

## SOUTHERN CALIFORNIA EDISON COMPANY

### WATER LEAK DETECTION IMPLEMENTATION CONTRACT

THIS CONTRACT FOR SERVICES (“Contract”) is by and between SOUTHERN CALIFORNIA EDISON (“SCE”) and SOUTH BAY CITIES COUNCIL OF GOVERNMENTS (“Implementer”), which Contract shall be effective as of \_\_\_\_\_ (“Effective Date”). SCE and Implementer may be referred to herein individually as a “Party” and collectively as the “Parties.

WHEREAS, on November 8, 2012 in Decision 12-11-015, the California Public Utilities Commission (“Commission”) authorized certain energy efficiency (“EE”) programs, including the Energy Leader Partnership Program (“Partnership Program”) for the 2013-2014 program cycle;

WHEREAS, pursuant to the Partnership Program SCE will conduct activities to design a Water Leak Detection program;

WHEREAS, SCE has selected the Implementer to implement the South Bay Council of Governments Water Leak Detection Program (referred to hereinafter as the “Program”), in order to identify water leak issues and pressure management opportunities within Implementer’s water agencies;

WHEREAS, the Implementer shall perform the Work to design a water leak detection program to be implemented in SCE’s territory;

WHEREAS, the Parties desire to enter into an agreement that supersedes any and all previous agreements, and sets forth the terms and conditions under which the Program shall be implemented with respect to the Parties; and

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### 1. DEFINITIONS

All terms used in the singular will be deemed to include the plural, and vice versa. The words “herein,” “hereto,” and “hereunder” and words of similar import refer to this Contract as a whole, including all exhibits or other attachments to this Contract, as the same may from time to time be amended or supplemented, and not to any particular subdivision contained in this Contract, except as the context clearly requires otherwise. “Includes” or “including” when used herein is not intended to be exclusive, or to limit the generality of the preceding words, and means “including without limitation.” The word “or” is not exclusive.

- 1.1. Business Day: The period from one midnight to the following midnight, excluding Saturdays, Sundays, and holidays.
- 1.2. Calendar Day: The period from one midnight to the following midnight, including Saturdays, Sundays, and holidays. Unless otherwise specified, all days in this Contract are Calendar Days.
- 1.3. Contract: This document issued by SCE to Implementer, as may be amended in writing as provided herein, which authorizes the Work, states the terms and conditions, and incorporates by reference the Statement of Work and any other referenced documents, if applicable, all of which form the agreement (Contract) between the Parties, with the following priority in the event of conflicting provisions: Amendments, from the most recent to the earliest; the Statement of Work; this Contract; and any other documents specifically incorporated by reference into the Contract.
- 1.4. Embedded Energy: The actual amount of energy needed to produce and deliver water.
- 1.5. Energy Efficiency Measure (or Measure): Will have the meaning ascribed to it in the Commission's Energy Efficiency Policy Manual, Version 4, August 2008.
- 1.6. EM&V: Evaluation, Measurement and Verification of the Program pursuant to Commission requirements.
- 1.7. Implementer Budget: The approved maximum budget for funding the performance by Implementer of the Work, as set forth in the Statement of Work attached hereto as Exhibit A.
- 1.8. Incentive: Will have the meaning ascribed to it in the Commission's Energy Efficiency Policy Manual, Version 4, August 2008.
- 1.9. Jobsite: An SCE facility or designated third party property at or for which the Work is performed.
- 1.10. Participating Municipality: Those jurisdictions or member cities that: (i) are located in SCE's service territory; and (ii) have been selected by SCE and Implementer to participate in the South Bay Council of Governments Water Leak Detection Program as set forth in the Statement of Work.
- 1.11. Program: The South Bay Council of Governments Water Leak Detection program.
- 1.12. Procurement Energy Efficiency Funds: The funds which make up the Implementer Budget and which are collected from electric utility ratepayers for public purposes programs, including energy efficiency programs approved by the Commission.

1.13. **Statement of Work (SOW):** A statement of the tasks to be performed by the Implementer, commercial terms including the Implementer Budget, reporting requirements and other necessary information, as set forth in Exhibit A and incorporated herein as part of this Contract, as such SOW may be modified from time to time as provided herein.

1.14. **Subcontractor:** An entity contracting directly or indirectly with a Party, or any Subcontractor thereof, to furnish services or materials as part of or directly related to such Party's Work obligations.

1.15. **Work:** The work authorized by SCE for the Program as set forth in this Contract and as more fully described in the SOW attached hereto as Exhibit A.

## **2. PURPOSE**

The Program is funded by California utility ratepayers and is administered by SCE under the auspices of the Commission. The purpose of this Contract is to authorize the expenditure of Procurement Energy Efficiency Funds to Implementer for services performed pursuant to the terms of this Contract and to set forth the terms and conditions under which the Program will be implemented. The Work authorized pursuant to this Contract is not to be performed for profit by the Implementer. Notwithstanding the foregoing, Implementer may hire Subcontractors that perform certain portions of the Work for profit.

The Program is part of SCE's innovative portfolio of EE programs seeking to achieve energy savings, "directly," "embedded," or otherwise, resulting from implementing water-use efficiency Measures. Specifically, the Program encompasses commercializing water-loss detection and pressure management within SCE's service territory.

The Program will build upon recent research findings and identified gaps to substantially advance the development of a methodology for computing water-related Embedded Energy, and to demonstrate clear and actionable energy savings, demand reduction, and water system benefits. The goals of the Work include providing a cost-effective program offering design, receiving recommendations for cost-effective and effective incentive offerings to motivate the water purveyors to take action to further their water management-control efforts in the urban water infrastructure.

## **3. AUTHORIZED WORK**

3.1. **Scope.** The Work authorized under this Contract is set forth in the Statement of Work (Exhibit A) and shall be performed pursuant to the terms of this Contract.

3.2. **Goals and Objectives.** The Program is designed to meet the specific goals, objectives and milestones within the schedule and budget set forth in the Statement of Work (Exhibit A).

## 4. OBLIGATIONS OF PARTIES

### 4.1. General Obligations of Implementer.

- 4.1.1. Implementer will appoint a Program representative (“Implementer Representative”) who will be the primary contact between SCE and Implementer, and who will be authorized to act on behalf of Implementer in carrying out its obligations under this Contract. Such appointment shall be communicated in writing to SCE’s designated Contract Program Manager within ten (10) Business Days following execution of this Contract.
- 4.1.2. Implementer shall be responsible for achieving the goals and objectives and producing the deliverables as set forth in the Statement of Work.
- 4.1.3. Implementer shall perform its Work obligations within the Implementer Budget and in conformance with the schedule associated with such Work as set forth in the Statement of Work, and shall furnish the required labor, equipment and material with the degree of skill, care and professionalism that is required by current professional standards.
- 4.1.4. Implementer shall be primarily responsible for coordinating the preparation of all Program-related documents, including all required reporting of Implementer pursuant to Section 9, and any such other reporting as may be requested by SCE. Implementer shall obtain the approval of SCE prior to use of any SCE Program documents or other energy efficiency program documents or materials offered by SCE.
- 4.1.5. Upon request, Implementer shall submit to SCE all contracts, agreements or other requested documents with Implementer’s Subcontractors performing Work for the Program.

### 4.2. General Obligations of SCE.

- 4.2.1. SCE will appoint a Program representative (“SCE Representative” or “Contract Program Manager” (“CPM”)) who will be the primary contact between SCE and Implementer, and who will be authorized to act on behalf of SCE in carrying out SCE’s obligations under this Contract.
- 4.2.2. SCE shall administer the Procurement Energy Efficiency Funds authorized by the Commission for the Program in accordance with this Contract.

## 5. MARKETING

- 5.1. Marketing Materials. Implementer shall obtain the approval of SCE when developing Program marketing materials and prior to distribution, publication, circulation, or dissemination in any way to the public by Implementer or by a

Participating Municipality. In addition, all advertising, marketing or otherwise printed or reproduced material (including website material) used to implement, refer to or is in anyway related to the Program must contain the respective name and logo of SCE and, at a minimum, the following language: *“This Program is funded by California utility ratepayers and administered by Southern California Edison under the auspices of the California Public Utilities Commission.”*

5.2. Outreach. Implementer shall obtain the approval of SCE prior to implementation by Implementer or a Participating Municipality, of any public outreach activities or campaigns for the Program (exhibits, displays, public presentations, canvassing, etc.), and any marketing materials used in connection with such outreach activity shall comply with all requirements of Section 5 of this Contract.

5.3. Use of SCE Name. Implementer must receive prior review and written approval from SCE for the use of SCE’s name or logo on any marketing or other Program materials. Implementer shall allow five (5) Business Days for SCE review and approval. If Implementer has not received a response from SCE within the five (5) Business Day period, then it shall be deemed that SCE has disapproved such use, unless Implementer and SCE’s CPM agree to a longer timeframe for SCE’s review and approval.

5.4. Use of Commission’s Name. No Party may use the name of the Commission on marketing materials for the Program without prior written approval from the Commission staff. In order to obtain this written approval, SCE must send a copy of the planned materials to the Commission requesting approval to use the Commission’s name and/or logo. Notwithstanding the foregoing, the Parties shall disclose their source of funding for the Program by stating prominently on marketing materials that the Program is “funded by California ratepayers under the auspices of the California Public Utilities Commission.”

## **6. CONTROL OF WORK**

6.1. Compliance with Work Schedule. Implementer shall perform the Work in compliance with the Work schedule set forth in the Statement of Work (“Work Schedule”). If performance of the Work (including any task, or achievement of any goals or objectives outlined in the Statement of Work) is delayed beyond the schedule for any reason, or if Implementer is aware that such Work will be delayed for any reason, Implementer shall notify the SCE Representative within thirty (30) Business Days in writing. SCE may, in its sole discretion, accept the delay, reduce the Work and Implementer Budget accordingly, or terminate the Contract, within thirty (30) Business Days following receipt of such written notice of delay from Implementer. Failure of Implementer to notify SCE in writing of such delay in the Work Schedule within thirty (30) Business Days shall constitute a breach of this Contract and SCE may exercise any of the remedies set forth in this Section or in Section 23.

6.2. Changes to Work.

6.2.1. Changes. SCE may at any time make changes to the Work including additions, reductions, and changes to any or all of the Work, as directed in writing by the SCE Representative. Such changes may be made with a Change Order. The Implementer Budget and Work Schedule shall be equitably adjusted, if required, to account for such changes and shall be set forth in a Change Order.

6.2.2. SCE Authority To Shift Funds Or Modify. SCE, in its sole discretion, may reallocate funds among the programs in its energy efficiency portfolio, or modify in anyway the Program, funding or Work. In the event that SCE elects to change or modify the funding, Program or Work, Implementer shall be notified in writing and if applicable by a Change Order to this Contract. Such Change Order will specify any changes to the Implementer's Scope of Work and may increase, decrease, or terminate overall Program funding.

6.3. Stop Work Procedures. SCE may suspend Implementer's Work at any time upon notice to Implementer for convenience or for cause, including, without limitation, Program funding, Program implementation or management, safety concerns, fraud or complaints. Implementer shall stop performing the Work immediately upon receipt of such notice. Implementer shall resume the Work only upon receiving written notice from SCE that it may do so. .

6.4. Key Personnel. Implementer shall deliver to SCE a list of Implementer's key personnel performing the Work prior to commencing the Work. Any change to Implementer's key personnel performing the Work shall be pre-approved by SCE; provided, however, that an unplanned personnel change shall be reported to the SCE Representative immediately. The Implementer Representative shall coordinate all Work and communicate regularly for the Implementer with the SCE Representative. Implementer shall promptly replace any key personnel performing the Work if requested by the SCE Representative; provided however, that this provision does not in any way require, endorse or approve (expressed or implied) the termination of employment by the Implementer of any employee replaced under the terms of this paragraph.

6.5. Subcontractors. Any Work subcontracted by Implementer shall be identified as such in the Contract and any Work subcontracted to an Implementer's affiliated entity shall be similarly specifically identified. For any subcontracted Work, the prior written approval of the SCE Representative shall be required for each Subcontractor, the activities to be performed, and the related charges. Implementer shall at all times be responsible for the Work, and for the acts and omissions of Subcontractors and persons directly or indirectly employed by them. Implementer shall be solely responsible and liable for ensuring that the terms and conditions of all subcontracts are in accordance with this Contract, including but not limited to all invoicing requirements. Any review or approval by SCE of a Subcontractor or a subcontract shall not relieve Implementer of its obligations hereunder.

6.6. Additional Instructions. If Implementer receives any verbal or written instructions for performance of Work from SCE personnel other than the SCE

Representative, Implementer shall promptly reconfirm such instructions with the SCE Representative and request that a corresponding Change Order be issued as necessary.

6.7. Emergencies. In an emergency endangering life or property, Implementer shall: a) perform Work or such other services or work as is necessary to address and resolve the emergency; and b) immediately notify SCE.

6.8. Drafts. Draft copies of required reports shall be submitted to the SCE Representative for review for contractual compliance, satisfaction of SCE needs and good professional practices, comments, and approval, prior to the due date of such reports.

6.9. Inspection. SCE authorized representatives shall have the right of access to and inspection of Implementer's facilities and/or locations at reasonable times during regular business hours regarding performance of the Work.

6.10. Uncontrollable Forces. Implementer shall not be liable for delay in the Work Schedule or inability to perform the Work due to any cause beyond its reasonable control, such as strike, flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, or critical material unavailability; provided that Implementer promptly notifies SCE in writing of the nature, cause, date of commencement, and expected impact of the event and has exercised due diligence in proceeding to meet the Work Schedule. SCE shall extend the Work Schedule for an equitable period due to such causes without any change in the Contract price.

## **7. FITNESS FOR DUTY/JOBSITE ACCESS REQUIREMENTS**

### **7.1 Fitness for Duty**

7.1.1. Implementer and its Subcontractor personnel on a Jobsite:

- (i) Shall report for work in a manner fit to do their job;
- (ii) Shall not be under the influence of or in possession of any alcoholic beverages or of any controlled substance (except a controlled substance as prescribed by a physician for such person so long as the performance or safety of the Work is not affected thereby); and
- (iii) Shall not have been convicted of any serious criminal offense which, by its nature, may have a discernible adverse impact on the business or reputation of SCE.

7.1.2. Inspection. Searches by SCE authorized representatives may be made of lockers, storage areas, vehicles, persons or personal effects on SCE owned, or leased, property at various times without prior announcement. Such facility inspections may be conducted using detection dog teams to search work areas and other common areas in order to detect evidence of unlawful drug use or the presence of pyrotechnics, explosives, firearms, weapons, or facsimiles thereof, alcoholic beverages and illegal drugs ("Prohibited Items"). Prohibited Items must not be brought onto, or kept on, SCE property.

7.1.3. Compliance. Implementer shall advise its employees of the requirement of this Section 7.1 ("Fitness for Duty Requirements") before they enter on the

Jobsite and shall immediately remove from the Jobsite any employee determined to be in violation of these requirements. Implementer shall inform its Subcontractors of these requirements as well. SCE may cancel the Contract if Implementer violates these Fitness for Duty Requirements.

## 7.2. JOBSITE ACCESS REQUIREMENTS

7.2.1. Notification of Convictions. During application for Jobsite access, and/or during performance of the Work, Implementer shall immediately notify SCE whenever Implementer becomes aware of evidence that any Implementer's or its Subcontractors' employee, who has, or will have, Jobsite access, has been convicted of a serious criminal offense.

7.2.2 Visitor Badge Requirement. All visitors to a particular Jobsite must comply with that Jobsite's visitor access requirements.

7.3. Sexual Harassment. SCE supports a diverse work force and prohibits unlawful employment discrimination and harassment of every kind, including sexual harassment, in accordance with state and federal laws. Whenever present on SCE property or facilities, Implementer shall require its employees, Subcontractors, and agents to comply with all applicable federal and state statutes, acts, regulations, codes and standards prohibiting conduct that might reasonably be construed as violating state or federal equal opportunity laws, including conduct such as making sexually suggestive jokes or remarks, touching, assaulting, making gestures of a sexual or suggestive nature, and impeding or blocking any SCE employee's, subcontractor's or agent's movement.

## 8. DOUBLE DIPPING PROHIBITED

If, in performing its respective Work obligations, Implementer engages contractors or vendors who provide incentives or services to SCE customers, Implementer shall take all appropriate steps to minimize "double-dipping." As applicable:

8.1. Prior to providing incentives or services to any eligible SCE customer, Implementer shall require its Subcontractors to obtain a signed form from such eligible customer stating that:

8.1.1. Such eligible SCE customer has not received incentives or services for the same Measure from any other SCE program or from another utility, state, or local program; and

8.1.2. Such eligible SCE customer agrees not to apply for or receive Incentives or services for the same Measure from any other SCE program or from another utility, state, or local program.

Each Party shall keep its customer-signed forms for at least five (5) years after the expiration or termination of this Contract.

8.2. No Party shall knowingly provide an incentive to a Participating Municipality, or make payment to a Subcontractor, who is receiving compensation for the same product or service either through another ratepayer funded program, or through any other funding source.

## 9. REPORTING/EM&V

9.1. Reporting. The Parties shall implement all reporting requirements set forth in the Statement of Work, including all appendices of the Statement of Work. The reporting requirements set forth in Appendix B of the Statement of Work will be amended when issued by the Commission for the 2013-2014 Program cycle, and may be amended from time to time thereafter at the discretion of the Commission. Upon issuance by the Commission of revised reporting requirements for 2013-2014 related to the Program, such Commission-approved reporting requirements shall replace the reporting requirements set forth in Appendix B of the Statement of Work in their entirety upon written notice to the Implementer, which notice shall include a copy of the revised Appendix B.

9.2. EM&V. The evaluators will be asked to prepare a Program logic model based upon the written proposal and on interviews with the Implementer. Research issues will be defined in collaboration with SCE program managers and may include questions such as: How well were program activities documented? How effectively was the proposed plan implemented? What could be done to improve the plan's effectiveness? Who are the decision-makers, and what information did they use to make their decisions? Implementer agrees to cooperate with and assist, as needed, program evaluators in this effort.

## 10. PAYMENTS/COMMERCIAL TERMS

10.1. Implementer Budget. The Implementer Budget is set forth in the Statement of Work. Implementer shall not be entitled to compensation in excess of the Implementer Budget without a Change Order issued and signed by SCE.

10.2. Time and Material Basis. All Work will be performed on a time and material basis and subject to the following general provisions:

### 10.2.1. General Provisions.

- a. All charges shall be directly identifiable to, and required for the Work.
- b. Any charges for overtime shall require the prior written approval of the SCE Representative. Overtime rates shall be authorized and charged only for non-exempt personnel.
- c. Implementer shall complete the Work within the amount authorized by the Contract and in accordance with the Work Schedule. Implementer shall notify SCE's procurement agent responsible for the Contract and the SCE Representative at such time that it becomes reasonably apparent that the forecasted cumulative charges will exceed any amounts

authorized by the Contract (whether by task, total amount of Contract, or both). Implementer shall not proceed with or be reimbursed for any Work performed either beyond the effective period of the Contract, or exceeding the dollar amount authorized in the Contract, without a Change Order.

10.2.2. Labor Related Costs Under Time and Material Basis. Implementer shall invoice SCE at the fixed hourly rates for the applicable labor categories stated in the Contract for time spent directly engaged in performance of the Work by Implementer's employees. Such fixed hourly rates shall be inclusive of all of Implementer's overhead costs (including all taxes and insurance), administrative and general fees, and profit.

10.2.3. Invoices. Implementer shall submit monthly invoices for the costs incurred in the prior month and shall include a cost breakdown for each task identified in the Statement of Work. Each invoice shall include:

10.2.3.1. Status.

- a. SCE's Contract number.
- b. Task Description.
- c. Cost incurred to date.
- d. Current monthly amount invoiced.
- e. Cumulative amount invoiced to date.
- f. Current monthly and cumulative amounts authorized, and justification for all variances between amounts authorized and incurred or invoiced.
- g. Statement of deliverables for the period.

10.2.3.2. Labor.

- a. Dates worked.
- b. Personnel name, work hours and classification.
- c. Personnel Fixed rate.
- d. Description of Work performed by task.
- e. Completion of Appendix "C" of the Statement of Work.

10.2.3.3. Reimbursable expenses (pre-approved by SCE).

- a. Material costs.
- b. Subcontract costs.
- c. Out-of-Pocket expenses.
- d. Travel costs.

- 10.2.4. Expenses. All reimbursable expenses shall be authorized by SCE in writing prior to the expenditure. Any expenses not so approved by SCE shall not be reimbursed. All expenses shall be charged at cost, without mark-up, and shall be necessary, reasonable and ordinary.
- 10.2.4.1. Material Costs. Material costs shall be substantiated with an invoice stating the unit price, quantity, and other information as required to identify the Work.
- 10.2.4.2. Subcontract Costs. Subcontracted Work shall be charged at the rates actually paid by Implementer, not to exceed the rates set forth in the Contract for Work by the Implementer. Implementer shall provide Subcontractor invoices for any Implementer invoice that includes Subcontractor costs.
- 10.2.4.3. Out-of-Pocket expenses. Miscellaneous costs such as telephone communications, routine copying, electronic mail, facsimiles, computer time and in-house technical software are deemed to be included in Implementer's overhead costs will not be reimbursed.
- 10.2.4.4. Travel Costs. Approved air travel costs shall in no case exceed economy or coach fare, whichever is reasonably available. Automobile travel from Implementer's office to the Jobsite and to SCE's general offices shall be paid at the fixed mileage rate stated in the Contract, or if not stated, at SCE's rate for SCE employees.
- 10.2.5. Final Invoice. The final invoice shall be marked "FINAL" and must be received by SCE within sixty (60) calendar days after completion of the Work. SCE shall not be liable for payment of any late invoices that are received by SCE beyond the 60 days.
- 10.2.6. Invoice Deficiencies. In the event SCE determines that Implementer's (or any of its subcontractors) invoices do not meet the invoicing requirements of the Contract, SCE will notify Implementer of the deficiencies and Implementer shall correct such deficiencies promptly.
- 10.2.7. Payment by SCE. SCE shall pay each correct invoice, submitted in accordance with the terms of the Contract, within thirty (30) days of SCE's receipt of the correct invoice in SCE's Accounts Payable Division. In the event that SCE disputes any of the charges on the invoice, SCE will pay only the undisputed portion of the invoice, pursuant to Section 19 hereof.
- 10.2.8. Records. Implementer shall maintain, for a period of five (5) years after final payment, complete accounting records (and supporting documentation) of all invoiced costs. SCE reserves the right to audit and copy any applicable documents related to the Work hours, all costs and expenses invoiced, and task completion records. Each invoice shall list the number of the Contract covered by such invoice.

## 11. COMPLIANCE WITH LAW; PERMITS, STATUTES AND CODES

11.1. The Implementer shall comply with, and shall ensure that the Work complies with the applicable requirements of all statutes, acts, ordinances, regulations, codes, and standards of federal, state, local and foreign governments, and all agencies thereof.

11.2. Implementer shall conform to the applicable employment practices requirements of (Presidential) Executive Order 11246 of September 24, 1965, as amended and applicable regulations promulgated thereunder.

### 11.3. Implementer Policy for Web Accessibility.

If an Implementer currently hosts and manages a web site, on behalf of SCE, that contains public, customer-facing pages, content and/or transactions that are not already web accessible and compliant with Web Content Accessibility Guidelines version 2.0, Level AA (WCAG 2.0, Level AA), the Implementer must make updates to the web site pages, content and/or transactions to meet web accessibility compliance, unless Implementer is not required by law to comply.

As such, if Implementer plans to or currently hosts and maintains web sites that include web pages, content and/or transactions for SCE, Implementer agrees to the following terms regarding current and/or planned web sites unless Implementer is not required to do so by law:

11.3.1. All public facing web pages, transactions and content, including multi-media and interactive content and forms targeted for SCE customers, shall be made web accessible and meet the standards defined in WCAG 2.0, Level AA. Multi-media and interactive content within the scope of these terms include, and are not limited to, image files, video files, audio files, Flash movies and applications, Flex applications, Silverlight applications, functionality developed with AJAX and/or any other interactive technology not otherwise specified but utilized to serve up information and/or transactions on the web.

11.3.2. Attachments that are posted on a web page for download must also be made web accessible. Attachments include, and are not limited to, Adobe Acrobat PDF files, Microsoft Office files, or any other type of file intended for a customer to download and review offline. An exception may be allowed only if the content contained within the download is already offered on the web site in a web accessible format, and the downloadable attachment is duplicative to the content or transaction displayed on web pages. Such exceptions must be documented and requested by the Implementer, agreed upon by both Implementer and SCE, and granted by SCE prior to declaring any attachment exempt from web accessibility compliance.

11.3.3. Implementers must include compliance with WCAG 2.0, Level AA guidelines as part of the base system requirements for any Work

completed for SCE. Implementers are responsible for testing proposed web pages, content and/or transactions, and confirming compliance with WCAG 2.0 Level AA guidelines. Proof of testing may be documented in the form of test plans, test scripts, test results, and/or web accessibility audits (performed by the Implementer itself or an external party). SCE may, at any time, request such documentation to confirm that testing was completed and that the published web page, content and/or transaction satisfies web accessibility compliance with WCAG 2.0, Level AA.

11.3.4. Upon deployment (i.e., publication for external consumption) of web accessible pages, content and/or transactions, Implementer must maintain compliance with WCAG 2.0, Level AA for as long as the web pages, content and/or transactions are made publicly available on the third-party hosted web site:

11.3.4.1. If Implementer edits, enhances, modifies, or updates web pages, content and/or transactions, Implementer agrees to re-test for web accessibility compliance, and document test results to prove that said content continues to maintain web accessibility compliance. SCE may, at any time, request such documentation to confirm that testing was completed and that the published web page, content and/or transaction satisfy web accessibility compliance with WCAG 2.0, Level AA.

11.3.4.2. On a periodic basis, SCE may perform audits on the third-party hosted site to assess web accessibility compliance. Audits may be completed by manual evaluation or through the use of an automated testing tool. If SCE identifies any content that was previously communicated as being compliant but is subsequently found to be in violation: 1) SCE will identify, in writing, the specific violation(s), including the WCAG 2.0, Level AA guideline violated, and the specific web page, content or transaction form where the violation(s) were found; and 2) Implementer will correct the item(s) in violation on its own accord, with no cost impact to SCE, in a timeframe that both SCE and Implementer agree to, not to exceed 30 calendar days.

11.3.4.3. SCE requires an annual web accessibility audit of SCE's web properties by an independent auditor ("Auditor"). Any part or all pages of a third-party hosted web site may be included in the annual audit. If the Auditor identifies any web page, content or transaction that was previously communicated as being compliant but is subsequently found to be in violation, 1) Auditor will identify, in writing, the specific web page content or transaction form where the violation is found, the specific WCAG 2.0, Level AA guideline that has been violated, and what the specific violation is determined to be; 2) SCE shall provide Implementer with audit report, 3) Implementer

will correct the item(s) in violation on its own accord, with no cost impact to SCE, in a timeframe that both SCE and Implementer agree to, not to exceed 30 calendar days.

11.3.5. If an existing third-party hosted web site utilizes a commercial off-the-shelf third-party software package to deliver any type of functionality that is customer-facing, the Implementer will work with the software manufacturer to determine whether the software produces web-accessible pages, content and/or transactions.

11.3.5.1. If the software manufacturer is unable to provide a product that produces web pages, content and/or transactions that meet WCAG 2.0, Level AA guidelines, the Implementer shall request the software manufacturer to explain such limitations in writing (i.e. in the form of product specifications, formal response from software manufacturer's technical support) and subsequently provide such documentation to SCE.

11.3.5.2. If the software manufacturer is unable to provide a product that produces web pages, content and/or transactions that meet WCAG 2.0, Level AA guidelines, the Implementer agrees to pursue, in good faith, an alternate product that can provide equivalent functionality and satisfy WCAG 2.0, Level AA web accessibility compliance requirements.

11.3.6. If an Implementer plans to utilize a commercial off-the-shelf third-party software package to deliver any type of functionality that is customer-facing for a future web site, the Implementer agrees to pursue, in good faith, a product that meets the desired business functionality requirements and WCAG 2.0, Level AA web accessibility compliance requirements.

11.3.6.1. If the Implementer is unable to locate a product that meets both business functionality requirements and web accessibility compliance requirements, the Implementer must communicate to SCE such limitations, in writing, and justify the software selection choice. Implementer shall also request the software manufacturer of desired product to explain such limitations in writing (i.e. in the form of product specifications, formal response from software manufacturer's technical support) and subsequently provide such documentation to SCE. SCE shall reserve final decision-making authority to approve the usage of such software to deliver desired business functionality.

## **12. INDEMNITY/CONSEQUENTIAL DAMAGES**

12.1. Indemnity. Implementer shall indemnify, defend and hold harmless SCE, and its respective successors, assigns, affiliates, subsidiaries, current and future parent companies, officers, directors, agents, and employees, from and against any

and all expenses, claims, losses, damages, liabilities or actions in respect thereof (including reasonable attorneys' fees) to the extent arising from (a) any act or omission of Implementer, its Subcontractors, or any of their respective employees, officers and agents, relating to this Contract, or (b) Implementer's breach of this Contract or of any representation or warranty of Implementer contained in this Contract.

12.2. NO CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OF OR UNDER-UTILIZATION OF LABOR OR FACILITIES, LOSS OF REVENUE OR ANTICIPATED PROFITS, COST OF REPLACEMENT POWER OR CLAIMS FROM CUSTOMERS, RESULTING FROM A PARTY'S PERFORMANCE OR NONPERFORMANCE OF THE OBLIGATIONS HEREUNDER, OR IN THE EVENT OF SUSPENSION OF THE WORK OR TERMINATION OF THIS CONTRACT.

### 13. **DEVELOPMENTS/PROPRIETARY RIGHTS**

13.1. Ownership. The Parties acknowledge and agree that SCE, on behalf of its customers, shall own all deliverables, data, reports, information, manuals, computer programs, works of authorship, designs or improvements of equipment, tools or processes, other written, recorded, photographic or visual materials, intellectual property, inventions and trade secrets and all deliverables produced in the performance of this Contract (collectively "Developments") , whether proprietary or non-proprietary; provided, however, that Developments do not include equipment or infrastructure purchased for research, development, education or demonstration related to energy efficiency. Although Implementer shall retain no ownership, interest, or title in the Developments except as may otherwise be provided in this Contract, it will have a permanent, royalty free, non-exclusive license to use such Developments, subject to any limitations set forth in the Contract.

13.2. Risk of Loss. Implementer shall have risk of loss of or damage to the undelivered Developments until completion of the Work.

13.3. Infringement.

13.3.1. Implementer represents and warrants that the Work performed by Implementer and/or its Subcontractors shall be free of any claim of trade secret, trade mark, trade name, copyright, or patent infringement or other violations of any proprietary rights of any person.

13.3.2. Implementer shall defend, indemnify and hold harmless, SCE, its officers, agents, employees, successors and assigns from and against any and all liability, damages, losses, claims, demands, actions, causes of action, and costs including reasonable attorney's fees and expenses arising out of any claim, demand, or charge that use of the Work or

Developments infringes upon any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights.

## 14. INSURANCE

14.1. Implementer will maintain, and shall require its Subcontractors to maintain, the following insurance coverage or self insurance coverage, at all times during the term of this Contract, with companies having an A.M. Best rating of “A-, VII” or better, or equivalent:

14.1.1. Workers’ Compensation: statutory minimum.

14.1.2. Employer’s Liability coverage: \$1 million minimum.

14.1.3. Commercial General Liability: \$2 million minimum per occurrence/\$4 million minimum aggregate.

Such insurances shall acknowledge SCE, its officers, agents and employees as additional insureds, be primary for all purposes, contain standard cross-liability or severability of interest provisions, and waive all rights of subrogation against SCE its officers, agents, employees and other contractors or Subcontractors.

14.1.4. Commercial or Business Auto: \$1 million minimum.

Such insurance shall acknowledge SCE, its officers, agents and employees as additional insureds and be primary for all purposes.

14.1.5. Professional Liability (if applicable): \$1 million minimum.

14.2. Evidence of Insurance. Upon request at any time during the term of this Contract, Implementer shall provide evidence that its insurance policies and the insurance policies of any Subcontractor, as provided in this Section are in full force and effect, and provide the coverage and limits of insurance that Implementer has represented and warranted herein to maintain at all times during the term of this Contract.

14.3. Self-Insurance. If Implementer is self-insured, it shall upon request forward documentation to SCE that demonstrates to SCE’s satisfaction that Implementer self-insures as a matter of normal business practice before commencing the Work. SCE will accept reasonable proof of self-insurance comparable to the above requirements.

14.4. Notice of Claims. Implementer shall immediately report to SCE, and promptly thereafter confirm in writing, the occurrence of any injury, loss or damage incurred by Implementer or its Subcontractors or their receipt of notice or knowledge of any claim by a third party of any occurrence that might give rise to such a claim.

14.5. Insurance Indemnification. If Implementer fails to comply with any of the provisions of this Section, "INSURANCE", or any insurance requirements in the Contract, Implementer shall, at its own cost, defend, indemnify, and hold harmless SCE, its affiliates and their officers, directors, agents, employees, assigns, and successors in interest, from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs, including attorney's fees and expenses, or any of them, arising out of or in connection with the performance or non-performance of the Work by Implementer or any Subcontractor, or their officers, directors, employees or agents to the extent that SCE would have been protected had Implementer complied with all of the provisions of this Section.

## 15. CUSTOMER CONFIDENTIALITY REQUIREMENTS

15.1. Non-Disclosure. Implementer, its employees, agents and Subcontractors shall not disclose any Confidential Customer Information (defined below) to any third party during the term of this Contract or after its completion, without Implementer having obtained the prior written consent of SCE, except as provided by law, lawful court order or subpoena and provided Implementer gives SCE advance written notice of such order or subpoena prior to any disclosure. Notwithstanding any other provisions in the Contract, Implementer's nondisclosure obligations with respect to SCE Confidential Customer Information shall survive any expiration or termination of the Contract in perpetuity.

15.2. Confidential Customer Information. "Confidential Customer Information" includes, but is not limited to, an SCE customer's name, address, telephone number, account number and all billing and usage information, as well as any SCE customer's information that is marked "confidential". If Implementer is uncertain whether any information should be considered Confidential Customer Information, Implementer shall contact SCE prior to disclosing the customer information.

15.3. Non-Disclosure Agreement. Prior to any approved disclosure of Confidential Customer Information, SCE may require Implementer to enter into a nondisclosure agreement.

15.4. Commission Proceedings. This provision does not prohibit Implementer from disclosing non-confidential information concerning the Work to the Commission in any Commission proceeding, or any Commission-sanctioned meeting or proceeding or other public forum.

15.5. Return of Confidential Information. Confidential Customer Information (including all copies, backups and abstracts thereof) provided to Implementer by SCE, and any and all documents and materials containing such Confidential Customer Information or produced by Implementer based on such Confidential Customer Information (including all copies, backups and abstracts thereof), during the performance of this Contract shall be returned upon written request by SCE.

15.6. Remedies. The Parties acknowledge that Confidential Customer Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Section 15 and the obligations of the Parties are specifically

enforceable. Accordingly, the Parties agree that in the event of a breach or threatened breach of this Section 15 by Implementer, SCE shall be entitled to seek and obtain an injunction preventing such breach, without the necessity of proving damages or posting any bond. Any such relief shall be in addition to, and not in lieu of, money damages or any other available legal or equitable remedy.

## 16. SECURITY INCIDENT PROVISIONS

### 16.1. SCE Personal Information.

16.1.1. Definition. SCE Personal Information is defined as any information in the possession or under the control of SCE or any of its affiliates, or that is furnished or made available by SCE or any of its affiliates to Implementer, that identifies, relates to, describes, or is capable of being associated with, any particular individual (whether SCE employee, customer, or otherwise), including, but not limited to, his or her name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, medical information or health insurance information, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information.

16.2. Nondisclosure of SCE Personal Information. Implementer, its employees, agents and Subcontractors shall not disclose any SCE Personal Information (defined above) to any third party during the term of this Contract or after its completion, without Implementer having obtained the prior written consent of SCE, except as provided by law, lawful court order or subpoena and provided Implementer gives SCE advance written notice of such order or subpoena prior to any disclosure.

16.2.1. Notwithstanding any other provision in the Contract, Implementer's nondisclosure obligations with respect to SCE Personal Information shall survive any expiration or termination of the Contract in perpetuity. Upon the expiration or termination of the Contract, or at any time upon request of SCE, all SCE Personal Information in any medium, including all copies or parts thereof, shall be returned to SCE or destroyed, except that Implementer may retain one copy of any materials prepared by Implementer containing or reflecting SCE Personal Information if necessary for compliance with its internal record-keeping or quality assurance requirements only. If destroyed, such destruction shall be certified in writing by Implementer.

16.3. Security Incidents. This section shall apply only to the extent Implementer is in possession or control of SCE Personal Information or SCE Confidential Customer Information.

16.3.1. Security Incident Response Plan. Implementer shall develop, implement and maintain a written plan and process for preventing, detecting, identifying, reporting, tracking and remediating Security Incidents

("Security Incident Response Plan" or "SIRP"). A Security Incident shall mean an event or set of circumstances that result in a reasonable expectation of a compromise of the security, confidentiality or integrity of SCE Personal Information, SCE Confidential Customer Information, and/or other confidential data or information under the Implementer's control. Examples of Security Incidents include are but not limited to:

- (i) Security breaches to Implementer's network perimeter or to internal applications resulting in potential compromise of SCE data or information.
- (ii) Loss of physical devices or media, e.g., laptops, portable media, paper files, etc., containing SCE data.
- (iii) Lapses in, or degradation of, Implementer's security controls, methods, processes or procedures.
- (iv) The unauthorized disclosure of SCE data or information.
- (v) Any and all incidents adversely affecting SCE's or its affiliates', as the case may be, information assets.

16.3.2. SIRP General Requirements. Implementer's SIRP will include Security Incident handling and response procedures, specific contacts in an event of a Security Incident, the contacts' roles and responsibilities, and their plans to notify SCE or its affiliates, as the case may be, concerning the Security Incident. The SIRP must be based on and meet all requirements of the following:

16.3.2.1. U.S. federal and applicable state laws, statutes and regulations concerning the custody, care and integrity of data and information. In particular and without limitation, Implementer shall ensure that its SIRP and its business practices in performing work on behalf of SCE comply with California's Information Practices Act of 1977, California Civil Code §§ 1798.80 *et seq.*, which addresses among other things the provision of notice to SCE or its affiliates, as the case may be, of any breach of the security of SCE Personal Information and SCE Confidential Customer Information if it is reasonably believed to have been acquired by an unauthorized person.

16.3.2.2. SCE information management and information security policies and procedures as made available to Implementer from time to time ("SCE Policies and Procedures"), including without limitation ITS-445 "Standards for Information Security Response – Third Parties."

16.3.3. Implementer Response to Security Incident. The following will apply in the event of a Security Incident:

16.3.3.1. Implementer will submit a Security Incident Report (SIR) to SCE's or its affiliates', as the case may be, IT Help Desk or IT Operations Center ("ITOC") in accordance with SCE Policies and Procedures, including ITS-445, and applicable law. The SIR shall be

submitted promptly upon discovery of a Security Incident and in any event not more than four (4) hours after discovery of a suspected Security Incident, or sooner if required by law, statute or regulation. If additional time is required under the circumstances of the Security Incident to ascertain the nature or extent of the Security Incident, to stabilize the Computing System or to ensure the integrity of SCE's or its affiliates', as the case may be, data and information, then Implementer shall promptly notify SCE or its affiliates, as the case may be, in writing of the existence of a Security Incident initially, and keep SCE or its affiliates, as the case may be, informed of developments and new information.

16.3.3.2. At SCE's or its affiliates', as the case may be, request, Implementer will meet with SCE or its affiliates, as the case may be, to discuss the cause of the Security Incident, Implementer's response, lessons learned and potential improvements to Implementer's system security processes and procedures.

16.3.4. Compromise of SCE Personal Information.

16.3.4.1. Additional SIRP Requirements for SCE Personal Information. With respect to any SCE Personal Information in the possession or under the control of Implementer, to protect SCE Personal Information from unauthorized access, destruction, use, modification or disclosure, Implementer shall:

(a) Develop, implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect SCE Personal Information from unauthorized access, destruction, use, modification, or disclosure.

(b) Develop, implement and maintain data privacy and security programs with administrative, technical, and physical safeguards appropriate to the size and complexity of the Implementer's business and the nature and scope of Implementer's activities to protect SCE Personal Information from unauthorized access, destruction, use, modification, or disclosure.

16.3.4.2. Notice Requirements for SCE Personal Information. In the event of a Security Incident where SCE Personal Information was, or is reasonably believed to have been, acquired by an unauthorized person, Implementer shall immediately provide the SIR required by Section 16.3.3. Such SIR shall state that SCE Personal Information may be involved, and shall describe the suspected nature of such SCE Personal Information.

16.3.5. SIRP Review. At SCE's or its affiliates', as the case may be, request, Implementer shall review the SIRP at least annually with SCE's or its affiliates', as the case may be, designated representatives to identify updates, changes or potential improvements; and a process to document these changes within ninety (90) days of any such changes.

16.3.6. Document Retention. Implementer shall maintain all documentation relating to Security Incidents, whether in written or electronic form, including without limitation, their identification, processing and resolution, for two (2) years after final resolution of the Security Incident, including the final resolution of all claims arising out of the Security Incident.

16.3.7. Indemnification for Security Incidents. Implementer shall, at its own cost, defend, indemnify and hold harmless SCE, its affiliates, officers, agents, employees, assigns and successors in interest, from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs, including attorney's fees and expense, fines or penalties, or any of them, resulting from any Security Incident. Any limitation of liability that may be in the Contract shall not apply to this Section 16.3.7.

16.4. Implementer shall ensure that its employees, agents and contractors that perform services for SCE in connection with the Contract are informed of and comply with these Security Incident provisions.

## **17. CONFLICT OF INTEREST**

Implementer affirms that, to the best of its knowledge, there is no actual or potential conflict of interest between Implementer, its employees or their families, Subcontractors, or business interests, and SCE. Implementer shall not hire any SCE employee or employee's spouse to perform any part of the Work. Implementer further affirms that it has set forth in its proposal for the Work: (i) all situations in which Implementer or an affiliated entity of Implementer has been or currently is an SCE Implementer, contractor, or employee; (ii) all situations in which Implementer or an affiliated entity of Implementer has been or currently is in a joint venture arrangement or licensing relationship with SCE (other than an Energy Leader Partnership); and (iii) any affiliated entity to which Implementer intends to subcontract any part of the Work. Implementer shall update such affirmations to SCE during performance of the Work within thirty (30) days following any change thereto.

## **18. TIME IS OF THE ESSENCE**

Implementer hereby acknowledges that time is of the essence in performing its obligations under this Contract. Failure to comply with milestones and goals stated in this Contract, including but not limited to those set forth in Exhibit A of this Contract, may constitute a material breach of this Contract, resulting in its termination, payments being withheld, Implementer Budgets being reduced or adjusted, funding redirected by SCE to other programs or partners, or other Program modifications as determined by SCE or as directed by the Commission. All Work must be performed and completed by December 31, 2014.

## **19. IMPLEMENTER DISPUTES**

Any unresolved disputes between Implementer and SCE shall be referred to an SCE management representative and an officer of Implementer for resolution. Pending resolution, Implementer shall continue to perform the Work as directed by the SCE Representative, and SCE shall continue to make payments for the undisputed items.

## **20. RIGHT TO AUDIT**

SCE and the Commission shall have the right to audit Implementer at any time during the term of this Contract and for five (5) years thereafter. An audit may include, but is not limited to, a review of Implementer's financial records relating to the Work, Program implementation procedures, Program marketing material, Program implementation documents, field audits of Implementer employees or Subcontractors, energy efficiency savings provided by the Program, funds spent to date, information relating to the substantiation of Program expenditures, incentives paid to date, customers given incentives to date, lists of employees and respective duties, lists of Subcontractors and their respective responsibilities or service provided.

SCE may, in its sole discretion and at anytime, request information or data relating to the program, Work or this Contract, and Implementer shall provide such information in the format and within the time requested by SCE. Nothing in this provision shall limit the type, format or frequency of such requests by SCE.

## **21. MODIFICATIONS**

Except as otherwise provided in this Contract, changes to this Contract shall be only be valid through a written amendment/Change Order to this Contract signed by both Parties.

## **22. TERM**

This Contract shall be effective as of the Effective Date. Unless otherwise terminated in accordance with the provisions of Section 23 below, this Contract shall terminate at midnight December 31, 2014; provided however, that all Work and services shall be completed by the dates specified in the Statement of Work.

## **23. TERMINATION OR CANCELLATION**

23.1. Commission Authority To Modify. The Work and Program under which the Work is authorized herein shall at all times be subject to the discretion of the Commission, including, but not limited to, review and modifications, excusing performance hereunder, or termination as the Commission may direct from time to time in the reasonable exercise of its jurisdiction.

23.2. Termination for Convenience. Notwithstanding any other provisions of the Contract, SCE shall have the unilateral right to terminate the Work, or any portion thereof, or the Contract by the issuance of a Change Order, which shall not require Implementer's acceptance.

Subject to the provisions of Section 23.3 and 23.4 hereof, SCE shall pay Implementer the termination charges set forth in the Contract pro-rated to the effective date of termination. If termination charges are not set forth in

the Contract, SCE shall pay for all Work accepted by SCE. SCE, at its option, may take possession of any material paid for by SCE. The provisions of this Section 23.2 shall be Implementer's sole remedy resulting from such termination.

23.3. Cancellation for Default. In the event of: (i) the breach of or failure of Implementer to perform any of its material obligations under the Contract including, but not limited to, failure to complete the Work on time or failure to make satisfactory progress or persistent failure to pay labor and material claims; (ii) the failure of Implementer to give SCE adequate assurance of performance within ten Business Days after written demand by SCE therefore when reasonable grounds for insecurity arise; or (iii) the insolvency, bankruptcy or receivership of Implementer, then SCE may (a) withhold payment of any further monies which may be due Implementer until such condition is cured, and/or (b) declare Implementer to be in default of the Contract and notify Implementer in writing of such declaration. SCE shall be entitled to cancel the Contract in whole or in part effective immediately upon written notice thereof. Any cancellation pursuant to this Section 23.3 shall not be deemed a "termination" for the purposes of Section 23.2 hereof.

In the event of such cancellation, Implementer shall immediately stop Work and surrender to SCE's possession, complete and incomplete documentation, Developments, and other information, material, control and use of the Jobsite and all Implementer and SCE-owned equipment, facilities, and all other items which SCE may deem necessary or appropriate until the Work is completed. Implementer shall assign to SCE the outstanding subcontracts and contracts as requested by the SCE Representative for such completion. SCE shall have the right to provide, or contract for, all additional labor, material, and any other items which it may deem necessary to complete the Work.

If the total of all expenses incurred by SCE to complete the Work is greater than the sum which would have been payable under the Contract if Implementer had completed the Work, the difference shall constitute a claim against Implementer. Such claim shall be due and payable within ten Business Days after presentation of the claim. Additionally, SCE shall have the right to pursue other remedies afforded by law.

23.4. Delivery of Materials. Without limiting the effect of the provisions of Sections 15 and 23.3 hereof, upon receipt of notice of termination or cancellation under this Section 23, Implementer shall immediately deliver to SCE all complete and incomplete documentation, Developments, and materials related to the Contract. If, at the time of termination or cancellation further sums are due Implementer, Implementer shall not be entitled to the sums until all such items required to be delivered to SCE are delivered.

23.5. Cessation of Work. Upon receipt of notice of termination or cancellation for any reason, Implementer shall promptly cease all Work except for additional Work that SCE may, in its discretion, request Implementer to perform. Additional Work shall be performed in compliance with the terms of the Contract.

**24. WRITTEN NOTICES**

Any written notice, demand or request required or authorized in connection with this Contract, shall be deemed properly given if delivered in person or sent by facsimile, nationally recognized overnight courier, or first class mail, postage prepaid, to the address specified below, or to another address specified in writing by a Party as follows:

Implementer:	SCE:
South Bay Cities Council of Governments	Southern California Edison
Jacki Bacharach	Jesse Langley
20285 S. Western Ave, Suite 100	1515 Walnut Grove Ave
Torrance, CA 90501	Rosemead, CA 91770

Notices shall be deemed received (a) if personally or hand-delivered, upon the date of delivery to the address of the person to receive such notice if delivered before 5:00 p.m., or otherwise on the Business Day following personal delivery; (b) if mailed, three (3) Business Days after the date the notice is postmarked; (c) if by facsimile, upon electronic confirmation of transmission, followed by telephone notification of transmission by the noticing Party; or (d) if by overnight courier, on the Business Day following delivery to the overnight courier within the time limits set by that courier for next-day delivery.

## **25. INDEPENDENT CONTRACTOR**

Implementer is and will perform the work as an independent contractor for SCE. Nothing in this Contract shall be construed so as to render Implementer an employee, agent, representative, joint venturer or partner of SCE for purposes of carrying out this Contract. Implementer shall not enter into any contracts, agreements or other obligations with any other parties which bind, or are intended to bind, SCE without first receiving express written authorization from SCE. SCE and Implementer shall each maintain sole and exclusive control over its respective personnel and operations.

## **26. BENEFIT TO SCE CUSTOMERS**

Ratepayer funded programs must directly benefit customers in the service territory from which the funds are collected. The energy efficiency Program implemented pursuant to this Purchase Order is funded in whole or in part by funds collected from SCE's customers for public purpose programs, and therefore must directly benefit SCE's customers. Procurement Energy Efficiency Funds are defined as those certain funds collected from electric utility ratepayers pursuant to Section 381 of the California Public Utilities Code for public purpose programs, including energy efficiency programs approved by the CPUC.

## **27. ENVIRONMENTAL, HEALTH & SAFETY REQUIREMENTS**

The "Southern California Edison ENVIRONMENTAL, HEALTH & SAFETY HANDBOOK FOR CONTRACTORS", dated January 10, 2010, is hereby incorporated by reference into this Contract. Implementer shall immediately notify the SCE Representative if Implementer is unable to meet ANY of the requirements set forth therein. SCE may cancel this Contract if Implementer fails to meet the requirements set forth in this Handbook. Such cancellation shall not be deemed a termination under the termination provisions of this Contract.

## **28. NON-DISCRIMINATION CLAUSE**

No Party shall unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (i.e., cancer), age (over 40), marital status, sexual orientation, and denial of family care leave. Each Party shall ensure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment, and shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a)-(f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a)-(f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full.

Each Party represents and warrants that it shall include the substance of the nondiscrimination and compliance provisions of this clause in all subcontracts for its Work obligations.

**29. NO WAIVER**

None of the provisions of this Contract shall be considered waived by either Party unless such waiver is specifically stated in writing.

**30. ASSIGNMENT**

No Party shall assign this Contract or any part or interest thereof, without the prior written consent of the other Party, and any assignment without such consent shall be void and of no effect. Notwithstanding the foregoing, if SCE is requested or required by the Commission to assign its rights and/or delegate its duties hereunder, in whole or in part, such assignment or delegation shall not require Implementer's consent and SCE shall be released from all obligations hereunder arising after the effective date of such assignment, both as principal and as surety.

**31. SEVERABILITY**

In the event that any of the terms, covenants or conditions of this Contract, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants, or conditions of this Contract and their application shall not be affected thereby, but shall remain in full force and effect, unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Contract.

**32. GOVERNING LAW; VENUE**

This Contract shall be interpreted, governed, and construed under the laws of the State of California as if executed and to be performed wholly within the State of California. Any action brought to enforce or interpret this Contract shall be filed in Los Angeles County, California.

**33. SECTION HEADINGS**

Section headings appearing in this Contract are for convenience only and shall not be construed as interpretations of text.

**34. SURVIVAL**

Notwithstanding completion or termination of this Contract, the Parties shall continue to be bound by the provisions of this Contract which by their nature survive such completion or termination.

**35. ATTORNEYS' FEES**

Except as otherwise provided herein, in the event of any legal action or other proceeding between the Parties arising out of this Contract or the transactions contemplated herein, each Party in such legal action or proceeding shall bear its own costs and expenses incurred therein, including reasonable attorneys' fees.

**36. PRIOR WORK.**

In the event that Implementer performs any Work authorized in writing by SCE but prior to the execution of this Contract, then such prior Work shall be considered performed subject to the provisions of this Contract.

**37. ENTIRE AGREEMENT**

This Contract (including all of the Exhibits and attachments hereto which are incorporated into this Contract by reference) contains the entire agreement and understanding between the Parties with respect to the Program and merges and supersedes all prior agreements, representations and discussions pertaining to the subject matter of this Contract.

**38. COUNTERPARTS.**

This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall be deemed to be one and the same instrument.

[SIGNATURE PAGE FOLLOWS]:

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed by their duly authorized representatives.

**IMPLEMENTER:**

**SOUTH BAY CITIES COUNCIL OF GOVERNMENTS**

\_\_\_\_\_  
By: Daniel Medina  
Title: Chair

**SCE:**

**SOUTHERN CALIFORNIA EDISON**

\_\_\_\_\_  
By: Erwin Furukawa  
Title: Senior Vice President,  
Customer Service

**EXHIBIT A**

**STATEMENT OF WORK (with Appendices A-C)**

**Exhibit A**  
**WATER LEAK DETECTION**  
**SCOPE OF WORK**

**Program Name:** Water Leak Detection Program (WLDP)  
**Implementer:** South Bay Cities Council of Governments (SBCCOG)  
**Consultant to Implementer:** Willdan Energy Solutions (Willdan Team)

The Willdan Team will provide SBCCOG with consultant services related to the implementing the Water Leak Detection Program. The scope of work includes support on the following WDLDP tasks:

- Task 1: Kick-off Meeting, Follow-Up Meetings, and Preliminary Project Planning
- Task 2: Project Baseline Data
- Task 3: Utilize an Economically Optimized Water Loss Intervention Strategy in the Short and Long-term
- Task 4: Implementation of Water Leak Detection Program
- Task 5: Implementation of Water System Pressure Management Program
- Task 6: Develop Program Design, Quantify Energy Savings and Evaluate Cost Effectiveness
- Task 7: Create a Strategic Plan for Commercialization of the Water Loss Control Program in SCE’s Territory
- Task 8: Marketing and Outreach

**Task 1: Kick-off Meeting, Follow-Up Meetings, and Preliminary Project Planning**

The Willdan Team will attend the Program kick-off meeting with SBCCOG and SCE to discuss Program logistics, coordination, evaluation, invoicing requirements, scope of work, and any remaining contract issues at a time and place to be determined by SCE after the issuance of the notice to proceed (NTP). The tasks related to the kick-off meeting included the following:

- Clarification of the project and Program objectives;
- Establishing points of contact;
- Establishing communication protocols with the Consultant;
- Discussing research goals and methodologies;
- Discussing data requirements;
- Making any necessary refinements in the schedule and Work scope; and
- Scheduling of a follow-up meeting with final date and time approval by SCE to discuss any necessary updates or revisions to the scope of work.

Subsequent follow-up meetings will be established with a minimum regularity of once every two weeks unless SCE agrees to a different schedule.

Task 1 Deliverables: Deliverables	Due Dates
1. Attend a Program Kick-off meeting.	SCE to schedule within 10 Business Days of NTP.

## Task 2: Project Baseline Data

The Willdan Team will work with SBCCOG and SCE’s Consultant to finalize the data requirements, sources and measurement points in order to establish Project Baseline Data and demonstrable impact (e.g., operational and maintenance documentation and cost assumptions). Elements of the Project Baseline Data will focus on the most recent data (fiscal year or calendar year). The Willdan Team will work with the SBCCOG to make a reasonable effort to gather the most recent three (3) to five (5) years of historic data, and this will be reviewed and considered in the case that the quality of the most recent data is unsatisfactory. The data to be collected includes but is not limited to:

- Detailed water system schematic diagram, with elevations;
- Detailed monthly water source information (e.g., surface water, ground water, desalted water, aqueduct, and imports from other water utilities or agencies);
- Detailed water and energy costs for all sources;
- Monthly energy consumption and demand information in kWh and kilowatts (kW);
- Monthly water production and consumption data;
- Metering policies and data including counts by type, size, etc.;
- Water loss volumes (per month if possible, but annually at a minimum);
- Data from previous water loss efforts; and
- Break repair data, maintenance and repair practices.

The Willdan Team will coordinate with SBCCOG and SCE’s Consultant to arrange an initial meeting to discuss the Project, and, to the extent possible, the parties should invite all key stakeholders from SCE and all involved water agencies to such meeting.

The Willdan Team shall establish the American Water Works Association (AWWA) water balance for an audit period approved by SCE using the Water Systems Optimization (WSO) developed “Audit Solve” software and compare the full set of performance indicators against a comprehensive data set of North American water agencies. This shall include a comprehensive analysis of all system input and export volumes including source and export meter evaluation and testing where feasible as well as a component breakdown of consumption volumes and both real and apparent losses. Real loss estimates shall include a “Breaks and Background Estimates” (BABE) model (real loss component analysis), separating the leak and break volumes into reported, unreported and background categories.

The Willdan Team will provide details of mandated and/or voluntary distribution improvement and/or water-loss mitigation plans. These plans are required before any of the water-loss reduction Measures are implemented in order to accurately quantify the water-loss and energy savings achieved through the Program. The Willdan Team will also refer to post project evaluations.

### Task 2 Deliverables

Task 2 Deliverables: Deliverables	Due Dates
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1. Project kick-off meeting	NTP plus 15 Business Days
2. Finalize data requirements	NTP plus 20 Business Days.
3. Provide raw data as described above	NTP plus 50 Business Days.
4. Validation of System Input Volumes	NTP plus 70 Business Days.
5. Billed, metered, authorized consumption and apparent loss analysis	NTP plus 100 Business Days.
6. Provide water balance and component analysis as described above	NTP plus 115 Business Days.

**Task 3: Utilize an Economically Optimized Water Loss Intervention Strategy in the Short and Long-term**

The Willdan Team will ensure each SBCCOG participating city:

- Adheres to AWWA best practice standards to create an economically optimized intervention strategy for leak detection and pressure management;
- Work with the SCE Consultant in providing an estimate of direct energy savings from such strategy; and
- Work with the SCE Consultant to estimate indirect “embedded” energy savings from such strategy, including all energy upstream of the water agency to the source.

Task 3 Deliverables:

Task 3 Deliverables: Deliverables	Due Dates
1. Provide economically optimized intervention strategy including an economic level of leakage (ELL) report and estimated direct and embedded energy savings	NTP plus 120 Business Days.

**Task 4: Implementation of Water Leak Detection Program**

The Willdan Team will support each SBCCOG participating city with the following:

- Provide a plan to implement a comprehensive “leak survey” in accordance with the findings in Task 2. This plan shall include, but not be limited to the following elements:
  - Leak detection kick-off meeting;
  - Review of water system maps leading to the creation of a routing plan;
  - Comprehensive leak survey;
  - Detailed leak reports;
  - Anything else needed to adhere to AWWA best practice standards.

- Implement plan to repair the identified leaks with full disclosure of all results and findings.

Task 4 Deliverables: Deliverables	Due Dates
1. Submit detailed leak detection plan	NTP plus 120 Business Days.
2. Submit comprehensive leak survey report with all results and findings	NTP plus 160 Business

### **Task 5: Implementation of Water System Pressure Management Program**

Where feasible, a reduction in system pressure will reduce system leakage losses from existing leaks and will also reduce the frequency of new leaks occurring.

The Willdan Team will support each SBCCOG participating city with the following:

- Advise SCE on, and develop a plan regarding, methods to reduce water system line pressures while maintaining effective service pressures;
- Provide SCE full disclosure of all results and findings that are garnered from the implementation of the plan to apply water pressure management practices. Implementation of the practices are not part of this Program budget; and
- Provide any and all data requested by Consultant related to implementation of its plan to apply water pressure management practices.

Task 5 Deliverables: Deliverables	Due Dates
1. Provide pressure management plan	NTP plus 100 Business Days.
2. Report on preliminary results from pressure management program	NTP plus 180 Business Days.
3. Submit final report of results from pressure management program	To be coordinated with Consultant.
4. Respond to any and all data requests from Consultant	As needed

### **Task 6: Develop Program Design, Quantify Energy Savings and Evaluate Cost Effectiveness**

The Willdan Team shall collaborate with SCE's Consultant to provide any and all necessary data to support Program design, energy savings quantification and cost-effectiveness evaluations.

Task 6 Deliverables: Deliverables	Due Dates
1. Ongoing check-in meetings with Implementation Teams	Scheduled twice monthly with each team
2. Feedback on technical memorandum describing proposed embedded energy savings methodology	Within 5 Business Days of receiving draft
3. Feedback on draft energy savings report per SCE's direction	Within 5 Business Days of receiving draft

**Task 7: Create a Strategic Plan for Commercialization of the Water Loss Control Program in SCE's Territory**

The Willdan Team shall collaborate with SCE's Consultant to provide any and all necessary data to support the creation of a strategic plan for commercialization of the Water Loss Control Program.

Task 7 Deliverables: Deliverables	Due Dates
1. Feedback on outline of report elements and commercialization strategies	Within 5 Business Days of receiving draft report
2. Feedback on draft program design whitepaper	Within 5 Business Days of receiving draft whitepaper
3. Feedback on draft strategic plan	Within 5 Business Days of receiving draft strategic plan

**Task 8: Marketing and Outreach**

The Willdan Team shall collaborate with SCE's Consultant to provide any and all necessary data to support the marketing and outreach for this Program.

Task 8 Deliverables: Deliverables	Due Dates
1. Feedback on Consultant presentation on WLDP and expected Program design strategies	Within 5 Business Days of receiving draft

**Budget Summary**

The Willdan Team will not exceed the total amount budgeted (subcontractor portion) by SCE for this program of **\$371,371**. The hourly rate schedule provided in Table 1 is based on the successful Water Leak Detection proposal approved by SCE.

**TABLE 1: FULLY BURDENED HOURLY RATES BY TITLE**

<b>Staffing Direct Labor (Willdan Team)</b>	<b>Team Member</b>	<b>Company</b>	<b>Responsibility</b>	<b>Hourly Rate</b>
Project Director	Reinhard Sturm	WSO	The Project Director will be involved in all tasks of this project. He will be responsible to lead the tasks 1, 2, 3, 4, and 5. In his position he will be responsible for the technical integrity of the project, application of innovative strategies and techniques, quality control and the technical oversight.	\$200
Technical Project Advisor	Steven Preston	WSO	The Technical Project Advisor will provide technical input for tasks 2, 3, 4 and 5.	\$220
Project Manager	Katherine Gasner	WSO	The Project Manager will assist the Technical Project Advisor and Project Director with project management tasks, data collection and standardization, and data analysis.	\$140
Project Engineer	Timothy Wilson	WSO	The Project Engineer will assist with data collection, field tests and assessments, DMA measurements, and data analysis.	\$120
Leak Detection Specialist	Cliff McAfee	WSO	The Leak Detection Specialist will carry out the detailed leak detection efforts in the participating utilities	\$85
Project Manager	James Ward	Willdan	The Project Manager will manage the day to day activities for Willdan, providing energy analysis and coordination with team members and ensure energy related collaboration with Consultant B staff.	\$120
Principal-in-Charge	Katie Wilson	Willdan	The Principal-in-Charge will provide management oversight of the project ensuring quality and establishing quality control procedures.	\$205
Project Engineer	Jonathan Pera	Willdan	The Project Engineer will lead engineering efforts in energy analysis and quantification of direct and embedded energy savings.	\$180
Project Engineer	Chikezie Nzewi	Willdan	The Project Engineer will provide engineering oversight, ensuring the technical integrity of the project.	\$185