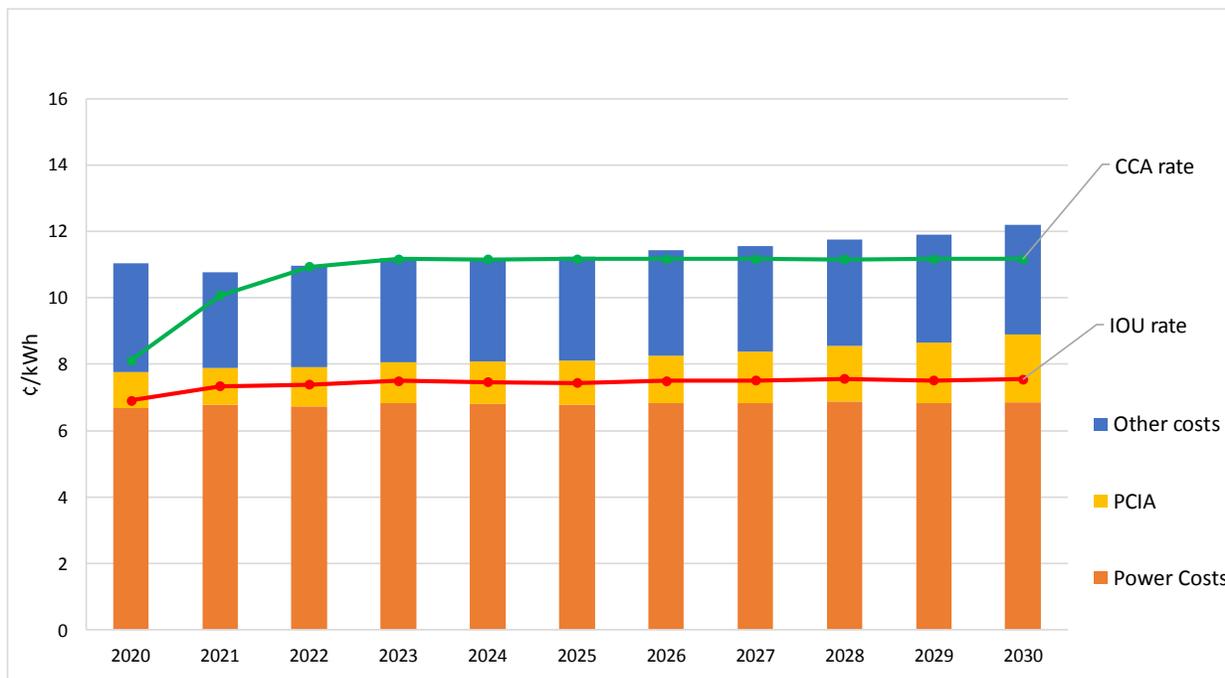


Figure 5: Central Coast Scenario 2 Pro-forma results

In contrast with Figure 5, Figure 6 shows MRW’s pro-forma results from its Contra Costa Study, specifically the RPS equivalent scenario. In this case, the power costs represent 82% of the total costs, PCIA charges represent 13 % and other costs represent 6%. MRW’s Contra Costa Study concluded that the CCA program could be feasible because the CCA rates are lower than the IOU average generation rate.

Note, the IOU average rate is higher in the Contra Costa Study than in the Draft Study because Contra Costa is located exclusively within PG&E’s service territory. Also note, another key difference between these analyses is that for the Contra Costa Study, the CCA rate was kept equal to the CCA total cost per kilowatt.

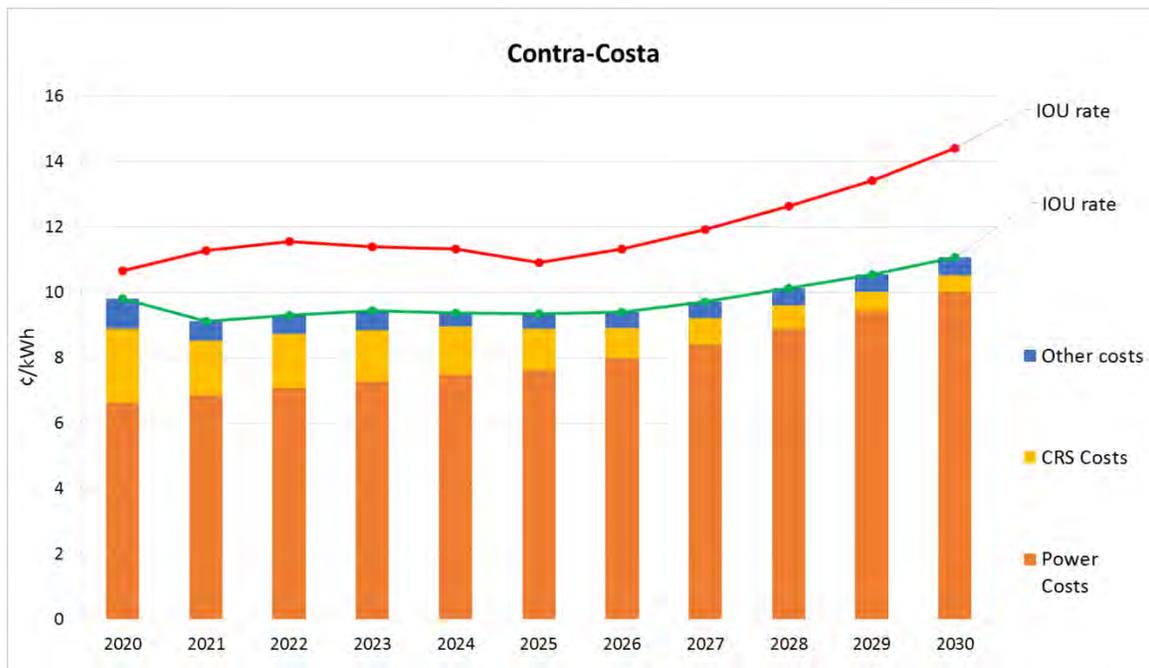


Figure 6: Contra Costa RPS equivalent Pro-forma results

As one last point of comparison, MCE appears to have other costs equivalent to 9% of its total power procurement costs for 2016 (versus 7% forecasted for the Contra Costa CCA and 47% forecasted for the Central Coast CCA).<sup>12</sup>

7. Do you have any other suggestions for reducing CCA costs in light of the evolving California CCA market place?

Please see MRW’s suggested revisions in response to questions 4, 5 and 6.

8. Does the Draft Study present an adequate analysis of potential economic benefits and challenges of various supply scenarios?

And

9. Should any additional benefits or challenges be considered?

The Draft Study considered the employment impacts of two separate mechanisms: those jobs created by the increased disposable income from lower electric bills and the jobs associated with local

<sup>12</sup> Based on MCE’s FY2015/16 audited financials: <https://www.mcecleanenergy.org/wp-content/uploads/2016/09/MCE-Audited-Financial-Statements-2015-2016.pdf>

investment in renewable resources. Given that the Draft Study found no bill savings, it did not perform any analysis of employment impact associated with bill savings. If Willdan chooses to implement some of the suggestions made in this memo and finds the CCA to be able to offer lower rates than the incumbent utilities, then the bill savings-related jobs analysis should be conducted.

The Draft Study assessed the potential economic development benefits associated with CCA building 1, 5 or 10 megawatts of solar projects or 100 MW of wind projects using the Jobs & Economic Impact Development (JEDI) model developed by the National Renewable Energy Laboratory. These projects are not explicitly included in the pro forma analyses, and must be seen as illustrative only.

The JEDI model is the most commonly used tool to estimate these kinds of impacts of renewable power project development, and is appropriate. The Draft Study also acknowledged that the opportunity for larger-scale (i.e., not simple behind-the-meter rooftop) solar is limited within the study area.

The estimated impacts depend on the number of jobs created and the salaries for each position. In addition, if the jobs are not sourced locally, but rely on workers from other areas of the country, state or region, the local direct impacts would diminish. The JEDI model uses “economic multipliers” to approximate impacts within the supply chain (e.g., manufacturing job creation). These multipliers are only estimates of potential effects and, perhaps more importantly, may not fully take into consideration that these effects may occur outside the local area. It is possible, for example, that the manufacturing jobs created because of power projects would be out of the local area or the U.S. entirely.

The JEDI model estimates the direct, indirect and induced effects associated with new power projects, but does not take into consideration that there could be a negative “ripple” effect associated with higher rates necessary to pay for these projects over time. In other words, if residents and businesses pay higher rates for local projects, they could spend less money in the local economy, which could have negative indirect and induced multiplier effects. While we would not expect that these negative indirect and induced effects would cancel out benefits of local projects, they were not acknowledged or included in the analysis.

#### **10. Does the Draft Study provide a thorough evaluation of the prospective CCA’s ability to achieve rate competitiveness with PG&E and SCE? What other factors, if any, should be considered?**

Because the Draft Study was not finding CCA to be cost-effective, it did not explore any explicit sensitivity cases. If Willdan chooses to implement some or all the recommendations and finds that the CCA rates can be competitive, sensitivity cases should be run to evaluate how robust the results are to reasonable variations in key inputs. These should include:

- Lower SCE and PG&E rates
- Higher PCIA
- Higher Renewable costs
- Higher gas prices

The Monte Carlo simulation modeling approach used in the Draft Study also provides an opportunity to reflect uncertainty in CCA costs. It does not appear, however, that the rate comparisons in the Draft

Study report utilize the Monte Carlo simulation model results. It would be helpful to incorporate these results into the rate comparison.

### 11. Does the Draft Study consider all pertinent factors to assess the overall cost-benefit potential of CCA?

Subject to the concerns and recommendations expressed in prior responses, all pertinent factors were included.

### 12. Does the Draft Study consider all pertinent risk factors involved with establishment and operation of the CCA program, and are such factors properly weighted and analyzed?

Appendix B, sections 3 (technical risks) and 4 (external risks) of the Draft Study enumerate the major risks and presents reasonable mitigations to those risks. With respect to technical risks, the

**Power Procurement Risk:** Power procurement risk includes wholesale power price spikes, uncertain load, intermittent renewable generation. The Draft Study suggests that the CCA can mitigate risk by “having a robust power supply plan, diversifying supply portfolios by production type, generation size and location, contract length, timing of contract purchases, and the use of hedging instruments ....” These are overall reasonable suggestions and should be refined and acted upon if the CCA moves forward.

**Regulatory Risk:** The Draft Study accurately notes that the landscape for CCA is changing, and that these changes must be monitored.

**Exit Fee and Non-bypassable Charges:** The Draft Study notes “The implication for the Central Coast Power CCA [of exit fees] is that even if the CCA’s primary power supply portfolio were cost-competitive with the existing supply costs, added PCIA and CRS charges may increase the overall costs such that the CCA’s offering would ultimately not be competitive with the IOU. This is especially true when considering the amount of load currently under consideration for CCA.” It further specifically identifies the ongoing application by SCE and PG&E (along with SDG&E) to revise the exit fee structure, which would likely increase further the IOU fees on CCA customers.

The Draft Study further suggests,

Given the relative size of the potential PCIA and CRS fees due to departing customers, Central Coast Power could attempt to procure excess IOU RPS contracts, which would both reduce the IOUs’ stranded costs and begin developing Central Coast Power’s renewable generation portfolio.

While MRW finds the prospect of restructuring the IOU renewable contracts to be remote, we fully concur that it must be more fully evaluated if Central Coast Power moves forward towards CCA implementation.

**Opt-out risk:** As shown in other CCA studies, the risk of higher- or lower-than expected initial opt-out is relatively modest. The Draft Study correctly states that opt-out risk once the CCA has begun service can be minimized by competitive rates (“economic advantage”), providing good customer services (“customer experience”), and offer products and services desired by the CCA customers (e.g., easy to implement solar rooftop agreements).

**Renewable Generation risk:** The Draft Study extensively discusses solar “over-generation” (i.e., solar generating more power during some hours than is needed by the CCA) and what is needed to integrate the solar into its overall power procurement profile. The observations in this section are accurate, and should be addressed if the CCA pursues a portfolio with particularly high solar content.

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## 2. MRW Extended Peer Review

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## MEMORANDUM

To: Jennifer Cregar, Project Supervisor, Energy and Sustainability Initiatives, County of Santa Barbara

From: Mark Fulmer, Anna Casas Llopart, and Jeremy Waen

**Subject: Willdan Pro-Forma with Alternative Assumptions**

Date: August 16, 2017 **(Updated)**

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The County of Santa Barbara (“County”) provided to MRW a community choice aggregation (CCA) pro-forma model that was originally created by Willdan Financial Services (“Willdan”) to inform Willdan’s preparation of a technical feasibility study (“Draft Study”) for the County and participating jurisdictions throughout San Luis Obispo, Santa Barbara, and Ventura Counties. At the request of the County, MRW edited the Draft Study pro-forma model according to MRW’s recommendations detailed in a peer review memorandum dated May 31, 2017. MRW made modifications to the pro-forma model for the following scenarios:

- Advisory Working Group (AWG) Middle of the Road (50% renewable) Scenario, where the AWG includes 11 jurisdictions across San Luis Obispo, Santa Barbara, and Ventura Counties
- Unincorporated Santa Barbara County Middle of the Road (50% renewable) Scenario
- Unincorporated San Luis Obispo County Middle of the Road (50% renewable) Scenario

MRW made changes to the underlying community choice aggregator (CCA) cost assumptions and updated Pacific Gas and Electric (PG&E) and Southern California Edison (SCE) rate forecasts based on its professional opinion.

While the Willdan pro-forma model provides output comparisons for specific rate schedules, because of the fundamentally different approach that MRW takes with respect to the rate comparisons, the model’s specific rate output pages are not impacted by the changes MRW made to the CCA cost assumptions or PG&E/SCE rates. That is, some of the original model functionality is lost. Notably, changes made to the model do not allow an assessment of the annual net operating position. Instead, MRW established average rates to recover 100% of revenues. Each year, the CCA’s net operating position is, by definition, balanced by rate increases/decreases. To fully update the original pro forma

model according to MRW's rate-setting approach would require significant modification to the spreadsheets, which was beyond the scope of our task.<sup>1</sup>

### **Summary of Conclusions**

Using the MRW alternative assumptions, the average CCA operational costs (i.e., the average rate the CCA could offer while covering all costs) for the AWG Middle of the Road Case is approximately 23% lower, on average, than that with the base assumptions (see Figure 1). Nearly half of the decrease is associated with the lower renewable power cost assumption; the bulk of the remaining cost reduction comes from reduced uncollectible expenses, elimination of the franchise fees as an expense (as well as a revenue) and revisions to the reserve fund. Some changes, including the cost of natural gas generation and updates to the power cost indifference adjustment (PCIA), modestly increased the CCA costs. See Table 1 for a summary of CCA cost impacts from the changes made by MRW.

This decrease in operating costs (and therefore CCA rates), coupled with the alternative PG&E/SCE rate forecasts, shows, for the AWG Middle of the Road Case, the CCA initially would need to set its rates higher than the investor-owned utilities (IOUs) in order to cover its costs in 2020 to 2022. The CCA may be able to offer nominally similar rates as the IOUs for 2023 to 2027 and modestly lower rates thereafter. See Table 2 and Figures 2, 3 and 4 for rate comparisons for the AWG Middle of the Road Case.

An important factor in the analysis is that PG&E's generation rates are significantly higher than SCE's generation rates. This has two implications for the analysis. First, it is more difficult for a CCA to offer competitive rates in communities located in SCE's service territory than those in PG&E's. Second, the CCA being considered here may choose to set different rates for customers located in PG&E's service territory versus those in SCE's service area. The net result of this differential between the two utilities' generation rates is that a CCA is more likely to be rate-competitive—or even offer a rate savings—for customers located in PG&E territory (i.e., San Luis Obispo County and northern Santa Barbara County); whereas, the CCA is not likely to be able to offer rates that are competitive with SCE for customers located in SCE territory (i.e., southern Santa Barbara County and Ventura County).

Because San Luis Obispo County and parts of Santa Barbara County are in PG&E territory, where a CCA may be more competitive, MRW also used the Willdan pro-forma model to compare the potential CCA's rates for the Unincorporated San Luis Obispo County Middle of the Road and Unincorporated Santa Barbara County Middle of the Road Cases. In both cases, after the first year phase-in, the CCA's rates are projected to be generally comparable to the weighted average of the SCE and PG&E rates (Santa Barbara County) or PG&E rates (San Luis Obispo County).

Please note that MRW conducted this analysis using a tool which it did not design and an analytical approach which MRW does not typically take. While the results for the unincorporated counties may

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<sup>1</sup> Sheets in red became nonfunctional after MRW edits. Also, in "CCA Operating Results," "PG&E Escalation," and "SCE Escalation" sheets, cells inside a red square are nonfunctional.

suggest that the CCA could offer competitive rates, MRW would need to perform additional, independent analyses before offering a conclusion.

### **Model Changes**

All the adjustments are highlighted using orange color<sup>2</sup> in the MRW edited version of the pro-forma model. Table 1 summarizes the quantitative impacts of the adjustments. The adjustments applied are the following<sup>3</sup>:

1. **CCA renewable contracts.** The Draft Study's use of utility-average renewable contract prices does not reflect the most recently-reported contract prices and does not reflect the general downward trend in renewable prices seen over the past few years. According to the 2016 Padilla report<sup>4</sup>, the weighted average prices for renewable contracts approved in 2016 are \$59/megawatt-hour (MWh) for PG&E and \$61/MWh for SCE. Based on this and the flat tendency showed in Table ES - I from the Draft Study, MRW considered \$60/MWh as a price for the renewable contracts for 2016-2030 (30% lower than Draft Study price estimates). MRW edited column N from "Tri County RPS Equiv" sheet.
2. **CCA natural gas generation.** Based on the Draft Study's analysis, natural gas generation costs are forecast to decrease by 25% from \$41/MWh in 2020 to \$31/MWh in 2030. This trend analysis may be underestimating natural gas generation costs over the long term. Natural gas prices are relatively low at present, but according to the U.S. Energy Information Administration's (EIA's) 2017 Annual Energy Outlook, natural gas prices for electricity generation in the Pacific region are expected to increase by an average of 3.5% per year between 2020 and 2030. Since natural gas generation is typically on the margin in the California wholesale power market, power production costs for market power are driven by the price for natural gas. MRW forecasted natural gas prices based on current New York Mercantile Exchange (NYMEX) market futures prices for natural gas and PG&E's tariffed natural gas transportation rates. MRW used a standard methodology of multiplying the natural gas price by projected heat rate for a gas-fired generator in the EIA's 2017 Annual Energy Outlook<sup>5</sup> and adding in variable operations and maintenance costs to calculate total power production costs. In addition, MRW added the cost of the greenhouse gas allowances calculated based on the auction floor price stipulated by the California Air Resources Board's cap-and-trade regulation. Following this methodology, MRW estimated natural gas generation costs equal to \$33/MWh for 2020, increasing on average 3% annually. MRW edited cells T19:V29 and column N from "Tri County RPS Equiv" sheet.

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<sup>2</sup> Cells with edited formulas are highlighted in light orange.

<sup>3</sup> MRW edited row 24 from "CCA Expenses" expenses.

<sup>4</sup>[http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About\\_Us/Organization/Divisions/Office\\_of\\_Governmental\\_Affairs/Legislation/2017/Final%20-%20Padilla%20Report%20-%20RPS%20Costs%202017.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/Office_of_Governmental_Affairs/Legislation/2017/Final%20-%20Padilla%20Report%20-%20RPS%20Costs%202017.pdf)

<sup>5</sup> EIA 2017 AEO, Supplemental Table 55.20 (California)

3. **Jurisdictional administration.** It is atypical for a CCA to reimburse the local jurisdictions for staff-time spent interfacing with the CCA. The one area where this might be practiced is with Single Jurisdiction (rather than Joint Powers Authority) CCAs where staff is shared between local government and CCA operations. Even in those cases, this “Jurisdictional Administration” category seems to overlap with the Salary & Wages category. As a result, these costs should not be considered part of the CCA’s operating expenses. MRW excluded these costs from the Operation Expenses analysis, editing cell D7 from “General Assumptions” sheet.
4. **Administrative labor costs.** The number of employees (45 full-time equivalents [FTEs]) assumed in the Draft Study pro-forma analysis, as well as their compensation, appear high relative to operating California CCAs. MRW lowered the staff to 35 FTE, editing column E from “Labor input worksheet” sheet. MRW did not adjust the compensation.
5. **CCA service fees.** MRW updated the service fees based on more recent fee data from the Meter Data Management Agent (MDMA), PG&E’s testimony<sup>6</sup> and SCE’s settlement agreement.<sup>7</sup> MRW edited cells K15, K18, and K19 from “PG&E Annual Service Costs” sheet and K14, K18, and K20 from “SCE Annual Service Costs” sheet.
6. **Franchise Charges.** The Draft Study pro-forma analysis appears to assume the franchise fees as an operating expense but not as a revenue for the CCA. Franchise fees are collected from CCA customers by IOUs, not the CCA, using the Franchise Fee Surcharge. This means that the same franchise fees are collected from CCA customers that would be collected from them had they been bundled customers. As such, it has no impact on the bundled versus CCA rate comparison. Therefore, MRW excluded from the analysis the franchise fees expense, editing row 30 from “CCA Operating Results” sheet.
7. **PG&E and SCE PCIA escalation.** The Draft Study relies upon a forecast of the PCIA rate from the utilities’ green tariff forecasts. This is not an unreasonable assumption, but doesn’t account for CCA departure in 2020-2022. In general, in the 2020’s, MRW sees the PCIA rates tending to decrease year to year. For conservatism, MRW kept PG&E and SCE’s PCIA constant starting in 2021. In addition, MRW updated the 2018 PCIAs according to the IOUs’ 2018 Energy Resource Recovery Account (ERRA) applications. While these rates are not adopted, the ERRA applications provide a good estimate as to what the upcoming year’s rates will be. MRW edited I6:R14 and F17:F25 from “PG&E Escalation” and “SCE Escalation.”

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<sup>6</sup> PG&E 2017 General Rate Case, Phase 2 (CPUC Application 16-06-013), Testimony Exhibit PG&E-2, Appendix C. June 30, 2016. <https://pgera.azurewebsites.net/Regulation/ValidateDocAccess?docID=378139>

<sup>7</sup> SCE 2017 General Rate Case, Phase 1 (CPUC Application 16-09-001), Joint Motion of Southern California Edison Company (U 388-E) and the City of Lancaster for Adoption of Settlement Agreement. January 19, 2017. [http://www3.sce.com/sscc/law/dis/dbattach5e.nsf/0/26C44E0FA545EC37882580AD0081F6BD/\\$FILE/A1609001-Joint%20Motion%20for%20Adoption%20of%20Settlement%20Agreement%20City%20of%20Lancaster%20and%20COS.pdf](http://www3.sce.com/sscc/law/dis/dbattach5e.nsf/0/26C44E0FA545EC37882580AD0081F6BD/$FILE/A1609001-Joint%20Motion%20for%20Adoption%20of%20Settlement%20Agreement%20City%20of%20Lancaster%20and%20COS.pdf)

8. **Reserve Fund.** The Draft Study pro-forma analysis appears to assume that approximately \$54 million (11% of total annual expenses) is contributed **each year** to the reserve fund, resulting in a total accumulation of more than \$597 million in 2030 (113% of total 2030 expenses). This approach is incorrect. MRW rather set a target amount (e.g., a percent of annual expenses), assumed 3 to 5 years to achieve the fund, and then eliminated further contributions until replenishment is needed. MRW estimated the reserve fund to be set at 10% of the non-power procurement expenses, plus 12% of the power procurement costs. Once this amount is achieved, it is adjusted nominally to account for CCA cost escalation. MRW edited row 34 from “CCA Expenses” sheet.
9. **Interest earnings.** The Draft Study pro-forma analysis accounts for the interest resulting from the net annual balance. According to MRW’s methodology to evaluate the feasibility of the CCA (explained under “Feasibility” on page 7), MRW simplified and didn’t account for any interest. MRW edited row 45 from “CCA Operating Results” sheet.

### **Startup and Initial Financing Costs**

MRW’s initial review of the Draft Study called out that the assumed 30-year bond financing was unusual and the amount financed was relatively high. Because we did not offer specific alternatives, we did not include any in our analysis. Nonetheless, as proposed, the start-up cost and financing is particularly high.

In general, CCAs begin operations—finding executive staff, office space, etc.—using County funds. Once they have a solid plan in place to deliver power (e.g., an implementation plan, power contractor in place, indicative bids for power), the CCA would arrange for a short-term (5-year) loan to cover the costs already paid for by the County, plus an amount for working capital to cover operating expenses until the first electricity bill revenues are received. A fully-funded rate stabilization fund would not typically be included in an initial financing; instead, the fund would be built with revenues over time. The initial start-up costs would fall in the order of a few million dollars, with the working capital equal to about 90 days of cash flow, or \$107 million for the AWG Middle of the Road Case.<sup>8</sup> This need for cash flow contributes to CCAs’ desire to phase in implementation.

### **Results of Changes**

Table 1 and Figure 1 show the impacts on CCA total costs for each one of the MRW adjustments detailed above. As Table 1 shows, using the MRW alternative assumptions, the average CCA operational costs (i.e., the average rate it could offer while covering all costs) is approximately 24% lower, on average, than that with the base assumptions. Nearly half of the decrease is associated with the lower renewable power cost assumption; the bulk of the remaining reduction comes from reduced elimination of the franchise fees as an expense (as well as a revenue) and revisions to the reserve fund. Some changes, including the cost of natural gas generation and updates to the PCIA, modestly increased the CCA costs.

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<sup>8</sup> This figure is 90 days working capital for the fully-implemented AWG case (i.e., after all customers had been phased in).

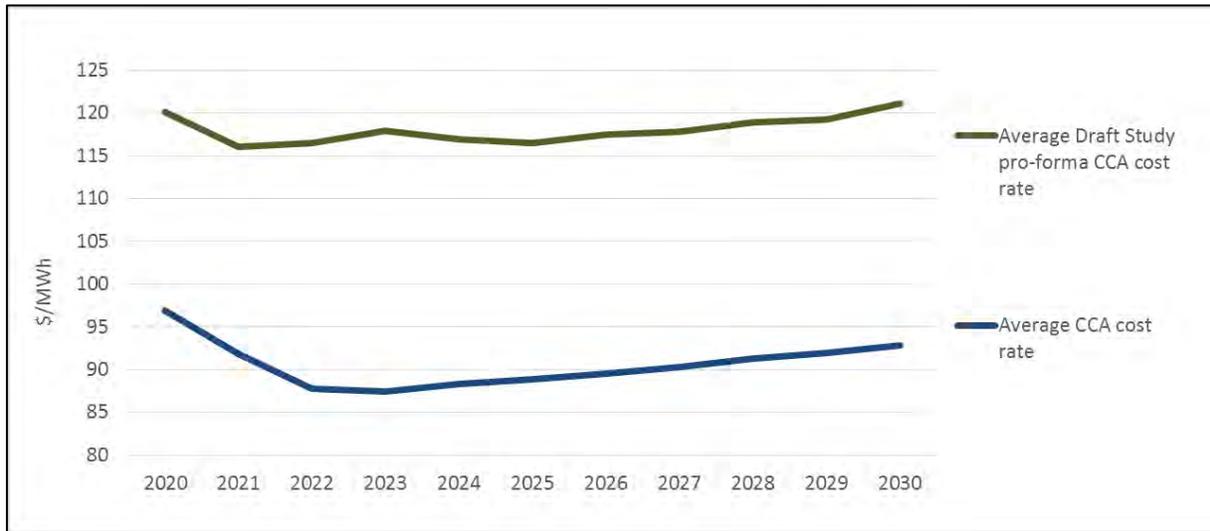
Table 1 Impact of MRW adjustments on CCA costs, AWG Middle of the Road Case

<b>Adjustments</b>	<b>Average 2020-2030 CCA costs [\$/MWh]</b>	<b>Change [%]</b>
Willdan CCA costs - starting point	<b>118.1</b>	
1. CCA renewable contracts	102.0	-13.6%
2. CCA natural gas generation	103.9	1.6%
3. Jurisdictional administration	103.8	0.0%
4. Administrative labor costs	103.5	-0.3%
5. CCA service fees	102.9	-0.5%
6. Franchise fees	95.7	-6.1%
7. PCIA escalation and 2018 update	99.1	3.0%
8. Reserve fund	90.0	-7.7%
9. Interest earnings	90.6	0.5%
MRW CCA costs (=CCA rate)	<b>90.6</b>	<b>-23.2%</b>

Based on the changes described above, the average CCA per-MWh cost obtained from the Draft Study pro-forma has been reduced by 23% on average. Figure 1 shows the differences between both results. The upper green line shows the CCA cost<sup>9</sup> from the Draft Study pro-forma; the lower blue line shows the average CCA cost with MRW modifications to the pro-forma. The average per-MWh CCA cost is higher in 2020 because the debt service is relatively constant year to year; whereas, only 30% of the CCA’s load (MWh) is in place in 2020 due to Willdan’s assumptions about phasing in larger commercial and industrial customers first. With fixed costs (\$) spread over lower sales (MWh), the average per-MWh cost is higher than later years when the full customer base is phased in.

<sup>9</sup> The figures use “average CCA cost” interchangeably with “average CCA rate,” as we assume that rates will cover costs, no matter their relation to SCE and PG&E rates.

**Figure 1 Comparison of CCA Average Cost (Rate) from Draft Study Pro-forma and MRW Edited Pro-forma, AWG Middle of the Road Case**



**AWG Middle of the Road Case Rate Comparison Results**

MRW used a different methodology than Willdan to assess the CCA feasibility. MRW considers a CCA “feasible” if the CCA average per-MWh cost (i.e., average CCA rate) is lower, on average, than the weighted average IOU generation rate.<sup>10</sup> The MRW changes to evaluate the rate-competitiveness of the CCA are detailed below:

10. **Comparative IOU generation rates and CCA expenses.** The Draft Study sets the CCA rates based on the CCA expenses for 2022-2024 period. MRW assumes that CCA rates will be set to cover the CCA expenses in each year. To account for our different rate-setting approach, MRW created six new sheets “CCA IOU rates”, “PG&E RATES”, “SCE RATES”, “CCA IOU CTC+DWR”, “PG&E CTC+DWR”, “SCE CTC+DWR” and added rows 13-17 to “CCA Operating Results.”

11. **PG&E and SCE rate escalation.** The Draft Study uses for the rate comparison the total IOU rates (generation plus delivery). To forecast the generation plus delivery IOU rates, the Draft Study uses the annual change in CCA power procurement costs. Instead, MRW only analyzes the generation portion of the IOU rates.<sup>11</sup> The MRW IOU generation rate forecast starts with 2018 rates from the IOUs’ 2018 ERRR applications and extends them using internally calculated escalators.<sup>12</sup> MRW entered the IOUs’ 2018 ERRR generation rates in cells P12:P20 from “PG&E RATES” and “SCE RATES” sheets and the rate escalators in cells H65:S67 from “CCA IOU rates”.

<sup>10</sup> To be consistent with the Willdan analysis, the comparison includes CTC and DWR in the IOU rate and in the CCA expenses. Excluding both is equally valid.

<sup>11</sup> See footnote 4.

<sup>12</sup> The internal escalators are aligned with the CCA natural gas generation and the CCA renewable contract prices assumed in this report.

**Appendix L: Peer Review and Response**

Pro-forma results with alternative assumptions

Page 8

Table 2 compares the CCA’s average cost (i.e., generation rate) with each IOU’s generation rate separately and as a combined weighted average for the AWG Middle of the Road Case.<sup>13</sup> For jurisdictions that are located in PG&E’s service area, the Average CCA Cost column can be compared to the “Average PG&E Rate” column. Alternatively, for AWG regions located in SCE’s service area, the Average CCA Cost column should be compared to the Average SCE Rate Column. The IOUs’ rates are lower in 2020 because of the Draft Study assumption that larger commercial and industrial accounts are transferred first to CCA service. Because these customers tend to have the lowest generation rates, the CCA is having to compete with the IOUs’ lowest rate classes while facing high start-up costs. This makes it particularly hard to compete in the first year of operations.

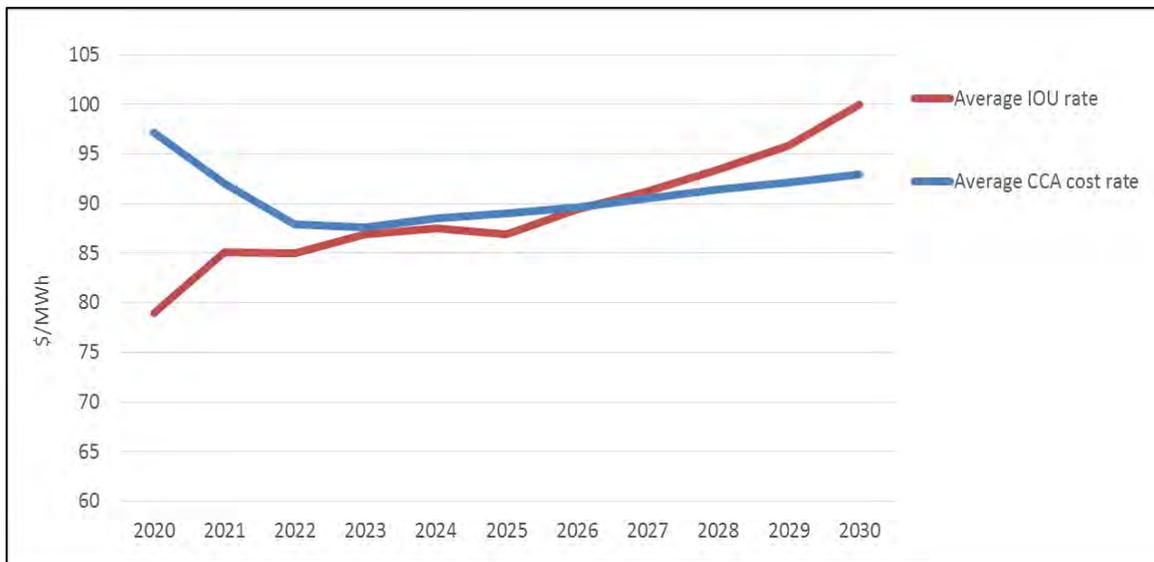
**Table 2. Rate Comparisons (\$/MWh), AWG Middle of the Road Case**

	<b>Average SCE Rate (\$/MWh)</b>	<b>Average PG&amp;E Rate (\$/MWh)</b>	<b>Weighted Average Utility Rate (\$/MWh)</b>	<b>Average CCA Cost (\$/MWh)</b>
<b>2020</b>	63.1	90.9	73.3	90.3
<b>2021</b>	71.8	103.2	79.7	86.0
<b>2022</b>	71.2	106.8	79.6	82.2
<b>2023</b>	73.9	105.3	81.5	81.9
<b>2024</b>	74.9	104.5	82.2	82.8
<b>2025</b>	75.9	97.6	81.6	83.3
<b>2026</b>	78.8	98.3	84.1	84.0
<b>2027</b>	79.6	103.8	85.9	84.8
<b>2028</b>	80.7	110.2	88.1	85.7
<b>2029</b>	81.9	117.6	90.5	86.4
<b>2030</b>	84.6	127.0	94.6	87.3

<sup>13</sup> For Table 2, 3, 4, Figure 3, 4, 5, and 6, MRW didn’t include the CTC and DWR in the IOU generation rates or in the CCA rates.

MRW’s comparison between the IOU weighted average generation rate and the average CCA total costs (rate) is shown in Figure 2. Through 2026, the expected IOU weighted generation rate<sup>14</sup> (red line) is below average CCA costs (blue line). After 2027, the expected IOU weighted generation rate is higher than the average CCA costs, meaning the CCA may be able to offer competitive, or lower, rates after this 2027 transition point.

**Figure 2 Comparison of Average CCA Cost (Rate) and Weighted Average IOU Rate, AWG Middle of the Road Case**



Figures 3 and 4 show the expected PG&E and SCE average generation rates compared to the CCA average costs (generation rate), respectively. Because PG&E generation rates are higher than SCE generation rates, the CCA may choose to set different rates for customers located in PG&E versus SCE service area. The CCA is more likely to be rate-competitive—or even offer a rate savings—for CCA customers located in PG&E territory (i.e., San Luis Obispo County and northern Santa Barbara County); whereas, the CCA is not likely to be able to offer rates that are competitive with SCE for CCA customers located in SCE territory (i.e., southern Santa Barbara County and Ventura County).

<sup>14</sup> The IOU rate depicted corresponds to generation rate plus CTC plus DWR. MRW included CTC and DWR because both charges are included as CCA expenses.

Figure 3. Comparison of Average CCA Cost (Rate) and PG&E Average Rate, AWG Middle of the Road Scenario

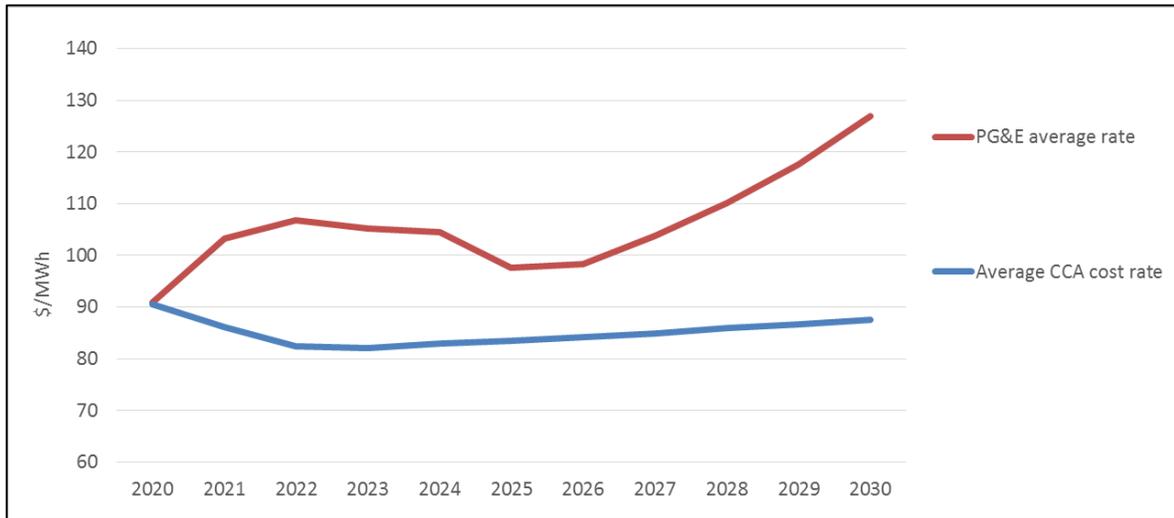
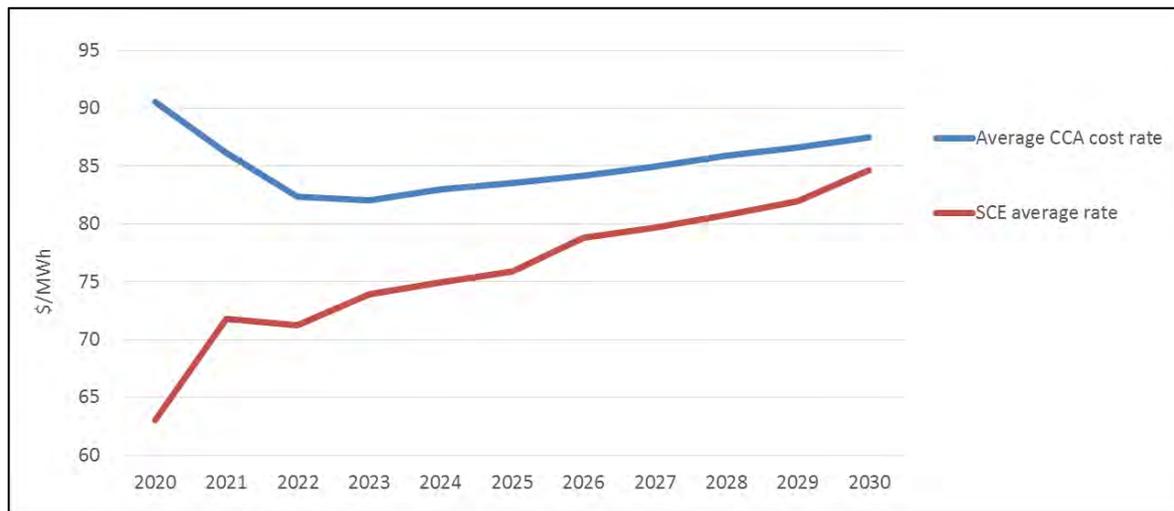


Figure 4. Comparison of Average CCA Cost (Rate) and SCE Average Rate, AWG Middle of the Road Scenario



As discussed on page 6, the particularly low SCE and PG&E average rates in 2020 are attributable to the way that the original Willdan Study phased in the CCA’s customers starting with the largest commercial customers, who also have the lowest IOU generation rates.

### **Unincorporated Santa Barbara and San Luis Obispo Counties Middle of the Road Rate Comparison Results**

MRW was also asked to use the modified Willdan pro forma model to derive CCA-utility rate comparisons assuming stand-alone CCAs covering either unincorporated Santa Barbara County or unincorporated San Luis Obispo County. These analyses used the model changes noted above, plus reflected the load and customer profiles of the unincorporated parts of the respective counties. The analyses did not change any of the underlying CCA costs, which while predominantly fixed, could potentially scale downward with the smaller CCAs.

Table 3 and Figure 5 show the results of the analysis for unincorporated Santa Barbara County. After the first year phase-in, the Unincorporated Santa Barbara County CCA's rates are projected to be generally comparable to the weighted average of the SCE and PG&E rates. This is because of the large number of PG&E accounts in the unincorporated area, where PG&E has higher generation rates relative to SCE.

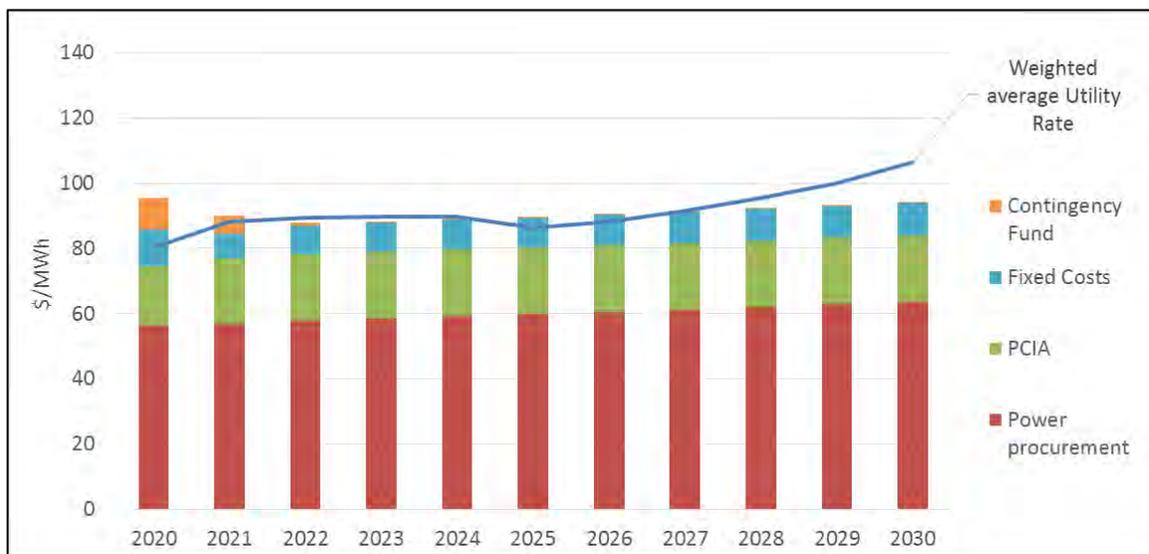
Table 4 and Figure 6 show the results of the analysis for unincorporated San Luis Obispo County. After the first-year phase-in, the Unincorporated San Luis Obispo County CCA's rates are projected to be generally comparable to the PG&E rates, although with a three-year period from 2025 through 2027 where the CCA rates are projected to be slightly higher than PG&E rates. This anomaly is due to the retirement of the two Diablo Canyon Nuclear Power Plant generators, the output of which is expected to be replaced with power that has a lower average cost than the power currently being generated by Diablo Canyon.

Figures 5 and 6 also break down the CCA costs into the major components. This highlights the impact of both the fixed costs and the PCIA. Because unincorporated San Luis Obispo County has smaller loads than the AWG or unincorporated Santa Barbara County, the average fixed costs (upper teal segments of the bar charts) are larger. Because SCE's PCIA is lower than PG&E's, Figure 5 shows that the green PCIA segment of the bar charts are slightly smaller for unincorporated Santa Barbara County (which is partially in SCE territory) than unincorporated San Luis Obispo County.

**Table 3. Rate Comparisons (\$/MWh), Unincorporated Santa Barbara County Middle of the Road Case**

	Average SCE Rate (\$/MWh)	Average PG&E Rate (\$/MWh)	Weighted Average Utility Rate (\$/MWh)	Average CCA Cost (\$/MWh)
2020	61.3	90.3	80.3	95.1
2021	67.8	101.3	88.1	89.7
2022	67.6	104.6	89.4	87.8
2023	70.2	103.1	89.8	87.9
2024	71.2	102.3	89.8	88.9
2025	72.1	95.6	86.5	89.5
2026	74.9	96.3	88.1	90.2
2027	75.7	101.6	91.5	91.1
2028	76.7	108.0	95.5	92.1
2029	77.8	115.2	100.0	92.8
2030	80.4	124.4	106.3	94.0

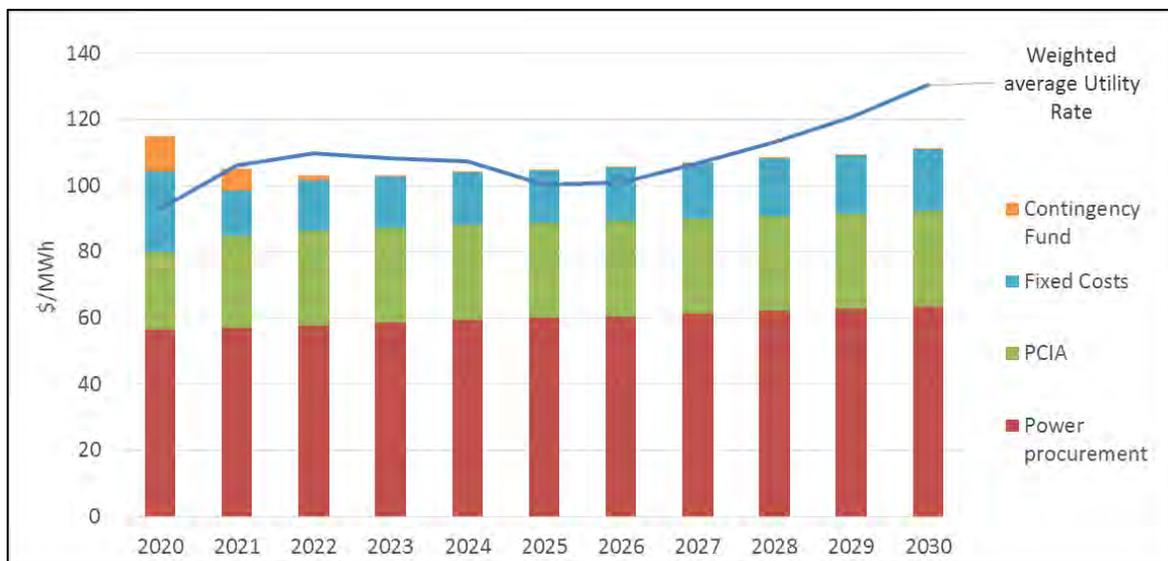
**Figure 5. Rate Comparisons (\$/MWh), Unincorporated Santa Barbara County Middle of the Road Case**



**Table 4. Rate Comparisons (\$/MWh), Unincorporated San Luis Obispo County Middle of the Road Case**

	Average SCE Rate (\$/MWh)	Average PG&E Rate (\$/MWh)	Weighted Average Utility Rate (\$/MWh)	Average CCA Cost (\$/MWh)
2020	N/A	92.9	92.9	114.7
2021	N/A	106.1	106.1	105.0
2022	N/A	109.7	109.7	102.8
2023	N/A	108.2	108.2	102.5
2024	N/A	107.3	107.3	103.8
2025	N/A	100.3	100.3	104.5
2026	N/A	101.0	101.0	105.5
2027	N/A	106.6	106.6	106.7
2028	N/A	113.2	113.2	108.0
2029	N/A	120.8	120.8	109.0
2030	N/A	130.5	130.5	110.9

**Figure 6. Rate Comparisons (\$/MWh), Unincorporated San Luis Obispo County Middle of the Road Case**



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### 3. Response to Peer Review

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## MEMORANDUM

<b>TO:</b>	Jen Cregar
<b>FROM:</b>	Willdan and EnerNex
<b>DATE:</b>	August 1, 2017
<b>RE:</b>	Response to MRW Peer Review of “Technical Feasibility Study on Community Choice Aggregation for Central Coast Region” Draft Report Dated May 10, 2017

## OVERVIEW

The County of Santa Barbara (The County) forwarded to Willdan and EnerNex the above referenced peer review prepared by MRW & Associates (MRW) dated May 31, 2017 (MRW Report). The MRW Report identifies six recommended changes to Willdan’s pro forma analysis. Additionally, the MRW Report cites a concern over the treatment of franchise fees and offers a recommendation concerning the need for additional sensitivity analyses. This memorandum responds to these six suggested revisions and two additional comments. The MRW Report also answers twelve questions posed by the AWG; this memorandum responds to MRW’s responses to these AWG questions in the final section.

## BACKGROUND

The peer-reviewed draft Study was prepared by Willdan Financial Services (Willdan), who conducted the pro forma analysis, and EnerNex, who forecasted load and power procurement pricing. Initial Study results found that the Central Coast Power (CCP) Community Choice Aggregation (CCA) program was not feasible as it resulted in forecasted rate proxies<sup>1</sup> that in most cases were higher than those of the incumbent investor owned utilities (IOUs)—Pacific Gas and Electric (PG&E) and Southern California Edison (SCE)—by rate class.

As noted on page 2 of the MRW review:

Unlike prior recent CCA technical studies, the Draft Study concluded that CCA was not economically feasible even when only the state-required minimum renewable energy content was assumed. MRW’s [sic] focused its review to identify areas where the Draft Study was potentially overly conservative or made questionable assumptions that might explain why its conclusion was negative while others have been affirmative.

Each of MRW’s six proposed changes, as discussed below, results in outcomes that favor CCP CCA feasibility. Not one of MRW’s six recommended pro forma analysis changes negatively impacts CCP CCA feasibility. Importantly, the two largest drivers of feasibility results are power pricing and IOU rate forecasts. The former because power prices comprise nearly 70% of CCA annual operating costs; the latter because IOU rate forecasts create the yardstick against which CCA rate proxies are measured. With respect to the former, a large portion of Study effort was devoted to in depth load analysis using actual data obtained from each IOU and power price forecasting as described more fully in the report and

<sup>1</sup> The technical Study did not include rate design, rather rate proxies, the unitized revenue requirement by rate class needed to meet the CCA programs financial obligations, were calculated based on cost of service principles.

Page 2

Response to MRW Peer Review of “Technical Feasibility Study on Community Choice Aggregation for Central Coast Region” Draft Report Dated May 10, 2017

August 1, 2017

appendices thereto. MRW has conducted no similar analysis. With respect to the latter, the primary scope of the Study was modeling CCA operating costs. Although providing reference rate comparisons was part of the scope, forecasting IOU rates was not part of the scope of work and would require significant additional resources and cost. Even with a considerable budget devoted specifically to forecasting IOU rates, results would at best be tenuous. IOU rates are driven by internal decision making, investor concerns, the Public Utilities Commission, and a host of other factors in addition to wholesale power market prices, all of which can fluctuate considerably. Lack of IOU rate forecasts is a challenge lacking resolution that impacts all CCA feasibility studies. Willdan, therefore used publicly available information and applied reasonable assumptions.

Willdan and EnerNex conducted an unbiased, third party review of CCP CCA feasibility. Given, as stated on page 2 of MRW’s peer review—and included on page 1 of this memo—MRW specifically “focused its review to identify where the draft Study was potentially overly conservative or made questionable assumptions that might explain why its conclusion was negative,” we are concerned that the peer review appears biased in favor of CCP CCA feasibility and caution that results based on these recommendations may also be biased accordingly.

## RESPONSE TO PEER REVIEW

### 1. CCA RENEWABLE POWER CONTRACTS

#### MRW SUGGESTION

The Draft Study’s use of utility-average renewable contract prices does not reflect the most recently-reported contract prices and does not reflect the general downward trend in renewable prices seen over the past few years.

#### WILLDAN RESPONSE

Power markets are volatile and dynamic, in particular for the regions addressed in this Study. For example, the recent rain in California has filled the large hydroelectric reservoirs owned and managed by both PG&E and SCE. In 2015, only 2% of SCE’s power content and 6% of PG&E’s power content was produced by large hydroelectric resources.<sup>2</sup> In contrast, these resources provided 18% of electricity for PG&E and 7% of electricity for SCE in 2011.<sup>3</sup> As a result, recent rainfall is likely to decrease the overall portfolio cost for IOU generation. This weather-dependent cost variable for hydroelectric generation is just one example of IOU power portfolio and retail

<sup>2</sup> Power Content Label required by AB 162 (Statute of 2009) and Senate Bill 1305 (Statutes of 1997):

<http://www.energy.ca.gov/pcl/labels/>

<sup>3</sup> Utility Annual Power Content Labels 2011:

[http://www.energy.ca.gov/pcl/labels/2011\\_index.html](http://www.energy.ca.gov/pcl/labels/2011_index.html)

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Response to MRW Peer Review of “Technical Feasibility Study on Community Choice Aggregation for Central Coast Region” Draft Report Dated May 10, 2017

August 1, 2017

cost volatility. Similar weather dependence applies to both sunshine and wind for renewable generation portfolios.

#### *Renewable Generation*

The Study was initiated in the summer of 2016 using the 2016 Padilla Report,<sup>4</sup> among other resources; the preliminary results were released in May of 2017. The 2017 Padilla Report<sup>5</sup> was released in May 2017, more than four months after the Study forecast was finalized. As in any Study of this nature, data must be analyzed as of a point in time. The forecast used in the Study does capture the downward trend as of the forecast date and the team stands by the forecasts presented as of the time of the Study. As discussed below, the forecast is not inconsistent with the updated findings of the 2017 Padilla Report.

MRW cites the 2017 Padilla Report versus the Study as follows:

The weighted average prices for contracts approved in 2016 are \$0.059/kWh for PG&E and \$0.061/kWh for SCE, well below the average 2016 expenditures of \$0.11/kWh and \$0.094/kWh, respectively. The prices of contracts approved in 2016 are approximately 30% below the average RPS [Renewable Portfolio Standard] PPA [Purchase Power Agreement] cost of \$88/MWh [\$0.088/kWh] assumed in the Report for 2020.

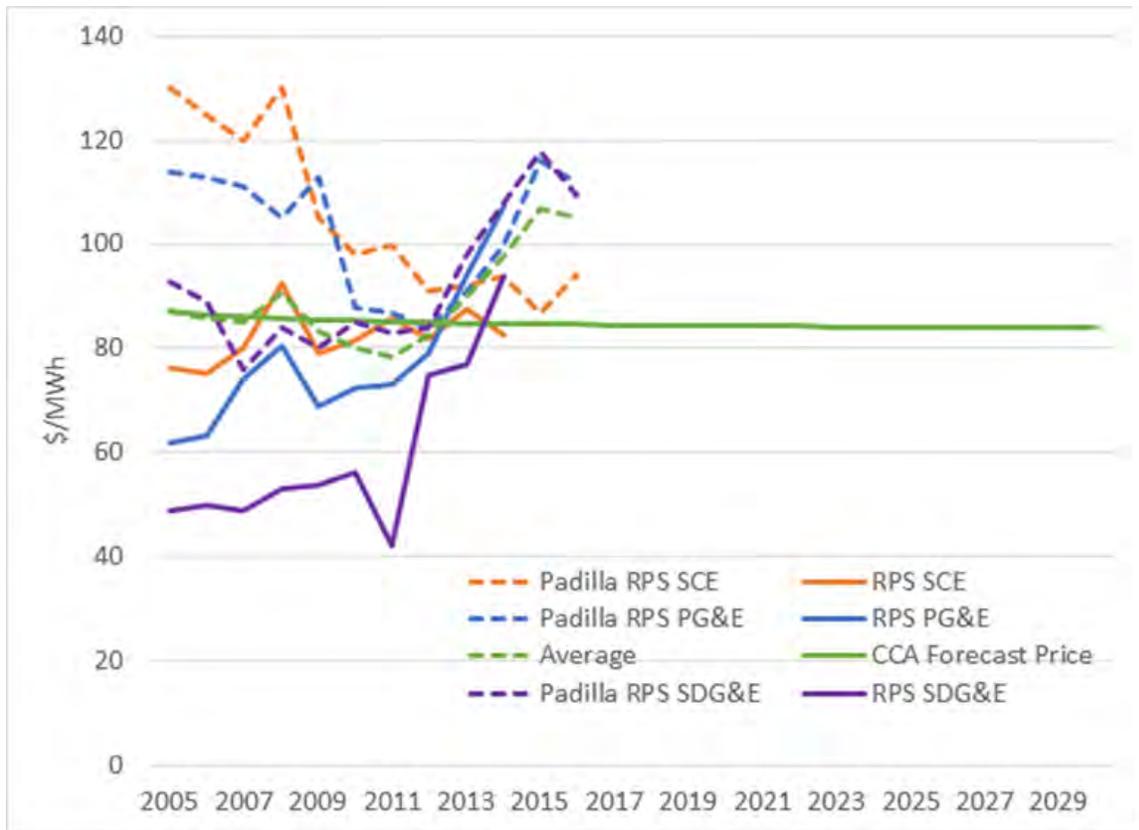
However, this information must be considered in light of the full set of data presented in the report and against all trends reported. The 2017 Padilla Report notes that certain actual 2016 procurement costs increased over 2015: bundled renewable supply to \$0.104/kWh from \$0.101/kWh in 2015. PG&E paid a premium for bundled RPS in 2016, an average of \$0.1119/kWh. SCE paid \$0.0942/kWh that same year. SCE’s actual average cost for 2015 was revised upward to \$0.0905 from the \$0.087 originally reported in the 2016 Padilla Report. The corresponding chart in the CCP CCA study has been updated accordingly, is included below as Figure 1, and illustrates that the RPS costs for all three IOUs are actually **higher** than the CCA forecast price for 2016.

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<sup>4</sup> [http://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Website/Content/Utilities\\_and\\_Industries/Energy/Reports\\_and\\_White\\_Papers/Padilla%20Report%202016%20-Final%20-%20Print.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Website/Content/Utilities_and_Industries/Energy/Reports_and_White_Papers/Padilla%20Report%202016%20-Final%20-%20Print.pdf)

<sup>5</sup> [http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About\\_Us/Organization/Divisions/Office\\_of\\_Governmental\\_Affairs/Legislation/2017/Final%20-%20Padilla%20Report%20-%20RPS%20Costs%202017.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/Office_of_Governmental_Affairs/Legislation/2017/Final%20-%20Padilla%20Report%20-%20RPS%20Costs%202017.pdf)

Figure 1 IOU RPS compliance cost.<sup>6</sup>



With significant solar generation growth in California, from both utility scale and distributed customer owned photovoltaic resources, solar generation output sometimes exceeds electricity demand during periods of peak solar output. California is entering an over-capacity condition for solar generation during certain daylight periods which means that additional solar generation capacity is not needed and that solar is no longer displacing fossil fuel generation. This over-capacity condition results in negative pricing in the CAISO day-ahead and real-time markets during periods when excess solar production exceeds demand. Battery energy storage is one

<sup>6</sup> The basis of the renewable RPS cost analysis included data from the May 2016: Report on 2015 Renewable Procurement Costs in Compliance with Senate Bill 836 (Padilla, 2011) Table A-2 Weighted Average TOD-Adjusted RPS Procurement Expenditures (Bundled Energy Only) for 2015 [http://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Website/Content/Utilities\\_and\\_Industries/Energy/Reports\\_and\\_White\\_Papers/Padilla%20Report%202016%20-Final%20-%20Print.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Website/Content/Utilities_and_Industries/Energy/Reports_and_White_Papers/Padilla%20Report%202016%20-Final%20-%20Print.pdf); Subsequent to the analysis an updated report was produced and the data was consistent with the forecast analysis previously performed: May 2017: Report on 2015 Renewable Procurement Costs in Compliance with Senate Bill 836 (Padilla, 2011) Table B-2 Weighted Average RPS Procurement Expenditures (Bundled Energy Only) for 2016 [http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About\\_Us/Organization/Divisions/Office\\_of\\_Governmental\\_Affairs/Legislation/2017/Final%20-%20Padilla%20Report%20-%20RPS%20Costs%202017.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/Office_of_Governmental_Affairs/Legislation/2017/Final%20-%20Padilla%20Report%20-%20RPS%20Costs%202017.pdf).

technology being pursued to help mitigate this overcapacity challenge. For reference, the LA Times article: “*California invested heavily in solar power. Now there's so much that other states are sometimes paid to take it,*”<sup>7</sup> provides a clear discussion of this situation.

#### *Natural Gas Generation*

The supply cost for natural gas generation used in the Study incorporated two factors: 1) a decreasing cost for the natural gas commodity as a result of increasing supplies from shale gas and fracking; and 2) an improved heat rate efficiency for natural gas electric generation. However, the cost of natural gas is also volatile as illustrated in the corresponding figures “California natural gas generation cost based on natural gas price and heat rate conversion” and “Natural gas generation supply cost” in the Study. The curve fitting regression analysis in the “Natural gas generation supply cost” is an averaging and flattening of the recent natural gas generation cost trend with actual historical prices being both above and below the cost forecast. The Monte Carlo simulation model estimates the corresponding volatility of natural gas prices (\$/MWh) based on the 2002-2016 data source.

#### *CCA Renewable Power Contracts*

The 2016 approved contracts referenced in the 2017 Padilla Report are primarily for supplies that will be provided in the future, and likely after 2020, for deals entered today. Given the dynamic nature of this market, prices may move in either direction. The forecast used in the Study stands as reasonable.

#### *Summary Comments*

Finally, MRW indicates that the Study is over-estimating the cost of future renewables and under-estimating the cost of natural gas generation. Although MRW suggests that we revise downward the renewables forecast, it does not similarly suggest that we also revise upward the natural gas generation price forecast. This one-sided recommendation further evidences a bias towards a feasible outcome, which must be rejected.

Exhibit A hereto presents the results of sensitivity analyses conducted against Participation Scenario 2: Advisory Working Group (AWG) Jurisdictions – Middle of the Road scenario that illustrate the impact of changes in power costs to feasibility results. Demonstrating that, all other assumptions held constant, a 40% reduction in power costs is required to achieve rate proxies lower than both IOUs.

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<sup>7</sup> L.A. Times “*California invested heavily in solar power. Now there's so much that other states are sometimes paid to take it*” by Ivan Penn, June 22, 2017: <http://www.latimes.com/projects/la-fi-electricity-solar/>

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## 2. UNCOLLECTABLE EXPENSES

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### MRW SUGGESTION

- a) The Study assumed from 5% to 8% of the revenues due to the CCA from its customers could not be collected. This is an order-of-magnitude higher than that experienced by either MCE Clean Energy (MCE), the longest-running CCA in the state, or Sonoma Clean Power (SCP), the second longest-running CCA in the state.
- b) CCAs do not observe the same level of uncollectible accounts as the IOUs due because CCAs are allowed to return non-paying accounts to the corresponding IOU's bundled service.

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### WILLDAN RESPONSE

- a) The Study assumption was based on the actual filings by PG&E and SCE using the ratio of Uncollectable Account allowance to total Receivables. In response to MRW's suggestion, additional research was conducted that revises this assumption.

In the 2014 General Rate Case Decision 14-08-0321, the California Public Utilities Commission (Commission or CPUC) adopted a revised methodology to determine PG&E's uncollectibles factor, which is based on a 10-year rolling average using recorded uncollectible data. The 2015 uncollectibles factor using historical data from 2004 through 2013 is 0.003325. SCE's authorized uncollectibles factor for 2010 and 2011 was 0.00240 and for 2012 to 2013 was 0.00204. However, SCE's actual uncollectible expense exceeded the authorized amount in each of these years and exhibits an increasing trend.

Based on these analyses, Willdan agrees that it makes sense to revise the pro forma assumption to reflect the actual expense set by the CPUC for PG&E of 0.3325%; this factor has been applied to both IOUs. Revision of this assumption in isolation does not materially impact forecasted feasibility outcomes.

- b) Willdan does not concur with MRW's assertion in practice nor in principle. Although a CCA is technically allowed to return clients to the IOU for non-payment, such treatment appears to conflict with the CCA's role in the public power paradigm. CPUC Code Section 366.2(c)(3) lists requirements for CCAs that indicate if a public agency seeks to serve as a CCA, it shall offer the opportunity to purchase electricity to all residential customers within its jurisdiction. Furthermore, for purposes of a feasibility study, such an assumption defies industry standards and practice and is, therefore, indefensible.

### 3. ADMINISTRATIVE LABOR COSTS

#### MRW SUGGESTION

The number of employees assumed in the pro forma analyses, as well as their compensation, appear high relative to operating California CCAs.

#### WILLDAN RESPONSE

Willdan based its labor analysis on the regional labor markets and a functional analysis of required positions. Figure 2 below demonstrates the level of staffing is reasonable when compared to other CCAs.<sup>8</sup> Labor costs include benefits.

Figure 2: CCA Staffing Comparison

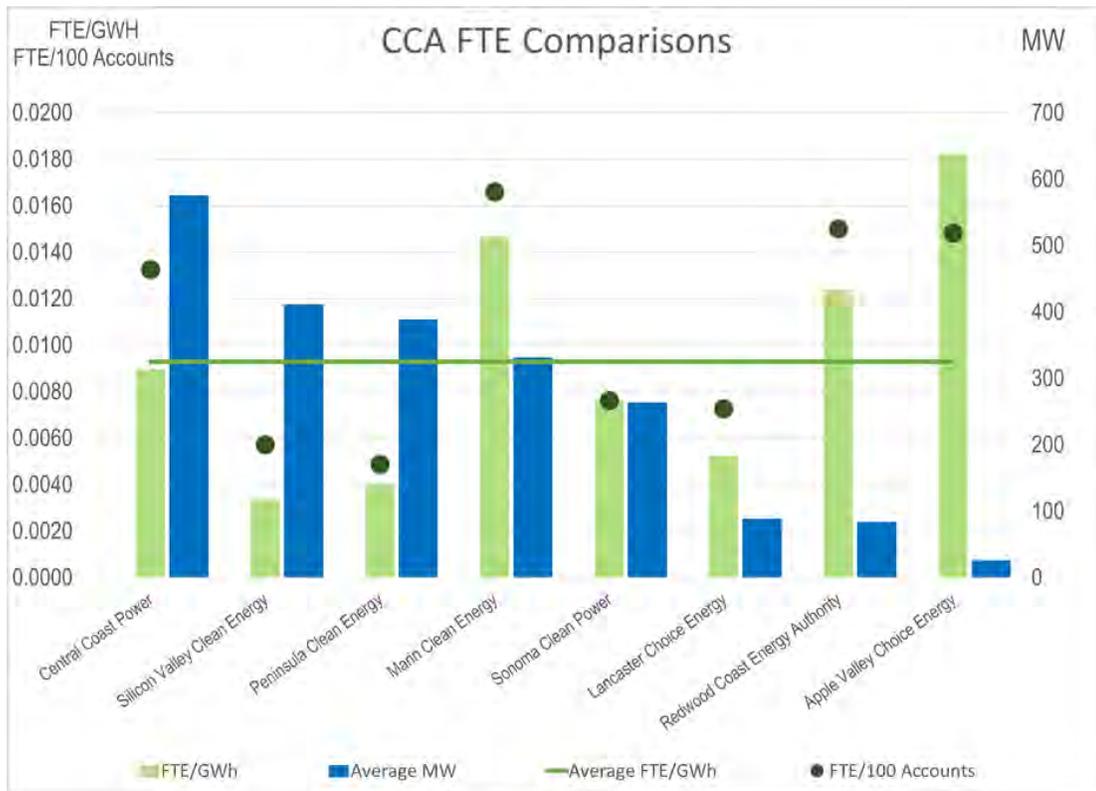
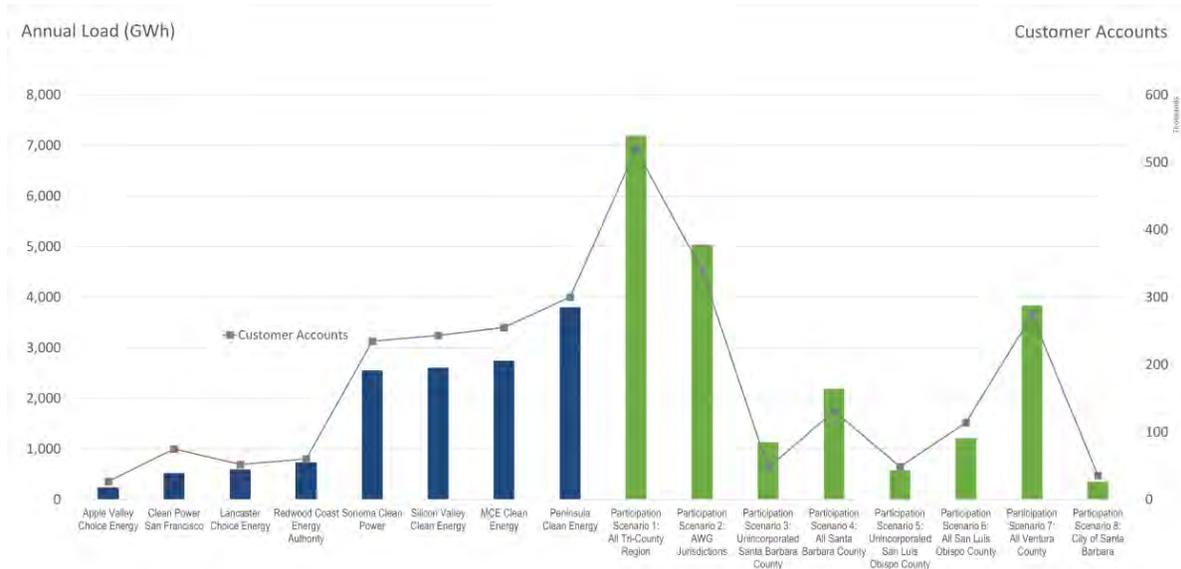


Figure 3 below illustrates the size of the CCP CCA relative to other currently operating CCAs by Participation Scenario, illustrating the extreme range between scenarios assessed. Staffing

<sup>8</sup> Based on Participation Scenario 2: AWG Jurisdictions.

assumptions are adjusted by scenario and range from a low of 24 for Participation Scenario 8: City of Santa Barbara and a high of 57 for Participation Scenario 1: All Tri-County Region.

Figure 3: Summary of CCA Size (GWh and Customer Accounts)



Willdan conducted sensitivity analyses concerning staffing levels. Exhibit B hereto presents the results of this sensitivity analysis. Decreasing staffing by over 70% in isolation did not materially alter feasibility outcomes.

#### 4. CCA SERVICE FEES

##### MRW SUGGESTION

- a) The incumbent utilities—Southern California Edison (SCE) and Pacific Gas and Electric (PG&E)—charge CCAs in their respective territories certain fees for billing conducted on behalf of the CCA as well as meter and data management. While the Draft Study reflects current tariffed rate for these services, it does not account for the proposed dramatic uncontested reductions being presented by both utilities.
- b) Similarly, it is unclear whether the ESP service fees section of the Draft Study properly accounts for critical operational services such as data management and scheduling coordination.

##### WILLDAN RESPONSE

- a) As noted by MRW, the Study relies upon current tariffed rates for CCA Service Fee at the time of the Study. No other assumption concerning pending proposals would be defensible.

- b) The Study adequately accounts for all required CCA functions as more fully described in the report.

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## 5. ASSUMED RESERVE FUNDING

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### MRW SUGGESTION

Beyond working capital, CCAs typically develop a “rate stabilization reserve fund” which can be drawn upon in years’ where the CCA might not otherwise be able to meet its rate targets. The Draft Study pro forma analysis appears to assume that approximately \$78 million (14% of total expenses) is contributed each year, rather than setting a target (e.g., 15% of annual expenses), taking 3 to 5 years to achieve the fund, and then eliminate further contributions until replenishment is needed.

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### WILLDAN RESPONSE

A contingency fund is budgeted for unanticipated occurrences over the course of a year. The pro forma assumes that each year a certain amount is set aside to cover unanticipated increases in operating costs. In the most recent version of the pro forma, the annual amount set aside for the rate stabilization fund was lowered to 12% of power costs (previously 17%). The contingency fund remains at 10% of non-power O&M. Usage of the contingency fund was not modeled—there are no withdrawals—so MRW’s assumption that the fund continues to grow is incorrect. The purpose of the contingency fund is to provide adequate funding given a reasonable increase in operating costs; given that the opt-out rate was set conservatively high and power procurement costs can fluctuate significantly, it should be assumed that the contingency fund will be used.

Altering the level of contingency and reserve funding (while maintaining reasonable levels) in isolation would not materially alter feasibility outcomes.

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## 6. PG&E AND SCE RATE FORECASTS

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### MRW SUGGESTION

A fundamental concern is that the forecast of SCE and PG&E rates is disconnected from the forecast of CCA rates. The utility rates against which the CCA rates are compared are simply the current rates escalated at 0-0.5%. It does not account for: (i) SCE’s or PG&E’s actual supply portfolio, (ii) the two utilities’ status with respect to State’s renewable power content mandates, (iii) fuel price trends, or (iv) any other underlying fundamentals. In particular, there is no explicit connection between the utilities’ generation rates and the CCA generation cost, even though they would be purchasing from the same wholesale market and vying for the same incremental renewable generation sources.

**WILLDAN RESPONSE**

In the prior section MRW contends that the renewable rates for the IOUs for 2016 are high and not representative of the market from which the CCA would be purchasing. However, here MRW contends that there should be an explicit connection between the IOU generation rates and the CCA generation cost. Renewables are currently the most expensive resource in the IOUs’ supply portfolio. On the one hand MRW contends that CCA prices for renewables should be much lower than the IOUs are currently paying, but at the same time that IOU rates and CCA rates should be connected. This appears to be contradictory, and depending on interpretation, could bias results in favor of feasibility.

As noted in the Background section of this memorandum, forecasting IOU rates was not part of the scope of work of this Study. Additionally, lack of insight into IOU rate forecasts is a challenge faced by all CCAs. Furthermore, CCAs compete only on the energy-related component of rates. CCA and IOU bundled service customers alike pay the delivery portion of the IOU bill which covers transmission and distribution. Additionally, CCA customers pay an exit fee to reimburse the IOU for generation related costs “stranded” when the CCA load leaves the IOU—i.e., the Cost Recovery Surcharge (CRS), in particular the Power Charge Indifference Adjustment(PCIA). When discussing rate forecasts and escalations, the non-energy component of IOU rates could escalate by 15%, and not impact Study outcomes (independent of other potential adjustments to Study assumptions) because both CCA and non-CCA customers would pay that increase.

As discussed in more detail with the following tables and figures, Willdan has demonstrated that both PG&E and SCE have, over the last few years, been moving more of the revenue requirement from generation to transmission and distribution costs—in other words shifting costs to the fixed delivery charge paid by both CCA and non-CCA customers. Table 1 shows historical energy and delivery charges for SCE for the Residential rate class since 2014, for the baseline consumption. Overall for this period, the delivery charge has increased 89% while the energy component has decreased 13%.

Table 1: SCE Rate Changes Since 2014, Residential Baseline

		2014	2015	2016	2017	% Change 2014-2017
<b>RESIDENTIAL, Baseline Usage</b>						
<b>Basic Service Fee</b>	\$/Meter/Month	0.94292	0.94292	0.94292	0.94292	
<b>Energy</b>						
Summer	\$/kWh	0.08555	0.0899	0.06887	0.07477	
Winter	\$/kWh	0.08555	0.0899	0.06887	0.07477	
<i>Increase/Decrease</i>			5%	-23%	9%	-13%
<b>Delivery</b>						
Summer	\$/kWh	0.04678	0.0586	0.08221	0.0884	
Winter	\$/kWh	0.04678	0.0586	0.08221	0.0884	
<i>Increase/Decrease</i>			25%	40%	8%	89%
<b>California Climate Credit</b>		\$0.00	(\$4.83)	(\$6.33)	(\$5.17)	

Table 2 and Table 3 on the following pages show the historical rate changes occurring for the Medium and Large Commercial classes, respectively. Overall for this period, the delivery charges increased and the generation charges decreased for both classes.

Table 2: SCE Rate Changes Since 2014, Medium Commercial

		2014	2015	2016	2017	% Change 2014-2017
<b>GENERAL SERVICE, TOU-GS-3</b>						
<b>Basic Service Fee</b>	\$/Meter/Month	444.790	441.930	493.360	446.130	
<i>Increase/Decrease</i>			-1%	12%	-10%	0%
<b>Energy</b>						
<b>Summer</b>						
On-Peak	\$/kWh	0.30087	0.33132	0.23913	0.28916	
<i>Increase/Decrease</i>			10%	-28%	21%	-4%
Mid-Peak	\$/kWh	0.10158	0.1119	0.08078	0.08281	
<i>Increase/Decrease</i>			10%	-28%	3%	-18%
Off-Peak	\$/kWh	0.03227	0.03555	0.02568	0.03226	
<i>Increase/Decrease</i>			10%	-28%	26%	0%
<b>Winter</b>						
Mid-Peak	\$/kWh	0.05581	0.06148	0.04537	0.04662	
<i>Increase/Decrease</i>			10%	-26%	3%	-16%
Off-Peak	\$/kWh	0.03681	0.04055	0.02927	0.03712	
<i>Increase/Decrease</i>			10%	-28%	27%	1%
<b>Voltage Discount, Energy</b>						
50kV<220kV	\$/kW	(0.00404)	(0.00440)	(0.00320)	(0.00461)	
<i>Increase/Decrease</i>			9%	-27%	44%	14%
<b>Delivery</b>						
<b>Summer</b>						
On-Peak	\$/kWh	0.02332	0.02691	0.02557	0.02718	
<i>Increase/Decrease</i>			15%	-5%	6%	17%
Mid-Peak	\$/kWh	0.02332	0.02691	0.02557	0.02718	
<i>Increase/Decrease</i>			15%	-5%	6%	17%
Off-Peak	\$/kWh	0.02332	0.02691	0.02557	0.02718	
<i>Increase/Decrease</i>			15%	-5%	6%	17%
<b>Winter</b>						
Mid-Peak	\$/kWh	0.02332	0.02691	0.02557	0.02718	
<i>Increase/Decrease</i>			15%	-5%	6%	17%
Off-Peak	\$/kWh	0.02332	0.02691	0.02557	0.02718	
<i>Increase/Decrease</i>			15%	-5%	6%	17%
<b>Demand Charges</b>						
Facilities Related	\$/kW	\$16.14	\$16.07	\$18.45	\$17.81	
<i>Increase/Decrease</i>			0%	15%	-3%	10%
<b>Voltage Discount, Demand</b>						
<b>Facilities Related</b>						
50kV<220kV	\$/kW	(6.76000)	(6.71000)	(7.46000)	(6.79000)	
<i>Increase/Decrease</i>			-1%	12%	-21%	-12%

Table 3: SCE Rate Changes Since 2014, Large Commercial

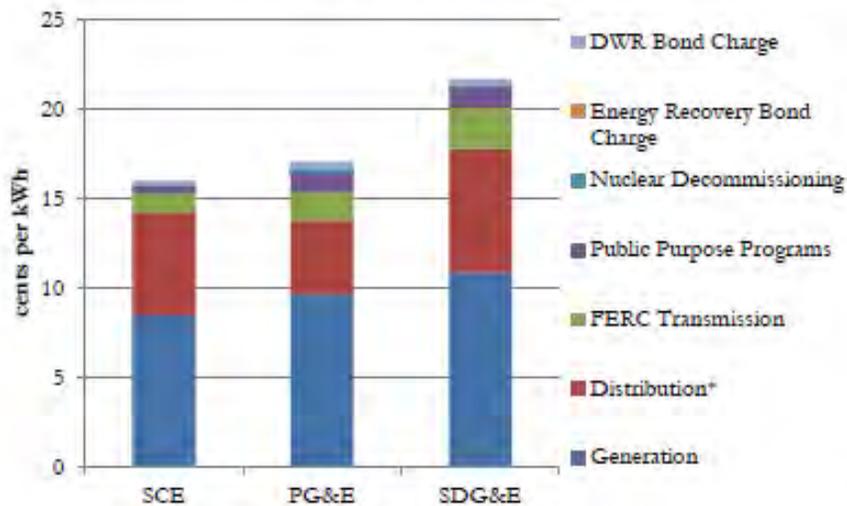
		2014	2015	2016	2017	% Change 2014-2017
<b>GENERAL SERVICE-LARGE, TOU-8-Option B</b>						
<b>Basic Service Fee</b>	\$/Meter/Month	321.60	319.47	356.41	303.25	
<i>Increase/Decrease</i>			-1%	12%	-15%	-6%
<b>Energy</b>						
<b>Summer</b>						
On-Peak	\$/kWh	0.10485	0.11445	0.08309	0.07072	
<i>Increase/Decrease</i>			9%	-27%	-15%	-33%
Mid-Peak	\$/kWh	0.05449	0.05948	0.04318	0.04730	
<i>Increase/Decrease</i>			9%	-27%	10%	-13%
Off-Peak	\$/kWh	0.03241	0.03537	0.02568	0.03165	
<i>Increase/Decrease</i>			9%	-27%	23%	-2%
<b>Winter</b>						
Mid-Peak	\$/kWh	0.05616	0.06130	0.04451	0.04579	
<i>Increase/Decrease</i>			9%	-27%	3%	-18%
Off-Peak	\$/kWh	0.03738	0.04081	0.02963	0.03645	
<i>Increase/Decrease</i>			9%	-27%	23%	-2%
<b>Demand Charges</b>						
<b>Time Related</b>						
<b>Summer</b>						
On-Peak	\$/kW	28.23	30.81	22.38	22.55	
<i>Increase/Decrease</i>			9%	-27%	1%	-20%
Mid-Peak	\$/kW	0.00	0.00	0.00	3.63	
<i>Increase/Decrease</i>			0%	0%	N/A	
<b>Delivery</b>						
<b>Summer</b>						
On-Peak	\$/kWh	0.02162	0.02463	0.02331	0.02426	
<i>Increase/Decrease</i>			14%	-5%	4%	12%
Mid-Peak	\$/kWh	0.02162	0.02463	0.02331	0.02426	
<i>Increase/Decrease</i>			14%	-5%	4%	12%
Off-Peak	\$/kWh	0.02162	0.02463	0.02331	0.02426	
<i>Increase/Decrease</i>			14%	-5%	4%	12%
<b>Winter</b>						
Mid-Peak	\$/kWh	0.02162	0.02463	0.02331	0.02426	
<i>Increase/Decrease</i>			14%	-5%	4%	12%
Off-Peak	\$/kWh	0.02162	0.02463	0.02331	0.02426	
<i>Increase/Decrease</i>			14%	-5%	4%	12%
<b>Demand Charges</b>						
Facilities Related	\$/kW	11.64	14.88	16.89	18.34	
<i>Increase/Decrease</i>			28%	14%	9%	58%

Unfortunately, this type of historical delivery data was not available for PG&E; PG&E does not post historical tariffs on its website and provides only bundled data for previous years’ rates.

However, the California Public Utilities Commission April 2016 report entitled “Electric and Gas Utility Cost Report” provides illustrative data comparisons between the rates and Revenue Requirements of the three state IOUs: PG&E, SCE, and San Diego Gas and Electric (SDG&E). Information from that report has been inserted into this memo for discussion purposes.

Figure 4 shows the overall rate levels for the three California IOUs for 2015 and the component parts. SCE and SDG&E appear to have about half of their rates attributable to the generation component, with PG&E having more than half, estimated around 60%.

Figure 4: From CPUC, 2015 Rate Components for the Three California IOUs



\*Distribution here includes some charges not related to distribution, but recovered through the Delivery Component of rates from all customers, both bundled and unbundled. These charges total 0.4¢ for SCE, -0.8¢ for PG&E and 0¢ for SDG&E.

Table 4 shows that in 2015 for PG&E, Distribution and Transmission account for approximately 44% of its total Revenue Requirement, in line with SCE at 43% and SDG&E at 44%. Generation accounts for 48% of its Revenue Requirement, in line with SCE at 48% and higher than SDG&E at 40%.

Table 4: From CPUC, 2015 Electric IOU Revenue Requirements (\$000)

	PG&E	SCE	SDG&E
<b>Generation/Energy Procurement</b>			
Purchased Power	\$4,514,153	\$4,412,244	\$1,008,008
Utility Owned Generation	\$2,185,558	\$1,513,067	\$399,351
<b>Distribution</b>	\$4,399,854	\$4,350,777	\$1,138,103
<b>Transmission</b>	\$1,610,878	\$910,155	\$423,318
<b>Demand Side Management and Public Purpose Programs</b>	\$646,788	\$545,126	\$162,987
<b>Bonds &amp; Fees</b>	\$673,170	\$485,956	\$131,756
<b>Total 2015 Revenue Requirement*</b>	<b>\$13,730,664</b>	<b>\$12,198,048</b>	<b>\$3,578,637</b>

\* The numbers in the table do not add up to the Total 2015 Revenue Requirement for each utility due to other costs that do not fall under the categories provided here.

Figure 5 and Figure 6 show transmission and distribution Revenue Requirements over time, which have been more or less consistently growing for each of the three IOUs since 2005.

Figure 5: From CPUC, Trends in Transmission Revenue Requirements for the Three California IOUs

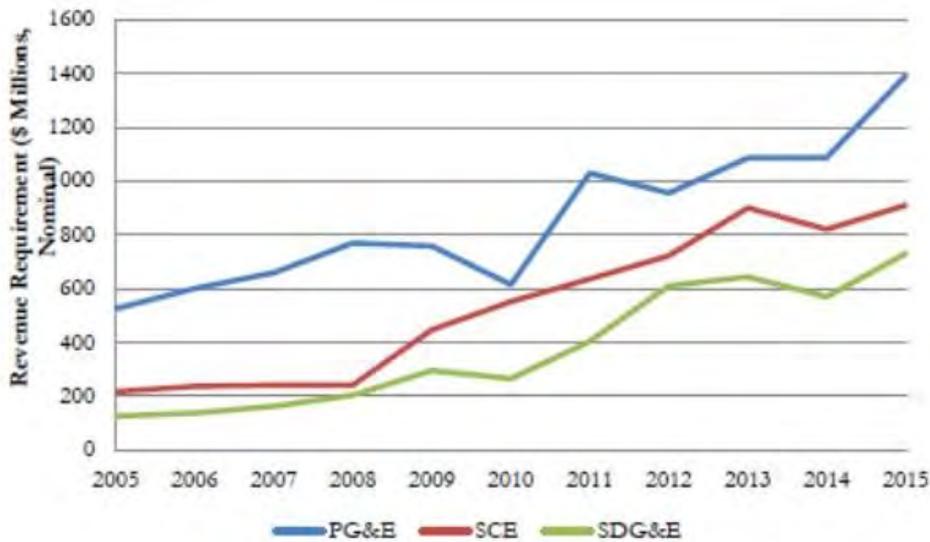


Figure 6: From CPUC, Trends in Distribution Revenue Requirements for the Three California IOUs

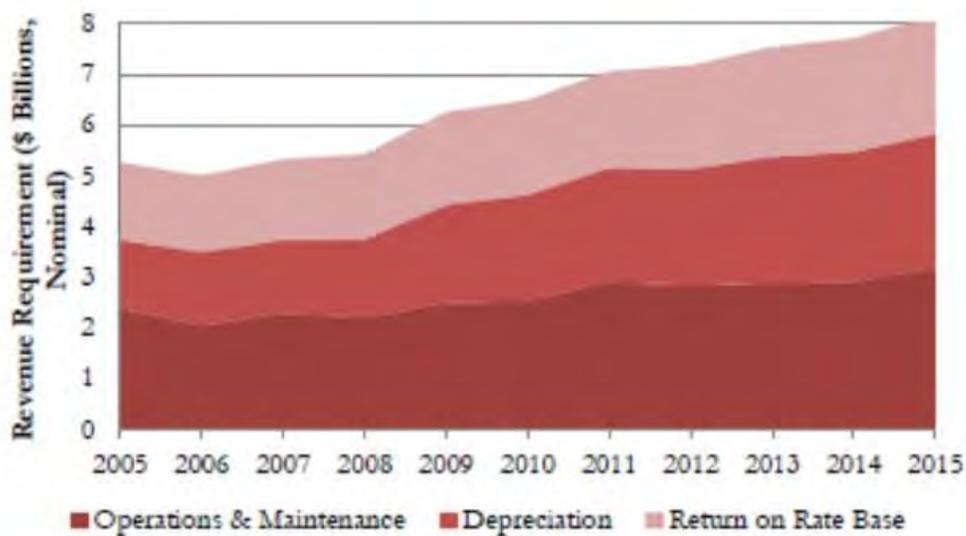
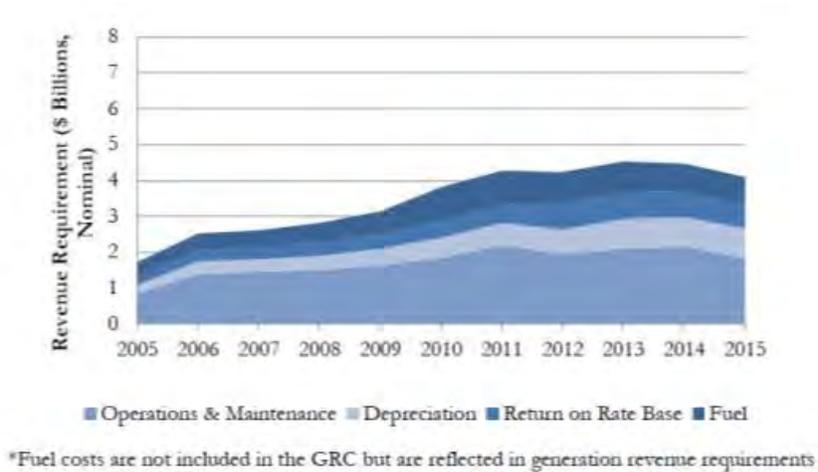


Figure 7 shows the generation Revenue Requirements over time; year 2015 generation Revenue Requirements are lower than 2014 and currently near the 2011 levels.

Figure 7: From CPUC, Trends in Generation Revenue Requirements for the Three California IOUs



Assuming PG&E follows the combined trends for the three utilities, this data would indicate that transmission and distribution is making up a larger portion of the total Revenue Requirement for the utility. This would, theoretically, justify a higher fixed component of rates—shifting revenues from generation-related charges to delivery-related charges.

On April 14, 2017 Lancaster Choice Energy (LCE) filed a protest against SCE claiming inappropriate shifting of generation related costs into the distribution component, and thus to CCA customers.<sup>9</sup> LCE’s filing supports the analysis presented above and the trend of cost shifting to the distribution portion of the electric bill, reducing the margin against which the CCA competes.

In addition, Exhibit C provides the results of sensitivity analyses of CCA results against rate escalation relative to the IOUs.

## 7. FRANCHISE FEE TREATMENT

### MRW SUGGESTION

We are also concerned that the Draft Study assumes that the franchise fees (i.e., utility taxes) that would flow to the respective cities’ and counties’ general funds if SCE or PG&E were providing service is assumed to instead flow to the CCA. This treatment should be verified by the AWG or corrected.

<sup>9</sup> Protest of Lancaster Choice Energy in the Application of Southern California Edison Company (U 338-E) for Approval of its Proposal to Implement Residential Default Time-Of-Use Rates, Application No. 17-04-015.

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#### **WILLDAN RESPONSE**

Franchise fees are generally not collected by public power entities. General fund transfers, payments in lieu of taxes, or payments in lieu of franchise fees are typically made by a public power entity. Ultimately, treatment of franchise fees would be a policy decision determined by the participating jurisdictions.

Willdan has removed flowback of the franchise fees to the CCA. This change in isolation did not alter feasibility results materially.

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### **8. ADDITIONAL ANALYSES**

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#### **MRW SUGGESTION**

Lastly, we recommend that sensitivity cases used to explore the impact of lower SCE and PG&E rates and higher exit fees consider a wider range of potential values.

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#### **WILLDAN RESPONSE**

The sensitivities and supporting analyses conducted adequately bound the realm of outcomes and exceed the contracted scope of services.

### **MRW RESPONSE TO QUESTIONS**

The MRW Report answered twelve questions posed by the AWG. Willdan’s responses to this material follow.

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#### **QUESTION 1: DOES THE STUDY CONSIDER ALL PERTINENT FACTORS TO DETERMINE CURRENT AND FUTURE ELECTRIC ENERGY REQUIREMENTS OF THE CCA?**

---

#### **MRW RESPONSE TO QUESTION 1**

MRW finds the analyses reasonable.

---

#### **WILLDAN RESPONSE**

No response required.

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**QUESTION 2: DOES THE STUDY INCORPORATE CURRENT POWER MARKET CONDITIONS AND REASONABLE PROJECTIONS OF EXPECTED FUTURE CONDITIONS?**

---

**MRW RESPONSE TO QUESTION 2**

*Renewable Energy Procurement*

MRW finds the analysis overestimates the cost of renewable energy and is unable to determine the reasonableness of the Monte Carlo Simulation results.

*Natural Gas Generation*

MRW finds the analysis underestimates the cost of natural gas generation and is unable to determine the reasonableness of the Monte Carlo Simulation results.

*Other Cost Components*

MRW finds study results reasonable.

---

**WILLDAN RESPONSE**

These items are addressed in other sections of this memorandum. No additional response required.

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**QUESTION 3: ARE THE ESTIMATES OF THE GHG EMISSIONS INTENSITY OF THE CCA SCENARIOS RELATIVE TO THE INCUMBENT INVESTOR-OWNED UTILITIES (IOUS), NAMELY PACIFIC GAS AND ELECTRIC COMPANY (PG&E) AND SOUTHERN CALIFORNIA EDISON (SCE), REASONABLE AND ADEQUATE?**

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**MRW RESPONSE TO QUESTION 3**

MRW finds the analyses reasonable.

---

**WILLDAN RESPONSE**

No response required.

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**QUESTION 4: DOES THE DRAFT STUDY CONSIDER ALL PERTINENT FACTORS IN PROJECTING FUTURE PG&E AND SCE RATES FOR COMPARISON TO CCA COSTS/PAYMENT/RATE PROJECTIONS?**

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**MRW RESPONSE TO QUESTION 4**

*Error in Current IOU Rates*

MRW identifies an anomaly in load data, based on demand factors, for medium and large commercial and industrial customers for PG&E and SCE.

*a) IOU Rates Forecasts*

- i. MRW finds that the IOU rate forecast used in the Study is not consistent with a forecast of PG&E rates prepared by MRW in March 2017 for the Contra Costa CCA Feasibility Study that predicts PG&E annual changes as follow: an increase of 1.5% per year for 2017 to 2022; a decrease of 1.5% per year from 2023 to 2025; and annual increases of 5% thereafter.
- ii. The Draft Study extends its calculated escalator for generation rates to non-generation rates. This is concerning because there is no direct relation between the cost drivers for generation and non-generation utility services.

---

**WILLDAN RESPONSE**

*Error in Current IOU Rates*

The demand level data anomalies resulted from the raw data set used in the load analysis. These anomalies were being researched parallel to MRW’s review. The analysis presented in the final report uses demand proxies to rectify this issue. This issue does not impact load forecasts used in the Study, rather it results from attempting to retro-fit load forecasts into current IOU rate structures.

*a) IOU Rates Forecasts*

- i. Willdan, lacking access to the underlying data and analysis, cannot verify MRW’s forecast. MRW claims the forecast is based on PG&E’s actual generation resources, however it is not clear what portion of the rate escalation is associated with generation assets that would ultimately be included in the PCIA charge and thus recovered from CCA customers. Some, or all, of the PG&E escalation could appear not in the energy portion of PG&E rates but instead be allocated to the PCIA component, that applies only to CCA customers. The forecast is not consistent with the rate of change in PG&E’s Green Tariff

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Shared Renewables 20-year Rate Forecast—Feb. 2017, page 8 of pdf<sup>10</sup>—which is the only long-term forecast publicly available.

The approach used in the Study is reasonable and consistent.

- ii. The rate escalation applied to the non-generation portion of rates applies equally to CCA and non-CCA customers and therefore the impact cancels out, having no impact on Study outcomes.

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**QUESTION 5: DOES THE DRAFT STUDY CONSIDER ALL PERTINENT FACTORS IN PRESENTING A REASONABLY ACCURATE INVESTOR-OWNED UTILITY (IOU) VS. CCA COST/PAYMENT COMPARISON?**

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**MRW RESPONSE TO QUESTION 5**

MRW’s concern is that it is not clear that the same delivery rate (and escalation) was used for both IOU and CCA rates.

---

**WILLDAN RESPONSE**

The same delivery rate and escalation was used for both CCA and IOU customers, thus canceling out.

---

**QUESTION 6: DO THE PRO FORMA ANALYSES CONSIDER ALL PERTINENT FACTORS IN PROJECTING CCA’S OPERATING RESULTS?**

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**MRW RESPONSE TO QUESTION 6**

*Franchise Fees*

- i. MRW believes the Study may be treating franchise fees incorrectly by flowing them back to the CCA.
- ii. MRW believes the level of SCE franchise fees is incorrect.

*Power Costs*

MRW finds it difficult to assess the reasonableness of the Monte Carlo simulation model analyses based on information presented in the report.

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<sup>10</sup> PG&E Green Tariff Shared Renewables 20 Year Rate Forecast:  
[https://www.pge.com/pge\\_global/common/pdfs/solar-and-vehicles/options/solar/Forecast.pdf](https://www.pge.com/pge_global/common/pdfs/solar-and-vehicles/options/solar/Forecast.pdf)

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### *Other Operating Costs*

#### **Salaries and Wages**

MRW suggests the Study decrease both the number of FTEs and the salary costs.

#### **IOU Service Charges**

MRW suggests the Study decrease the charges below current IOU tariff rates based on the expectation that these charges will decrease or be reduced in the future.

#### **ESP Charges**

MRW concedes that the fee used in the Study is reasonable assuming it includes Scheduling Coordination.

#### **Jurisdictional Administration Charges**

MRW recommends that these costs be removed from CCA operating expenses.

#### **Uncollectable Account Charges**

MRW recommends that these costs be reduced to 0.5% based on rates experienced by operating CCAs.

#### **PCIA**

MRW recommends sensitivity analyses around the level of the PCIA be conducted.

### *Non-Operating Costs*

MRW takes issue with the Study’s assumptions around contingency funding and financing assumptions.

### *Pro Forma Results and Rate Comparisons*

MRW concurs that the CCP CCA is infeasible for two reasons: 1) the IOU average rate is lower than the CCA average rate; and 2) the CCA average rate does not cover costs starting in year 2026. MRW cites Contra Costa CCA study results that indicate power costs are 82% of total costs, PCIA charges are 13% and other costs are 6%. MRW claims that other non-power costs comprise 47% of Study costs.

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## **WILLDAN RESPONSE**

### *Franchise Fees*

- i. The treatment of franchise fees has been revised as discussed in this memorandum under the response to Item No. 7.
- ii. Based on the tariff applicable to CCAs, SCE’s franchise fees are correct.

*Power Costs*

Exhibit D provides a memorandum concerning the Monte Carlo simulation prepared for the AWG.

*Other Operating Costs*

**Salaries and Wages**

Refer to the response to Item No. 3.

**IOU Service Charges**

Refer to the response to Item No. 4.

**ESP Charges**

Willdan confirms that the ESP charges include Scheduling Coordination.

**Jurisdictional Administration Charges**

These charges are for external CCA coordinators located at member sites or to reimburse members for use of FTEs performing coordination efforts needed to facilitate CCA operations. These charges represent an additional labor requirement for members resulting from creation of the CCA and are not captured elsewhere. Willdan does not concur with removing such costs from CCA operating expenses but also notes that such costs in isolation are immaterial to feasibility Study results.

**Uncollectable Account Charges**

Refer to the response to Item No. 2.

**PCIA**

Refer to the response to Item No. 8.

*Non-Operating Costs*

With respect to a contingency/rate stabilization fund, MRW incorrectly asserts that the Study would accumulate \$778M in contingency funds by 2030 (refer to Figure 3). Contingency funds are intended to cover unanticipated events. Therefore, the Study prudently includes a contingency amount in yearly budgeted amounts and assumes such funding is used to routinely cover power cost fluctuations and other expenditures in excess of budgeted amounts. It is an erroneous belief that such amounts would accrue in an account over time.

*Pro Forma Results and Rate Comparisons*

Willdan finds it difficult to respond to MRW’s cited percentages absent understanding what items are included in cited amounts and the basis of comparison.

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For this Study, power costs represent approximately 70% of operating expenses—97% when adding IOU service charges, the CRS component, and franchise fees—leaving other non-power and non-IOU costs totaling approximately 3% of operating expenses.

Given that CCA rates were higher than the IOU rates in the first five years, no further adjustment was made to CCA rates in outer years as the enterprise was deemed infeasible.

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**QUESTION 7: DO YOU HAVE ANY OTHER SUGGESTIONS FOR REDUCING CCA COSTS IN LIGHT OF THE EVOLVING CALIFORNIA CCA MARKET PLACE?**

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**MRW RESPONSE TO QUESTION 7**

MRW’s suggestions appear in its responses to Questions 4, 5, and 6.

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**WILLDAN RESPONSE**

Refer to Willdan’s responses to Questions 4, 5, and 6.

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**QUESTION 8: DOES THE DRAFT STUDY PRESENT AN ADEQUATE ANALYSIS OF POTENTIAL ECONOMIC BENEFITS AND CHALLENGES OF VARIOUS SUPPLY SCENARIOS? AND**

**QUESTION 9: SHOULD ANY ADDITIONAL BENEFITS OR CHALLENGES BE CONSIDERED?**

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**MRW RESPONSE TO QUESTIONS 8 AND 9**

MRW believes that the Study failed to model the negative indirect and induced effects canceling out the benefits of local projects.

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**WILLDAN RESPONSE**

Willdan believes that the entities involved are rational economic actors that would not proceed with an infeasible enterprise and therefore no negative economic impacts would be realized.

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**QUESTION 10: DOES THE DRAFT STUDY PROVIDE A THOROUGH EVALUATION OF THE PROSPECTIVE CCA’S ABILITY TO ACHIEVE RATE COMPETITIVENESS WITH PG&E AND SCE? WHAT OTHER FACTORS, IF ANY, SHOULD BE CONSIDERED?**

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**MRW RESPONSE TO QUESTION 10**

MRW suggests additional sensitivities should have been run.

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**WILLDAN RESPONSE**

Refer to Willdan’s response to Item No. 8.

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**QUESTION 11: DOES THE DRAFT STUDY CONSIDER ALL PERTINENT FACTORS TO ASSESS THE OVERALL COST-BENEFIT POTENTIAL OF CCA?**

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**MRW RESPONSE TO QUESTION 11**

MRW has no additional factors to include.

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**WILLDAN RESPONSE**

No additional response is needed.

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**QUESTION 12: DOES THE DRAFT STUDY CONSIDER ALL PERTINENT RISK FACTORS INVOLVED WITH ESTABLISHMENT AND OPERATION OF THE CCA PROGRAM, AND ARE SUCH FACTORS PROPERLY WEIGHTED AND ANALYZED?**

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**MRW RESPONSE TO QUESTION 12**

MRW finds the Study addressed all pertinent risk factors.

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**WILLDAN RESPONSE**

No additional response is needed.

## EXHIBIT A

Original analysis conducted in May 2017; revised in August 2017 to reflect changes incorporated into the final report.

### POWER PROCUREMENT COST COMPARISON RESULTS

At the request of the AWG, all sensitivity analyses considered the AWG Jurisdictions Middle of the Road scenario against changes in key input assumptions, including power procurement costs, staffing costs, and IOU rate escalation. This Exhibit A presents the results of the power procurement cost sensitivity analyses. Table A-1 depicts the difference in average power procurement costs between the AWG Middle of the Road scenario and the 30% decrease in power procurement costs and 40% decrease in power procurement costs sensitivity cases.

Table A-1: Average Power Procurement Costs, AWG Jurisdictions - Middle of the Road Scenario, with 30% Decrease in Power Procurement Costs, and with 40% Decrease in Power Procurement Costs

Year	AWG Jurisdictions Middle of the Road Scenario		
	Original Power Procurement Cost (\$ per MWh)	With Power Procurement Cost Lower 30% (\$ per MWh)	With Power Procurement Cost Lower 40% (\$ per MWh)
2020	74.54	52.18	44.72
2021	74.81	52.37	44.89
2022	73.55	51.48	44.13
2023	74.33	52.03	44.60
2024	72.80	50.96	43.68
2025	71.73	50.21	43.04
2026	71.69	50.18	43.01
2027	70.93	49.65	42.56
2028	70.56	49.39	42.34
2029	69.18	48.43	41.51
2030	68.64	48.05	41.18

Table A-2 presents the AWG Middle of the Road scenario average rate comparisons between the CCA and PG&E and SCE over the rate comparison period of 2022 through 2026. Tables A-3 and A-4 present this information for the 30% decrease in power procurement cost and 40% decrease in power procurement cost cases, respectively.

As shown in Table A-3, the 30% decrease in power procurement costs results in CCA rate proxies that are still not below both PG&E and SCE. The average rates for the CCA are between 2.93% and 4.51% higher than PG&E and between 7.26% and 8.91% higher, depending on the year. While the premium across the

classes between the CCA and the SCE has gone down over the AWG Middle of the Road scenario, shown in Table A-2, the CCA power procurement costs still need to be even lower to be competitive with either IOU.

Table A-4 shows that CCA rate proxies become competitive against both PG&E and SCE once power procurement costs are decreased for the CCA by 40%. Compared to PG&E rates, a CCA rate proxy savings (CCA customer pay less) of between 4.34% and 5.79%, results depending on the year. Compared to SCE rates, a CCA rate proxy savings of between 2.01% and 3.50% results.

Table A-2: Rate Comparisons, Participation Scenario 2: AWG Jurisdictions - Middle of the Road Scenario

Rate Class	2022		2023		2024		2025		2026	
	CCA Rates	PG&E Rates								
Agriculture	0.1242	0.0742	0.1242	0.0753	0.1242	0.0749	0.1242	0.0747	0.1242	0.0754
Commercial/Industrial Small <200kW	0.1250	0.1049	0.1250	0.1065	0.1250	0.1059	0.1250	0.1055	0.1250	0.1065
Commercial/Industrial Medium 200<500 kW	0.1257	0.1097	0.1257	0.1113	0.1257	0.1107	0.1257	0.1103	0.1257	0.1114
Commercial/Industrial Large 500<1000 kW	0.1212	0.1107	0.1212	0.1124	0.1212	0.1118	0.1212	0.1114	0.1212	0.1124
Residential	0.1287	0.1003	0.1287	0.1018	0.1287	0.1013	0.1287	0.1009	0.1287	0.1018
Residential CARE	0.1219	0.0936	0.1219	0.0950	0.1219	0.0945	0.1219	0.0941	0.1219	0.0950
Residential Solar Choice	0.1987	0.1265	0.1987	0.1284	0.1987	0.1277	0.1987	0.1272	0.1987	0.1284
<b>Weighted Average</b>	<b>0.1260</b>	<b>0.0961</b>	<b>0.1260</b>	<b>0.0975</b>	<b>0.1260</b>	<b>0.0970</b>	<b>0.1260</b>	<b>0.0967</b>	<b>0.1260</b>	<b>0.0976</b>
<b>CCA Rate Premium/ (CCA Savings)</b>	<b>31.06%</b>		<b>29.13%</b>		<b>29.82%</b>		<b>30.29%</b>		<b>29.08%</b>	

Rate Class	CCA Rates	SCE Rates								
Agriculture	0.1117	0.0543	0.1117	0.0551	0.1117	0.0548	0.1117	0.0547	0.1117	0.0552
Commercial/Industrial Small <200kW	0.1139	0.0922	0.1139	0.0936	0.1139	0.0931	0.1139	0.0927	0.1139	0.0936
Commercial/Industrial Medium 200<500 kW	0.1132	0.0837	0.1132	0.0850	0.1132	0.0845	0.1132	0.0842	0.1132	0.0850
Commercial/Industrial Large 500<1000 kW	0.1124	0.0777	0.1124	0.0789	0.1124	0.0785	0.1124	0.0782	0.1124	0.0789
Residential	0.1066	0.0712	0.1066	0.0723	0.1066	0.0719	0.1066	0.0716	0.1066	0.0723
Residential CARE	0.0991	0.0635	0.0991	0.0645	0.0991	0.0641	0.0991	0.0639	0.0991	0.0645
Residential Green Tariff	0.1266	0.1127	0.1266	0.1144	0.1266	0.1138	0.1266	0.1134	0.1266	0.1144
<b>Weighted Average</b>	<b>0.1102</b>	<b>0.0776</b>	<b>0.1102</b>	<b>0.0788</b>	<b>0.1102</b>	<b>0.0784</b>	<b>0.1102</b>	<b>0.0781</b>	<b>0.1102</b>	<b>0.0788</b>
<b>CCA Rate Premium/ (CCA Savings)</b>	<b>41.87%</b>		<b>39.78%</b>		<b>40.53%</b>		<b>41.04%</b>		<b>39.72%</b>	

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EXHIBIT A  
POWER PROCUREMENT COST COMPARISON RESULTS

Table A-3: Rate Comparisons Participation Scenario 2: AWG Jurisdictions - Middle of the Road, with Power Price Forecast Sensitivity set at -30%

Rate Class	2022		2023		2024		2025		2026	
	CCA Rates	PG&E Rates								
Agriculture	0.0988	0.0742	0.0988	0.0753	0.0988	0.0749	0.0988	0.0747	0.0988	0.0754
Commercial/Industrial Small <200kW	0.0996	0.1049	0.0996	0.1065	0.0996	0.1059	0.0996	0.1055	0.0996	0.1065
Commercial/Industrial Medium 200<500 kW	0.1003	0.1097	0.1003	0.1113	0.1003	0.1107	0.1003	0.1103	0.1003	0.1114
Commercial/Industrial Large 500<1000 kW	0.0958	0.1107	0.0958	0.1124	0.0958	0.1118	0.0958	0.1114	0.0958	0.1124
Residential	0.1033	0.1003	0.1033	0.1018	0.1033	0.1013	0.1033	0.1009	0.1033	0.1018
Residential CARE	0.0966	0.0936	0.0966	0.0950	0.0966	0.0945	0.0966	0.0941	0.0966	0.0950
Residential Solar Choice	0.1533	0.1265	0.1533	0.1284	0.1533	0.1277	0.1533	0.1272	0.1533	0.1284
<b>Weighted Average</b>	<b>0.1004</b>	<b>0.0961</b>	<b>0.1004</b>	<b>0.0975</b>	<b>0.1004</b>	<b>0.0970</b>	<b>0.1004</b>	<b>0.0967</b>	<b>0.1004</b>	<b>0.0976</b>
<b>CCA Rate Premium/ (CCA Savings)</b>	4.51%		2.97%		3.52%		3.89%		2.93%	

Rate Class	CCA Rates	SCE Rates								
Agriculture	0.0862	0.0543	0.0862	0.0551	0.0862	0.0548	0.0862	0.0547	0.0862	0.0552
Commercial/Industrial Small <200kW	0.0883	0.0922	0.0883	0.0936	0.0883	0.0931	0.0883	0.0927	0.0883	0.0936
Commercial/Industrial Medium 200<500 kW	0.0876	0.0837	0.0876	0.0850	0.0876	0.0845	0.0876	0.0842	0.0876	0.0850
Commercial/Industrial Large 500<1000 kW	0.0868	0.0777	0.0868	0.0789	0.0868	0.0785	0.0868	0.0782	0.0868	0.0789
Residential	0.0812	0.0712	0.0812	0.0723	0.0812	0.0719	0.0812	0.0716	0.0812	0.0723
Residential CARE	0.0736	0.0635	0.0736	0.0645	0.0736	0.0641	0.0736	0.0639	0.0736	0.0645
Residential Green Tariff	0.0912	0.1127	0.0912	0.1144	0.0912	0.1138	0.0912	0.1134	0.0912	0.1144
<b>Weighted Average</b>	<b>0.0846</b>	<b>0.0776</b>	<b>0.0846</b>	<b>0.0788</b>	<b>0.0846</b>	<b>0.0784</b>	<b>0.0846</b>	<b>0.0781</b>	<b>0.0846</b>	<b>0.0788</b>
<b>CCA Rate Premium/ (CCA Savings)</b>	8.91%		7.31%		7.88%		8.27%		7.26%	

Table A-4: Rate Comparisons, Participation Scenario 2: AWG Jurisdictions - Middle of the Road, with Power Price Forecast Sensitivity set at -40%

Rate Class	2022		2023		2024		2025		2026	
	CCA Rates	PG&E Rates								
Agriculture	0.0904	0.0742	0.0904	0.0753	0.0904	0.0749	0.0904	0.0747	0.0904	0.0754
Commercial/Industrial Small <200kW	0.0912	0.1049	0.0912	0.1065	0.0912	0.1059	0.0912	0.1055	0.0912	0.1065
Commercial/Industrial Medium 200<500 kW	0.0918	0.1097	0.0918	0.1113	0.0918	0.1107	0.0918	0.1103	0.0918	0.1114
Commercial/Industrial Large 500<1000 kW	0.0874	0.1107	0.0874	0.1124	0.0874	0.1118	0.0874	0.1114	0.0874	0.1124
Residential	0.0948	0.1003	0.0948	0.1018	0.0948	0.1013	0.0948	0.1009	0.0948	0.1018
Residential CARE	0.0881	0.0936	0.0881	0.0950	0.0881	0.0945	0.0881	0.0941	0.0881	0.0950
Residential Solar Choice	0.1348	0.1265	0.1348	0.1284	0.1348	0.1277	0.1348	0.1272	0.1348	0.1284
<b>Weighted Average</b>	<b>0.0919</b>	<b>0.0961</b>	<b>0.0919</b>	<b>0.0975</b>	<b>0.0919</b>	<b>0.0970</b>	<b>0.0919</b>	<b>0.0967</b>	<b>0.0919</b>	<b>0.0976</b>
<b>CCA Rate Premium/ (CCA Savings)</b>	-4.34%		-5.75%		-5.24%		-4.90%		-5.79%	

Rate Class	CCA Rates	SCE Rates								
Agriculture	0.0777	0.0543	0.0777	0.0551	0.0777	0.0548	0.0777	0.0547	0.0777	0.0552
Commercial/Industrial Small <200kW	0.0799	0.0922	0.0799	0.0936	0.0799	0.0931	0.0799	0.0927	0.0799	0.0936
Commercial/Industrial Medium 200<500 kW	0.0791	0.0837	0.0791	0.0850	0.0791	0.0845	0.0791	0.0842	0.0791	0.0850
Commercial/Industrial Large 500<1000 kW	0.0783	0.0777	0.0783	0.0789	0.0783	0.0785	0.0783	0.0782	0.0783	0.0789
Residential	0.0727	0.0712	0.0727	0.0723	0.0727	0.0719	0.0727	0.0716	0.0727	0.0723
Residential CARE	0.0650	0.0635	0.0650	0.0645	0.0650	0.0641	0.0650	0.0639	0.0650	0.0645
Residential Green Tariff	0.0827	0.1127	0.0827	0.1144	0.0827	0.1138	0.0827	0.1134	0.0827	0.1144
<b>Weighted Average</b>	<b>0.0761</b>	<b>0.0776</b>	<b>0.0761</b>	<b>0.0788</b>	<b>0.0761</b>	<b>0.0784</b>	<b>0.0761</b>	<b>0.0781</b>	<b>0.0761</b>	<b>0.0788</b>
<b>CCA Rate Premium/ (CCA Savings)</b>	-2.01%		-3.46%		-2.94%		-2.59%		-3.50%	

Tables A-5 and A-6 show the operating results for the AWG Middle of the Road scenario and the 40% decrease in power procurement costs sensitivity, respectively.

Table A-5: Operating Results, AWG Jurisdictions Middle of the Road Scenario

Year	Operating Revenues (\$000s)	Total Operating Expenses Plus Contingency/ Rate Stabilization Fund (\$000s)	Non-Operating Revenues/ (Expenses) (\$000s)	Debt Service (\$000s)	Net Margin <sup>1</sup> (\$000s)	Working Capital Fund (\$000s)	Working Capital Target (\$000s)	Working Capital Surplus/ (Deficiency) (\$000s)	Working Capital Surplus/ (Deficiency) (%)
	a	b	c	d	a - b + c - d	e	f	e - f	(e/f)-1
2020	117,525	150,875	1,235	12,330	(44,445)	223,724	50,583	173,141	342%
2021	472,491	504,655	2,323	12,330	(42,170)	193,883	170,117	23,766	14%
2022	579,072	568,848	2,082	18,499	(6,192)	187,691	192,494	(4,803)	-2%
2023	590,222	575,366	2,044	18,499	(1,600)	186,092	194,836	(8,745)	-4%
2024	590,817	570,966	1,962	18,499	3,314	189,406	194,067	(4,662)	-2%
2025	588,906	566,609	2,098	18,499	5,896	195,302	193,284	2,019	1%
2026	587,918	570,586	2,132	18,499	966	196,268	195,171	1,096	1%
2027	586,991	571,282	2,109	18,499	(681)	195,587	196,227	(640)	0%
2028	586,831	576,506	1,991	18,499	(6,182)	189,405	198,875	(9,470)	-5%
2029	584,330	574,978	2,033	18,499	(7,113)	182,292	199,652	(17,361)	-9%
2030	582,330	581,643	1,541	18,499	(16,270)	166,022	203,279	(37,257)	-18%
					NPV of Net Margin:	(100,693)			

<sup>1</sup> Net Margin includes Net Operating Income less Debt Service. The net present value (NPV) of the Net Margin is determined using a 4% discount rate and is as of Year 2020. The discount rate is equal to the interest rate on the long-term debt.

Table A-6: Operating Results, Participation Scenario 2: AWG Jurisdictions - Middle of the Road, with Power Price Forecast Sensitivity set at -40%

Year	Operating Revenues (\$000s)	Total Operating Expenses Plus Contingency/ Rate Stabilization Fund (\$000s)	Non-Operating Revenues/ (Expenses) (\$000s)	Debt Service (\$000s)	Net Margin <sup>1</sup> (\$000s)	Working Capital Fund (\$000s)	Working Capital Target (\$000s)	Working Capital Surplus/ (Deficiency) (\$000s)	Working Capital Surplus/ (Deficiency) (%)
	a	b	c	d	a - b + c - d	e	f	e - f	(e/f)-1
2020	82,848	105,426	760	8,677	(30,495)	158,236	37,030	121,205	327%
2021	334,087	355,046	1,651	8,677	(27,985)	138,928	125,496	13,432	11%
2022	409,860	402,108	1,493	13,019	(3,774)	135,154	142,754	(7,600)	-5%
2023	417,805	407,071	1,470	13,019	(814)	134,340	144,631	(10,291)	-7%
2024	418,226	405,861	1,383	13,019	730	135,069	144,811	(9,741)	-7%
2025	416,874	404,605	1,477	13,019	727	135,796	144,949	(9,153)	-6%
2026	416,175	408,857	1,460	13,019	(4,242)	131,555	146,919	(15,364)	-10%
2027	415,518	411,523	1,376	13,019	(7,647)	123,907	148,560	(24,653)	-17%
2028	415,405	417,554	1,189	13,019	(13,980)	109,927	151,447	(41,520)	-27%
2029	413,635	419,905	1,133	13,019	(18,156)	91,771	153,379	(61,607)	-40%
2030	412,220	428,262	527	13,019	(28,534)	63,237	157,508	(94,271)	-60%
					NPV of Net Margin:	(107,507)			

<sup>1</sup> Net Margin includes Net Operating Income less Debt Service. The net present value (NPV) of the Net Margin is determined using a 4% discount rate and is as of Year 2020. The discount rate is equal to the interest rate on the long-term debt.

Overall, financial performance is similar between the cases, with a sustained period of negative net margins lasting through 2023, followed by a few years of positive net margins (from 2024 to 2026 in the AWG Middle of the Road scenario and 2024 to 2025 in the sensitivity), and then negative net margins for all remaining years of the study period. The net present value of net margins is \$108 million in the 40%

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EXHIBIT A

POWER PROCUREMENT COST COMPARISON RESULTS

decrease in power procurement cost sensitivity versus negative \$101 million in the AWG Middle of the Road scenario. In terms of surplus funds available for investment, both cases show the CCA has issues maintaining adequate working capital for all but a few years of the study period.

This larger working capital shortage is attributable to several factors including a lowering of debt issuance amount and the decrease in average rate revenue resulting from lower rates which is sustained throughout the study period (debt issuance and rates are both driven lower due to the power procurement costs being lower). Thus, the lowering of available cash and rates at the onset result in negative financial impacts which worsen through time.

## EXHIBIT B

*Original analysis conducted in May 2017; revised in August 2017 to reflect changes incorporated into the final report.*

### DECREASE IN STAFFING COSTS COMPARISON RESULTS

This Exhibit B presents the results of the staffing cost sensitivity analyses. Again, at the request of the AWG, this analysis and all sensitivity analyses considered the AWG Jurisdictions Middle of the Road scenario against changes in key input assumptions. Table B-1 shows the total staffing costs between the AWG Middle of the Road scenario and the 70% decrease in staffing costs case.

Table B-1: Test Year Staffing Costs, AWG Jurisdictions -  
 Middle of the Road Scenario and with a 70% Decrease in Salary and Benefits Costs

Description	Number of Positions	Salary and Benefits Base Case (\$)	Salary and Benefits 70% Decrease in Staffing Costs Case (\$)
<b>Executive Management Positions:</b>			
General Manager	1	350,868	105,260
Assistant General Manager	1	241,563	72,469
Chief Financial Officer	1	301,680	90,504
Customer Service Manager	1	241,563	72,469
Human Resources Manager	1	241,563	72,469
Attorney	1	334,472	100,342
<b>Total Executive Management Positions:</b>	<b>6</b>	<b>1,711,709</b>	<b>513,513</b>
<b>Other/Departmental Management Positions</b>			
Accounting and Budget Manager	1	163,957	49,187
Rates and Regulatory Affairs Manager	1	226,260	67,878
Customer Information and Billing Manager	1	226,260	67,878
Key Accounts Manager	1	226,260	67,878
DSM Program Manager	1	174,887	52,466
Communications and Public Relations Manager	1	174,887	52,466
Power Supply and Planning Manager	1	213,144	63,943
Information Technology Manager	1	226,260	67,878
Procurement and Contracts Manager	1	163,957	49,187
<b>Total Other/Departmental Management Positions</b>	<b>9</b>	<b>1,795,873</b>	<b>538,762</b>
<b>Analyst, Technical, Engineering Positions</b>			
Contracts Analyst	1	128,979	38,694
Accounting and Budget Analyst	3	386,938	116,081
Rates and Regulatory Affairs Analyst	0	-	-
Power Supply Analyst	2	277,633	83,290
DSM Analyst	2	277,633	83,290
<b>Total Analyst, Technical, Engineering Positions</b>	<b>8</b>	<b>1,071,184</b>	<b>321,355</b>
<b>Administrative, Customer Service, and Other Positions</b>			
Executive Administrative Assistant	3	341,030	102,309
Administrative Assistant	4	314,797	94,439
Customer Service Representative	4	314,797	94,439
Key Account Representative	7	994,671	298,401
Communications Specialist	1	122,421	36,726
IT Specialist	2	244,842	73,453
Human Resources Specialist	1	142,096	42,629
<b>Total Administrative, Customer Service, and Other Positions</b>	<b>22</b>	<b>2,474,654</b>	<b>742,396</b>
<b>Total, All Positions</b>	<b>45</b>	<b>7,053,421</b>	<b>2,116,026</b>

Table B-2 depicts the rate comparisons under the 70% decrease in staffing costs case. Even with this large reduction in staffing costs, the CCA rate proxies under the AWG Middle of the Road scenario are not competitive with PG&E and SCE.

Table B-2: Rate Comparisons Participation Scenario 2: AWG Jurisdictions - Middle of the Road, with Staffing Costs Sensitivity set at -70%

Rate Class	2022		2023		2024		2025		2026	
	CCA Rates	PG&E Rates								
Agriculture	0.1230	0.0742	0.1230	0.0753	0.1230	0.0749	0.1230	0.0747	0.1230	0.0754
Commercial/Industrial Small <200kW	0.1238	0.1049	0.1238	0.1065	0.1238	0.1059	0.1238	0.1055	0.1238	0.1065
Commercial/Industrial Medium 200<500 kW	0.1245	0.1097	0.1245	0.1113	0.1245	0.1107	0.1245	0.1103	0.1245	0.1114
Commercial/Industrial Large 500<1000 kW	0.1200	0.1107	0.1200	0.1124	0.1200	0.1118	0.1200	0.1114	0.1200	0.1124
Residential	0.1275	0.1003	0.1275	0.1018	0.1275	0.1013	0.1275	0.1009	0.1275	0.1018
Residential CARE	0.1208	0.0936	0.1208	0.0950	0.1208	0.0945	0.1208	0.0941	0.1208	0.0950
Residential Solar Choice	0.1975	0.1265	0.1975	0.1284	0.1975	0.1277	0.1975	0.1272	0.1975	0.1284
<b>Weighted Average</b>	<b>0.1248</b>	<b>0.0961</b>	<b>0.1248</b>	<b>0.0975</b>	<b>0.1248</b>	<b>0.0970</b>	<b>0.1248</b>	<b>0.0967</b>	<b>0.1248</b>	<b>0.0976</b>
<b>CCA Rate Premium/ (CCA Savings)</b>	<b>29.84%</b>		<b>27.93%</b>		<b>28.62%</b>		<b>29.08%</b>		<b>27.88%</b>	
Rate Class	CCA Rates	SCE Rates								
Agriculture	0.1106	0.0543	0.1106	0.0551	0.1106	0.0548	0.1106	0.0547	0.1106	0.0552
Commercial/Industrial Small <200kW	0.1127	0.0922	0.1127	0.0936	0.1127	0.0931	0.1127	0.0927	0.1127	0.0936
Commercial/Industrial Medium 200<500 kW	0.1120	0.0837	0.1120	0.0850	0.1120	0.0845	0.1120	0.0842	0.1120	0.0850
Commercial/Industrial Large 500<1000 kW	0.1112	0.0777	0.1112	0.0789	0.1112	0.0785	0.1112	0.0782	0.1112	0.0789
Residential	0.1056	0.0712	0.1056	0.0723	0.1056	0.0719	0.1056	0.0716	0.1056	0.0723
Residential CARE	0.0979	0.0635	0.0979	0.0645	0.0979	0.0641	0.0979	0.0639	0.0979	0.0645
Residential Green Tariff	0.1256	0.1127	0.1256	0.1144	0.1256	0.1138	0.1256	0.1134	0.1256	0.1144
<b>Weighted Average</b>	<b>0.1091</b>	<b>0.0776</b>	<b>0.1091</b>	<b>0.0788</b>	<b>0.1091</b>	<b>0.0784</b>	<b>0.1091</b>	<b>0.0781</b>	<b>0.1091</b>	<b>0.0788</b>
<b>CCA Rate Premium/ (CCA Savings)</b>	<b>40.46%</b>		<b>38.39%</b>		<b>39.13%</b>		<b>39.63%</b>		<b>38.33%</b>	

## EXHIBIT C

Original analysis conducted in May 2017; revised in August 2017 to reflect changes incorporated into the final report.

### ANNUAL ESCALATION OF PG&E AND SCE RATES COMPARISON RESULTS

This Exhibit C presents the results of the PG&E and SCE rates escalation sensitivity analyses. Again, at the request of the AWG, this analysis and all sensitivity analyses considered the AWG Jurisdictions Middle of the Road scenario against changes in key input assumptions. Table C-1 depicts the difference in PG&E and SCE generation rate escalation (the same escalation rates are applied to all classes for both IOUs) between the AWG Middle of the Road scenario and the 4.0% increase in annual escalation of PG&E and SCE rates case.

Table C-1: IOU Rates Escalation, AWG Jurisdictions - Middle of the Road Scenario and with a 4.0% Increase

Year	Study's Assumed Rate Escalation	With IOU Rates Escalated at Additional 4.0%
2020	0.00%	4.00%
2021	0.85%	4.85%
2022	-0.49%	3.51%
2023	1.50%	5.50%
2024	-0.53%	3.47%
2025	-0.36%	3.64%
2026	0.94%	4.94%

Table C-2 depicts the rate comparison results of the 4.0% increase in annual escalation of PG&E and SCE generation rates case. The increase of 4.0% in IOU generation rate escalation results in CCA rate proxies being more competitive compared to the AWG Middle of the Road scenario (shown in Table A-2). Compared to PG&E, CCA average generation rate proxies are less than PG&E beginning in year 2024; savings continue to increase in years 2025 and 2026. CCA average generation rate proxies still are higher than SCE rates through year 2025, and then become lower than SCE in 2026.

ANNUAL ESCALATION OF PG&E AND SCE RATES COMPARISON RESULTS

Table C-2: Rate Comparisons Participation Scenario 2: AWG Jurisdictions - Middle of the Road, with IOU Rates Escalation Sensitivity set at +4.0%

Rate Class	2022		2023		2024		2025		2026	
	CCA Rates	PG&E Rates								
Agriculture	0.1242	0.0903	0.1242	0.0952	0.1242	0.0985	0.1242	0.1021	0.1242	0.1072
Commercial/Industrial Small <200kW	0.1250	0.1276	0.1250	0.1346	0.1250	0.1393	0.1250	0.1443	0.1250	0.1515
Commercial/Industrial Medium 200<500 kW	0.1257	0.1334	0.1257	0.1408	0.1257	0.1456	0.1257	0.1509	0.1257	0.1584
Commercial/Industrial Large 500<1000 kW	0.1212	0.1347	0.1212	0.1421	0.1212	0.1470	0.1212	0.1524	0.1212	0.1599
Residential	0.1287	0.1220	0.1287	0.1287	0.1287	0.1332	0.1287	0.1380	0.1287	0.1448
Residential CARE	0.1219	0.1138	0.1219	0.1201	0.1219	0.1243	0.1219	0.1288	0.1219	0.1351
Residential Solar Choice	0.1987	0.1539	0.1987	0.1623	0.1987	0.1680	0.1987	0.1741	0.1987	0.1827
<b>Weighted Average</b>	<b>0.1260</b>	<b>0.1169</b>	<b>0.1260</b>	<b>0.1233</b>	<b>0.1260</b>	<b>0.1276</b>	<b>0.1260</b>	<b>0.1323</b>	<b>0.1260</b>	<b>0.1388</b>
<b>CCA Rate Premium/ (CCA Savings)</b>	<b>7.74%</b>		<b>2.13%</b>		<b>-1.30%</b>		<b>-4.76%</b>		<b>-9.25%</b>	
Rate Class	CCA Rates	SCE Rates								
Agriculture	0.1117	0.0661	0.1117	0.0697	0.1117	0.0721	0.1117	0.0748	0.1117	0.0785
Commercial/Industrial Small <200kW	0.1139	0.1122	0.1139	0.1183	0.1139	0.1224	0.1139	0.1269	0.1139	0.1331
Commercial/Industrial Medium 200<500 kW	0.1132	0.1018	0.1132	0.1074	0.1132	0.1112	0.1132	0.1152	0.1132	0.1209
Commercial/Industrial Large 500<1000 kW	0.1124	0.0946	0.1124	0.0998	0.1124	0.1032	0.1124	0.1070	0.1124	0.1123
Residential	0.1066	0.0866	0.1066	0.0914	0.1066	0.0945	0.1066	0.0980	0.1066	0.1028
Residential CARE	0.0991	0.0773	0.0991	0.0815	0.0991	0.0844	0.0991	0.0874	0.0991	0.0918
Residential Green Tariff	0.1266	0.1371	0.1266	0.1446	0.1266	0.1496	0.1266	0.1551	0.1266	0.1627
<b>Weighted Average</b>	<b>0.1102</b>	<b>0.0944</b>	<b>0.1102</b>	<b>0.0996</b>	<b>0.1102</b>	<b>0.1031</b>	<b>0.1102</b>	<b>0.1068</b>	<b>0.1102</b>	<b>0.1121</b>
<b>CCA Rate Premium/ (CCA Savings)</b>	<b>16.63%</b>		<b>10.55%</b>		<b>6.84%</b>		<b>3.09%</b>		<b>-1.76%</b>	

## EXHIBIT D

### POWER PROCUREMENT MONTE CARLO SIMULATION MODEL QUESTIONS

#### OVERVIEW

On Friday, May 19, 2017, EnerNex was sent a detailed inquiry from the Central Coast Power (CCP) Advisory Working Group (AWG) related to the methodology utilized to establish the power procurement cost component of the CCA Feasibility Study (Study) for the Tri-County region of Santa Barbara County, San Luis Obispo County, and Ventura County. The full text of that inquiry is included below along with EnerNex responses and clarifications. EnerNex welcomes any additional questions that may be needed to further clarify the statistical analysis and Monte Carlo simulation model (MCSM) utilized to estimate electricity usage, demand, and power procurement cost for the CCP feasibility study.

#### INQUIRY/RESPONSE

##### AWG PREAMBLE

This comment has to do with “Table XXXV. Weekday electricity usage Monte Carlo confidence interval” and the narrative around it (and it is relevant to several other sections). We do not understand how the Monte Carlo simulations are being applied here, and we are confused about the use of confidence interval vs confidence level.

Figure ES - XXXV. Weekday electricity usage Monte Carlo confidence intervals.

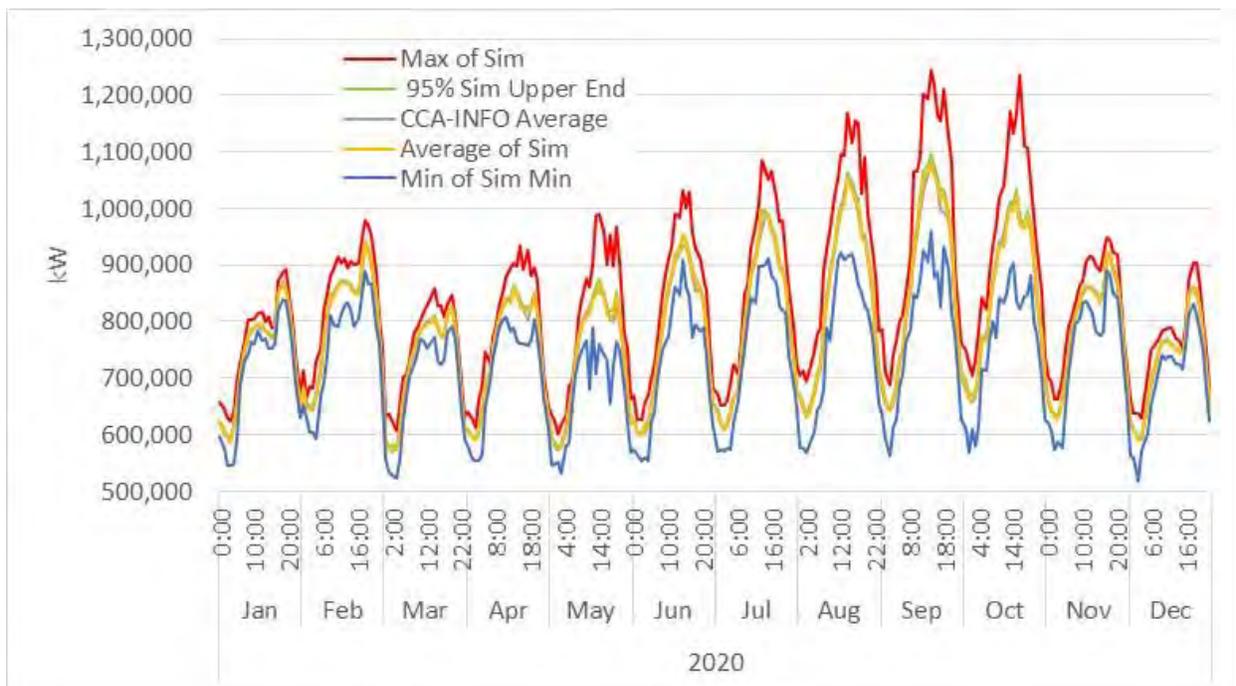
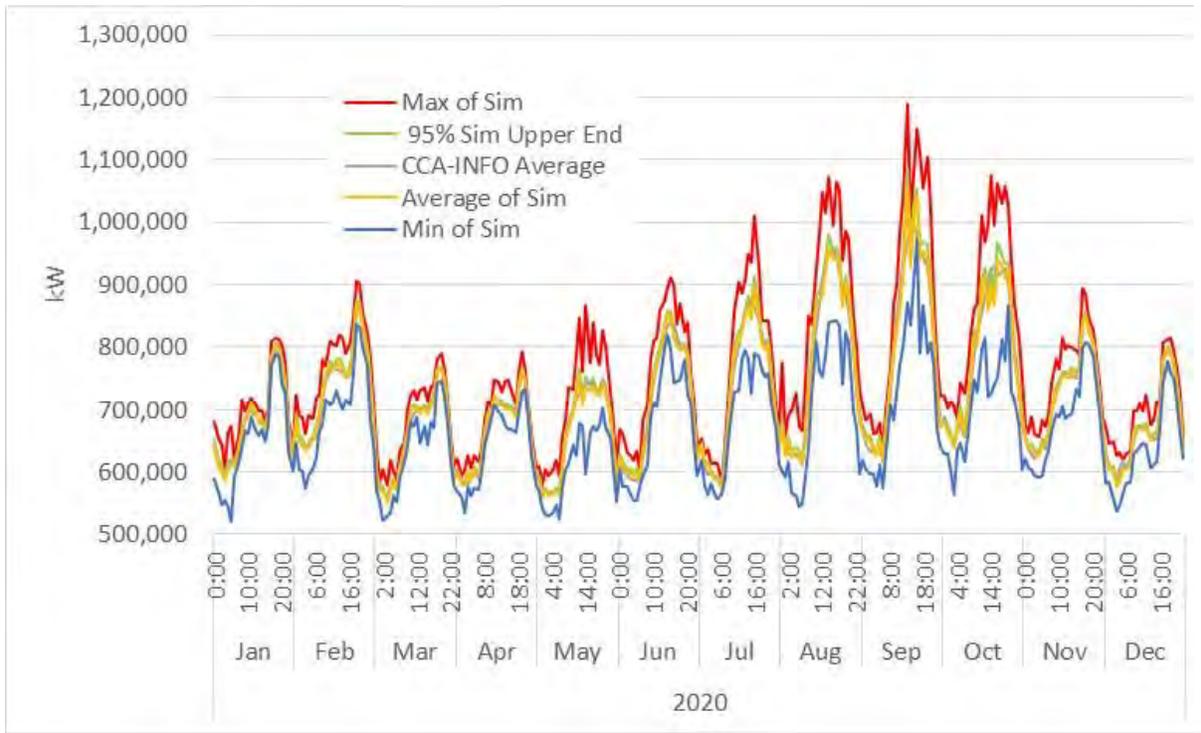


Figure ES - XXXVI. Weekend/holiday electricity usage Monte Carlo confidence intervals.



**ENERNEX PREAMBLE**

The statistical analysis that provides the basis for the load analysis and cost of power analysis utilize both confidence intervals and statistical based simulations to estimate and forecast future electricity demand and usage as well as power supply cost.

The figures/tables in question are an output rather than an input to the analysis. In this case, the figures are depicting a range of possible electricity demand (kW) for each weekday and weekend hour in the year 2020 based on the historical CCA-Info data provided by the CCAs, the load forecast, and a projection of customer owned distributed generation.

The figures are intended to illustrate the range of historic variability, as forecasted to future years. The majority of load stays fairly close to the average, but outliers exist on the high and low ends. *Managing the cost exposure when serving the high and low extremities of the demand range can be the difference between a successful and unsuccessful power procurement strategy.* The depiction of the 95% simulation upper end illustrates that the majority of electricity demand is close to the average and utilizing that number for power procurement planning is a conservative approach.

However, the power procurement approach embedded in the Monte Carlo model does not utilize power purchase agreements (PPAs) to procure power at this upper end 95% confidence level. Instead, the model procures energy through PPAs to a lower bound 90% confidence level. Confidence levels as low



as the 80% lower bound were explored as a PPA procurement strategy with the intent to minimize exposure to California Independent System Operator (CAISO) market volatility – especially when there is a correlation between high renewable supply content and the extreme high and low prices in the CAISO markets.

Specific responses to the inquiries regarding the confidence intervals, confidence levels and Monte Carlo simulation follow.

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#### AWG INQUIRY 1

- We are working off the following definitions:
  - Confidence interval: refers to the range of values around the sample value within which we expect the population value to lie.

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#### ENERNEX RESPONSE 1

- *Correct.* The CCA-Info data set was analyzed for every hour of every day of every month (with differentiation between weekdays and weekends) to calculate the average demand and standard deviation and confidence intervals. This specified range (low end to high end) is the confidence interval which is expressed in percentages. Put another way, with a 95% confidence interval, there is a 95% statistical probability that the average price within a given hour is between the low end of the range and the high end of the range based on historical sample data.

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#### AWG INQUIRY 2

- Confidence level: refers to the degree of certainty (or probability, allows us to claim significance at certain levels). It indicates how confident we are about the projected value lying within our confidence interval.

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#### ENERNEX RESPONSE 2

- *Correct.* Confidence level refers to the capability of the analysis to produce accurate confidence intervals. Intervals and levels go hand in hand. As utilized in the figure, the confidence level provides an estimate with a 95% probability that the actual result will be at or below the 95% confidence level based on the historical data.
- Again, the figures in question are intended to be illustrative with the majority of load staying fairly close to the average, while outliers exist on the high and low ends.

---

#### AWG INQUIRY 3

- And the following general understanding of MC simulation:
  - 1. You want to model the output (in our case, cost) based on input (in our case, customer load profile)

---

#### ENERNEX RESPONSE 3

- The load forecast and power purchase cost forecasts are developed independently.
- The forecasts are used as inputs to the MCSM. The output of the MCSM is a total cost of power estimate for related products to serve the estimated future load.
  - Load Forecast Inputs:



- CCA-Info data for historical load
  - Load forecast includes a statistical Monte Carlo simulation for every hour in the Study to model load variability.
- Load forecast based on historical load, EIA data and IOU long term procurement plan
- Forecast for continuing consumer adoption of rooftop solar which reduces the load forecast
  - The intermittency of customer owned rooftop solar is estimated with a statistical Monte Carlo simulation for every hour in the Study to model distributed generation variability.
- Power Purchase Cost Inputs (\$/MW)
  - Estimated cost forecast for natural gas generation
  - Estimated cost forecast for RPS compliant renewable generation
  - Estimated cost forecast for monthly resource adequacy
  - Estimated cost forecast for meeting mandated energy storage procurement
  - Estimated cost of day ahead and real-time CAISO market participation
    - Power procurement cost forecast for CAISO includes a statistical Monte Carlo simulation using a beta distribution for every hour in the Study to model market volatility.

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#### AWG INQUIRY 4

- 2. Given an input (average load) you can model the output (average cost to meet that load)

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#### ENERNEX RESPONSE 4

- The Power Purchase Cost is estimated by multiplying the projected load (MW) for each hour by the forecasted supply costs for that hour (\$/MWh for energy and \$/MW for capacity/resource adequacy).
- The Monte Carlo model attempts to simulate the power purchase progression with increasing certainty over shorter timeframes and the intent to minimize exposure to the CAISO wholesale market.
  - PPAs are utilized to purchase energy to serve the load forecast at the 90% lower bound confidence level – with 90% certainty that at least that amount of energy will be needed.
    - The 90% confidence level was utilized after a few iterations to minimize CAISO market exposure.
  - CAISO markets are then utilized to true-up the load forecast and energy supply to meet the day-ahead forecast and the real-time demand.

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#### AWG INQUIRY 5

- 3. But you don't know the impact that changes in input have on (model) output. (In our case: how changes in customer load affect cost)

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#### ENERNEX RESPONSE 5

- This is exactly the variable that the MCSM is intended to estimate – the electricity demand variability relative to the forecast.



- The output is the exposure to volatile CAISO wholesale electricity markets:
  - Purchasing additional energy in CAISO markets when PPAs are short relative to actual (simulated) electricity demand.
  - Selling excess energy in CAISO markets when PPAs are long relative to actual (simulated) electricity demand.
  - The Monte Carlo calculates the energy transacted in CAISO as the differential between the amount of energy procured through PPAs and the simulated electricity usage for every hour during the 10 year study timeframe.
  - The CAISO cost estimate utilizes a beta distribution aligning with the skewed distribution of historical CAISO prices for each hour of each month with differentiation between weekdays and weekends/holidays.

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#### AWG INQUIRY 6

- 4. So, what you do is to first compute average load and use this to compute average cost

---

#### ENERNEX RESPONSE 6

- The procurement costs on a per unit basis is determined by the cost and forecast for:
  - Natural Gas Generation
  - RPS Compliant Generation (renewables)
  - Resource Adequacy
  - Storage
- Rather than using the average load, the Study estimates electricity demand using statistical calculation of confidence intervals and application of confidence levels.
  - PPAs are then used to procure energy/capacity to meet the lower bound 90 % confidence level of the load forecast.
  - The “per unit” cost is translated to an overall cost.
- The Monte Carlo then estimates the exposure to CAISO prices based on the differential between the load forecast and the simulated actual load for each hour of the 10 year study period.

---

#### AWG INQUIRY 7

- 5. Then you try to model the variance in the load and use this to compute the variance in the cost - but since you don't have an analytical formula to do this, you use MC simulations

---

#### ENERNEX RESPONSE 7

- Yes. This is the CAISO market exposure component (See the answer to item 3 above).

---

#### AWG INQUIRY 8

- 6. You generate hundreds, if not thousands, of model load profiles by assuming a normal distribution around the load mean with the variance that's determined by statistical analysis of the customer load profiles provided.

---

#### ENERNEX RESPONSE 8

- Yes.



- For SCE, standardized tariff specific SCE load profiles<sup>11</sup> are applied to the CCA-Info electricity usage data within each customer tariff as provided in the CCA-Info data.
- For PG&E, the CCA-Info data contained actual hourly or 15 minute interval meter data for each potential CCA customer. The interval data were combined into tariff totals.
- The CCA-Info data was then analyzed for any given hour of any given month with differentiation between weekdays and weekends.

---

#### AWG INQUIRY 9

- 7. For each of these randomly generated load profiles, you generate your model output (in this case, the cost of providing the energy)

---

#### ENERNEX RESPONSE 9

- The PPA cost and forecast (\$/MW) is determined independently for each resource type and applied to the load forecast for every hour of every day for the 10 year study period.
- The estimated exposure to CAISO markets is based on the MCSM simulated differential between the energy procured through PPAs (with the lower bound 90% confidence interval hourly load forecast) and the simulated actual demand for a specific hour.

---

#### AWG INQUIRY 10

- 8. After several thousand random input profiles you will have several thousand different model output costs, but the average of these should be the same as the average given in (2) above. However, what you have learned from all these simulations is the variation in the output (cost) around this average.

---

#### ENERNEX RESPONSE 10

- A simple average can skew the estimate because of the variance in demand.
  - For example, in the “All 27 Jurisdiction tri-county region” scenario, the average weekday noontime electricity usage forecasted for August 2020 is 1,434,446 kWh. However, the range of usage includes a minimum of 1,236,638 kWh, a maximum of 1,616,966 kWh and a standard deviation of 67,053.
- The confidence level approach was utilized to procure PPAs to serve the lower bound 90% confidence level load of 1,420,550 kWh with an embedded strategy to manage CAISO market exposure in the Monte Carlo simulation.
  - The average simulated usage for August 2020 on a weekday at noontime is 1,417,853 kWh – a little less than the forecast average as well as the 90% confidence interval lower bound.
  - The resulting CAISO market exposure for a simulated month of August 2020 at noontime on weekdays is:
    - \$15,364 day-ahead market **income** from CAISO in the day ahead market to sell excess energy while meeting the day-ahead forecast.

---

<sup>11</sup> SCE Load Profiles <http://bit.ly/LoadProfiles>



- \$18,162 real-time market **expenditure** to purchase energy to meet simulated estimates of actual customer electricity needs.

---

#### AWG INQUIRY 11

- 9. So now you have a distribution of output values (costs). The 95th percentile of these tells us that we're 95% certain that our costs will lie at or below this value.

---

#### ENERNEX RESPONSE 11

- *Correct.* Utilization of the upper bound 95% confidence interval output for both the load forecast and the power procurement forecast adds in some contingency margin for the many factors that are unknown and not modeled for a forward looking estimate.

---

#### AWG INQUIRY 12

The way that the MC analysis is presented in this report doesn't make sense based on the above understanding.

- Firstly, placing a 95% percentile on something where there are only 10 values makes no statistical sense.

---

#### ENERNEX RESPONSE 12

- For each Monte Carlo run, each of the variables are calculated multiple times:
  - The weekday noon estimate for August 2020 was calculated 22 times (22 weekdays in that month) for each simulation or 220 times within the 10 run simulation.
  - The scenarios also provide additional simulation runs to compare the procurement cost estimates for each renewable scenario on a per unit basis:
    - 8 participation scenarios x 22 occurrences of 5:00 in August x 10 simulation runs per scenario = 1,760 simulations of that hour of each year
  - Of course additional data would be nice, but the Study utilized the lowest resolution data available including the effort to aggregate all customers' interval meter data provided by PG&E.

---

#### AWG INQUIRY 13

- Second, finding the 95th percentile of load curves is not an MC simulation. You actually have the load data. The actual statistical curve can be calculated (including its 95th percentile).

---

#### ENERNEX RESPONSE 13

- *Correct.* The confidence interval is calculated using average and standard deviation.
  - However, the MCSM is the model where the load forecast and cost forecasts are combined even if the specific data is not simulated. EnerNex will update the label of the figures accordingly.
- The Monte Carlo simulation sensitivity analysis is performed when simulating the hourly demand and cost based on those same statistics (average and standard deviation):
  - Load variability;
  - Distributed generation intermittency; and



- CAISO price volatility

---

#### AWG INQUIRY 14

- Thirdly, the MC simulation should take us from load profile to procurement cost, not from load profile to model load profile.

---

#### ENERNEX RESPONSE 14

- The MCSM combines data elements into the load forecast by taking the historical load profile, applying a load forecast and then deducting the customer adoption of distributed generation to derive the amount of demand and energy needed in future years.
- The Monte Carlo analysis is designed specifically to address one of the fundamental challenges for a load-serving entity: to develop a load forecast and procure energy to serve that load.
  - The load forecast is straightforward using statistics as you suggest.
  - Determining the accuracy of that load forecast and related exposure to CAISO market prices requires a Monte Carlo simulation of both the customer demand forecast and the CAISO market prices.

---

#### AWG INQUIRY 15

- When we look at the green line in the graph, there is only one, which makes it seem like we are talking about a value, not an interval.

---

#### ENERNEX RESPONSE 15

- Correct. This should be relabeled “95% Confidence Level Upper End” as the graph is illustrating the upper bound of the confidence interval for a 95% probability that the demand will be less than or equal to the 95% confidence level based on the historical data.

---

#### AWG INQUIRY 16

So, it seems like the graph and supporting narrative is saying that the green line is in the 95<sup>th</sup> percentile of model runs (again only based on 10 runs, so how is that statistically significant?). If that is true, why would we select such an outlier as our projection? Shouldn't we use something like the average, or maybe something 1 standard deviation from average to be conservative?

In short, I'm very confused by their methodology. I don't understand how the 95<sup>th</sup> percentile value was used. Was it used to estimate procurement costs and if so, was the average profile used at all? And – we should be looking at the 95<sup>th</sup> percentile in procurement costs, not the 95<sup>th</sup> percentile in load profile, because these are 2 very different things.

---

#### ENERNEX RESPONSE 16

- The figures are intended to illustrate the range of historic variability projected forward to future years. The majority of load stays fairly close to the average, and that outliers exist on the high and low ends. The figures are an output rather than an input for the procurement strategy within the MCSM.
- The actual procurement strategy embedded within the MCSM is intended to model how power procurement progresses with long term, near term, day-ahead and real-time timeframes.



- As stated, PPAs are utilized to meet the lower bound 90% confidence level. The model is not over-procuring energy relative to the load forecast as implied in the question.

---

### AWG INQUIRY 17

And finally, referencing a “95% confidence interval” seems to communicate a false sense of certainty. It sounds like the study implies you are 95% sure that outcomes will fall within a certain range, which suggests the findings are statistically significant. However, aren't you really saying that 95% of model outcomes fall below that line, which is very different and may have important impacts on our outcomes?

---

### ENERNEX RESPONSE 17

- Utilization of statistical confidence intervals and confidence levels are intended to account for the variability within both load and cost. Proceeding with a simple average is likely to underestimate the actual cost given the variability in demand illustrated in the figures. For example, with the normal distribution analysis of the load data, there is an equal probability of the demand being higher or lower than the average. Utilizing the upper bound 95% confidence level incorporates some contingency to factor in unknown variables that can impact cost. However, we will provide the full range of MCSM results for the load forecast and power procurement cost including the maximum, minimum and average in the Study in order for the AWG and stakeholders to make an informed decision.
- Just like a forecast and statistical analysis for stock prices, past behavior is not necessarily an indicator of future performance. As stated in the Study, risk management is the primary focus of developing a power procurement portfolio. The Study attempts to describe the wide variety of risks associated with power procurement. The only thing that is certain is that the load and cost forecast will not match reality.
  - However, the Study results are as statistically accurate as possible given supporting data and statistical/Monte Carlo model certainties to estimate a load forecast and simulate the cost of power by including CAISO market exposure.



#### 4. Response to Extended Peer Review

Willdan received the MRW Extended Peer Review appearing in Section 2 of this Appendix L on August 24, 2017. Concerning the Extended Peer Review: Willdan has neither reviewed nor vetted assumptions; was afforded no opportunity to review or question MRW's methodology; and makes no representations concerning the validity of its results, as related to this Study and outcomes. Further, Willdan has not been provided the MRW-revised version of the Pro Forma Model. Willdan cannot therefore opine as to the reasonableness of MRW's alternative assumptions nor can Willdan determine the extent to which changes to the Pro Forma Model implemented by MRW impaired functionality or the validity of outputs therefrom. Any reliance upon the results of MRW's alternative pro forma analysis presented in Section 2 of this Appendix L is neither supported nor endorsed by Willdan.



## Office of the City Council

990 Palm Street, San Luis Obispo, CA 93401-3249  
805.781.7114  
[slocity.org](http://slocity.org)

February 2, 2018

Honorable Mayor and City Council  
City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442

**RE:** *Community Choice Energy*

Dear Mayor Irons and City Council:

As you know, the City Council of the City of San Luis Obispo provided direction to our staff to pursue a local Community Choice Energy program at our December 12, 2017 meeting, as well as determine interest of other regional partners that would also like to explore potential participation. We would like to invite the City of Morro Bay to sit down with us to start the conversation.

Below, I offer a few more details for your consideration:

- The City of San Luis Obispo is looking for regional partners that are interested in exploring formation of a CCE program to start in 2019. (Arroyo Grande, Atascadero, County of San Luis Obispo, Grover Beach, Morro Bay, Paso Robles, Pismo Beach, and Santa Maria,).
- The City of San Luis Obispo would provide primary initial staffing resources.
- CCE programs typically establish clear exit ramps for communities along the way.
- Key first steps (based on the experience of others) include forming a JPA together followed by contracting for formation and operational support using existing models and a multi-vendor services RFP, wherein vendors are sought that will defer compensation until the program generates revenue.
- One of the objectives is to provide energy choices for communities and that the cost structure of any CCE is competitive with rates being charged by Independently Owned Utilities (IOUs).
- An important milestone will be to develop an agreed upon CCE Implementation Plan and submit for CPUC review by Dec. 31, 2018.

As always, please feel free to be in touch with Derek Johnson, City Manager and Mr. Robert Hill, Interim Deputy Director or myself with any questions.

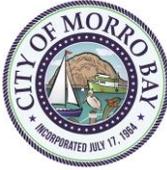
Sincerely yours,

Heidi Harmon  
Mayor

A handwritten signature in blue ink that reads "Heidi Harmon".

CC: San Luis Obispo City Council  
Derek Johnson, City Manager  
Scott Collins, City Manager, Morro Bay

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AGENDA NO: C-2

MEETING DATE: April 24, 2018

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** April 12, 2018

**FROM:** Scot Graham, Community Development Director

**SUBJECT:** Introduction and First Reading of Ordinance No. 613 Amending Section 5.47.050 of the Morro Bay Municipal Code to Limit the number of Vacation Rentals in residential zones to 250 at any one time

### RECOMMENDATION

Staff recommends the City Council waive reading of Ordinance 613 in its entirety and introduce for first reading, by number and title only, Ordinance No. 613 amending section 5.47.050 of the Morro Bay Municipal Code (MBMC) to limit the number of vacation rentals to not more than 250 at any given time on residentially zoned property.

### ALTERNATIVE

Make additional modifications to Ordinance No. 613 and adopt as modified with direction to staff to return for 2<sup>nd</sup> reading and adoption or depending on the significance of those modifications, revise and return to City Council with a modified 1<sup>st</sup> reading for further review and recommendation.

### FISCAL IMPACT

The proposed amendment would limit City transient occupancy tax (TOT) revenue from vacation rentals (VR's). Fiscal Year 2016/17 Vacation Rental TOT revenue was approximately \$421,000. FY 2017/18 estimated TOT revenue for Vacation Rentals is \$507,000.

### BACKGROUND/DISCUSSION

An urgency ordinance was adopted by City Council on June 14, 2016, to regulate VR's. That urgency ordinance was in effect for 45 days. On July 12, 2016, the City Council extended the moratorium for the full two years as allowed by State law, which was the remaining 22 month and 15 days. That moratorium is due to expire on June 14, 2018.

Since 2016, the Community Development Department has been working on the project *Plan Morro Bay: General Plan/Local Coastal Program/Zoning Code* update. A draft VR ordinance which would be included as part of Plan Morro Bay was released for public review and considered by the City's General Plan Advisory Committee (GPAC) on April 19, 2018. As part of the draft ordinance, new regulations are proposed which in part would limit the number of VR's in residential zones by implementing buffers that prohibit VR's within 200 feet of one another, implement occupancy limitations, and require minimum parking

Prepared By: CJ/SG

Dept Review: SG

City Manager Review: SC

City Attorney Review: JWP

standards.

The draft VR ordinance is intended to be complete by September 2018, which would be after expiration of the current VR moratorium (Ordinance No. 605). It is, therefore, necessary to take an interim step to amend the Municipal Code to maintain the 250 cap on VR's, while we continue to work our way through development of the comprehensive VR ordinance. Once the new VR ordinance is adopted and certified by the Coastal Commission, staff will return to Council to remove the 250 cap on VR's.

**Environmental Determination:**

Under the California Environmental Quality Act (CEQA), the ordinance is not subject to CEQA pursuant to 14 California Code of Regulations subdivisions 15060(c)(2) in that the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and 15060(c)(3) (the activity is not a project as defined in Section 15378), because it has no potential for resulting in physical change to the environment, directly or indirectly; rather it limits changes in the environment that could occur pursuant to the existing municipal code.

**CONCLUSION**

Ordinance No. 613 amends Section 5.47.050 of the MBMC to limit the number of VR's to not more than 250 at any time on residential zoned property. Adoption of the ordinance would address concerns regarding neighborhood compatibility between residential uses and VR occupancies and also address concerns regarding the potential to degrade the quality of the City's residential neighborhoods. The ordinance is an interim step, as progress is being made on the *Plan Morro Bay*, which will deliver, in part, wholistic and more permanent regulations pertaining to VR's for City Council consideration later this year.

Staff recommends introduction of Ordinance No. 613.

**ATTACHMENTS**

1. Ordinance No. 613

**ORDINANCE NO. 613**

**AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF MORRO BAY, CALIFORNIA,  
AMENDING SECTION 5.47.050 OF THE MORRO BAY MUNICIPAL CODE LIMITING  
THE NUMBER OF VACATION RENTALS IN RESIDENTIAL ZONES TO 250 AT ANY  
ONE TIME WITHIN THE CITY OF MORRO BAY**

THE CITY COUNCIL  
City of Morro Bay, California

THE CITY COUNCIL OF THE CITY OF MORRO BAY DOES HEREBY  
ORDAIN AS FOLLOWS:

SECTION 1. Section 5.47.050 of the Morro Bay Municipal Code is amended in its entirety to read as follow:

5.47.050 – Rental permit as business certificate.

A short-term vacation rental permit issued pursuant to this chapter shall also serve as a business certificate for rental activity pursuant to MBMC Chapter 5.04; *provided, that not more than 250 rental permits shall be effective at any one time within the residentially zoned portion of the City.*

B.

SECTION 2. The City Council finds this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to 14 California Code of Regulations subdivisions Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; rather it prevents changes in the environment pending the completion of the contemplated municipal code review.

SECTION 3. The City Clerk, or her duly appointed deputy, shall certify to the adoption of this Ordinance and shall cause this Ordinance to be posted as required by law.

SECTION 4. This Ordinance shall become effective on the 31<sup>st</sup> day after its adoption.

**INTRODUCED** at the regular meeting of the City Council held on the 24th day of April 2018, by motion of \_\_\_\_\_ and seconded by \_\_\_\_\_.

**THIS ORDINANCE NO. 613 WAS DULY PASSED, APPROVED, AND ADOPTED** at a regular meeting of the City Council of the City of Morro Bay, held on \_\_\_\_\_, by motion of \_\_\_\_\_, seconded by \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Jamie Irons, Mayor

ATTEST:

\_\_\_\_\_  
DANA SWANSON, City Clerk

I, Dana Swanson, City Clerk for the City of Morro Bay, hereby certify the foregoing Ordinance No. 613 was duly passed, approved, and adopted at a meeting of the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, by the following vote, to wit:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
City Clerk of the City of Morro Bay

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AGENDA NO: C-3  
MEETING DATE: April 24, 2018

# Staff Report

**TO:** Honorable Mayor and City Council **DATE:** April 12, 2018  
**FROM:** Chris F. Neumeyer, Assistant City Attorney  
**SUBJECT:** Discussion of Ordinance to Add Chapter 3.70 (Cannabis Tax) to Title 3 of the Morro Bay Municipal Code for Taxation of Commercial Cannabis Operations, and Consider Sending Ordinance to the Voters as a Ballot Measure for the November 6, 2018 General Municipal Election

## RECOMMENDATION

Staff recommends Council discuss proposed cannabis tax ordinances (one to tax only currently authorized operations, the other to tax both currently authorized operations as well as prospectively any future operations that may be allowed) for the taxation of commercial cannabis operations, and consider placing a cannabis tax ordinance on the ballot for the November 6, 2018 general municipal election.

## FISCAL IMPACT

The proposed ordinances will generate tax revenue for the City from commercial cannabis operations. The revenue will be deposited in the general fund and will be available for general City purposes.

Morro Bay Municipal Code Chapter 5.50 authorizes in the City two medical cannabis retail operations, (wholesale) medical cannabis distribution operations, and medical cannabis deliveries. Rough estimates under the proposed cannabis tax ordinance, on tax revenue to be generated from these authorized operations, are anywhere from \$25,000 to \$225,000 annually.

## BACKGROUND

The City Council at the regular meeting of November 14, 2017 adopted an ordinance to establish a commercial cannabis operations regulatory program.

The ordinance added Chapter 5.50 to Title 5 of the Morro Bay Municipal Code to permit and regulate (with applications accepted no sooner than July 1, 2018) two medical cannabis retail operations, wholesale medical cannabis distribution operations, and medical cannabis deliveries, while prohibiting all other commercial cannabis operations.

The City Council directed staff to prepare a commercial cannabis tax ordinance for consideration to send to the voters for approval at the regular election to be held on November 6, 2018. The California Constitution requires that new taxes be approved by voters. (Cal Const art XIIC, XIII.A.)

The deadline for Council to place such a measure on the ballot is August 10, 2018 (with the last

01181.0001/466104.2 CFN Prepared By: CFN  
City Manager Review: SC City Attorney Review: \_\_\_\_\_

# Discussion of Ordinance to Add Chapter 3.70 (Cannabis Tax) to Title 3 of the Morro Bay Municipal Code for Taxation of Commercial Cannabis Operations, and Consider Sending Ordinance to the Voters as a Ballot Measure for the November 6, 2018 General Municipal Election

April 24, 2018

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regularly scheduled Council meeting before the deadline being July 10, 2018).

## DISCUSSION

### 1. Proposed Ordinances

Two ordinances to tax commercial cannabis operations are presented for Council consideration.

The first one is to tax only currently allowed operations in the City, while the second one is to tax both existing *and* prospective operations in the City. The second ordinance is presented for consideration so the Council has the option of asking the voters to approve at one election all potential taxation of commercial cannabis uses. Otherwise, if the City in the future allows new commercial cannabis uses, there would need to be another election held (with additional expense) on another ballot measure to tax any of those new uses. It must be emphasized that the second ordinance does **not** allow any new commercial cannabis uses in the City.

The first ordinance is to impose a *maximum* 10% tax on the gross receipts of the currently permitted commercial cannabis uses in the City (being medical retail, (wholesale) distribution and delivery).

The second ordinance is to tax both existing and potential commercial cannabis uses in the City through imposing a *maximum* 10% tax on the gross receipts of all commercial cannabis businesses, and a *maximum* \$25 per square foot tax on commercial cannabis cultivation (with annual adjustment upwards based on the Consumer Price Index).

Attached as Exhibit 3 to this report is a survey of cannabis taxes imposed by various jurisdictions throughout the State of California.

If the voters approve the maximum tax rates, the Council will have the authority to set the tax rates anywhere on a scale up to the maximum. For example, the Council could decide to set the tax rate at 5% initially to encourage new business operations, and then later in time raise the rate.

A maximum rate for voter approval is suggested so as to provide flexibility to the Council without having to incur the expense of sending another tax measure to the voters for approval (if later in time there is a desire to raise the tax rate).

Both of the proposed ordinances provide for tax remittance from commercial cannabis operations monthly (which can be amended by resolution of the Council if later in time quarterly or even annual remittances are desired). The second ordinance provides for tax remittance from cultivator taxes (per square foot of cultivation) on an annual basis.

Both ordinances provide stiff penalties and interest for late payments, with a penalty of 25% of the tax due for every month of late payment, and 10% interest on late payments.

The Finance Director is authorized to implement and administer the ordinance.

# Discussion of Ordinance to Add Chapter 3.70 (Cannabis Tax) to Title 3 of the Morro Bay Municipal Code for Taxation of Commercial Cannabis Operations, and Consider Sending Ordinance to the Voters as a Ballot Measure for the November 6, 2018 General Municipal Election

April 24, 2018

Page 3 of 3

## 2. Revisions to Proposed Ordinances

Each of the proposed ordinances, *before* being sent to the voters, can be amended as desired by the Council, including:

- a) the proposed rates of taxation;
- b) the method of taxation;
- c) when tax payments are made; and
- d) both penalties and interest rates for late tax payments.

Upon voter approval, the maximum tax rates cannot be increased, and the methods of taxation (and what is taxed) cannot be altered. However, the administrative and operational aspects of the ordinance would be subject to amendment by the Council to further the purposes and intent of the ordinance.

## 3. Procedures

At the June 12, 2018 regular Council meeting, staff intends to bring the necessary resolutions for Council approval to call a general municipal election for November 6, 2018.

If the Council approves sending a cannabis tax ordinance to the voters as a ballot measure, then staff recommends at the June 12, 2018 meeting the necessary resolutions to send a cannabis tax ordinance to the voters also be placed on the agenda for Council consideration and approval.

A two-thirds (*i.e.*, 4 Councilmembers) vote of all members of the City Council (Cal. Const. art. 13C, § 2(b) and Gov't Code § 53724(b)) will be required to pass the resolution to send to the voters a cannabis tax ballot measure.

Passage of the cannabis tax measure will require approval by a majority of the voters. (The proposed taxes will generate revenue, deposited in the general fund, available for any general governmental purpose. Thus the taxes are considered "general taxes." Under Proposition 218, the levy of a new general tax must be approved by a majority of voters. (Cal. Const. art. 13C, § 2(b).))

## **CONCLUSION**

Staff recommends Council discuss the proposed cannabis tax ordinances and provide direction on sending a cannabis tax ordinance as a ballot measure to the voters for approval.

## **ATTACHMENTS**

- 1) Proposed Cannabis Tax Ordinance (on existing operations)
- 2) Proposed Cannabis Tax Ordinance (on existing and prospective operations)
- 3) Survey of Cannabis Taxes Imposed By Communities Statewide

**ORDINANCE NO. XXXX**

**ORDINANCE OF THE PEOPLE OF THE CITY OF MORRO BAY, CALIFORNIA APPROVING A TAX ON CANNABIS COMMERCIAL ACTIVITIES BY ADDING CHAPTER 3.70 (CANNABIS TAX) TO TITLE 3 (REVENUE AND FINANCE) OF THE MORRO BAY MUNICIPAL CODE**

WHEREAS, pursuant to subdivision (b) of Section 2 of Article XIIC of the California Constitution and Section 53720 et. seq. of the Government Code the city council is authorized to impose a general tax upon submission of such general tax to the voters of the City and approval by a majority of the voters voting on the issue, at an election consolidated with a regularly scheduled general election for members of the governing body of the local government; and

WHEREAS, in 1996 the California voters approved Proposition 215, the Compassionate Use Act, codified as Health and Safety Code Section 11362.5, to exempt certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of cannabis for medical purposes; and

WHEREAS, in 2003 the State of California adopted Senate Bill 420, the Medical Marijuana Program Act, codified as Health and Safety Code Section 11362.7, *et seq.*, and as later amended, to clarify the scope of the Compassionate Use Act of 1996 relating to the possession and cultivation of cannabis for medical purpose, and to authorize local governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, in October 2015, the State of California adopted AB 266, AB 243, and SB 643, collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”), which established a comprehensive regulatory and licensing scheme for commercial medical cannabis operations; and

WHEREAS, at the November 8, 2016 general election, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”) was approved by California voters as Proposition 64, which established a comprehensive regulatory and licensing scheme for commercial adult-use cannabis operations, and which also legalized limited adult-use personal cannabis use, possession, and cultivation; and

WHEREAS, on June 27, 2017 Governor Brown signed Senate Bill 94, the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”), which merged the regulatory regimes of MCRSA and AUMA; and

WHEREAS, Chapter 5.50 of Title 5 of the Morro Bay Municipal Code provides for a commercial cannabis regulatory program for the City, which authorizes applications to be

accepted starting June 1, 2018 for two medical cannabis retail permits (MBMC § 5.50.120(D)) and medical cannabis distributor permits; and

WHEREAS, presently the City has no local tax on either medical cannabis commercial operations or adult-use commercial cannabis operations; and

WHEREAS, MAUCRSA and AUMA do not preempt local taxation of cannabis operations; and

WHEREAS, presently the City of Morro Bay pursuant to Chapter 5.50 of Title 5 of the Morro Bay Municipal Code permits only limited commercial cannabis operations (being two medical cannabis retail operations, (wholesale) medical cannabis distribution operations, and medical cannabis deliveries), and prohibits all other commercial cannabis operations; and

WHEREAS, the city council desires that a cannabis tax be submitted to the voters for approval so that every person engaged in conducting a commercial cannabis operation consisting of cannabis retail operations, (wholesale) cannabis distribution operations, or cannabis deliveries, and regardless of whether such operation has a valid permit pursuant to the Morro Bay Municipal Code, shall pay a maximum cannabis tax of 10% of proceeds or fractional part thereof; and

WHEREAS, the city council desires that revenue generated from said cannabis taxes can be spent for unrestricted general revenue purposes; and

WHEREAS, the city council finds that tax revenue from cannabis operations can provide funds for additional City services to promote and protect the general health and welfare of the citizens of the City of Morro Bay.

**NOW, THEREFORE, THE PEOPLE OF THE CITY OF MORRO BAY, CALIFORNIA DO HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1. CHAPTER 3.70 (CANNABIS TAX) IS HEREBY ADDED TO TITLE 3 (REVENUE AND FINANCE) OF THE MORRO BAY MUNICIPAL CODE AS FOLLOWS:**

**CHAPTER 3.70 CANNABIS TAX**

Section 3.70.010. Definitions.

Section 3.70.020. Tax.

Section 3.70.030. Operation.

Section 3.70.040. Returns and Remittances.

01181.0001/466319.1

Section 3.70.050. Failure to Pay Tax.

Section 3.70.060. Refunds.

Section 3.70.070. Enforcement.

Section 3.70.080. Debts; Deficiencies; Determinations; Hearings.

Section 3.70.080. City Council Authority to Amend

### **Section 3.70.010. Definitions.**

The following definitions apply to this chapter unless the context clearly denotes otherwise.

- A. “Adult use” (i.e., “recreational” or “non-medical”) refers to activity involving cannabis or cannabis products, which is restricted to adults 21 years of age and older and who do not possess a physician’s recommendation, in contrast to an activity involving medical cannabis or medical cannabis products.
- B. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. ‘Cannabis’ also means the separated resin, whether crude or purified, obtained from cannabis. ‘Cannabis’ does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- C. “Cannabis products” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.
- D. “Commercial cannabis operation” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale (including retail and wholesale) of cannabis and cannabis products; except, as applicable, as set forth in Chapter 9.06 (“Personal Cultivation of Cannabis”) of this Code or as preempted by state law.
- E. “Commercial cannabis operation permit” shall mean a City of Morro Bay permit issued pursuant to the procedures provided for in Chapter 5.50 of Title 5 of the Morro Bay Municipal Code and which shall allow the permit holder to operate a specific type of commercial cannabis operation in the City of Morro Bay subject to the requirements of that chapter, state law, and the specific permit.

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- F. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- G. “Cultivation site” means any facility or location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities.
- H. “Delivery” means the commercial transfer of cannabis or cannabis products to a customer, and includes the use of any technology platform owned and controlled by the same person making such use.
- I. “Director” means the City of Morro Bay Community Development Director, and includes his/her designee(s).
- J. “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed for and/or engaged in commercial cannabis activities.
- K. “Distributor” means a person engaged in distribution.
- L. “Edible” means cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.
- M. “Extraction” means the process of obtaining cannabis concentrates from cannabis plants, including but not limited to through the use of solvents like butane, alcohol or carbon dioxide.
- N. “Finance Director” means the City of Morro Bay Finance Director, and includes his/her designee(s).
- O. “Location” means any parcel of land, whether vacant or occupied by a building, group of buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area.
- P. “Manufacture” or “manufacturing” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product; includes the activities of a manufacturer.
- Q. “Manufacturer” means a person that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or

repackages cannabis or cannabis products or labels or relabels its container; includes the activity of manufacturing.

- R. “Marijuana” has the same definition as provided for “cannabis” in this chapter.
- S. “Medical” refers to activity involving medical cannabis or medical cannabis products, in contrast to an activity involving adult-use cannabis or adult-use cannabis products.
- T. “Medical cannabis” or “medical cannabis product” means cannabis or a cannabis product used in compliance with state law for medical purposes, pursuant to the Compassionate Use Act (Health and Safety Code § 11362.5), the Medical Marijuana Program Act (Health and Safety Code §§ 11362.7, *et seq.*), and the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code §§ 26000, *et seq.*).
- U. “Operation” means a “commercial cannabis operation” as defined by this chapter.
- V. “Permit” means a “commercial cannabis operation permit” as defined by this chapter.
- W. “Person” means any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.
- X. “Proceeds” means total revenue and/or money received through the sale of goods and/or services before any deductions or allowances (e.g., rent, cost of goods sold, taxes).
- Y. “Retailer” means a person engaged in the retail sale or delivery of cannabis or cannabis products to a customer.
- Z. “Space utilized as cultivation area” shall mean any space or ground, floor or other surface area (whether horizontal or vertical) which is used during the cannabis germination, seedling, vegetative, pre-flowering, flowering and harvesting phases, including without limitation any space used for activities such as growing, planting, seeding, germinating, lighting, warming, cooling, aerating, fertilizing, watering, irrigating, topping, pinching, cropping, curing or drying cannabis or any such space used for storing any products, supplies or equipment related to any such activities, no matter where such storage may take place or such storage space may be located.
- AA. “Term” means a calendar month in regards to the monthly taxation of proceeds from a commercial cannabis operation (or a defined set term, as determined by resolution of the city council, in regards to the taxation of proceeds from a commercial cannabis operation); and, means the fiscal year in regards to the annual taxation of the space utilized as cultivation area for cannabis.
- BB. “Testing laboratory” or “testing” refers to a laboratory, facility, or entity that offers or performs tests on cannabis or cannabis products; includes the activity of

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laboratory testing.

**Section 3.70.020. Tax.**

- A. Commercial Cannabis Operations Tax. Every person engaged in conducting a commercial cannabis operation consisting of cannabis retail operations, (wholesale) cannabis distribution operations, or cannabis deliveries, and regardless of whether such operation has a valid permit pursuant to the Morro Bay Municipal Code, shall pay a maximum cannabis tax of ten percent (10%) of proceeds or fractional part thereof.
- B. Purpose of Cannabis Taxes. The revenue generated by the commercial cannabis operations tax may be spent for unrestricted general revenue purposes.
- C. Intent of Cannabis Taxes. The cannabis taxes provided herein do not authorize any commercial cannabis operation or use that is not otherwise expressly allowed by Chapter 5.50 of Title 5 of the Morro Bay Municipal Code. The taxes imposed by this chapter are in addition to all other applicable taxes imposed by this Code, including, but not limited to, the business taxes imposed by Chapter 5.08 of Title 5.

**Section 3.70.030. Operation.**

- A. Failure to pay the taxes set forth in this chapter shall be subject to penalties, interest charges, and determinations of tax due as the city council may establish and the City may use any or all other enforcement remedies provided for in this Code, or pursuant to state law.
- B. The city council may impose the tax authorized by this chapter at a lower rate and may establish exemptions, incentives, or other reductions, and penalties and interest charges or determinations of tax due for failure to pay the tax in a timely manner, as otherwise allowed by Code or California law. No action by the Council under this Section shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and restoring the maximum tax specified in this chapter.
- C. The payment of the tax required pursuant to this chapter shall not be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this chapter shall be construed to authorize commercial cannabis operations.
- D. Taxes provided for hereunder are not sales or use taxes and shall not be calculated or assessed as such. The taxes shall not be separately identified or otherwise specifically assessed or charged to any individual, consumer or customer; rather, the taxes are imposed upon the commercial cannabis operation.
- E. The Finance Director shall promulgate rules, regulations, and procedures to implement and administer this chapter to ensure the efficient and timely collection of the tax

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imposed by this chapter, including without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the tax as provided.

### **Section 3.70.040. Returns and Remittances.**

The tax shall be due and payable as follows:

- A. Each person owing tax, on or before the last business day of each term as established by the Finance Director, shall prepare a tax return to the Finance Director of the total proceeds, and the amount of tax owed for the preceding term. At the time the tax return is filed, the full amount of the tax owed for the preceding term shall be remitted to the City.
- B. All tax returns shall be completed on forms provided by the Finance Director.
- C. Tax returns and payments for all outstanding taxes owed the city are immediately due the Finance Director upon cessation of business for any reason.
- D. Whenever any payment, statement, report, request or other communication received by the Finance Director is received after the time prescribed by this section for the receipt thereof, but is in an envelope bearing a postmark showing that it was mailed on or prior to the date prescribed in this section for the receipt thereof, or whenever the Finance Director is furnished substantial proof that the payment, statement, report, request, or other communication was in fact deposited in the United States mail on or prior to the date prescribed for receipt thereof, the Finance Director may regard such payment, statement, report, request, or other communication as having been timely received. If the due day falls on Friday, Saturday, Sunday, or a federal holiday, the due day shall be the last regular business day on which the City Hall is open to the public prior to the due date.
- E. Unless otherwise specifically provided under other provisions of this chapter, the taxes required to be paid pursuant to this chapter shall be deemed delinquent if not paid on or before the due date specified by this section.
- F. The Finance Director is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

### **Section 3.70.050. Failure to Pay Tax.**

Any person who fails or refuses to pay any tax required to be paid pursuant to this chapter on or before the due date shall pay penalties and interest as follows:

- A. A penalty equal to twenty-five percent (25%) of the amount of the tax (in addition to the amount of the tax), plus interest on the unpaid tax calculated from the due date of the tax at a rate of ten percent (10%) or at a rate as established by resolution of the city council;

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and, an additional penalty for each month thereafter of unpaid tax, equal to twenty-five percent (25%) of the amount of the tax if the tax remains unpaid for a period exceeding one month beyond the due date, plus interest on the unpaid tax and interest on the unpaid penalties calculated at a rate of ten percent (10%) or at a rate as established by resolution of the city council.

- B. Whenever a check is submitted in payment of a tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the tax amount due plus penalties and interest as provided for in this section plus any amount allowed under state law.
- C. The tax due shall be that amount due and payable from the operative date of this chapter.
- D. The Finance Director may waive the penalties of twenty-five percent (25%) each imposed upon any person if:
  - 1. The person provides evidence satisfactory to the Finance Director that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent business tax and accrued interest owed the city prior to applying to the Finance Director for a waiver.
  - 2. The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during any twenty-four month period for taxation of proceeds, and only once during any five (5) year period for taxation of space utilized as cultivation area for cultivation of cannabis.

**Section 3.70.060. Refunds.**

- A. No refund shall be made of any tax collected pursuant to this chapter, except as provided in this Section.
- B. No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution, or other termination of an operation.
- C. Any person entitled to a refund of taxes paid pursuant to this chapter may elect in writing to have such refund applied as a credit against cannabis taxes for the next term.
- D. Whenever the amount of any tax, penalty, or interest has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the city under this chapter, such amount may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Finance Director.
- E. The Finance Director shall have the right to examine and audit all the books and business

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records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant therefor refuses to allow such examination of claimant's books and business records after request by the Finance Director to do so.

- F. In the event that the tax was erroneously paid and the error is attributable to the city, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the city shall retain the amount set forth in this chapter from the amount to be refunded to cover expenses.
- G. The Finance Director shall initiate a refund of any tax which has been overpaid or erroneously collected whenever the overpayment or erroneous collection is uncovered by a city audit of tax receipts. In the event that the tax was erroneously paid and the error is attributable to the city, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the city shall retain the amount set forth in this chapter from the amount to be refunded to cover expenses.

**Section 3.70.070. Enforcement.**

- A. It shall be the duty of the Finance Director to enforce each and all of the provisions of this chapter.
- B. For purposes of administration and enforcement of this chapter generally, the Finance Director, with the assistance of the City Attorney, may from time to time promulgate administrative rules and regulations.
- C. The Finance Director shall have the power to audit and examine all books and records of operations as well as persons engaged in the conducting of an operation, including both state and federal income tax returns, California sales tax returns, logs, receipts, bank records, or other evidence documenting the gross receipts of the operation, or persons engaged in the conduct of an operation, for the purpose of ascertaining the amount of tax, if any, required to be paid by the provisions of this chapter, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to the provisions of this chapter. If such operations or person, after written demand by the Finance Director, refuses to make available for audit, examination or verification such books, records, or equipment as the Finance Director requests, the Finance Director may, after full consideration of all information within the Finance Director's knowledge concerning the operation and activities of the person so refusing, make a determination of tax due in the manner provided in Section 3.70.080 of this chapter.
- D. The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this chapter or of any state law requiring the payment of all taxes.

- E. Any person violating any of the provisions of this chapter or any regulation or rule passed in accordance herewith, or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact, either concerning the operation and administration of this chapter, or as provided for in this chapter, shall be deemed guilty of a misdemeanor.

**Section 3.70.080. Debts; Deficiencies; Determinations; Hearings.**

- A. The amount of any tax, penalties, and interest imposed by the provisions of this chapter shall be deemed a debt to the city and any person conducting an operation without also making payment to the city of the taxes imposed by this chapter shall be liable in an action in the name of the city in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such operation.
- B. If the Finance Director is not satisfied that any statement filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, the Finance Director may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in an operation, a deficiency determination may be made at any time within three years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due.
- C. Under any of the following circumstances, the Finance Director may make and give notice of a determination of the amount of tax owed by a person under this chapter:
  - 1. If the person has not filed any statement or return required under the provisions of this chapter.
  - 2. If the person has not paid any tax due under the provisions of this chapter.
  - 3. If the person has not, after demand by the Finance Director, filed a corrected statement or return, or furnished to the Finance Director adequate substantiation of the information contained in a statement or return already filed, or paid any additional amount of tax due under the provisions of this chapter.
  - 4. If the Finance Director determines that the nonpayment of any tax due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this chapter.
  - 5. The notice of determination shall separately set forth the amount of any tax known by the Finance Director to be due or estimated by the Finance Director, after

consideration of all information within the Finance Director's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of determination.

6. The notice of determination shall be served upon the person either by handing it to him or her personally, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business appearing on the face of the business tax certificate issued under this Code or to such other address as he or she shall register with the Finance Director for the purpose of receiving notices provided under this chapter; or, should the person have no business tax certificate issued and should the person have no address registered with the Finance Director for such purpose, then to such person's last known address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.
- D. Within ten days after the date of service of a determination of the amount of tax owed by a person under this chapter, the person may apply in writing to the Finance Director for a hearing on the determination. If application for a hearing before the City is not timely made, the tax assessed by the Finance Director shall become final. The procedures for such a hearing shall be conducted as required by law and as follows:
1. The city council delegates its authority to conduct such a hearing on the determination to an independent hearing officer. The compensation of the hearing officer shall not depend on any particular outcome of the appeal. The hearing officer shall have full authority and duty to preside over the hearing on the determination in the manner set forth herein and as required by law.
  2. Within 30 days of the receipt of any such application for hearing, the Finance Director shall cause the matter to be set for hearing before the independent hearing officer, unless a later date is agreed to by the Finance Director and the person requesting the hearing.
  3. Notice of the hearing shall be given by the Finance Director to the person requesting the hearing not later than five days prior to the date of the hearing. For good cause, the hearing officer may continue the administrative hearing from time to time. At the hearing the applicant may appear and offer evidence to show why the determination as made by the Finance Director should not be confirmed and fixed as the tax due. In conducting the hearing, the hearing officer shall not be limited by the technical rules of evidence. Failure of the person who applied for a hearing on the determination to appear shall not affect the validity of the proceedings or order issued thereon.
  4. Upon conclusion of the hearing, or no later than 10 days after the conclusion of the hearing, the hearing officer shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in this chapter for

giving notice of determination, and the hearing officer shall submit its decision and the record to the City Clerk. The decision of the hearing officer shall be final.

**3.70.090. Amendment.**

The city council has the right and authority to amend this chapter, to further its purposes and intent (including but not limited to amendment for more efficient administration as determined by the city council), in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution, pursuant to Section 9217 of the California Elections Code.

**SECTION 2. EFFECTIVE DATE.**

If a majority of the voters of the City of Morro Bay voting at the General Municipal Election of November 6, 2018 vote in favor of this Ordinance, then this Ordinance shall become a valid and binding ordinance of the City of Morro Bay, and shall be considered as adopted upon the date that the vote is declared by the City Council of the City of Morro Bay, and this Ordinance shall go into effect ten (10) days after that date, pursuant to Election Code section 9217.

**SECTION 3. CITY COUNCIL AUTHORITY TO AMEND**

This is a city council sponsored initiative Ordinance which otherwise would only be subject to amendment by the voters of the City of Morro Bay. However, pursuant to Section 9217 of the California Elections Code, the city council expressly reserves the right and authority to amend the Ordinance to further the purposes and intent of the Ordinance (including but not limited to amendment for more efficient administration as determined by the city council) in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

**SECTION 4. SEVERABILITY.**

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The People hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

**SECTION 5. EXECUTION.**

The Mayor of the City of Morro Bay is hereby authorized and ordered to attest to the adoption of the Ordinance by the voters of the City of Morro Bay by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Morro Bay, California voting on the 6th day of November, 2018.

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Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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City Attorney

**ORDINANCE NO. YYYY**

**ORDINANCE OF THE PEOPLE OF THE CITY OF MORRO BAY, CALIFORNIA APPROVING A TAX ON CANNABIS COMMERCIAL ACTIVITIES BY ADDING CHAPTER 3.70 (CANNABIS TAX) TO TITLE 3 (REVENUE AND FINANCE) OF THE MORRO BAY MUNICIPAL CODE**

WHEREAS, pursuant to subdivision (b) of Section 2 of Article XIIC of the California Constitution and Section 53720 et. seq. of the Government Code the city council is authorized to impose a general tax upon submission of such general tax to the voters of the City and approval by a majority of the voters voting on the issue, at an election consolidated with a regularly scheduled general election for members of the governing body of the local government; and

WHEREAS, in 1996 the California voters approved Proposition 215, the Compassionate Use Act, codified as Health and Safety Code Section 11362.5, to exempt certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of cannabis for medical purposes; and

WHEREAS, in 2003 the State of California adopted Senate Bill 420, the Medical Marijuana Program Act, codified as Health and Safety Code Section 11362.7, *et seq.*, and as later amended, to clarify the scope of the Compassionate Use Act of 1996 relating to the possession and cultivation of cannabis for medical purpose, and to authorize local governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, in October 2015, the State of California adopted AB 266, AB 243, and SB 643, collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”), which established a comprehensive regulatory and licensing scheme for commercial medical cannabis operations; and

WHEREAS, at the November 8, 2016 general election, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”) was approved by California voters as Proposition 64, which established a comprehensive regulatory and licensing scheme for commercial adult-use cannabis operations, and which also legalized limited adult-use personal cannabis use, possession, and cultivation; and

WHEREAS, on June 27, 2017 Governor Brown signed Senate Bill 94, the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”), which merged the regulatory regimes of MCRSA and AUMA; and

WHEREAS, Chapter 5.50 of Title 5 of the Morro Bay Municipal Code provides for a commercial cannabis regulatory program for the City, which presently authorizes applications to

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be accepted starting June 1, 2018 for two medical cannabis retail permits (MBMC § 5.50.120(D)) and medical cannabis distributor permits; and

WHEREAS, presently the City has no local tax on either medical cannabis commercial operations or adult-use commercial cannabis operations; and

WHEREAS, MAUCRSA and AUMA do not preempt local taxation of cannabis operations; and

WHEREAS, presently the City of Morro Bay pursuant to Chapter 5.50 of Title 5 of the Morro Bay Municipal Code permits only limited commercial cannabis operations (being two medical cannabis retail operations, (wholesale) medical cannabis distribution operations, and medical cannabis deliveries), and prohibits all other commercial cannabis operations; and

WHEREAS, while the city council does not desire nor does it intend by this ordinance to allow any other commercial cannabis uses in the City other than the currently allowed uses, the city council does desire to seek voter approval for a broad cannabis tax that is applicable to both existing allowed commercial cannabis uses and any potential commercial cannabis uses that may be allowed in the future; and

WHEREAS, the city council desires that a cannabis tax be submitted to the voters for approval so that every person engaged in conducting a commercial cannabis operation, regardless of whether such operation has a valid permit pursuant to the Morro Bay Municipal Code, shall pay a maximum cannabis tax of 10% of proceeds or fractional part thereof; and, that every person commercially cultivating cannabis in the City, regardless of whether such operation has a valid permit pursuant to the Morro Bay Municipal Code, shall pay an annual maximum tax of twenty-five dollars (\$25) per square foot for space utilized as commercial cultivation area, and that taxes imposed on commercial cultivation area shall be adjusted annually based on the Consumer Price Index (while no such adjustment shall decrease any tax imposed, unless approved by the city council); and

WHEREAS, the city council desires that revenue generated from said cannabis taxes can be spent for unrestricted general revenue purposes; and

WHEREAS, the city council finds that tax revenue from cannabis operations can provide funds for additional City services to promote and protect the general health and welfare of the citizens of the City of Morro Bay.

**NOW, THEREFORE, THE PEOPLE OF THE CITY OF MORRO BAY, CALIFORNIA DO HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1. CHAPTER 3.70 (CANNABIS TAX) IS HEREBY ADDED TO TITLE 3 (REVENUE AND FINANCE) OF THE MORRO BAY MUNICIPAL CODE AS FOLLOWS:**

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## **CHAPTER 3.70 CANNABIS TAX**

Section 3.70.010. Definitions.

Section 3.70.020. Tax.

Section 3.70.030. Operation.

Section 3.70.040. Returns and Remittances.

Section 3.70.050. Failure to Pay Tax.

Section 3.70.060. Refunds.

Section 3.70.070. Enforcement.

Section 3.70.080. Debts; Deficiencies; Determinations; Hearings.

Section 3.70.080. City Council Authority to Amend

### **Section 3.70.010. Definitions.**

The following definitions apply to this chapter unless the context clearly denotes otherwise.

- A. “Adult use” (i.e., “recreational” or “non-medical”) refers to activity involving cannabis or cannabis products, which is restricted to adults 21 years of age and older and who do not possess a physician’s recommendation, in contrast to an activity involving medical cannabis or medical cannabis products.
- B. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. ‘Cannabis’ also means the separated resin, whether crude or purified, obtained from cannabis. ‘Cannabis’ does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- C. “Cannabis products” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.
- D. “Commercial cannabis operation” includes the cultivation, possession, manufacture,

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distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale (including retail and wholesale) of cannabis and cannabis products; except, as applicable, as set forth in Chapter 9.06 (“Personal Cultivation of Cannabis”) of this Code or as preempted by state law.

- E. “Commercial cannabis operation permit” shall mean a City of Morro Bay permit issued pursuant to the procedures provided for in Chapter 5.50 of Title 5 of the Morro Bay Municipal Code and which shall allow the permit holder to operate a specific type of commercial cannabis operation in the City of Morro Bay subject to the requirements of that chapter, state law, and the specific permit.
- F. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- G. “Cultivation site” means any facility or location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities.
- H. “Delivery” means the commercial transfer of cannabis or cannabis products to a customer, and includes the use of any technology platform owned and controlled by the same person making such use.
- I. “Director” means the City of Morro Bay Community Development Director, and includes his/her designee(s).
- J. “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed for and/or engaged in commercial cannabis activities.
- K. “Distributor” means a person engaged in distribution.
- L. “Edible” means cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.
- M. “Extraction” means the process of obtaining cannabis concentrates from cannabis plants, including but not limited to through the use of solvents like butane, alcohol or carbon dioxide.
- N. “Finance Director” means the City of Morro Bay Finance Director, and includes his/her designee(s).
- O. “Location” means any parcel of land, whether vacant or occupied by a building, group of

buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area.

- P. “Manufacture” or “manufacturing” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product; includes the activities of a manufacturer.
- Q. “Manufacturer” means a person that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container; includes the activity of manufacturing.
- R. “Marijuana” has the same definition as provided for “cannabis” in this chapter.
- S. “Medical” refers to activity involving medical cannabis or medical cannabis products, in contrast to an activity involving adult-use cannabis or adult-use cannabis products.
- T. “Medical cannabis” or “medical cannabis product” means cannabis or a cannabis product used in compliance with state law for medical purposes, pursuant to the Compassionate Use Act (Health and Safety Code § 11362.5), the Medical Marijuana Program Act (Health and Safety Code §§ 11362.7, *et seq.*), and the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code §§ 26000, *et seq.*).
- U. “Operation” means a “commercial cannabis operation” as defined by this chapter.
- V. “Permit” means a “commercial cannabis operation permit” as defined by this chapter.
- W. “Person” means any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.
- X. “Proceeds” means total revenue and/or money received through the sale of goods and/or services before any deductions or allowances (e.g., rent, cost of goods sold, taxes).
- Y. “Retailer” means a person engaged in the retail sale or delivery of cannabis or cannabis products to a customer.
- Z. “Space utilized as cultivation area” shall mean any space or ground, floor or other surface area (whether horizontal or vertical) which is used during the cannabis germination, seedling, vegetative, pre-flowering, flowering and harvesting phases, including without limitation any space used for activities such as growing, planting, seeding, germinating, lighting, warming, cooling, aerating, fertilizing, watering, irrigating, topping, pinching, cropping, curing or drying cannabis or any such space used for storing any products, supplies or equipment related to any such activities, no matter where such storage may

take place or such storage space may be located.

- AA. “Term” means a calendar month in regards to the monthly taxation of proceeds from a commercial cannabis operation (or a defined set term, as determined by resolution of the city council, in regards to the taxation of proceeds from a commercial cannabis operation); and, means the fiscal year in regards to the annual taxation of the space utilized as cultivation area for cannabis.
- BB. “Testing laboratory” or “testing” refers to a laboratory, facility, or entity that offers or performs tests on cannabis or cannabis products; includes the activity of laboratory testing.

**Section 3.70.020. Tax.**

- A. Commercial Cannabis Operations Tax. Every person engaged in conducting a commercial cannabis operation, regardless of whether such operation has a valid permit pursuant to the Morro Bay Municipal Code, shall pay a maximum cannabis tax of ten percent (10%) of proceeds or fractional part thereof.
- B. Commercial Cannabis Cultivation Tax. Every person commercially cultivating cannabis in the City, regardless of whether such commercial operation has a valid permit pursuant to the Morro Bay Municipal Code, shall pay an annual maximum tax of twenty-five dollars (\$25) per square foot for space utilized as cultivation area. Taxes imposed on commercial cultivation area shall be adjusted annually on July 1 after the date of imposition, and then July 1 of each succeeding year based on the Consumer Price Index (“CPI”) for all urban consumers in the San Francisco-Oakland-San Jose areas as published by the United States Government Bureau of Labor Statistics; however, no adjustment shall decrease any tax imposed by this chapter, unless approved by the city council.
- C. Purpose of Cannabis Taxes. The revenue generated by the commercial cannabis operations tax and the commercial cannabis cultivation tax may be spent for unrestricted general revenue purposes.
- D. Intent of Cannabis Taxes. The cannabis taxes provided herein do not authorize any commercial cannabis operation or use that is not otherwise expressly allowed by Chapter 5.50 of Title 5 of the Morro Bay Municipal Code. The cannabis taxes provided herein are intended to allow the City to levy cannabis taxes on both existing commercial cannabis operations and uses, as well as provide the City with the ability to levy cannabis taxes on potential future commercial cannabis operations that later in time may be allowed in the City by local ordinance. The taxes imposed by this chapter are in addition to all other applicable taxes imposed by this Code, including, but not limited to, the business taxes imposed by Chapter 5.08 of Title 5.

**Section 3.70.030. Operation.**

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- A. Failure to pay the taxes set forth in this chapter shall be subject to penalties, interest charges, and determinations of tax due as the city council may establish and the City may use any or all other enforcement remedies provided for in this Code, or pursuant to state law.
- B. The city council may impose the tax authorized by this chapter at a lower rate and may establish exemptions, incentives, or other reductions, and penalties and interest charges or determinations of tax due for failure to pay the tax in a timely manner, as otherwise allowed by Code or California law. No action by the Council under this Section shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and restoring the maximum tax specified in this chapter.
- C. The payment of the tax required pursuant to this chapter shall not be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this chapter shall be construed to authorize commercial cannabis operations.
- D. Taxes provided for hereunder are not sales or use taxes and shall not be calculated or assessed as such. The taxes shall not be separately identified or otherwise specifically assessed or charged to any individual, consumer or customer; rather, the taxes are imposed upon the commercial cannabis operation.
- E. The Finance Director shall promulgate rules, regulations, and procedures to implement and administer this chapter to ensure the efficient and timely collection of the tax imposed by this chapter, including without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the tax as provided.

**Section 3.70.040. Returns and Remittances.**

The tax shall be due and payable as follows:

- A. Each person owing tax, on or before the last business day of each term as established by the Finance Director, shall prepare a tax return to the Finance Director of the total proceeds, and the amount of tax owed for the preceding term. At the time the tax return is filed, the full amount of the tax owed for the preceding term shall be remitted to the City.
- B. All tax returns shall be completed on forms provided by the Finance Director.
- C. Tax returns and payments for all outstanding taxes owed the city are immediately due the Finance Director upon cessation of business for any reason.
- D. Whenever any payment, statement, report, request or other communication received by the Finance Director is received after the time prescribed by this section for the receipt thereof, but is in an envelope bearing a postmark showing that it was mailed on or prior

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to the date prescribed in this section for the receipt thereof, or whenever the Finance Director is furnished substantial proof that the payment, statement, report, request, or other communication was in fact deposited in the United States mail on or prior to the date prescribed for receipt thereof, the Finance Director may regard such payment, statement, report, request, or other communication as having been timely received. If the due day falls on Friday, Saturday, Sunday, or a federal holiday, the due day shall be the last regular business day on which the City Hall is open to the public prior to the due date.

- E. Unless otherwise specifically provided under other provisions of this chapter, the taxes required to be paid pursuant to this chapter shall be deemed delinquent if not paid on or before the due date specified by this section.
- F. The Finance Director is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

### **Section 3.70.050. Failure to Pay Tax.**

Any person who fails or refuses to pay any tax required to be paid pursuant to this chapter on or before the due date shall pay penalties and interest as follows:

- A. A penalty equal to twenty-five percent (25%) of the amount of the tax (in addition to the amount of the tax), plus interest on the unpaid tax calculated from the due date of the tax at a rate of ten percent (10%) or at a rate as established by resolution of the city council; and, an additional penalty for each month thereafter of unpaid tax, equal to twenty-five percent (25%) of the amount of the tax if the tax remains unpaid for a period exceeding one month beyond the due date, plus interest on the unpaid tax and interest on the unpaid penalties calculated at a rate of ten percent (10%) or at a rate as established by resolution of the city council.
- B. Whenever a check is submitted in payment of a tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the tax amount due plus penalties and interest as provided for in this section plus any amount allowed under state law.
- C. The tax due shall be that amount due and payable from the operative date of this chapter.
- D. The Finance Director may waive the penalties of twenty-five percent (25%) each imposed upon any person if:
  - 1. The person provides evidence satisfactory to the Finance Director that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and

the person paid the delinquent business tax and accrued interest owed the city prior to applying to the Finance Director for a waiver.

2. The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during any twenty-four month period for taxation of proceeds, and only once during any five (5) year period for taxation of space utilized as cultivation area for cultivation of cannabis.

**Section 3.70.060. Refunds.**

- A. No refund shall be made of any tax collected pursuant to this chapter, except as provided in this Section.
- B. No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution, or other termination of an operation.
- C. Any person entitled to a refund of taxes paid pursuant to this chapter may elect in writing to have such refund applied as a credit against cannabis taxes for the next term.
- D. Whenever the amount of any tax, penalty, or interest has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the city under this chapter, such amount may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Finance Director.
- E. The Finance Director shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant therefor refuses to allow such examination of claimant's books and business records after request by the Finance Director to do so.
- F. In the event that the tax was erroneously paid and the error is attributable to the city, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the city shall retain the amount set forth in this chapter from the amount to be refunded to cover expenses.
- G. The Finance Director shall initiate a refund of any tax which has been overpaid or erroneously collected whenever the overpayment or erroneous collection is uncovered by a city audit of tax receipts. In the event that the tax was erroneously paid and the error is attributable to the city, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the city shall retain the amount set forth in this chapter from the amount to be refunded to cover expenses.

**Section 3.70.070. Enforcement.**

- A. It shall be the duty of the Finance Director to enforce each and all of the provisions of

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this chapter.

- B. For purposes of administration and enforcement of this chapter generally, the Finance Director, with the assistance of the City Attorney, may from time to time promulgate administrative rules and regulations.
- C. The Finance Director shall have the power to audit and examine all books and records of operations as well as persons engaged in the conducting of an operation, including both state and federal income tax returns, California sales tax returns, logs, receipts, bank records, or other evidence documenting the gross receipts of the operation, or persons engaged in the conduct of an operation, for the purpose of ascertaining the amount of tax, if any, required to be paid by the provisions of this chapter, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to the provisions of this chapter. If such operations or person, after written demand by the Finance Director, refuses to make available for audit, examination or verification such books, records, or equipment as the Finance Director requests, the Finance Director may, after full consideration of all information within the Finance Director's knowledge concerning the operation and activities of the person so refusing, make a determination of tax due in the manner provided in Section 3.70.080 of this chapter.
- D. The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this chapter or of any state law requiring the payment of all taxes.
- E. Any person violating any of the provisions of this chapter or any regulation or rule passed in accordance herewith, or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact, either concerning the operation and administration of this chapter, or as provided for in this chapter, shall be deemed guilty of a misdemeanor.

**Section 3.70.080. Debts; Deficiencies; Determinations; Hearings.**

- A. The amount of any tax, penalties, and interest imposed by the provisions of this chapter shall be deemed a debt to the city and any person conducting an operation without also making payment to the city of the taxes imposed by this chapter shall be liable in an action in the name of the city in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such operation.
- B. If the Finance Director is not satisfied that any statement filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, the Finance Director may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession. One or more deficiency determinations of the amount of tax due for a period

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or periods may be made. When a person discontinues engaging in an operation, a deficiency determination may be made at any time within three years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due.

C. Under any of the following circumstances, the Finance Director may make and give notice of a determination of the amount of tax owed by a person under this chapter:

1. If the person has not filed any statement or return required under the provisions of this chapter.
2. If the person has not paid any tax due under the provisions of this chapter.
3. If the person has not, after demand by the Finance Director, filed a corrected statement or return, or furnished to the Finance Director adequate substantiation of the information contained in a statement or return already filed, or paid any additional amount of tax due under the provisions of this chapter.
4. If the Finance Director determines that the nonpayment of any tax due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this chapter.
5. The notice of determination shall separately set forth the amount of any tax known by the Finance Director to be due or estimated by the Finance Director, after consideration of all information within the Finance Director's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of determination.
6. The notice of determination shall be served upon the person either by handing it to him or her personally, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business appearing on the face of the business tax certificate issued under this Code or to such other address as he or she shall register with the Finance Director for the purpose of receiving notices provided under this chapter; or, should the person have no business tax certificate issued and should the person have no address registered with the Finance Director for such purpose, then to such person's last known address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

D. Within ten days after the date of service of a determination of the amount of tax owed by a person under this chapter, the person may apply in writing to the Finance Director for a hearing on the determination. If application for a hearing before the City is not timely made, the tax assessed by the Finance Director shall become final. The procedures for

such a hearing shall be conducted as required by law and as follows:

1. The city council delegates its authority to conduct such a hearing on the determination to an independent hearing officer. The compensation of the hearing officer shall not depend on any particular outcome of the appeal. The hearing officer shall have full authority and duty to preside over the hearing on the determination in the manner set forth herein and as required by law.
2. Within 30 days of the receipt of any such application for hearing, the Finance Director shall cause the matter to be set for hearing before the independent hearing officer, unless a later date is agreed to by the Finance Director and the person requesting the hearing.
3. Notice of the hearing shall be given by the Finance Director to the person requesting the hearing not later than five days prior to the date of the hearing. For good cause, the hearing officer may continue the administrative hearing from time to time. At the hearing the applicant may appear and offer evidence to show why the determination as made by the Finance Director should not be confirmed and fixed as the tax due. In conducting the hearing, the hearing officer shall not be limited by the technical rules of evidence. Failure of the person who applied for a hearing on the determination to appear shall not affect the validity of the proceedings or order issued thereon.
4. Upon conclusion of the hearing, or no later than 10 days after the conclusion of the hearing, the hearing officer shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in this chapter for giving notice of determination, and the hearing officer shall submit its decision and the record to the City Clerk. The decision of the hearing officer shall be final.

### **3.70.090. Amendment.**

The city council has the right and authority to amend this chapter, to further its purposes and intent (including but not limited to amendment for more efficient administration as determined by the city council), in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution, pursuant to Section 9217 of the California Elections Code.

### **SECTION 2. EFFECTIVE DATE.**

If a majority of the voters of the City of Morro Bay voting at the General Municipal Election of November 6, 2018 vote in favor of this Ordinance, then this Ordinance shall become a valid and binding ordinance of the City of Morro Bay, and shall be considered as adopted upon the date that the vote is declared by the City Council of the City of Morro Bay, and this Ordinance shall go into effect ten (10) days after that date, pursuant to Election Code section 9217.

### **SECTION 3. CITY COUNCIL AUTHORITY TO AMEND**

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This is a city council sponsored initiative Ordinance which otherwise would only be subject to amendment by the voters of the City of Morro Bay. However, pursuant to Section 9217 of the California Elections Code, the city council expressly reserves the right and authority to amend the Ordinance to further the purposes and intent of the Ordinance (including but not limited to amendment for more efficient administration as determined by the city council) in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

**SECTION 4. SEVERABILITY.**

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The People hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

**SECTION 5. EXECUTION.**

The Mayor of the City of Morro Bay is hereby authorized and ordered to attest to the adoption of the Ordinance by the voters of the City of Morro Bay by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Morro Bay, California voting on the 6th day of November, 2018.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## Survey of Cannabis Taxes from Various California Jurisdictions

City	Gross Receipts Tax	Square Footage Tax	Comments
City of Santa Barbara	Proposed gross receipts tax: 6% retail dispensary; 3% manufacturing; 4% cultivation; 1% nurseries;	N/A	City Council proposed direction for upcoming tax ordinance
City of Santa Maria	N/A	N/A	Ban on Commercial
City of Atascadero	5% gross receipts tax on all commercial cannabis activities	\$5 per square foot of cultivation facility	Cultivators can choose to pay gross receipts or per sq. ft.; tax approved 2016
City of Grover Beach	5% on gross receipts of medical related sales and 10% on non-medical	\$25 per sq. ft. on nurseries and cultivation for the first 5,000 sq. ft., then \$10 per sq. ft. for addtl. sq. ft.	Future increases tied to the Consumer Price Index (CPI)
City of Paso Robles	N/A	N/A	Considering tax measure for November, 2018
City of Pismo Beach	N/A	N/A	Ban on Commercial
City of San Luis Obispo	N/A	N/A	Considering tax measure for 2018
City of Coalinga	10% gross receipts on dispensaries	\$25 per sq. ft. on other cannabis businesses for the first 3,000 sq. ft. then \$10 per sq. ft. for addtl. sq. ft.	Tax approved 2016
City of Costa Mesa	6% gross receipts tax on all cannabis businesses	N/A	
City of Fillmore	15% gross receipts tax on retail dispensaries	Cultivation \$30 per sq. ft. first 3,000 sq. ft., \$15 per sq. ft. on remainder	Cultivation tax subject to CPI; tax approved 2016
City of Gonzales	5% gross receipts tax on manufacturers capped at 15%	\$15 per sq. ft. cultivation tax capped at \$25	Tax Approved 2016
City of Greenfield	10% gross receipts tax on non-cultivation activities	\$25 per sq. ft. cultivation tax with CPI	Tax approved 2016
City of Monterey	N/A	N/A	Ban on Commercial
City of Santa Cruz	7% gross receipts with increases up to 10% on cannabis businesses	N/A	
City of Seaside	Up to 10% gross receipts on cannabis businesses	N/A	
City of Watsonville	2.5% gross receipts tax on manufactured product, 10% retail	\$20 per sq. ft. on cultivation	Tax approved 2016

County	Gross Receipts Tax	Square Footage Tax	Comments
Santa Barbara County	Proposed gross receipts tax – 6% retail dispensaries, 4% cultivation, 3% manufacturers;	N/A	Tax measure planned for June, 2018 ballot
San Luis Obispo County	Proposed – 4% initial rate with annual automatic increases of 2% max rate of 10% on gross receipts, 0% for testing laboratories	Proposed sq. ft. fee (non- tax) to cover direct costs – \$.50 to \$1.00	Square foot charge depends on number licenses and size of the grow
Humboldt County	N/A	\$1.00 to \$3.00 per sq. ft. outdoor/indoor, annually	Treasurer-Tax Collector states approx. 10,000 growers in Humboldt County – 4 months ago, 3,500 had applied for licenses
Lake County	\$1 per sq. ft. outdoor cultivation, \$2 per sq. ft. mixed light, \$3 per sq. ft. indoor	N/A	Subject to annual CPI
Mendocino County	2.5% on cultivation, capped at 10% on gross receipts, with minimum determined by square feet of cultivation; 5% on retail; Board considers annual increases, of 2.5% per year, 10% max.	N/A	Annual flat \$2,500 tax, with CPI every year after 7/1/2020 on other cannabis businesses
Monterey County	5% to 10% tax on gross receipts	\$25 sq. ft. for cultivation; \$5 sq. ft. nurseries	These are the maximum amounts that are reached by 2021
Santa Cruz County	7% up to 10% on gross receipts	N/A	Initial rate of 7% capped at 10% gross receipts