

Decision 19-08-006 August 1, 2019

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U338E) for Approval of Energy Efficiency Rolling Portfolio Business Plan.

Application 17-01-013

And Related Matters.

Application 17-01-014  
Application 17-01-015  
Application 17-01-016  
Application 17-01-017

**DECISION ADOPTING STANDARD CONTRACT FOR ENERGY EFFICIENCY LOCAL GOVERNMENT PARTNERSHIPS**

**Summary**

This decision adopts a standard contract for energy efficiency local government implementers, and associated implementation details.

The decision closes this consolidated proceeding.

**1. Background**

In Decision (D.) 18-05-041 the California Public Utilities Commission (Commission) approved the 2018-2025 energy efficiency business plans of the large investor owned utilities (IOUs), three regional energy networks (RENs) and one community choice aggregator (together, energy efficiency program

administrators).<sup>1</sup> The Commission did not adopt the business plan proposal by the Local Government Sustainable Energy Coalition (LGSEC) for statewide administration of local government partnerships (LGPs), but found merit in LGSEC's recommendation to standardize LGP contracts, noting the IOUs' assertion that they had already begun work on developing more consistent LGP contracts.<sup>2</sup> The Commission therefore directed the IOUs to file a joint motion for approval of a standard contract for local government partnerships (LGP standard contract).<sup>3</sup>

Pursuant to D.18-05-041, on August 31, 2018, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCalGas), and Southern California Edison Company (SCE) (together, the IOUs) jointly filed the *Joint Motion for Approval of Standard Contract for Local Government Partnerships* (Joint Motion).

On October 1, 2018, the City of San Diego (San Diego), the City of Chula Vista (Chula Vista), LGSEC, San Diego Association of Governments (SANDAG), San Diego Unified Port District (SDUPD), and the City and County of San Francisco (CCSF) filed responses to the Joint Motion. On October 11, 2019, the IOUs jointly filed a reply to parties' responses.

On February 28, 2019, the assigned administrative law judge issued a ruling inviting further comments on the Joint Motion, and asking parties to address specific questions related to implementation of the proposed LGP

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<sup>1</sup> Only Marin Clean Energy filed a business plan, but Lancaster Choice Energy is also allowed to offer ratepayer energy efficiency programs, pursuant to Resolution E-4917.

<sup>2</sup> See, for example, *Southern California Edison Company's (U 338-E) Response to Local Government Sustainable Energy Coalition's (LGSEC) Statewide Local Government Partnership Business Plan Proposal*, filed March 3, 2017, at 3.

<sup>3</sup> D.18-05-041 *Decision Addressing Energy Efficiency Business Plans*, issued June 5, 2018, Ordering Paragraph 31.

standard contract (February 28, 2019 Ruling). On March 22, 2019, Chula Vista; SANDAG; SDG&E, SoCalGas, and SCE (together, the Joint Commenting IOUs); and a group of local governments and other entities – Energy Council, CCSF, Marin County, Redwood Coast Energy Authority, City/County Association of Governments of San Mateo County, Association of Monterey Bay Area Governments, Community Environmental Council (Southern County Energy Efficiency Partnership in Santa Barbara), San Joaquin Valley Clean Energy Organization, Ventura County Regional Energy Alliance, Sierra Nevada Energy Watch, and High Sierra Energy Foundation (together, the Joint Public Parties) – filed comments in response to the February 28, 2019 Ruling. On April 5, 2019, SDUPD filed reply comments.

## **2. Issues Before the Commission**

The main issues before us are whether to adopt the Joint Motion and, if so, whether to adopt associated implementation details such as when and under which contexts the LGP standard contract would apply. Before we address these issues, we respond to several more general comments made by some of the parties.

CCSF and LGSEC assert the Commission must address a more fundamental issue, *i.e.*, budget cuts and elimination of some LGP programs, before considering whether to adopt the proposed LGP standard contract. We acknowledge the challenges facing many (if not all) entities that have historically had a role in delivering ratepayer-funded energy efficiency programs in California. Cost-effectiveness appears to have been declining for most program administrators' portfolios.

In D.15-10-028 and D.18-05-041, establishing the Rolling Portfolio framework, the Commission set requirements related to cost-effectiveness,

overall budget adherence, and achieving the State's energy efficiency goals. The Commission also required, in D.18-01-004, the IOUs to have an increasing percentage of their programs be designed and implemented by third parties, with a minimum requirement of 60 percent by the end of 2022.<sup>4</sup> Acknowledging these many requirements, and a general trend of declining cost-effectiveness, the Commission made clear its intent to provide the IOUs flexibility in designing their portfolios; it would be contrary to Commission intent (in establishing the Rolling Portfolio) to second-guess their portfolio decisions with respect to LGP programs and budgets.

Furthermore, it is worth noting, while some IOUs have proposed budget reductions for LGP programs, this is the context of overall budget reductions across all their programs, including the commercial, industrial, agricultural and residential sectors. The Commission reiterates that it is up to the energy efficiency program administrators, which include the IOUs, to manage their portfolios and meet Commission established savings goals, budget caps and cost-effectiveness thresholds.

Separate but relatedly, in D.18-05-041 the Commission did express concern over CCSF's allegation that PG&E had shifted administrative expenses attributable to some of their own programs to the San Francisco Energy Watch

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<sup>4</sup> D.18-01-004 *Decision Addressing Third Party Solicitation Process for Energy Efficiency Programs*, issued January 17, 2018, Ordering Paragraph 1: "Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company shall ensure that their energy efficiency portfolios contain third party designed and implemented programs with the following minimum percentages by the dates given:

"a. At least 25 percent by December 31, 2018. For 2018 only, the percentage requirement may also include third party programs under the definition of third party previously in place prior to the adoption of Decision 16-08-019.

"b. At least 40 percent by December 31, 2020

"c. At least 60 percent by December 31, 2022."

LGP, and we remain concerned with this allegation to the extent it can be substantiated. Any party with information that indicates a program administrator shifted administrative expenses from one or more of its programs to an LGP should file a motion for official notice in Rulemaking (R.) 13-11-005 or its successor. We will address any such motion(s) in the context of addressing accounting issues, as described in the April 26, 2018 amended scoping memo for R.13-11-005.

Also related to the above issues, CCSF, Chula Vista, LGSEC, San Diego, SANDAG and SDUPD additionally object to the utilities issuing competitive solicitations for LGP programs, which historically have not been open to competitive bids that include third-party implementers. However, the requirement for IOUs to competitively bid an increasing percentage of their portfolios to third parties<sup>5</sup> also argues for affording flexibility for the IOUs to determine how best to comply with these increasing third party requirements.

The final general comment on the proposed LGP standard contract is that it lacks certain key provisions that are important for public partnerships. The IOUs respond that the Commission did not order them to file the entire LGP contract, and that each IOU has its own set of standard terms and conditions, which will be negotiated among the parties.<sup>6</sup> We agree with the IOUs and will not force them to adopt any of the key provisions identified by Chula Vista and LGSEC, but strongly encourage the IOUs to take into consideration all of the local governments' legal constraints and their requested provisions when negotiating contracts with local government implementers.

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<sup>5</sup> *Ibid.*

<sup>6</sup> *Joint Reply to Parties' Comments on Joint Motion for Approval of Standard Contract for Local Government Partnerships*, filed October 11, 2018 (Joint IOU Reply), at 6.

### **3. Approval with Modifications of the Proposed LGP Standard Contract**

Except as addressed and/or modified in this decision, the proposed LGP standard contract is approved. A copy of the approved LGP standard contract is included in Attachment A of this decision.

We address the specific terms and conditions to which parties raised objections and/or concerns in this section. Only the Joint Public Parties provided specific recommended revisions to the proposed LGP standard contract.

#### **3.1. Contract Term/Length**

The proposed LGP standard contract includes a standard (non-modifiable) three-year contract length, and notes that CPUC approval would be required if the contract length exceeds three years or if the contract amount exceeds five million dollars. The proposed LGP standard contract defines “CPUC Approval” as follows:

“CPUC Approval” means a decision of the CPUC that (i) is final and no longer subject to appeal, which approves the Agreement in full and in the form presented on terms and conditions acceptable to Company in its sole discretion, including without limitation terms and conditions related to cost recovery and cost allocation of amounts paid to Implementer under the Agreement; (ii) does not contain conditions or modifications unacceptable to Company, in Company’s sole discretion; and (iii) finds that the Agreement satisfies the requirements in [Decision xx-xxx]. [footnotes omitted]

Regarding contract length, Chula Vista, LGSEC, SANDAG and SDUPD oppose a three-year standard term, advocating instead for a five-year standard contract length. These parties generally advocate for more budget and program stability that a longer contract term would allow. The IOUs, in response, first note that existing LGP agreements vary from one to five years, and secondly

assert that a three-year term aligns with the “transition period” for the third-party contract framework (*i.e.*, the requirement in D.18-01-004 for at least 60 percent of programs to be designed and implemented by third parties by the end of 2022). The IOUs indicate a willingness to consider a longer initial term following the transition period, but note that all contracts with a term longer than three years or valued at more than five million dollars must nevertheless be submitted for Commission review.

As we previously discussed, the energy efficiency program administrators may need to modify their portfolios over the next several years, which argues in favor of establishing a shorter (*i.e.*, three-year) standard contract length. We acknowledge but must balance local governments’ need for stability with program administrators’ need for flexibility. We will adopt the three-year contract length as a non-modifiable term of the LGP standard contract.

CCSF and the Joint Public Parties additionally object to, and recommend deleting, the definition of “CPUC Approval” because it specifies “terms and conditions acceptable to [the utility] in its sole discretion,” and “does not contain conditions or modifications unacceptable to [the utility], in [the utility’s] sole discretion,” which, these parties assert, means the utilities may choose not to honor an agreement “that has been approved by the CPUC even if the conditions imposed by the CPUC do not interfere with the performance and purpose of the contract and are entirely reasonable and/or minor.”<sup>7</sup>

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<sup>7</sup> *Comments of Energy Council, City and County of San Francisco, Marin County, Redwood Coast Energy Authority, City/County Association of Governments of San Mateo County, Association of Monterey Bay Area Governments, Community Environmental Council (Southern County Energy Efficiency Partnership in Santa Barbara), San Joaquin Valley Clean Energy Organization, Ventura County Regional Energy Alliance, Sierra Nevada Energy Watch, and High Sierra Energy Foundation in Response to Administrative Law Judge’s February 28, 2019 Ruling Regarding Joint Motion for Approval of Standard Contract for Local Government Partnerships, filed March 22, 2019 (Joint Public Parties’ Comments), at Attachment A, Section A.1 – CPUC Approval.*

We agree the proposed definition of “CPUC Approval” goes beyond what is required, and unfairly favors utilities in providing them “sole discretion” to determine the acceptability of such approval. In comments to the proposed decision, the IOUs advocate for either maintaining the definition as proposed in the Joint Motion, or modifying the language to clarify that the terms and conditions should be acceptable to both/all parties (not just the IOU). In reply comments, the Joint Public Parties assert the proposed decision’s definition of “CPUC Approval” is reasonable, but do not oppose the alternative definition suggested by the IOUs. We generally agree with the IOUs and Joint Public Parties and will modify the definition to state the following:

“CPUC Approval” means a decision or resolution of the CPUC that (i) is final and no longer subject to appeal, which approves the Agreement in full, without conditions or modifications unacceptable to the Parties; and (ii) finds that the Agreement satisfies the requirements in [Decision xx-xx-xxx].

### **3.2. Termination Process**

The proposed LGP standard contract specifies, among other things, conditions under which an “Event of Default” occurs, and party rights with respect to termination for cause and termination for convenience.

With respect to “Event of Default,” CCSF and the Joint Public Parties identify several details to which they object and propose deleting or modifying. The reasons for these objections and proposed modifications are, the Joint Public Parties suggest, to ensure due process and to narrow the types of default warranting termination to those associated with the contract in question (as opposed, for example, to implementer conduct that is unrelated to implementing the contract).

The IOUs do not address any of the Joint Public Parties' suggested revisions. We generally agree with the Joint Public Parties' reasoning and with their suggested revisions. We will adopt the Joint Public Parties' suggested revisions, except with respect to the 30-day period to correct any deficiencies for which an IOU will be required to provide written notice. In D.18-10-008 we included a similar provision but with a 60-day period, and we will adopt that same modification here in place of what the Joint Public Parties suggest.

With respect to Termination for Convenience, CCSF and the Joint Public Parties point out that the Commission removed this section from the third party standard contract, stating such a provision "effectively allows termination for any or no reason" and "has no place in a standard contract for energy efficiency services."<sup>8</sup> We agree, consistent with our discussion of this proposed term in D.18-10-008, and will delete this entire section of the proposed LGP standard contract.

### **3.3. Pay for Performance**

The proposed LGP standard contract includes language stating "Company prefers Program Proposals that include a 'pay for performance' fee structure component that conditions payments from Company to Implementer based on specific savings or other metrics that advance energy efficiency portfolio goals."

Most of the local government parties, including CCSF, Chula Vista, the Joint Public Parties, LGSEC, San Diego, SANDAG and SDPUD, express concern over having even a preference for pay for performance as a non-modifiable term in the LGP standard contract. In general, these parties assert local governments are not able to "pass through" such requirements to their contractors, which

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<sup>8</sup> D.18-10-008 *Decision Addressing Workforce Requirements and Third-Party Contract Terms and Conditions*, issued October 22, 2018 (D.18-10-008), at 37.

places an unfair risk of non-recovery on public funds. These parties suggest that, at minimum, a pay for performance term should be a modifiable term in the LGP standard contract. The Joint Public Parties propose, as an alternative, including “time and materials-based payments” language, which they suggest is acceptable for local governments. CCSF notes that the third-party standard contract is a modifiable term rather than a non-modifiable term.

The IOUs’ reasoning for maintaining a preference for pay for performance is that the Commission “encourage[s] the administrators to utilize this contractual option as much as possible, when it makes sense to do so.”<sup>9</sup> The IOUs do not, however, address the appropriateness of the local government parties’ suggested alternative, i.e., to make payment a modifiable term in the LGP standard contract.

We agree with the local government parties that payment terms should be modifiable in the LGP standard contract. First, this is consistent with the third party standard contract we adopted in D.18-10-008. Second, we agree that public funds should not be placed at risk of non-recovery, and inclusion of a pay for performance term will place such a risk on local governments. For this same reason, we will remove the pay for performance preference.

In comments to the proposed decision, the Public Advocate’s Office of the Public Utilities Commission (Public Advocates Office) recommends re-inserting the pay for performance preference, asserting that removing this language constitutes legal error “because this language is necessary to preserve the Commission’s finding that pay-for-performance contracts are preferred *where*

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<sup>9</sup> Joint IOU Reply, at 4.

*feasible.*<sup>10</sup> The IOUs assert “a time and materials payment structure shifts delivery risk to the Joint IOUs’ customers, rather than to the local government’s contractors,” and further that such a difference in pricing structures may not “allow the scoring utility to evaluate the local government (or any third-party submitting a non-preferred pricing proposal) differently than other non-local government bidders in the same solicitation.”<sup>11</sup> In support of this argument, the IOUs note that the time value of money, which impacts bid evaluation, may be computed differently on a time and materials basis than on a pay for performance basis; the IOUs do not, however, address how different bids that are both/all based on pay for performance, but may still vary in terms of payment timing, are currently evaluated against each other. The IOUs recommend adding language to make clear that the IOUs should evaluate competing bids fairly. In reply comments to the proposed decision, the Joint Public Parties counter the Public Advocates Office and IOUs’ assertions, arguing that removing the pay for performance preference is not legal error and does not provide an unfair advantage to local governments.

As the Public Advocates Office notes, the Payment term is modifiable and thus subject to negotiation; nothing in this decision conflicts with past determinations that the Commission prefers pay for performance where feasible. Nevertheless, we have removed the “time and materials” language from the modifiable Payment term to further clarify that this term is to be negotiated between/among parties. With this modification, we do not see a need to

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<sup>10</sup> *Comments of the Public Advocates Office on the Proposed Decision Adopting Standard Contract for Energy Efficiency Local Government Partnerships*, filed July 22, 2019, at 3-4.

<sup>11</sup> *Comments of San Diego Gas & Electric Company (U 902 M) Pacific Gas and Electric Company (U 39 M) Southern California Edison Company (U 338 E) and Southern California Gas Company (U 904 G) on Proposed Decision Adopting Standard Contract for Energy Efficiency Local Government Partnerships*, filed July 22, 2019, at 3.

re-insert the pay for performance preference as the Public Advocates Office recommends, or to emphasize that the IOUs should evaluate bids fairly, as the IOUs suggest.

### **3.4. Intellectual Property**

The Joint Public Parties recommend either deleting or modifying Section C.3(b) (Ownership and Use Rights - Program Intellectual Property) such that the local government retains ownership of intellectual property, arguing that IOU ownership “would undermine the goals of LGP program (sic) and the Commission’s energy efficiency goals more broadly.”<sup>12</sup> The Joint Public Parties oppose IOU ownership of intellectual property because, they suggest, IOU ownership would cause such intellectual property to be “sequestered from public view” and prevent it from being used in the public interest.<sup>13</sup> The Commission shares this interest, as discussed in D.18-10-008 regarding intellectual property developed under all third party agreements.<sup>14</sup> For this reason, in D.18-10-008 we made several modifications to the proposed third party standard contract, and we adopt those same modifications here, for the LGP standard contract.

### **3.5. Other Third Party Terms**

The February 28, 2019 Ruling invited parties to comment on the Commission’s intention to incorporate the Eligibility, Safety, Workforce Standard and Quality Installation Procedures, and Diverse and Disadvantaged Employee Terms (Third Party Terms) into the LGP standard contract. In response, the Joint Public Parties assert the Commission “has not allowed for an adequate

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<sup>12</sup> Joint Public Parties’ Comments, at 6.

<sup>13</sup> Joint Public Parties’ Comments, Attachment A-2, Section C.3(b).

<sup>14</sup> D.18-10-008, at 51.

opportunity for notice, input and comment on these Terms,”<sup>15</sup> and further that the Commission should make all of these terms modifiable if it determines to incorporate them into the LGP standard contract. Chula Vista expresses a similar concern as the Joint Public Parties, and requests an opportunity to modify these terms to the specific and unique nature of the LGP program.

The Commission, by way of the February 28, 2019 Ruling, provided adequate opportunity for notice, input and comment on its proposal to include the Third Party Terms into the LGP standard contract. We will nevertheless make these terms modifiable so that local governments will have flexibility to negotiate modifications as needed for legal or any other legitimate purposes.

#### **4. Applicability of LGP Standard Contract**

The February 28, 2019 Ruling invited parties to comment on the applicability of the LGP standard contract, specifically whether the LGP standard contract should apply only to Public Sector programs,<sup>16</sup> or to programs being offered in any sector where a local government is delivering energy efficiency.

In response to the February 28, 2019 Ruling, Chula Vista, the Joint Public Parties and SANDAG recommend that the LGP standard contract be applicable to any energy efficiency program administered by a local government, in any sector (i.e., not limited to the Public Sector). The Joint Commenting IOUs suggest, somewhat differently, that the LGP standard contract apply to “partnerships implementing the categories of strategies described in the Energy Efficiency Strategic Plan, either non-resource activities or resource activities.”<sup>17</sup>

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<sup>15</sup> Joint Public Parties’ Comments, at 10.

<sup>16</sup> The IOUs’ Public Sector customers include local, state and federal governmental entities, and educational entities.

<sup>17</sup> Response of San Diego Gas & Electric Company (U 902 M) Southern California Edison Company (U 338 E) and Southern California Gas Company (U 904 G) to Administrative Law

The Joint Commenting IOUs further suggest, if the Commission were to apply the LGP standard contract to any sector, the Commission “should explain how the [IOUs] should score the local government’s or quasi-governmental agency proposal with distinct contract terms against proposals that adopt the third-party [terms and conditions].”

We agree with the parties that recommend the LGP standard contract be applicable to any energy efficiency program administered by a local government or governments, in any sector. Our intent, as stated in the February 28, 2019 Ruling, is to adopt a contract that would be applicable to local governments implementing energy efficiency programs. In light of the Commission’s process for increasing the proportion of energy efficiency programs administered by third parties, and to the extent local governments wish to propose programs outside of the Public Sector, we see no good reason to restrict local governments’ (if selected) use of the LGP standard contract. We also disagree with the Joint Commenting IOUs and do not see a need to explain how IOUs should score a local government’s proposal with distinct contract terms against proposals that adopt the third party terms and conditions; the IOUs’ scoring rubrics and criteria should generally be independent of contract terms. If they are not, the IOUs should identify specific scoring criteria that warrant such explanation, and make a proposal to their respective procurement review groups for how to address the distinct contract terms.

To make clear the applicability of contract types to programs administered by local governments: prior to our adoption of an LGP standard contract (through this decision), if a local government participated in a competitive

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Judge’s Ruling Regarding Joint Motion for Approval of Standard Contract for Local Government Partnerships, filed March 22, 2019, at 2-3.

solicitation and was selected by an IOU to implement a program, the IOU was required by D.18-10-008 to offer the standard and modifiable terms and conditions adopted in D.18-10-008 to that local government. Upon our adoption (through this decision) of the LGP standard contract, if a local government is selected by an IOU to implement a program (regardless of whether the local government is selected through a competitive solicitation or otherwise), the IOU will instead be required by this decision to offer the standard and modifiable terms and conditions adopted in this decision to that local government.

#### **4.1. Timeline for Applicability of LGP Standard Contract**

Chula Vista and the Joint Public Parties note that PG&E's market study to identify co-benefits and economic development benefits is not expected to be completed until the fourth quarter of 2019, which is too late for any results to be incorporated into contracts starting in 2020. Most parties nevertheless advocate for making the LGP standard contract available as soon as possible.

We agree that the LGP standard contract should be available as soon as possible. Incorporation of co-benefits and economic development benefits into the LGP standard contract will require a further process beyond completion of PG&E's market study. Specifically, Energy Division Staff may use the current Opinion Dynamics-led evaluation of LGP non-resource activities<sup>18</sup> that will develop a methodology for measuring the extent to which LGPs generate co-benefits and economic development benefits that are identified in the market study, contingent upon the timing of the final delivery date and the results of the PG&E market study. This evaluation will include a public comment process and is expected to be completed by late September 2021.

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<sup>18</sup> A copy of the workplan is available at <https://pda.energydataweb.com/#!/documents/2140/view>

Following publication of the final results of the Opinion Dynamics-led evaluation, the IOUs shall jointly submit a joint Tier 2 advice letter (joint advice letter) to update the LGP standard contract to include the resulting methodology for measuring co-benefits and economic development benefits applicable to programs implemented by local governments. The standard of review for staff disposition of the joint advice letter will not include review of whether specific co-benefits and economic development benefits are included or not included, or review of the methodology for measuring co-benefits and economic development benefits in responses or protests to the joint advice letter. The most helpful forum for parties to make suggestions on what co-benefits and economic developments to include in the updated LGP standard contract is during the public comment period on the Opinion Dynamics-led evaluation. Any contracts signed after Energy Division staff's approval of the joint advice letter must conform the co-benefits and economic development benefits term to the standard methodology included in the joint advice letter.

In reply comments to the proposed decision, the IOUs suggest the co-benefits and economic development benefits should be vetted in R.14-10-003 if the proposed decision intends to incorporate them into the Total Resource Cost test; we clarify here that the sole purpose of the joint advice letter is to update the LGP standard contract. If the Commission later considers using or applying any of these co-benefits or economic development benefits in cost-effectiveness tests, further opportunity for stakeholder input will be provided as part of such consideration.

## **5. Comments on Proposed Decision**

The Commission mailed the proposed decision to the parties in accordance with Section 311 of the Public Utilities Code and allowed comments under Rule

14.3 of the Commission's Rules of Practice and Procedure. On July 22, 2019, the IOUs (jointly) and the Public Advocates Office filed comments and on July 29, 2019, the IOUs (jointly) and Joint Public Parties filed reply comments. In response to party comments, the proposed decision has been revised in the following ways:

- In Section 4, remove limitation on the scope of responses or protests to the joint Tier 2 advice letter to update the LGP standard contract.
- Remove "time and materials" from the modifiable Payment term, and leave payment terms to be negotiated between/among parties.
- Modify the definition of "CPUC Approval" to specify that the agreement shall be "without conditions or modifications unacceptable to" both/all parties to the agreement, and not just the IOUs.

## **6. Assignment of Proceeding**

Liane Randolph is the assigned Commissioner and Julie A. Fitch and Valerie U. Kao are the assigned Administrative Law Judges in this proceeding.

### **Findings of Fact**

1. D.18-05-041 required the IOUs to file a motion containing standard and modifiable contract terms for LGPs. The Commission did not order the IOUs to file the entire LGP contract as part of this motion.

2. D.18-05-041 afforded flexibility to the IOUs in designing their energy efficiency portfolios.

3. D.18-05-041 expressed concern over CCSF's allegation that PG&E had shifted administrative expenses attributable to some of their own programs to the San Francisco Energy Watch LGP.

4. Program administrators may need to modify their portfolios over the next several years.

5. Contract terms containing absolute statements such as “acceptable to [the utility] in its sole discretion,” or “without limitation” and “without further consideration” related to intellectual property, may create barriers to local government participation in solicitations.

6. The proposed revisions to “Event of Default” by Joint Public Parties ensure due process and narrow the types of default warranting termination to those associated with the contract in question.

7. Inclusion of a “termination for convenience” term in the standard contract terms discourages participation in the solicitation process because it places too much risk on the third parties.

8. In D.18-10-008 the Commission adopted payment as a modifiable term in the standard and modifiable terms for third party implementers.

9. A “pay for performance” standard term places local governments at risk of non-recovery of public funds.

10. The Commission provided adequate opportunity for notice, input and comment on the proposal to include the Third Party Terms into the LGP standard contract.

11. Energy Division Staff’s current Opinion Dynamics-led evaluation will develop a methodology for measuring the extent to which LGPs generate co-benefits and economic development benefits. There will be a public comment process as part of finalizing the results of that evaluation.

### **Conclusions of Law**

1. Any party with information that indicates a program administrator shifted administrative expenses from one or more of its programs to an LGP should file a motion for official notice in R.13-11-005 or its successor proceeding.

2. It is reasonable to adopt a standard contract length of three years (instead of five years) for the LGP standard contract because program administrators may need to modify their portfolios over the next several years.

3. The proposed definition of "CPUC Approval" should be modified because, as proposed, it unfairly favors IOUs in providing them "sole discretion" to determine the acceptability of such approval.

4. It is reasonable to adopt the Joint Public Parties' proposed revisions to "Event of Default," except that third parties, including local government implementers, should be allowed a 60-day period after receipt of written notice to cure any contract failure to achieve minimum performance requirements, because this provision is consistent with the third party standard contract approved in D.18-10-008.

5. IOUs should not be permitted to include a "termination for convenience" term in their standard contract terms.

6. Public funds should not be placed at risk of non-recovery.

7. The phrases "without limitation" and "without further consideration" should be stricken from the LGP terms and conditions related to intellectual property. The IOUs should not be authorized to further limit the use of intellectual property that may be developed as a result of third-party energy efficiency contracts that may otherwise benefit the future delivery of energy efficiency programs.

8. Local governments should have flexibility to negotiate modifications to the Third Party Terms as needed for legal or other legitimate purposes.

9. The LGP standard contract should be applicable to any energy efficiency program administered by a local government or governments, in any sector.

10. The IOUs should be authorized to jointly submit a joint Tier 2 advice letter to update the LGP standard contract following publication of the final results of the current Opinion Dynamics-led evaluation, to include the resulting methodology for measuring co-benefits and economic development benefits applicable to programs implemented by local governments. Any contracts signed after Energy Division staff's approval of the joint advice letter should be required to conform the co-benefits and economic development benefits term to the standard methodology included in the joint advice letter.

## **O R D E R**

### **IT IS ORDERED** that:

1. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Southern California Gas Company shall, and other energy efficiency program administrators may, include as standard contract terms for local government implementers delivering energy efficiency programs under the energy efficiency rolling portfolio, as required by Decision 18-01-004, only those provisions included in Attachment A of this decision.

2. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company (together, the utility program administrators) shall, and other program administrators may, include as modifiable or negotiable contract terms for local government implementers delivering energy efficiency programs under the energy efficiency rolling portfolio, as required by Decision 18-01-004, the terms

included in Attachment B to this decision. Other negotiable contract terms may also be included, but those in Attachment B are required as the starting point for negotiations. The modifiable terms in Attachment B to this decision and any others put forward by the utility program administrators may only be modified by mutual agreement between the utility program administrator and the local government implementer.

3. Within 30 days of the publication date of the final results of the Opinion Dynamics-led evaluation, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company shall jointly submit a joint Tier 2 advice letter to update the modifiable terms in Attachment B of this decision to include a standardized methodology for measuring co-benefits and economic development benefits applicable to local government partnerships.

4. Any contracts signed after Energy Division staff's approval of the joint advice letter required by Ordering Paragraph 3 must conform the co-benefits and economic development benefits term to the standard methodology included in the joint advice letter.

5. Applications 17-01-013, 17-01-014, 17-01-015, 17-01-016 and 17-01-017 are closed.

This order is effective today.

Dated August 1, 2019, at San Francisco, California.

MICHAEL PICKER  
President  
LIANE M. RANDOLPH  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
GENEVIEVE SHIROMA

Commissioners

**Attachment A**  
**Standard Contract Terms and**  
**Conditions**

**A. Contract Term/Length**

1. Term. The “Term” of this Agreement<sup>1</sup> shall commence upon the [Effective Date]<sup>2</sup> and shall continue, unless terminated earlier in accordance with the terms of this Agreement, until three (3) years [from the Effective Date] [after the date upon which California Public Utilities Commission (“CPUC”) Approval occurs]. *{Comment: CPUC Approval is required if the contract length is more than three (3) years, or the contract amount is more than five (5) million dollars. The second bracketed clause is applicable if no CPUC Approval required; the third bracketed clause and definition below are applicable if CPUC Approval is required}*

“CPUC Approval” means a decision or resolution of the CPUC that (i) is final and no longer subject to appeal, which approves the Agreement in full, without conditions or modifications unacceptable to the Parties; and (ii) finds that the Agreement satisfies the requirements in [Decision xx-xx-xxx].

**B. Dispute Resolution Process**

1. Disputes. Either Party may give the other Party written notice of any dispute which has not been resolved at a working level. Any dispute that cannot be resolved between Implementer’s<sup>3</sup> contract representative and Company’s<sup>4</sup> contract representative by good faith negotiation efforts shall be referred to a [Insert IOU-specific level of authority] of Company and a [Insert implementer-specific level of authority] of Implementer for resolution. Within 20 calendar days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If Company and Implementer cannot reach an agreement within a reasonable period (but in no event more than 30 calendar days after the initial meeting), Company and Implementer shall have the right to pursue all rights and remedies that may be available at law or in equity. To the extent legally permissible, all negotiations and any mediation agreed to by the Parties are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.

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<sup>1</sup> “Agreement” will be defined in the RFP Instructions and will be the agreement executed by Bidder and Company as a result of an RFP for a Proposed Program upon Company’s final selection of Offers, and pursuant to the RFP process and requirements of the Proposed Program.

<sup>2</sup> “Effective Date” to be defined as the date both parties have executed the Agreement.

<sup>3</sup> “Implementer” will be defined in the Agreement as the Third-Party Program implementer who is party to the Agreement that will implement the contracted-for EE program (“Program”).

<sup>4</sup> “Company” will be defined in the Agreement as the Investor Owned Utility entering into the Agreement with Implementer.

2. Governing Law. This Agreement shall be governed by the laws of the State of California, with reference to its conflict of laws principles.
3. Venue. In the event of any litigation to enforce or interpret any terms of this Agreement, such action shall be brought in a Superior Court of the State of California located in [Insert IOU-specific County] and the parties hereby submit to the exclusive jurisdiction of such court.

**C. Termination Process**

1. Event of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any one or more of the following:
  - (a) With respect to either Party:
    - (i) the failure to perform any material covenant, obligation, term or condition of this Agreement (except to the extent constituting a separate Event of Default), including without limitation the failure to make, when due, any undisputed payment required to be made by such Party, if such failure is not remedied within thirty (30) calendar days of Notice of such breach by the Non-Defaulting Party;
    - (ii) such Party becomes insolvent, generally does not pay its debts as they become due, makes a general assignment for the benefit of creditors, or commences any action seeking reorganization or receivership under any bankruptcy, insolvency, reorganization or similar law for the relief of creditors or affecting the rights or remedies of creditors generally; or
    - (iii) such Party disaffirms, disclaims, rejects, or challenges the validity of this Agreement in its entirety or in any material respect.
  - (b) With respect to Implementer if the circumstances of the referenced default are not remedied within thirty (30) calendar days of Notice of such breach by Company:
    - (i) any representation or warranty made by Implementer or its employees, agents, representatives, subcontractors, independent contractors, and all other persons performing the Services on Implementer's behalf ("Implementer Party") to any person or entity (including, without limitation, a member

- of the public, a customer of Company, or a governmental authority) regarding this agreement or in this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature;
- (ii) any legal action is made or commenced against Implementer or Implementer Party which, in Company's opinion, is reasonably likely to interfere with the performance of the [Services<sup>5</sup>];
  - (iii) Implementer or any Implementer Party commits any material act of dishonesty, fraud, or misuse of funds in connection with this Agreement or misrepresents Company's administration of this Agreement;
  - (iv) Company becomes aware of a material public safety issue arising out of or related to Implementer's or Implementer Party's administration or performance of this Agreement;
  - (v) Implementer assigns, subcontracts, or transfers this Agreement or any right or interest herein except with written consent of Company, which consent shall not be reasonably withheld;
  - (vi) Implementer fails to maintain the insurance coverage required of it in accordance with Article [\_\_];
  - (vii) Implementer fails to satisfy the collateral requirements set forth in Section [\_\_\_\_], including failure to post and maintain the performance assurance requirements set forth in this Agreement;
  - (viii) Implementer materially breaches any obligation of confidentiality or its obligations under Section [*Insert Section Reference to Security Measures*]; or
  - (ix) Implementer fails to achieve [*Insert Minimum Performance Requirements*].

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<sup>5</sup> "Services" will be defined in the Agreement as all of the services, and any other work, performed by Implementer pursuant to the Agreement and any related purchase orders.

2. Termination for Cause. If an Event of Default shall have occurred with respect to a Party, the other Party (the “Non-Defaulting Party”) shall have one or more of the following rights:
  - (a) To designate by Notice, which will be effective no later than twenty (20) calendar days after the Notice is received, the early termination of this Agreement (an “Early Termination Date”);
  - (b) Withhold any payments due to the Defaulting Party under this Agreement;
  - (c) Suspend performance of [Services] under this Agreement (but excluding, for the avoidance of doubt, the obligation to post and maintain [Security] in accordance with Section [\_\_\_\_] and the obligation to obtain and maintain the insurance requirements in accordance with Section [\_\_\_\_]); and
  - (d) To pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.
  
3. Termination/Modification by CPUC Order. This Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission (“CPUC”). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case Company shall notify Implementer of the order or directive and Implementer and Company shall meet and confer to determine whether to change, modify or terminate this Agreement in any manner to be consistent with such CPUC order or directive. If the parties cannot agree on a response to the order or directive this Agreement shall be terminated. Implementer and Implementing Parties (including any subcontractors) shall be entitled to reasonable compensation for any costs and expenses, incurred because of any change, modification, or termination of this Agreement under this Section [\_\_\_\_] that increases the work to be performed. Any modifications that reduce the work to be performed shall be processed in accordance with Section [].

Conclusion of Work. Upon Company’s termination of this Agreement for any reason, Implementer shall, and shall cause each Implementer Party to, bring the Services to an orderly conclusion as directed by Company. Implementer and each Implementer Party shall vacate the worksite but shall not remove any material, plant or equipment thereon without the approval of Company. Company, at its option, may take possession of any portion of the Services paid for by Company.

A.17-01-013 ALJ/VUK/mph

(END OF ATTACHMENT A)

**Attachment B  
Required Modifiable  
Contract Terms and  
Conditions**

**A. Eligibility (Type of Business, License Requirements, Insurance and Bonding Requirements, Etc.)**

1. Licensing. At all times during the performance of the Services,<sup>1</sup> Implementer<sup>2</sup> represents, warrants and covenants that it has and shall, and shall cause each of its employees, agents, representatives, and subcontractors and all other persons performing the Services on behalf of the Implementer (“Implementer Party”) to, obtain and maintain, at its sole cost and expense, all required licenses and registrations required for the operation of its business and the performance of the Services. Implementer shall promptly provide copies of such licenses and registrations to Company<sup>3</sup> at the request of Company.
2. Performance Assurance; Bonding. At all times during the performance of the Services, Implementer providing any direct installation services represents, warrants and covenants that it has and shall, and shall cause each Implementer Party to, obtain and maintain, at its sole cost and expense, all bonding requirements of the California Contractors State License Board, as may be applicable. Implementer shall also maintain any payment and/or performance assurances as may be requested by Company during the performance of the Services.
3. Insurance. At all times during the performance of the Services, Implementer represents, warrants and covenants that it has and shall, and shall cause each Implementer Party to, obtain and maintain, at its sole cost and expense, the insurance coverage requirements specified in [*Insert IOU-specific Appendix containing insurance requirements to be developed by the parties based on the Scope of Work*].
4. Good Standing. Implementer represents and warrants that (a) it is a local government duly organized, validly existing and in good standing under the laws of the State of [*Insert State of organization*], and (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement<sup>4</sup> and to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.
5. Financial Statements. Implementer shall deliver financial statements on an annual basis or as may be reasonably requested by Company from time to time. Such financial statements or documents shall be for the most recently available audited or reviewed period and prepared in accordance with generally-accepted accounting principles. Company shall keep such information confidential if requested by Implementer, except provision to the Commission may be required from time to time under confidentiality procedures, where applicable.

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<sup>1</sup> “Services” will be defined in the Agreement as all of the services, and any other work, performed by Implementer pursuant to the Agreement and any related purchase orders.

<sup>2</sup> “Implementer” will be defined in the Agreement as the Third-Party Program implementer who is party to the Agreement that will implement the contracted-for EE program (“Program”).

<sup>3</sup> “Company” will be defined in the Agreement as the Investor Owned Utility entering into the Agreement with Implementer.

<sup>4</sup> “Agreement” will be defined in the RFP Instructions and will be the agreement executed by Bidder and Company as a result of an RFP for a Proposed Program upon Company’s final selection of Offers, and pursuant to the RFP process and requirements of the Proposed Program.

**B. Safety Requirements**

1. Safety. During the term of this Agreement, Implementer represents, warrants and covenants that it shall, and shall cause each Implementer Party to:
  - (a) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;
  - (b) abide by all applicable Company security procedures, rules and regulations and cooperate with Company security personnel whenever on Company's property;
  - (c) abide by Company's standard safety program contract requirements as may be provided by Company to Implementer from time to time;
  - (d) provide all necessary training to its employees, and require subcontractors to provide training to their employees, about the safety and health rules and standards required under this Agreement; and
  - (e) have in place an effective Injury and Illness Prevention Program that meets the requirements all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code.

Additional safety requirements (including Company's standard safety program contract requirements) are set forth elsewhere in the Agreement, as applicable, and in Company's safety handbooks as may be provided by Company to Implementer from time to time.

2. Background Checks.

- (a) Implementer hereby represents, warrants and certifies that any personnel of Implementer or Implementer Party, and their representatives and agents, having or requiring access to Company's assets, premises, customer property, data or systems ("Covered Personnel") shall have successfully passed background screening on each such individual, prior to receiving access, which screening may include, among other things to the extent applicable to the Services, a screening of the individual's educational background, employment history, valid driver's license, and court record for the seven (7) year period immediately preceding the individual's date of assignment to the project.
- (b) Notwithstanding the foregoing and to the extent permitted by applicable law, in no event shall Implementer permit any Covered Personnel to have one or more convictions during the seven (7) year period immediately preceding the individual's date of assignment to the project, or at any time after the individual's date of, assignment to the project, for any of the following ("Serious Offense"): (i) a "serious felony," similar to those defined in California Penal Code Sections 1192.7(c) and 1192.8(a), or a successor statute, or (ii) any crime involving fraud (such as, but not limited to, crimes covered by California Penal Code Sections 476, 530.5, 550, and 2945, California Corporations Code Section 25540), embezzlement (such as, but not limited to, crimes covered by California Penal Code Sections 484 and 503 et seq.), or racketeering (such as, but not limited to,

crimes covered by California Penal Code Section 186 or the Racketeer Influenced and Corrupt Organizations (RICO) Statute (18 U.S.C. Sections 1961-1968)).

- (c) To the maximum extent permitted by applicable law, Implementer shall maintain documentation related to such background and drug screening for all Covered Personnel and make it available to Company for audit if required pursuant to the audit provisions of this Agreement.
- (d) To the extent permitted by applicable law, Implementer shall notify Company if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Implementer will also immediately prevent that employee, representative, or agent from performing any Services.

- 3. Fitness for Duty. Implementer shall ensure that all Covered Personnel report to work fit for their job. Covered Personnel may not consume alcohol while on duty and/or be under the influence of drugs or controlled substances that impair their ability to perform their work properly and safely. Implementer shall, and shall cause its subcontractors to, have policies in place that require their employees report to work in a condition that allows them to perform the work safely. For example, employees should not be operating equipment under medication that creates drowsiness.

### C. Workforce Standards and Quality Installation Procedures

#### 1. Workforce Standards.

At all times during the term of the Agreement, Implementer shall comply with, and shall cause its employees, agents, representatives, subcontractors, independent contractors, and all other persons performing the Services on Implementer's behalf ("Implementer Party") to comply with, the workforce qualifications, certifications, standards and requirements set forth in Section [ ] ("Workforce Standards"). The Workforce Standards shall be included in their entirety in Implementer's Final Implementation Plan.<sup>5</sup> Prior to commencement of any Services, once per calendar year, and at any other time as may be requested by Company, Implementer shall provide all documentation necessary to demonstrate to Company's reasonable satisfaction that Implementer has complied with the Workforce Standards. *{Comment: Term is subject to modification and may be negotiated by Company and Bidder<sup>6</sup>}*

[A Draft Implementation Plan<sup>7</sup> will be negotiated as part of the Agreement and will include Workforce Standards. In its Proposal,<sup>8</sup> Bidder will be required to include a section identifying all

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<sup>5</sup> "Final Implementation Plan" will be defined in the Agreement and will identify milestones and deliverables Implementer is required to comply with. / "Final Implementation Plan" will be defined in the Agreement as, "The final written plan for implementation of a Program, as further described in Decision (D.) 15-10-028, which shall consist of a detailed listing of activities, costs, expected milestones, tasks, deliverables, and schedules that are required to execute and meet Program objectives. The Final Implementation Plan is subject to approval by the IOU."

<sup>6</sup> "Bidder" will be defined in the Solicitations Instructions of the IOUs Request for Abstract (RFA) and/or Request for Proposal (RFP), as an entity submitting a program proposal in response to the IOU's RFA and/or RFP pursuant to solicitation process and requirements.

<sup>7</sup> "Draft Implementation Plan" will be defined in the Agreement.

<sup>8</sup> "Proposal" will be defined in the Company's request for proposals ("RFP") instructions ("Instructions") for the Proposed Program.

relevant workforce standards that Bidder deems applicable to the Proposed Program,<sup>9</sup> including any specific skills certification and/or broader occupational training and experience that would reduce the risk of lost net lifecycle energy savings from poor installation, modification, or maintenance of the energy efficiency measures that Bidder proposes to be included in the Agreement (the “Proposed Workforce Standards”). Bidder’s Proposed Workforce Standards will be reviewed by the Company as part of the Proposal, and if Bidder is selected to participate in the RFP by Company, Company and Bidder will negotiate the final Workforce Standards for each Proposed Program that will be included in any Agreement, if Bidder and Company execute a final Agreement. The Commission has specifically required Workforce Standards for non-residential heating, ventilation, and air-conditioning projects and lighting controls projects, as set forth below. *{Comment: modifiable RFP Instructions}*

**(a) For Heating, Ventilation, and Air Conditioning (HVAC) Energy Efficiency Programs or Projects**

For all Program Projects<sup>10</sup> and for each Measure,<sup>11</sup> installed, modified, or maintained in a non-residential setting where the project is seeking an energy efficiency incentive of \$3,000 or more, Implementer shall ensure that each worker or technician involved in the project meets at least one of the following criteria:

- (i) Completed an accredited HVAC apprenticeship.
- (ii) Is enrolled in an accredited HVAC apprenticeship.
- (iii) Completed at least five years of work experience at the journeyman level according to the Department of Industrial Relations definition, Title 8, Section 205, of the California Code of Regulations, passed a practical and written HVAC system installation competency test, and received credentialed training specific to the installation of the technology being installed.
- (iv) Has a C-20 HVAC contractor license issued by the California Contractors State License Board.

This standard shall not apply where the incentive is paid to any manufacturer, distributor, or retailer of HVAC equipment, unless the manufacturer, distributor, or retailer installs or contracts for the installation of the equipment.

*{Comment: Further relevant standards beyond these requirements may be negotiated by Company and Bidder and Bidder will propose any further standards based on Program design, etc.}*

**(b) For Advanced Lighting Control Programs or Projects:**

For all Program Projects and for each Measure, installed in a non-residential setting where the project is seeking an energy efficiency incentive of \$2,000 or more, Implementer shall ensure that all workers or technicians involved in the project are certified by the California Advanced Lighting Controls Training Program (CALCTP). This requirement shall not apply where the incentive is paid to a manufacturer, distributor, or retailer of lighting controls unless the manufacturer, distributor, or retailer installs or contracts for installation of the equipment.

*{Comment: Further relevant standards beyond these requirements may be negotiated by*

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<sup>9</sup> “Proposed Program” means that certain energy efficiency program that Company seeks Offers for pursuant to Company’s RFP Instructions.

<sup>10</sup> “Program Projects” will be defined in the Agreement.

<sup>11</sup> “Measure” will be defined in the Agreement.

*Company and Bidder and Bidder will propose any further standards based on Program design, etc.*

2. Quality Assurance Procedures.

Implementer shall comply with the following requirements (the “Quality Assurance Procedures”): [*Comment: Quality Assurance Procedures to be negotiated after Proposal received.*] *{Comment: Term is subject to modification and may be negotiated by Company and Bidder}*

[In its Proposal, Bidder will be required to identify Quality Assurance Procedures that ensure that the Program Projects and Measures that are installed perform to minimum standards appropriate to the program proposed in the Proposal (“Minimum Qualifications”). The Quality Assurance Procedures must be sufficiently robust to ensure that each Program Project, each Measure, and the Proposed Program complies with Applicable Law.<sup>12</sup> Additionally, Quality Assurance Procedures must include, but are not limited to: (i) industry standard best practices; and (ii) procedures that ensure Measure functionality, customer satisfaction, and that the Minimum Qualifications are satisfied. *{Comment: modifiable RFP Instructions}*

**D. Progress and Evaluation Metrics**

1. Final Implementation Plan.

The Parties shall finalize a Final Implementation Plan in accordance with the Draft Implementation Plan. The Final Implementation Plan will be posted to the relevant CPUC website by Company no later than sixty (60) days following the Effective Date of this Agreement. The Final Implementation Plan shall be consistent with the terms and conditions of the Agreement. *{Comment: Term is subject to modification by Company and may be negotiated by Company and Implementer}*

Implementer shall not be permitted to, nor shall Implementer permit or allow an Implementer Party to, commence the Services prior to both Parties’ approval to the Final Implementation Plan. Company shall not be obligated to make any payment to Implementer under this Agreement prior to approval of the Final Implementation Plan. *{Comment: Term is subject to modification by Company and may be negotiated by Company and Implementer}*

2. Key Performance Indicators.

Implementer shall use commercially reasonable efforts to meet the Key Performance Indicators (“KPIs”)<sup>13</sup> for the Program attached hereto as Schedule [*Comment: Schedule to be inserted based on the Proposal and negotiations between Implementer and Company*]. Implementer shall provide to Company all documentation and accurate data specified in Schedule \_\_\_ to demonstrate compliance with each KPI and to calculate satisfaction of each KPI, at the frequency stipulated in the Final Implementation Plan or as reasonably requested by Company. Company shall review Implementer’s performance in achieving each KPI once per calendar quarter or as otherwise deemed necessary by Company in its reasonable discretion. If Company determines, in its reasonable discretion, that Implementer does not

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<sup>12</sup> “Applicable Law” will be defined in the Agreement and will include all regulatory and legal requirements.

<sup>13</sup> “KPIs” will be the primary means by which Company will assess Program performance on an ongoing basis.

meet one or more of its KPIs, then, in addition to and without limiting any and all remedies available to Company as provided in this Agreement, Implementer shall provide Company with an action plan detailing the reasons why the KPI(s) were not achieved and the steps (and timeline for those steps) Implementer will take to remediate and achieve its KPI(s) in a timely manner. *{Comment: Term is subject to modification by Company and may be negotiated by Company and Implementer, and will include a remediation timeframe for each KPI based on specific KPIs and contract type}*

[In its Proposal, Implementer will be required to include a table of KPIs and data and documentation for monitoring KPIs, which will be the primary means by which Company will assess Program performance on an ongoing basis. KPIs will be individually negotiated based on the specific proposed Program features. The proposed KPIs will be negotiated to the mutual satisfaction of Company and Implementer. Additional Implementer performance requirements to ensure KPIs are met may be negotiated between the Implementer and Company depending on the Program. *{Comment: modifiable RFP Instructions}*

**Schedule [TBD]: Key Performance Indicators** *{Comment: Schedule to be included in Implementer's Proposal and included in the Agreement, subject to modification by Company and may be negotiated by Company and Implementer}*

3. Other Program Metrics.

Implementer shall provide to Company all documentation and data needed to calculate all Program Metrics<sup>14</sup> set forth in the Final Implementation Plan, at the frequency stipulated in the Final Implementation Plan. Such data includes, but is not limited to, data in support of sector-level and portfolio-level metrics, as approved by the CPUC. *{Comment: Term is subject to modification by Company and may be negotiated by Company and Implementer}*

**E. Diverse and Disadvantaged Business and Employee Terms, Including Small Businesses, if Applicable**

1. Definitions

- a. "SBE" means a "small business enterprise" as defined in Title 2, Section 1896.12, of the California Code of Regulations. *{Comment: placeholder for Agreement term}*
- b. "Diverse Business Enterprise" means a diverse business enterprise, which shall consist of SBEs and women, minority, disabled veteran, lesbian, gay, bisexual, or transgender business enterprises, as more particularly set forth in CPUC General Order 156. *{Comment: placeholder for Agreement term}*
- c. "Disadvantaged Worker" "Disadvantaged Worker" means a worker that meets at least one of the following criteria: lives in a household where total income is below 50 percent of Area Median Income; is a recipient of public assistance; lacks a high school diploma or GED; has previous history of incarceration lasting one year or more following a conviction under the criminal justice system; is a custodial single parent; is chronically unemployed; has been aged out or emancipated from the foster care system; has limited English proficiency; or lives in a high unemployment ZIP code that is in the top 25 percent of only the unemployment indicator of the CalEnviroScreen Tool. *{Comment: placeholder for Agreement term}*

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<sup>14</sup> "Program Metrics" will be defined in the Agreement.

2. Diverse Business Enterprises

Implementer agrees to comply, and to require all Implementer Parties to comply, with Company's DBE policy as may be provided by Company from time to time. Implementer shall provide a copy of such policy to each Implementer Party and report any DBE information to Company at the interval specified in the policy. *{Comment: placeholder for Agreement term}*

[In its Proposal, each Bidder will be required to describe how it will comply with Company's DBE policies, and the Parties may negotiate additional terms, as appropriate, for further compliance obligations.] *{Comment: modifiable RFP Instructions}*

3. Disadvantaged Workers

Implementer agrees to comply, and to require all Implementer Parties to comply, with the Disadvantaged Worker requirements set forth in the Final Implementation Plan. Implementer shall provide a copy of such requirements to each Implementer Party and report any Disadvantaged Worker information to Company at the interval specified in the Agreement. *{Comment: placeholder for Agreement term}*

[In its Proposal, Bidder shall include a section describing the manner by which their proposed program will provide Disadvantaged Workers with improved access to career opportunities in the energy efficiency industry for programs that directly involve the installation, modification, repair, or maintenance of EE equipment. If Bidder is selected to engage in further contract negotiations with the Company, Company and Bidder will negotiate the requirements necessary to support improved access to career opportunities in the energy efficiency industry by Disadvantaged Workers for each applicable Proposed Program that will be included in the Agreement, if Bidder and Company execute an Agreement.] *{Comment: modifiable RFP Instructions}*

**F. Payment Schedule and Terms**

1. Payment Terms.

[Payment terms will vary based on the Program proposed, and the Company will evaluate proposals, in part, on creative proposals that deliver a quality and cost-effective program at a reasonable cost to ratepayers.] *{Comment: modifiable RFP Instructions}*

**G. Measurement and Verification Requirements, including Guidelines about Normalized Metered Energy Consumption (NMEC) Design Requirements**

Implementer shall:

- (a) Only enroll customers that qualify for Program services. Implementers may need to confirm a customer's NMEC analysis suitability with the PAs.
- (b) Comply with current policies, procedures, and other required documentation as required by Company;

- (c) Report Customer Participation Information<sup>15</sup> to Company;
- (d) Work with Company's evaluation team to define Program-specific data collection and evaluability requirements, and in the case of NMEC,<sup>16</sup> which independent variables shall be normalized. *{Comment: placeholder for Agreement term, subject to modification by Company and may be negotiated by Company and Implementer}*

Throughout the Term, Company may identify new energy savings estimates, net-to-gross ratios, effective useful lives, or other values that may alter Program Energy Savings.<sup>17</sup> Implementer shall use modified values upon Company's request, provided Company modifies Implementer's Program budget and/or overall Program Energy Savings consistent with the requested change. *{Comment: placeholder for Agreement term, subject to modification by Company and may be negotiated by Company and Implementer}*

For Programs claiming to-code savings:

Implementer shall comply with Applicable Law and work with Company to address elements in its Program designs and Implementation Plans, such as:

- (a) Identifying where to-code savings potential resides;
- (b) Specifying which equipment types, building types, geographical locations, and/or customer segments promise cost-effective to-code savings;
- (c) Describing the barriers that prevent code-compliant equipment replacements;
- (d) Explaining why natural turnover is not occurring within certain markets or for certain technologies; and
- (e) Detailing the program interventions that would effectively accelerate equipment turnover. *{Comment: placeholder for Agreement term}*

#### **H. Data Collection and Ownership Requirements**

1. "Company Data" shall mean all data or information provided by or on behalf of Company, including but not limited to, customer personally identifiable information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manual's, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of Company to Implementer as Company may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Implementer. Company Data shall also include all data and materials provided by or made available to Implementer by Company's licensors, including but not limited to, all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between Company and their licensors.

Prior to Implementer receiving any Company Data, Implementer shall comply, and always thereafter continue to comply, in compliance with Company's Data security policies set forth on Exhibit \_\_\_\_ ("Security Measures") and pursuant to Company's Confidentiality provisions in

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<sup>15</sup> "Customer Participation Information" will be defined in the Agreement.

<sup>16</sup> "NMEC" will be defined in the Agreement.

<sup>17</sup> "Program Energy Savings" will be defined in the Agreement.

Section [ ]. Company's Data Security Measures and Confidentiality provisions require Implementer to adhere to reasonable administrative, technical, and physical safeguard protocols to protect the Company's Data from unauthorized handling, access, destruction, use, modification or disclosure. *{Comment: placeholder for Agreement term, each Company to add their own set of internal requirements}*

2. Public Record Act. Notwithstanding the foregoing, to the extent applicable, information provided to the Implementer may be subject to public review pursuant to the California Public Records Act (California Government Code Section 6250 *et seq.*), which provides that records in the custody of a public entity be disclosed unless the information being sought falls into one or more of the exemptions to disclosure set out in Government Code Sections 6254 through 6255. As a result, the Implementer may be obligated to disclose some or all information provided to the Implementer, to any party that requests it to the extent required under the California Public Records Act; provided, however the Implementer agrees to give [IOU] prompt notice of such request prior to releasing any information so the [IOU] may seek a protective order or other appropriate remedy and/or seek to resist or narrow the scope of the disclosure, including protecting the disclosure of any Confidential Information. *{Comment: placeholder for Agreement term, each Company to add their own set of internal requirements}*
3. Ownership and Use Rights.
  - (a) Company Data. Unless otherwise expressly agreed to by the Parties, Company shall retain all its rights, title and interest in Company's Data. *{Comment: placeholder for Agreement term, each Company to add their own set of internal requirements}*
  - (b) Program Intellectual Property. Unless otherwise expressly agreed to by the Parties, any and all materials, information, or other work product created, prepared, accumulated or developed by Implementer or any Implementer Party under this Agreement with Program funds ("Program Intellectual Property"), including inventions, processes, templates, documents, drawings, computer programs, designs, calculations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be jointly owned by the Company and Program Participants,<sup>18</sup> if any, on behalf and for the benefit of their respective customers. Program Intellectual Property will be owned by Company upon its creation. Implementer agrees to execute any such other documents or take other actions as Company may reasonably request to perfect Company's ownership in the Program Intellectual Property. Company hereby grants Implementer an irrevocable, assignable, non-exclusive, perpetual, worldwide, royalty-free, unrestricted license to use and sublicense to others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any Program Intellectual Property for the sole purpose of using such Program Intellectual Property for the conduct of Implementer's business. *{Comment: placeholder for Agreement term, each Company to add their own set of internal requirements}*
  - (c) Implementer's Pre-Existing Materials. If, and to the extent Implementer retains any preexisting ownership rights ("Implementer's Pre-Existing Materials") in any of the materials

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<sup>18</sup> "Program Participants" is defined as any other entity (including, without limitation, any other utility) providing funding under the Program.

furnished to be used to create, develop, and prepare the Program Intellectual Property, Implementer hereby grants Company and the Program Participants on behalf of their respective customers and the CPUC for governmental and regulatory purposes an irrevocable, assignable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of Implementer or any Implementer Party for the sole purpose of using such Program Intellectual Property for the conduct of Company's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Implementer shall retain all its rights, title and interest in Implementer's Pre-Existing Materials. All claims to Implementer's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Program Intellectual Property must be expressly disclosed to Company prior to performing any Services under this Agreement. *{Comment: placeholder for Agreement term, each Company to add their own requirements}*

4. Billing, Energy Use, and Program Tracking Data.

Implementer shall comply with and timely cooperate with all CPUC directives, activities, and requests regarding the Program and Project evaluation, measurement, and verification (EM&V), and Rolling Portfolio sector and implementation plan metrics.

*{Comment: placeholder for Agreement term, each Company to add their own requirements}*

Implementer shall make available to Company upon demand, detailed descriptions of the program, data tracking systems, baseline conditions, and participant data, including financial assistance amounts. *{Comment: placeholder for Agreement term, each Company to add their own requirements}*

Implementer shall make available to Company any revisions to Implementer's program theory and logic model (PTLM) and results from its quality assurance procedures, and comply with all Company EM&V requirements, including reporting of progress and evaluation metrics.

*{Comment: placeholder for Agreement term, each Company to add their own requirements}*

5. Access to Customer Sites.

Implementer shall be responsible for obtaining all access rights from customers and other third parties to the extent necessary to perform the Services. Implementer shall also procure all access rights from Implementer Parties, Customers and other third parties for Company and CPUC employees, representatives, designees and contractors to inspect the Services. *{Comment: placeholder for Agreement term, each Company to add their own requirement}*

**I. Method for Calculating Co-Benefits and Economic Development Benefits of Programs in Disadvantaged Communities and/or for Hard-to-Reach Customers**

Implementer shall provide to Company all documentation and data identified in Table XX necessary to calculate the co-benefits (or non-energy benefits – NEBs) and economic development benefits of the Program, at the frequency stipulated in Table XX. Implementer shall utilize the methods outlined in study "XXXXXX", or as otherwise agreed to between the Company and Implementer, to calculate co-benefits and economic development benefits.

“Co-Benefits” means non-energy related benefits (such as decreased GHG emissions, fewer sick days, etc.), particularly regarding hard-to-reach and disadvantaged communities, that are the result of the program.

“Economic Development Benefits” means local economic impacts (such as increased property values, number of jobs created, etc.), particularly regarding hard-to-reach and disadvantaged communities, associated with the Local Government Partnership program.

**Table XX: Co-benefits/Economic Development Benefit Fields**

<b>Data Field</b>	<b>Frequency</b>
<b>TBD</b> (TBD)	TBD

*{Comment: placeholder for Agreement term, each Company to add their own requirements}*

*{Comment: Evaluation, Measurement and Verification (EM&V) Study. Co-benefits are also known in the evaluation field as Non Energy Benefits (NEBs), and has a 20 year history of research from energy efficiency programs outside of California (see also the California Evaluation Framework, Chapter 11 “Non Energy Effects” - [http://www.calmac.org/events/California\\_Evaluation\\_Framework\\_June\\_2004.pdf](http://www.calmac.org/events/California_Evaluation_Framework_June_2004.pdf))}.*

(END OF ATTACHMENT B)