



SMUD Transformer Box Wrap Program Agreement
(To be completed by SMUD Representative)

Applicant: _____ Reference: _____

Approval Date: _____

Installation Date: _____

Recitals:

A. Applicant owns, occupies or operates the real property located at (the "Location"):

Address Line 1

Address Line 2

_____, California _____

Attention: _____
Print Name or Title of Responsible Individual

B. SMUD maintains an electrical equipment cabinet at the Location (the "Equipment"):

Describe size, type, identification of equipment cabinet

C. Applicant desires to install approved decorative wrap materials ("Wrap") on the Equipment.

D. Applicant has selected the following wrap design

_____ Design Gallery: _____
Identify Selected Design

_____ Custom Design: Image attached to this Agreement as Exhibit A.

E. SMUD is willing to permit Applicant to install the Wrap on the Equipment pursuant to the terms and conditions set forth below.

This Agreement is entered into by Applicant and the Sacramento Municipal Utility District (SMUD), collectively referred to as the Parties.

1. SMUD grants Applicant permission to install and maintain the Wrap on the Equipment for a period not to exceed five (5) years from the date the Wrap installation is completed.
 - a. Applicant's rights and duties related to the Wrap shall be exercised at Applicant's sole cost and expense, and shall be subject to the prior and continuing right of SMUD to access and operate its Equipment and electric system.
 - b. No approvals, permissions or other authorizations hereunder shall, or shall be deemed to, grant any right, title or interest in the Equipment or any other property or facilities of SMUD, except as expressly stated herein.
 - c. No approvals, permissions or other authorizations hereunder shall, or shall be deemed to, grant any right, title or interest in any photos, images, or designs from the Design Gallery or of any custom design (collectively, the "Designs") selected by Applicant in connection with the Wrap. The ownership of such Designs is and shall at all times remain with the copyright owner or licensor of such Designs. Use of the selected Design for purposes other than installation of the Wrap on the Equipment is expressly prohibited.

2. Compliance with program requirements
 - a. Applicant shall comply with all process, direction and requirements set forth in the applicable SMUD Transformer Box Wrap Program Guidelines and application process for wrapping SMUD transformer boxes ("Guidelines") available at www.smud.org/Wraps, as those Guidelines may be revised from time to time. The Wrap shall, at all times, conform in all respects to the application and supporting documentation approved by SMUD.
 - b. Applicant shall, at all times comply with (and obtain and maintain such licenses, permits or other approvals necessary to comply with) all applicable constitutions, statutes, ordinances, resolutions, judicial decisions, regulations, rules, standards, tariffs, administrative orders, certificates, or permits of any Federal, State, and local governmental agency having joint or several jurisdiction over the Parties or subject matter of this Agreement (Laws), as such Laws may be amended from time to time.
 - c. Applicant shall comply with any and all technical, safety and other requirements identified by SMUD in connection with the design, printing, installation and maintenance of the Wrap.
 - d. The Wrap shall be printed, installed and maintained using approved materials, equipment and work methods/practices. All installation and maintenance work shall be performed by qualified workers pre-approved by SMUD.
 - e. Permission to install and maintain the Wrap does not include access to and from the Equipment. Unless otherwise agreed to in writing by the Parties, any access to the Equipment for installation or maintenance of the Wrap shall be approved in advance by SMUD, which approval may be requested by emailing SMUD at TransformerWrapProgram@smud.org.

3. Applicant shall obtain and maintain all required permits, permissions, approvals and inspections, pay all charges and fees, and give all notices necessary for the design, printing, installation, maintenance and removal of the Wrap.
 - a. Permission hereunder is effective only after receipt by SMUD of written documentation in a form acceptable to SMUD which evidences the consent of the property owner(s) or others with interest in the real property on which the Equipment is located, including relevant homeowner association and re-development agency, as applicable.
 - b. For any custom wrap, Applicant shall execute a Custom Design Addendum, which Addendum shall be attached as Exhibit B.
 - c. In the event the Equipment occupies real property by virtue of any easement or other right conveyed to SMUD by a third party, and such easement or other right held by SMUD is not sufficient to permit Applicant access to and use of such real property for the purposes of this Agreement, Applicant shall secure and acquire such necessary rights from the property owner of record.
4. Applicant obligations:
 - a. Applicant shall be responsible for all services, materials, equipment and labor required to print, install, maintain and remove the Wrap on the Equipment. It is the responsibility of Applicant to follow the Wrap manufacturers' installation and maintenance instructions, warranty and general information.
 - b. Applicant shall at all times maintain the Wrap in good condition, and in a clean and safe manner, free of graffiti or other disfigurement.
 - c. Applicant is responsible for all costs related to the Wrap, including submittals, design, printing, approvals, installation, maintenance and removal of the Wrap. This includes graffiti removal and repair of the Wrap, however the damage occurs. Applicant agrees that it will pay SMUD for the actual direct and indirect cost of all work performed by SMUD in connection with this Agreement or the design, installation, maintenance and removal of the Wrap, including inspections. All charges shall be based upon SMUD's regular and customary methods for calculating costs, and may be based on SMUD's loaded labor and equipment rates.
5. Applicant shall, and shall ensure that its employees, agents and representatives, perform all work under this Agreement in a safe and secure manner and so as not to interfere in any way with SMUD's Equipment, property, system, workers or operations.
6. SMUD reserves the right to, at any time, inspect the Wrap and all work performed in connection with the Wrap.
 - a. SMUD may require Applicant to immediately suspend any work being performed or to be performed on or near the Equipment whenever in SMUD's sole judgment such work is being performed or is to be performed in a manner contrary to any of the provisions of this Agreement, in an unsafe manner, or in any manner which

might cause injury to persons or damage to property. Applicant shall not resume any such work until SMUD has given Applicant consent to do so.

- b. If Applicant fails to perform any maintenance or remediation of the Wrap, or other work which Applicant is obligated to do under this Agreement, SMUD may elect to do such work at Applicant's sole risk and expense, and Applicant upon receipt of an invoice shall reimburse SMUD for the entire expense thereby incurred.
7. Any notice or demand required to be given herein shall be made in writing (unless expressly permitted herein to be verbal) and delivered by certified or registered mail, return receipt requested, or by reliable overnight courier, to the address of the respective Party as set forth below.

If sent to SMUD:

If sent to Applicant, then to the address set forth above.

SMUD Transformer Wrap Program
Attention: Transformer Wrap Program
Specialist, Mailstop EA 301
6301 S Street
P.O. Box 15830
Sacramento, California 95852

8. Indemnity

- a. Except as otherwise expressly set forth in this Agreement, Applicant acknowledges and agrees that SMUD provides no representation or warranty in connection with:
 - i. The condition of the Equipment or the suitability of the Equipment for the uses contemplated hereunder, including the adequacy of the Location, the condition of the Equipment or any facility, structure or appurtenances thereto; or the continued existence or control of such Equipment.
 - ii. Whether Applicant will be required to obtain (or will be able to obtain) any licenses, permits or approvals of third parties or any applicable governmental authority necessary for Applicant's design, printing, installation, maintenance or removal of the Wrap.
 - iii. Applicant's ability to enjoy continuous use of the Facility.
- b. SMUD will not keep its Equipment or the Wrap insured against fire or casualty, and Applicant will make no claim of any nature against SMUD for any damage to the business or property (including the Wrap) of Applicant in the event of damage or destruction by fire or any other cause, except to the extent caused by the gross negligence or intentional misconduct of SMUD, or its employees, contractors or agents. Except as provided for herein, Applicant is solely responsible for insuring, or self-paying, all expenses caused by the destruction or damage of the Wrap regardless of cause or fault. SMUD assumes no liability or guarantees in the performance of the Wrap materials applied to SMUD Equipment. In no event shall SMUD be responsible for any damage to the Wrap as the result of heat generation and/or other event or activity related to the operation of its Equipment or electric system.

- c. Applicant is aware that the Equipment may house transformers or other facilities that conduct high voltage electricity and that installing, maintaining and removing the Wrap may pose risks of serious personal injuries, illness, property damage or death as a consequence of not only SMUD's actions, inactions or negligence, but also the actions, inactions or negligence of others, conditions of the Equipment, and other risks not known or not reasonably foreseeable at this time. Possible risks include, but aren't limited to electrocution. Applicant hereby releases, waives, discharges, and agrees not to sue SMUD, or its directors, officers, representatives, agents, and employees ("SMUD Parties") for and from all claims, loss, damage, expense and liability, including without limitation any injury, including death, or property damage, howsoever caused, including without limitation from the negligence or other acts or omissions of SMUD Parties, arising out of or in connection with Applicant's use of or presence at or near the Equipment.
- d. **Hold Harmless.** To the fullest extent permitted by law, Applicant shall unconditionally protect, indemnify, hold harmless, and defend (with counsel reasonably acceptable to SMUD) SMUD Parties, from and against any and all losses, damages, claims, liabilities, judgments, actions, settlements, lawsuits, fines, levies, assessments, penalties, interest, costs and expense (including reasonable attorneys' and other professionals' fees, expert witness fees, and other costs and expenses in connection with any claim, action, suit or proceeding brought against any SMUD Parties) which any SMUD Parties may incur, suffer, or become liable for, attributable to, arising out of, or in any way related to the performance of this Agreement, including the installation, maintenance or removal of the Wrap, and caused by acts, omissions, intent or negligence of Applicant or any officers, directors, agents, employees, volunteers, contractors or representatives of Applicant, and excepting only such losses, damages, claims, liabilities, judgments, actions, settlements, lawsuits, fines, levies, assessments, penalties, interest, costs and expense to the extent caused by the gross negligence or willful misconduct of the SMUD Parties.

9. Insurance

- a. Insurance. Without limiting any obligation or liability of Applicant, Applicant shall maintain insurance coverage in accordance with requirements established in the attached Insurance Requirements Form.

10. Termination

- a. Either party may immediately and without further notice terminate this Agreement in the event of any breach or default of this Agreement, if such breach or default is not remediated within ten (10) days after receipt of written notice of same.
 - i. If at any time SMUD determines, based on the entirety of the circumstances that the Wrap poses a threat to the public safety or welfare, including for safety, reliability, security or engineering reasons, or that the Wrap could affect the safety, reliability or security of SMUD's

electric service, system, facilities, or workers, and such threat is not promptly eliminated by Applicant, SMUD may immediately terminate this Agreement by giving written notice to Applicant.

- ii. SMUD may terminate this Agreement to accommodate SMUD's need to utilize the Equipment in a manner inconsistent with the continued use of the Equipment by Applicant, or to relocate, replace or remove the existing Equipment, by giving prior written notice to Applicant.
 - iii. In the event a complaint or other controversy arises in connection with the Wrap, and such complaint or controversy is not timely resolved, SMUD may immediately terminate this Agreement by giving written notice to Applicant.
 - iv. [If SMUD terminates this Agreement without cause within the first twelve (12) months after installation of the Wrap, SMUD will reimburse Applicant for the cost of printing and installing the Wrap.]
- b. Applicant may terminate this Agreement by giving SMUD at least thirty (30) days prior written notice.
 - c. Upon any Termination of this Agreement Applicant shall within thirty (30) days after receipt of notice remove the Wrap from the Equipment, and return the Equipment and Location to the same condition they were in prior to installation of the Wrap, at no cost to the SMUD, and without any liability of SMUD to Applicant related directly or indirectly to such termination or removal. If such removal is not completed within such 30 days, SMUD may without further notice to Applicant remove the Wrap from the Equipment in any manner it deems appropriate, including through a contractor, and Applicant shall reimburse SMUD for all costs of removal within thirty (30) days of receipt of an invoice. SMUD shall not have any liability of SMUD to Applicant related directly or indirectly to such removal.

11. Miscellaneous: This Agreement shall be governed, construed and interpreted solely by and under the laws of the State of California without regard to conflict of laws provisions.

- a. This Agreement and all attachments hereto, as well as agreements and other documents referred to herein, constitute the entire agreement between the Parties with regard to the subject matter of this Agreement. This Agreement shall not be modified except by a writing signed by the Parties. Neither party shall assign any rights, or delegate or subcontract, any obligations under this Agreement without the other party's prior written consent. Any assignment in violation of the foregoing shall be deemed null and void. No failure to enforce or waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, nor shall it constitute a continuing waiver. No waiver shall be binding unless executed in writing by the waiving party. This Agreement is for the sole and exclusive benefit of the Parties hereto and their respective successors and permitted assignees and is not intended for the benefit of any other person or entity.
- b. SMUD's rights hereunder to audit, inspect, or otherwise review, comment on, test, accept, approve or stop, any work, work method or contractor of Applicant

shall not impose any duty, obligation or liability on SMUD with respect to the Wrap or its printing, installation, maintenance or removal, nor shall they impose any duty to inspect, review or approve the methods by which the work is performed. Nor shall any such action or failure to take such action, by SMUD constitute a warranty or representation by SMUD that the Wrap, work, work method or contractor meets any particular standard or is suitable for any particular purpose. Nor shall such action, or failure to take such action prejudice any claim, right or privilege that SMUD may have arising in connection with the Wrap or any work related thereto, or relieve Applicant of its responsibility for the Wrap and work, or Applicant's obligations hereunder.

The undersigned have the right and authority to execute this Agreement and upon such execution, this Agreement will be a valid and binding obligation of the respective Parties.

SMUD

APPLICANT

Sacramento Municipal Utility District

Insert Legal Name of Applicant

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A – Approved Custom Design

Attached image is final – No alterations allowed

EXHIBIT B – Custom Design Addendum

1. Applicant shall obtain all rights, title, permission and authorizations from all persons having an interest or right to the custom artwork as may be necessary for the use of the artwork image in SMUD's Transformer Wrap Program, including the reproduction, display or other representation of the artwork on the transformer box and for public information purposes. Applicant shall provide evidence of such right, title, permission and artist consent to SMUD.
2. Applicant represents and warrants that it has the legal right to reproduce, display and otherwise use the custom artwork, and to grant SMUD the legal right to reproduce, display and otherwise use the custom artwork, for all purposes contemplated under the SMUD Transformer Box Wrap Program Agreement, including without limitation as a decorative wrap on electric equipment at various public locations and for public information purposes in various media, and Applicant agrees to indemnify and hold harmless SMUD, and SMUD's directors, officers, employees, contractors and agents, and each of them, from and against any and all actions, claims, liabilities, costs, expenses (including attorney's fees and costs) and other damages arising out of or in any way connected with any suit or proceeding which claims that any reproduction, display or other use of the custom artwork by Applicant or SMUD, infringe on any third party's patent, copyright, trademark or other intellectual property or proprietary rights, or any misrepresentation whatsoever with respect to the preceding.
3. Upon receipt of any claim that a reproduction, display or use of the custom artwork infringes on any third party's intellectual property or proprietary rights, Applicant shall immediately notify SMUD of the receipt and contents of such claim. In the event of any such claim, whether directed to Applicant or to SMUD, SMUD may at its sole discretion require Applicant to remove the Wrap from the Equipment.
 - a. In such instance, Applicant shall, immediately upon request of SMUD, remove the Wrap from the Equipment and return the Equipment and Location to the same condition they were in prior to installation of the Wrap, at no cost to SMUD and
 - b. If such removal is not completed within five (5) days or such other time as SMUD may designate in writing, SMUD may without further notice to Applicant remove the Wrap from the Equipment in any manner it deems appropriate, including through a contractor, and Applicant shall reimburse SMUD for all costs of removal within thirty (30) days of receipt of an invoice. SMUD shall not have any liability to Applicant related directly or indirectly to such removal.

SMUD

Sacramento Municipal Utility District

By: _____

Name: _____

Title: _____

APPLICANT

Insert Legal Name of Applicant

By: _____

Name: _____

Title: _____