

MASTER SERVICE AGREEMENT

This Master Service Agreement ("Agreement") is made and entered into as of the last date signed below ("Effective Date") by and between County of Sonoma ("Customer" or "County") and Pacific Gas and Electric Company, a California corporation ("PG&E"). Customer and PG&E shall each individually be referred to as "Party" and together constitute the "Parties."

I. RECITALS

- A. PG&E is a public utility regulated by the California Public Utilities Commission. PG&E provides power to customers in its service territory.
- B. Customer receives power from PG&E at Customer facilities within PG&E's service area.
- C. PG&E also provides turnkey energy related services to customers ("Turnkey Services"). Turnkey Services typically include energy related assessments of a customer facility and/or installation of energy conservation measures ("ECMs").
- D. PG&E is interested in providing Turnkey Services to Customer, and Customer is interested in receiving Turnkey Services from PG&E.
- E. This Agreement sets forth the terms and conditions under which PG&E may provide Turnkey Services to Customer.
- F. Now, therefore, in consideration of the promises and covenants set out herein, Customer and PG&E agree as follows:

II. Agreement

A. Relationship of the Parties

1. **No agency or partnership:** Nothing in this Agreement creates an agency, partnership, or other form of joint enterprise between the Parties, and neither Party may create any obligations or responsibilities on behalf of the other Party.

Notwithstanding any other provision herein, this Agreement is intended to be and serve as an "energy service contract" under applicable law (including Government Code section 4217.10 et seq.), pursuant to which PG&E (including through its contractors) will provide certain electrical or thermal energy or conservation services to County.

2. **Subcontractors:** PG&E may perform any or all Turnkey Services through subcontractors.

3. **Project Management:** Customer and PG&E shall each designate an authorized employee (“Authorized Person”) who shall be the primary point of contact for inquiries and requests relating to this Agreement.
4. PG&E shall be solely responsible for project delivery as to any authorized PIWO. Except to the extent expressly stated herein or specified in any PIWO (as defined in Section B.3 below), County shall not be responsible for any project delivery. Except for such obligations expressly set forth in this Agreement or any IGA WO or PIWO, no review or comment by the County (or right thereto) shall in any way relieve PG&E of its obligation to deliver any County-approved project or PIWO.
5. Notwithstanding PG&E’s obligation to obtain energy conservation services and measures, which may include conservation measure project design, construction, and delivery, and further notwithstanding any other reference to the Public Contract Code in this Agreement or any WO or ESCo materials, PG&E acknowledges that it is not a “contractor” under any provision of the Public Contract Code (including under Public Contract Code section 20100 et seq.) and accordingly is not entitled to and otherwise waives any and all rights and other provisions applicable to public works contractors arising under the Public Contract Code or other law.
6. This Agreement does not confer any exclusive rights and County makes no guarantee of issuance of any IGA WO or PIWO.

B. Turnkey Services

1. **Preliminary Assessment (“PA”):** PG&E may conduct, at no cost to Customer, a PA consisting of a brief on-site investigation and high-level evaluation of a Customer facility to identify possible ECMs, including but not limited to: energy efficiency measures, water efficiency measures, energy generation measures, electric vehicle charging stations, demand control measures, energy storage measures and services to operate, maintain, repair, inspect and construct customer-owned or third-party electric and gas systems. The purpose of the PA is to determine whether energy-related and/or water-related opportunities exist, and whether a more detailed assessment and/or implementation is desired by the Customer.
2. **Investment Grade Assessment (“IGA”):** After reviewing the PA, the Parties may enter into a Work Order (“WO”) setting forth a Scope of Work for an IGA. An IGA is a detailed assessment that describes the technical and financial feasibility of implementing one or more potential ECMs. If applicable, it provides the estimated energy savings and/or generation for each identified ECM. It may also support procurement of project financing.

IGAs shall be performed by a third party contractor (“ESCo”) qualified to perform energy conservation services and deliver related energy conservation measures as part of those services. All ESCOs shall be retained via competitive procurement process undertaken by PG&E. Such procurements shall contain and notice the terms and conditions included in Exhibit A, “PG&E: ESCo RFP - Required Provisions.”

The IGA WO will specify the terms for completing the IGA, including its price, scope, and schedule. Unless otherwise agreed in the IGA WO, Customer will provide PG&E, at no cost to PG&E, legible copies of all relevant facility plans and other facility-related drawings and information in order that an accurate IGA can be prepared. In the event County decides not to select PG&E for implementation of any ECMs, County shall be entitled to freely use the IGA and any related materials for County's sole purposes, in County's sole discretion, provided that PG&E and its subcontractors will have no liability associated with such use of the IGA by County. Subject to the foregoing limitation of liability, the IGA shall be County's property, without restriction or limitation, and PG&E assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, or right to ideas, in and to the IGA.

Any IGA WO involving the County Campus or the Los Guilicos Campus must include provision for a potential integrated microgrid power system. Both have an existing 12k loop at that location which will require additional safety precautions for any work in its vicinity.

If Customer decides to not select PG&E to implement any ECMs, Customer will pay PG&E for the IGA according to the terms of the applicable IGA WO. In no event shall payment for non-implemented IGAs total more than \$300,000. If Customer decides to select PG&E to implement one or more ECMs identified in the IGA, Customer and PG&E may agree to include the cost of the IGA in the amount to be paid to PG&E under the resulting PIWO.

- 3. Implementation and Agreements with ESCos:** Upon completion of the IGA and if requested by Customer, PG&E will provide an ECM implementation proposal, which includes additional design, engineering and construction services. Proposals shall include a schedule of values for the proposed scope as well as a cost/benefit analysis.

If Customer decides to select PG&E to implement any or all of the identified ECMs (a "Project"), the Parties will negotiate a project implementation WO ("PIWO") specifying, among other things, the ECMs to be installed as part of the Project, price, schedule, and source(s) of funding. A PIWO shall be implemented by PG&E through separate, written agreement between PG&E and a County-approved ESCo. In addition to such other terms as decided by PG&E to ensure project construction and delivery otherwise in conformance with this agreement and the specific PIWO, such written agreement shall contain the terms and conditions included in Exhibit A, "PG&E: ESCo RFP - Required Provisions" and Exhibit A, "Required PG&E-ESCo Terms." To the extent any such provisions call for compliance by PG&E, PG&E will so comply. Final terms and conditions of the PIWO shall be in discretion of Customer and shall comply with all applicable laws. Implementation proposals and PIWO's to perform any ECM work shall reflect and incorporate due diligence as to existing site and facility conditions, including as to any Hazardous Materials.

PG&E shall obtain and maintain performance and payment bonds for each PIWO, containing terms as contained in as Exhibits B and C hereto, as follows:

Construction Performance Bond issued by a California-admitted surety, in amount equal to the total ECM construction costs under the PIWO.

Construction Labor and Material Payment Bond issued by a California-admitted surety, in amount equal to the total ECM construction costs under the PIWO. The bond shall include a dual/multiple obligee rider in favor of County.

PG&E acknowledges and accepts that any selection of PG&E (or its ESCo or contractors) to perform any PIWO may require approval by Customer's Board of Supervisors and would be subject to timeframes and requirements for that process.

Notwithstanding the respective relationship and rights of the Parties, including any financing or other payment arrangement between County and PG&E, PG&E shall comply, and ensure compliance by its ESCos, with all applicable retention, prompt payment, and contractor claims requirements relating to public works and improvements.

In no event shall any retention proceeds withheld from any payment by PG&E to any ESCo or lower-tier contractor or subcontractor, or by any ESCo as to any lower-tier contractor or subcontractor, exceed five percent (5%) of payment due. In no event shall the total retention proceeds withheld exceed five percent (5%) of the ECM/Project implementation agreement price due the ESCo (i.e., exclusive of any PG&E administrative or project management costs).

Alternatively, County reserves the right, in its sole absolute discretion, to not select PG&E or any related ESCo to implement any of the ECMs and reserves the right to competitively bid or independently procure any ECM work on its own. Notwithstanding anything stated herein, County does not guarantee any WO or implementation of any ECM.

- 4. Cooperation, Access, and Audit Rights:** Customer acknowledges that PG&E's performance of Turnkey Services depends upon Customer's cooperation. Thus, Customer agrees to use its best efforts to cooperate with PG&E in PG&E's performance of Turnkey Services. Customer will provide access to the subject Customer facilities for PG&E and its subcontractors to perform any function related to this Agreement during regular business hours, or during other reasonable hours as requested by PG&E and acceptable to Customer. PG&E will comply with all Customer access procedures. Customer and PG&E will coordinate PG&E's activities with Customer's activities and any construction or equipment installation will occur according to a schedule approved by Customer in advance. Customer will promptly provide notice to PG&E of any conditions or circumstances of which it is or becomes aware that constitute Unanticipated Conditions, Hazardous Waste or Disputed Work (as defined in Section 5 below).

To the extent PG&E's ability to perform depends upon Customer's performance (e.g., Customer review or approval of drawings or other submittals or Customer providing data, drawings, documents, or other information) and Customer's performance is not completed within the agreed time period,

PG&E's period for performance will be extended accordingly and any costs incurred by PG&E because Customer's performance was unreasonable and not timely completed shall be reimbursed to PG&E.

To the extent of Customer's ownership and control over the facilities and conditions thereon, Customer shall be responsible for the safety of PG&E personnel and subcontractors performing Turnkey Services at those facilities and shall promptly take such reasonable actions that may be requested by PG&E to help ensure a safe working environment. Customer will provide PG&E with due diligence documentation regarding Customer facilities. With respect to the implementation of a PIWO, PG&E will be responsible for submitting to Customer safety plans for PG&E and all its contractors describing means and methods of protecting all employees, workers, and agents.

Audit Rights: County shall have the right to audit and copy PG&E's books and records of any type, nature or description relating to any PIWO and/or matters connected with performance of the contract (including but not limited to financial records reflecting in any way costs claimed), and to inspect any project site at any time. County and the California State Auditor shall have the right to inspect all such information and documents, at any time during the project and for a period of five years following project final payment. All contracts and subcontracts with PG&E's contractors (including any ESCo) and subcontractors shall contain provisions ensuring these audit and access rights. Such rights of inspection shall not relieve PG&E of its duties and obligations under the implementation agreement.

Customer will use best efforts to assist PG&E in obtaining all necessary permits and approvals for the performance of the Turnkey Services. Except as otherwise provided in a PIWO, PG&E shall be solely responsible for obtaining and maintaining all required permits for any WO or other activities, subject to payment of related costs by County in accordance with agreed WO.

5. Work Order Modifications; Change Orders and Disputed Work:

5.1 Potential Modifications and Change Orders: In order to ensure County knowledge of all improvements, construction, and other Material aspects of any project or PIWO, PG&E shall inform County of all requests for information, alternates, substitutions, modifications, change orders, and construction change directives (including by or between PG&E and ESCo, and any other contractors or subcontractors) (*individually and collectively*, a "Change Order") that Materially affect the approved scope of work, plans and specifications, and/or final construction plans, for County's review. County reserves the right to request, and PG&E shall provide, any reasonable information and materials needed for assessing and understanding such Change Order or proposed Change Order, including supporting documentation.

"Material" shall mean: a) changing the physical characteristics of the project location (including improvements thereto) as it relates to facility size, shape, major structural characteristics, and mechanical/electrical/plumbing systems; b) relate to concealed or unknown conditions; c) changes that will or are likely to contribute to change to the final total project costs; and/or d) changes that impact maintainability or durability of improvements.

5.2 County-requested Change Orders. In the event that the County requests a Material Change Order, PG&E shall provide a cost estimate for the request. Should the County tentatively accept the cost estimate, then the Parties shall meet and confer as to whether and how to incorporate the Change Order into the subject PIWO, including to increase the final total project costs if necessary and to resolve any potential delay issues associated with said Change Orders. Any such Change Order shall be stated in writing and signed by both Parties.

5.3 PG&E requested Change Orders. Subject to the provisions below, if PG&E proposes any Material Change Order, then the Parties will negotiate regarding a Change Order to be agreeable to both Parties as reasonable and proper allowance, and which shall be in writing that is signed by both Parties.

5.4 Unanticipated Conditions.

If at the project site any material unanticipated or differing site condition, other than the presence of Hazardous Materials which is addressed in Section 5.5 below (collectively, "Unanticipated Condition") exists or arises which could not reasonably have been anticipated or discovered by PG&E and that would involve the incurrence by PG&E of any expenses to correct such conditions, PG&E shall notify customer in writing and may temporarily cease work and either request that Customer mitigate such circumstances or submit a request for a Change Order to cover any corrective work and payment of related expenses. Except as stated below, an Unanticipated Condition shall be cause for a corresponding and commensurate Change Order.

5.5 Hazardous Materials

5.5.1 DISCLOSURE; CUSTOMER RESPONSIBILITY: PG&E UNDERSTANDS THAT MANY CUSTOMER FACILITIES CONTAIN HAZARDOUS MATERIALS (DEFINED BELOW) AND CUSTOMER WILL INFORM PG&E OF ALL KNOWN HAZARDOUS CONDITIONS CONCERNS AND CONDITIONS AS PART OF DEVELOPING ANY IGA AND/OR WO. OTHER THAN TO THE EXTENT OF DISCLOSED CONDITIONS OR WORK SCOPE SPECIFICALLY INCLUDED IN ANY WO, CUSTOMER UNDERSTANDS AND AGREES THAT PG&E HAS NO RESPONSIBILITY TO INVESTIGATE OR INSPECT A CUSTOMER FACILITY WHERE TURNKEY SERVICES ARE BEING PROVIDED FOR THE PRESENCE OF ANY HAZARDOUS, TOXIC OR DANGEROUS WASTES, SUBSTANCES, CHEMICALS, CONSTITUENTS, CONTAMINANTS, POLLUTANTS, AND MATERIALS SUBJECT TO REGULATION UNDER APPLICABLE LAW ("HAZARDOUS MATERIALS"), OR TO IDENTIFY, REMOVE, DISPOSE OF, ABATE OR REMEDIATE HAZARDOUS MATERIALS. EXCEPT TO THE EXTENT INCLUDED IN ANY WO OR TO THE EXTENT CAUSED BY PG&E, CUSTOMER SHALL HAVE SOLE RESPONSIBILITY, SUBJECT TO THE CHANGE ORDER PROVISIONS STATED HEREIN, FOR THE IDENTIFICATION, REMOVAL, DISPOSAL, ABATEMENT OR REMEDIATION OF HAZARDOUS MATERIALS, AND FOR THE CLEAN-UP AND DISPOSAL OF ANY MATERIALS, EQUIPMENT OR SUBSTANCES CONTAINING, EXPOSED TO OR CONTAMINATED BY HAZARDOUS MATERIALS, ALL IN ACCORDANCE WITH APPLICABLE LAWS.

5.5.2 DISCOVERY OF HAZARDOUS MATERIALS: IF PG&E (OR ITS ESCO OR OTHER CONTRACTORS) DISCOVERS ANY MATERIAL THAT PG&E BELIEVES MAY BE HAZARDOUS WASTE, AS DEFINED IN SECTION 25117 OF THE HEALTH AND SAFETY CODE, THEN PG&E SHALL IMMEDIATELY CEASE WORK, REMOVE ALL PG&E PERSONNEL OR CONTRACTORS FROM THE SITE, PROMPTLY GIVE CUSTOMER WRITTEN NOTICE OF THE CONDITION BEFORE THE CONDITION IS DISTURBED, AND SHALL COMPLY WITH ALL APPROPRIATE OSHA LAWS, REGULATIONS, AND CONSTRUCTION STANDARDS AND ALL GOVERNING RULES FROM LOCAL AGENCIES HAVING JURISDICTION.

5.5.3 CUSTOMER SHALL PROMPTLY INVESTIGATE THE CONDITIONS, AND IF IT FINDS THAT (I) THE CONDITIONS DO INVOLVE HAZARDOUS WASTE OUTSIDE THE SCOPE OF THE WORK; AND (II) CAUSE A DECREASE OR INCREASE IN PG&E'S COST OF, OR THE TIME REQUIRED FOR, PERFORMANCE OF ANY PART OF THE WORK, THEN CUSTOMER SHALL INITIATE A CHANGE ORDER UNDER THE PROCEDURES DESCRIBED HEREIN.

5.5.4 IF CUSTOMER DETERMINES THAT CONDITIONS AT THE SITE DO NOT INVOLVE HAZARDOUS WASTE OUTSIDE THE SCOPE OF THE WORK OR DO NOT CAUSE A DECREASE OR INCREASE IN PG&E'S COST OF, OR THE TIME REQUIRED FOR, PERFORMANCE OF ANY PART OF THE WORK, OR FOR ANY OTHER REASON THAT THAT NO CHANGE IN TERMS OF THE WO OR PIWO IS JUSTIFIED, CUSTOMER WILL SO NOTIFY PG&E IN WRITING, STATING REASONS, AND PG&E MAY THEREAFTER FOLLOW THE PROCEDURES DESCRIBED HEREIN IN RESPECT OF SUCH CUSTOMER DETERMINATION.

5.5.5 EXCEPT TO THE EXTENT OF ANY HAZARDOUS CONDITIONS CREATED BY PG&E (OR ITS ESCO OR OTHER CONTRACTORS) OR AS TO ANY DELAY DUE TO CONDITIONS KNOWN OR THAT SHOULD HAVE BEEN KNOWN BY PG&E (OR ITS ESCO OR OTHER CONTRACTORS), Customer will be responsible for abatement of such Hazardous Materials at its expense and Customer will bear the sole risk and responsibility (SUBJECT TO THE CHANGE ORDER PROVISIONS STATED HEREIN).

5.6 Disputed Work: Requirements and Procedures

5.6.1 Notice requirements: Should any Unanticipated Condition, Hazardous Materials or other circumstances including those described in Sections 5.2 and 5.3 relating to a requested Change Order, in the opinion of PG&E, exceed the requirements of or not comply with the subject PIWO in any way, or otherwise result in PG&E seeking additional compensation in time or money or damages for any reason (collectively "Disputed Work"), then PG&E shall immediately, and not more than ten (10) days, so notify County in writing after PG&E's first knowledge of the Disputed Work. PG&E shall then forthwith as appropriate provide a preliminary cost proposal for the Disputed Work to County stating clearly and in detail its objection and reasons for contending the Disputed Work is outside or in breach of the requirements of the PIWO.

Customer will review PG&E's timely notice and preliminary cost proposal for Disputed Work and provide a decision. If, after receiving the decision, PG&E disagrees with it or still considers the Work required of it to be outside of the requirements of the PIWO, then

PG&E shall so notify Customer, in writing, within ten (10) days after receiving the decision, by submitting a notice of potential claim, stating that a formal claim will be issued. (If Customer should fail to provide a decision on a notice and preliminary cost proposal within thirty (30) days, then PG&E shall submit a notice of potential claim within ten days following the thirtieth (30th) day, i.e., or by the 40th day following the notice and preliminary cost proposal.)

5.6.2 Customer Options: If an agreement regarding Disputed Work cannot be reached and Customer provides a decision to that effect to PG&E, and notwithstanding PG&E's right herein to file any claim as to any Disputed Work or otherwise, then Customer may, in its reasonable discretion, do any of the following (or in combination):

1. Order the disputed portion of work deleted from the PIWO;
2. Procure performance by others; or
3. Terminate PG&E's right to proceed in whole or in part, for convenience or for cause as the facts may warrant, in all cases consistent with Section III.A.

Any such election by County shall also result in abatement of the subject PIWO cost to reflect the reduced or deleted scope.

5.6.3 Duty to Mitigate Notwithstanding Dispute. In the event that a dispute arises between Customer and PG&E over Disputed Work, whether conditions do materially so differ, or involve undisclosed hazardous waste, or cause a decrease or increase in PG&E's cost of, or the time required for, performance of any part of the work, PG&E shall use its best efforts to mitigate, including by re-phasing the order of work and proceeding with all other PIWO work on condition said work is able to be made safe and performed in compliance with all applicable laws and regulations.

5.6.4 Disputed Work Resolution Process If any PG&E claims (including those of any subcontractors) submitted as required herein in respect of Disputed Work total less than \$375,000, then claims resolution shall first proceed in the manner prescribed by California Public Contract Code section 20104.2. If any PG&E claims (including those of any subcontractors) submitted as required herein in respect of Disputed Work exceed \$375,000, then, as a condition precedent to litigation thereon, such claims must first be submitted to non-binding mediation as required by law. PG&E shall provide in its contract with ESCo that all ESCo, contractor, subcontractor, or supplier claims of any type shall be brought only through PG&E, as provided herein.

If PG&E fails to comply with the requirements herein as to any claim in respect of Disputed Work, then PG&E shall waive its rights to such claim. All such claim(s) or issue(s) not raised in a timely notice, timely notice of potential claim and then timely claim submitted as required herein, may not be asserted in any subsequent Government Code section 910 claim, litigation or legal action.

5.7 Foreseeable, Discoverable Conditions. With regard to any alleged Unanticipated Condition, Disputed Work, and/or Safety Condition, and subject in all cases to Customer's obligations under Section 4 above, PG&E shall not be entitled to any Change Order, adjustment in the PIWO, or claim if:

5.7.1 PG&E knew of the existence of such condition(s) at the time PG&E submitted its WO proposal;

5.7.2 PG&E should have known of the existence of such conditions at the time PG&E submitted its WO proposal, or should have learned of such conditions and mitigated their impact, as a result of standard due diligence and industry practice; or

5.7.3 PG&E was required to give written notice and failed to do so within the time required.

6. **PG&E's Utility Obligations:** Customer acknowledges that as a public utility, PG&E is obligated to maintain, repair, and service its own facilities, including those under the operation and control of the California Independent System Operator, and that this obligation takes precedence over any obligations undertaken in this Agreement. If PG&E decides, in its sole discretion, to divert personnel or resources committed to the performance of Turnkey Services under this Agreement to meet a utility obligation, PG&E's actions will not constitute a default, and PG&E will have no liability to Customer as a result. In the event of such diversion and/or delay, as to all Customer sites where construction or invasive advance work is active, PG&E will ensure that said sites are secure and mitigated during all periods of delay. PG&E will have the option to resume the Turnkey Services as soon as possible if it determines, in its sole discretion, that such resumption will not interfere with its fulfilling its utility obligations. PG&E will use best efforts to recommence WO scope as soon as possible. The Customer will be entitled to take self-help measures including performing or procuring its own separate contractors to complete the work. All WO pricing shall be abated to the extent PG&E or its contractors do not perform any portion of the work affected by such diversion delay, and Customer shall not be liable or charged for any project increases, expenses, or other claims related or attributable to such diversion/delay or related re-mobilization measures.

7. **Unforeseen Safety Condition:** If during performance of the Turnkey Services a condition is discovered at the work site that, in the sole judgment of PG&E (a) represents an extreme safety hazard to its workers or other personnel, or (b) may cause operational failure of equipment at the site or damage to other equipment being served by the site, PG&E will immediately notify Customer of such condition and the Turnkey Services necessary to remedy the condition. At PG&E's sole discretion, it may suspend the Turnkey Services at that work site until such condition has been corrected to PG&E's reasonable satisfaction. If Customer fails or refuses to remedy the condition, PG&E shall be entitled to continue or commence suspension of the Turnkey Services at that site. The subject work and conditions shall be deemed Disputed Work and shall be subject to the Change Order/claim process, as set forth in Section B.5. Except for conditions created by PG&E or its agents, PG&E will not be liable for any Customer costs incurred as a result of such temporary suspension of Turnkey Services.

- 8. Statutory Compliance/Living Wage Ordinance:** PG&E agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. PG&E shall not do nor allow to be done in or about any County property or project site anything which will violate or conflict with any statute, ordinance, rule, order, or regulation or other law which is now or may hereafter be enacted, adopted, or promulgated by any federal, state, county, or municipal authority. Without limiting the generality of the foregoing, PG&E expressly acknowledges and agrees that this Agreement may be subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

C. Compensation

- 1. Payment terms; Financing:** Customer will pay PG&E for the Turnkey Services performed according to the payment terms contained in the relevant WO. All late payments shall be subject to an interest charge, which is the greater of: (i) one and one-half percent (1.5%) per month, or (ii) the maximum legal rate. PG&E shall use best efforts and maximize options for project financing, rebates, subsidy programs, “on-bill financing” and other available project payment and financing opportunities, which shall be included in all ECM implementation proposals and memorialized in any resulting PIWO. Depending on the project and available financing and other project funding considerations, County, in its sole discretion, may elect for payment on a full, one-time basis or any long-term financing option available. In the event County agrees to a non-financed payment basis, County reserves the right to impose retentions and withhold incremental and final payments in accordance with applicable law.
- 2. Expense:** Subject to any retention as required and permitted by applicable law, Customer agrees to reimburse PG&E for all expenses incurred in connection with PG&E’s performance of the Turnkey Services, consistent with the provisions of the applicable WO. Any PG&E costs or expenses (i.e., those other than direct pass-through costs of ESCos or any other contractors) shall not exceed ten percent (10%) of the subject WO unless otherwise agreed by the Parties in a specific PIWO.
- 3. Taxes:** Customer shall be solely responsible for the payment of any sales, use, transfer and other taxes and duties which are imposed on PG&E directly related to the Turnkey Services performed under this Agreement (other than taxes based on PG&E’s net income).

D. Warranties

- 1. Substantial Completion:** “Substantial Completion” means an ECM is generally capable of being used for or achieving the purpose intended by the PIWO relating to that ECM. Substantial Completion does

not occur until the ECM is commissioned and accepted by the Customer and the Customer executes the Substantial Completion form attached to the PIWO.

2. **Services Warranty:** PG&E warrants it will perform the Turnkey Services specified in a WO under this Agreement in a commercially reasonable manner consistent with applicable industry standards. The warranty period for Turnkey Services relating to an ECM is one year from the date of Substantial Completion of that ECM. If Customer notifies PG&E within that one-year warranty period of any non-conformity or defect in such Turnkey Services (including as to any design and/or construction), then PG&E will either re-perform, or refund the compensation received for such defective Turnkey Services, in full satisfaction of its liability for any breach of its Services Warranty. This Services Warranty extends to Customer only and cannot be assigned by Customer.
3. **Third Party Warranties:** PG&E will use commercially reasonable efforts to obtain from the manufacturers of equipment used in the Turnkey Services or ECMs installed as part of a Project standard guarantees and warranties and will assign any such third-party warranties directly to Customer. Any warranty for such equipment is limited to such third-party warranties, and PG&E will not be liable for any breach of a third-party warranty. If Customer notifies PG&E of a defect in equipment installed as part of a Project within the term of the applicable third-party warranty, PG&E will consult with Customer regarding the appropriate remedy under the third-party warranty.
4. **No Guarantee of Savings:** PG&E does not warrant or guarantee any level of energy, water savings, cost reductions, or equipment or ECM performance.
5. **Disclaimer:** Except as expressly provided in this Section E, Customer expressly agrees that PG&E makes no other warranties and assumes no other liabilities, whether in contract or in tort, in connection with the assessment, design, engineering, equipment procurement, construction, implementation, operations, maintenance, services, equipment or ECMs hereunder whether express or implied, in law, in equity or in communications between PG&E and Customer. PG&E specifically disclaims any implied warranties of merchantability or fitness for a particular purpose. Customer shall have no remedies against PG&E for any defective services, installed equipment, or operation of an ECM except in accordance with the warranty set forth in this Section E or as the Parties may expressly agree in any WO or amendment to this Agreement.

E. PG&E Insurance

Prior to commencing Turnkey Services under a WO, PG&E will provide Customer with evidence that the following insurance is in full force and effect: (i) Worker's Compensation Insurance as required by applicable workers' compensation laws; and (ii) Commercial general liability of \$5,000,000 per occurrence; and (iii) Automobile liability of \$1,000,000 per person and \$2,500,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage. PG&E shall have the right to self-insure with respect to any of these insurance requirements.

F. Limitation of Liability

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY PERSONNEL, SUBCONTRACTOR OR OTHER PERSON OR ENTITY CLAIMING THROUGH SUCH PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT.

FURTHER, PG&E'S LIABILITY TO CUSTOMER UNDER THIS AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO PG&E UNDER THE WO GIVING RISE TO THE CLAIM.

III. General Provisions

A. Term and Termination

- 1. Term:** The term of this Agreement is five (5) years beginning on the Effective Date. Upon thirty (30) days' written notice prior to the expiration of the Agreement, the parties may renew this Agreement for two (2) additional three (3) year extensions by mutual written agreement. The term of this Agreement provides the time frame within which a WO can be authorized and incorporated under this Agreement. If the term of a WO continues beyond the termination or expiration of this Agreement and that WO has not been terminated, then the terms and conditions of this Agreement shall continue to apply to that WO until completion and acceptance of the Work performed under that WO.
- 2. Termination for Cause:** If either Party materially defaults in the performance of its obligations under this Agreement or under a specific WO and/or Proposal and the default is incapable of being cured, or, being capable of being cured, has not been cured within thirty (30) days after receipt of written notice of such default, this Agreement or that WO and/or Proposal may be terminated by the non-defaulting party for cause upon thirty (30) days written notice. In addition to all remedies available to it at law or in equity, the non-defaulting party will be entitled to recover all costs and expenses reasonably incurred to exercise its remedies, including attorneys' fees.
- 3. Termination for Change in Law:** Either Party may terminate this Agreement, or a specific WO and/or Proposal, upon forty-five (45) days written notice, or sooner as may be required, without liability or penalty if a change in law or regulations or a California Public Utilities Commission ruling or order would prohibit PG&E from providing Turnkey Services under this Agreement or that specific WO and/or Proposal, in which event Customer would pay PG&E for the Turnkey Services provided to Customer as of the effective date of such termination and reimburse PG&E for reasonable demobilization costs incurred as a result of such termination.
- 4. Termination for Convenience:** This Agreement or a specific WO and/or Proposal may be terminated by either Party upon thirty (30) days written notice without liability or penalty whenever that Party determines that such termination is in its best interest. Upon such termination, Customer shall pay

PG&E for those Turnkey Services provided to Customer as of the effective date of such termination and reimburse PG&E for reasonable demobilization costs incurred as a result of such termination.

B. Force Majeure.

If a Party is unable to perform its obligations under this Agreement due to any cause, event or other occurrence materially impacting the Turnkey Services that is not caused by that party or within its control to avoid or remedy ("Force Majeure Event"), this Agreement will at the other party's option: (i) remain in effect but the performing party's obligations will be suspended until the Force Majeure Event has ended; or, (ii) be terminated upon ten (10) days' notice to the non-performing party, in which event neither party will have any further liability to the other, other than Customer's obligation to pay PG&E; (i) for Turnkey Services rendered prior to the Force Majeure Event; and (ii) for reasonable demobilization costs incurred as a result of such termination.

C. Dispute Resolution.

Other than as to any change to a WO or matter involving Disputed Work (which shall be resolved in accordance with the **Change Order** provisions, above), if any other dispute, excluding payment defaults or delinquencies, arises under this Agreement that is not settled promptly in the ordinary course of business, the Parties will first attempt to resolve such dispute by negotiating promptly in face-to-face negotiations between the respective designated senior managers of each Party. If the Parties are unable to resolve the dispute through these negotiations within thirty (30) business days following the start of such negotiations, then the Parties shall escalate the dispute to the business line vice president of PG&E and the appropriate senior manager within Customer's organization. If those individuals or their designees are unable to resolve the dispute within thirty (30) business days, then either Party may file suit in a court of competent jurisdiction. Completion of mediation is a condition precedent to commencement or continued prosecution of litigation. To the extent allowed by applicable law, all negotiations and any mediation conducted pursuant to this Section III.C are confidential and shall be treated as compromise and settlement negotiations, to which applicable laws including Sections 1119 and 1152 of the California Evidence Code shall apply.

D. Notices.

Any notice required or permitted under this Agreement will be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or

delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

PACIFIC GAS AND ELECTRIC COMPANY

Address: 245 Market Street MC N10D
San Francisco, CA 94105

COUNTY OF SONOMA

Address: 2300 County Center Dr., Ste A200
Santa Rosa, CA 95403

By: E-SIGNED by Nick Burke
on 2021-10-20 17:14:19 GMT

(Signature)

Name: Nick Burke

Title: Manager, Energy Consulting Services

Date: October 20, 2021

By: E-SIGNED by Caroline Judy
on 2021-10-20 17:12:10 GMT

(Signature)

Name: Caroline Judy

Title: Director of General Services

Date: October 20, 2021

E. Applicable Law and Venue.

This Agreement is governed, construed, and enforced in accordance with the laws of the State of California, without regard to its conflict of laws rules. Any controversy or claim arising out of or relating to this Agreement shall be litigated in a California Superior Court of competent jurisdiction; or if jurisdiction over the action cannot be obtained in a California Superior Court, in a Federal District Court of competent jurisdiction situated in the State of California, and Customer hereby consents to the personal jurisdiction of such courts.

F. General Terms.

This Agreement contains the entire agreement between the Parties regarding the Turnkey Services and supersedes any other prior oral or written agreements related to same. If a conflict or inconsistency arises between the terms of this Agreement and any WO issued under it, the WO will control, as specified in Section D.8. Any different or additional provisions in purchase orders, invoices or similar documents issued by the Customer are deemed refused by PG&E and unenforceable. Any modifications to this Agreement must be in writing and signed by the Parties. A waiver by either Party of any breach does not constitute a waiver of different or subsequent breaches. If any part of this Agreement is invalid, illegal, or unenforceable for any reason, that portion shall be replaced with a valid provision appropriate to the Parties' original intent and the remainder will be enforced.

No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

G. Execution of Agreement.

This Agreement may be executed by providing an electronic signature under the terms of the Electronic Signatures Act, 15 U.S.C. SS 7001 et. seq., and may not be denied legal effect solely because it is in electronic form or permits the completion of the business transaction referenced herein electronically instead of in person. The exchange of executed copies of this Agreement and of signature pages by electronic mail transmission will constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by electronic mail will be deemed to be their original signatures for all purposes.

Intending to be legally bound, the Parties execute this Agreement by their duly authorized representatives.

PACIFIC GAS AND ELECTRIC COMPANY

By:

E-SIGNED by Nick Burke
on 2021-10-20 17:14:31 GMT

(Signature)

Name: Nick Burke

Title: Manager, Energy Consulting
Services

Date: October 20, 2021

COUNTY OF SONOMA

By:

E-SIGNED by Caroline Judy
on 2021-10-20 17:12:21 GMT

(Signature)

Name: Caroline Judy

Title: Director of General Services

Date: October 20, 2021

Exhibit A

PG&E: ESCo RFP - Required Provisions

In its RFPs (or solicitation equivalent) for any investment grade audit (and/or potential implementation of any ECM) and in any resulting agreement with any ESCo for implementation of a project implementation work order, PG&E shall include and provide for the following in its solicitation and any resulting agreement materials. Unless approved in advance in writing by County, no ESCo or other third-party shall be retained or used for any audit or implementation unless as a result of a competitive procurement process and pursuant to a written agreement containing the following notices and requirements. County reserves the right to approve or disapprove any modification, deviation, or other change to any of said provisions.

1. Clayton and Cartwright Acts Assignments. In submitting an estimate and upon entering into any resulting ECM/project implementation agreement, ESCo (and all its subcontractors) offers and agrees to assign to County all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials for the ECM or project. This assignment shall be made and become effective at the time final payment is tendered for the project and work, without further acknowledgment by the parties.
2. Subcontractor Listing. In conjunction with submittal of all project estimates/cost quotes for implementation of any ECM or project, ESCo shall:
 - 2.1 Provide a list of all subcontractors ("Subcontractor List") to be used for the project, to include:
 - 2.1.1 The name, the location of the place of business, the California contractor license number, and public works contractor registration number issued pursuant to Section 1725.5 of the Labor Code of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total project cost estimate.
 - 2.1.2 The portion of the work that will be done by each listed subcontractor.
 - 2.2 ESCo shall use only those subcontractors listed in the Subcontractor List. If ESCo fails to specify a subcontractor or if more than one subcontractor is listed for the same portion of work to be performed in excess of one-half of 1 percent of the total project costs, the ESCo shall perform that portion himself or herself. Other than in the performance of "change orders" causing changes or deviations from the original contract, ESCo shall not sublet or subcontract any portion of the work in excess of one-half of 1 percent of the total project costs as to which a subcontractor was not designated in the Subcontractor List.
 - 2.3 Except upon County consent for good cause as otherwise specified in Public Contract Code section 4100 et seq.:

2.3.1 No subcontractor on the Subcontractor List may be substituted; and

2.3.2 No subcontract may be voluntarily assigned or transferred or allowed to be performed by anyone other than the subcontractor listed in the Subcontractor List.

3. Prevailing Wage.

3.1 For all ECM or project work, ESCo shall ensure that its contractors and subcontractors are paid and shall pay, as appropriate, not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). Up to two hundred dollars (\$200) shall be forfeited as penalty for each calendar day, or portion thereof, for each worker paid less than applicable prevailing wage rates. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute work, as determined by Director of the State of California Department of Industrial Relations and are deemed included in the Proposal Documents. State prevailing wage requirements are published by the Director of the State of California Department of Industrial Relations and can be found online at www.dir.ca.gov. Prevailing wage requirements can also be found at the General Service's Purchasing Department, located at 2300 County Center Dr., Suite A208, Santa Rosa, CA 95403. Said rates shall be posted at all public work job sites. ESCo is advised and shall accordingly advise that a craft or classification not on file on the general wage determinations is to be used, the wage rate of the craft or classification most closely related to it as shown in the general determinations may be required to be paid. ESCo shall post (or cause the posting of) all required notices, including those required pursuant to 8 CCR 16451, and shall make them available to any interested party upon request. The difference between such prevailing wage rates and the amount paid each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by ESCo (and its contractor(s) and subcontractor(s), as applicable). Further, ESCo (and, as applicable, its contractor(s) and subcontractor(s)) shall make all applicable travel and subsistence payments to each worker entitled thereto as required pursuant to the Labor Code.

3.2 Subcontracts. ESCo shall insert, or ensure insertion, in every contract, subcontract, or other arrangement which ESCo may make or cause for performance of such ECM or project work or labor on such work, provision that contractor(s) and subcontractors shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the labor code. Pursuant to Labor Code section 1775(b)(1), ESCo shall provide, and ensure provision, to each contractor and subcontractor a copy of sections 1771, 1775, 1776, 1777.5, 1813 and 1815 of the labor code.

3.3 Hours of Work. Pursuant to California Labor Code Section 1810 and following, eight (8) hours of labor shall constitute a legal day's work, and workers may not work more than eight hours a day or 40 hours in any one calendar week, unless compensated at not less than time and a half as set forth in Labor Code Section 1815 or as otherwise required by law. Twenty-five dollars (\$25) shall be forfeited as penalty for each worker employed in violation of the provisions of Labor Code sections 1810 et seq.

Payment Bonds. In accordance with California Labor Code section 3700, ESCo is required to secure the payment of compensation of its employees and ensure the same by all contractors and

subcontractors and any other third parties providing work and/or services. By entering into a resulting ECM/project implementation agreement, Contractor certifies awareness of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and certifies they will comply with such provisions before commencing work.

Payroll Records. All payroll record keeping, availability, certification, and confidentiality requirements set forth in Labor Code section 1776 and 8 CCR sections 16400 et seq. shall be complied with. Accurate records of the work performed, as set forth in Labor Code section 1812, shall be kept, or caused to be kept, including showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by such ESCo's contractor(s) and subcontractor(s) in connection with all work of the PHF Project. All work is subject to the requirements of Labor Code section 1771.4 and Title 8, Cal. Code of Regulations Div. 1, Chapter 8, Subchapter 4.5 (starting at 8 CCR §16450), including the requirement to monthly furnish certified payroll records directly to the Labor Commissioner. Work under a resulting ECM/project implementation agreement is subject to compliance monitoring and enforcement by the Department of Industrial Relations. ESCo shall require and ensure that all of its contractors and subcontractors has ten (10) days in which to comply subsequent to receipt of a written notice requesting the records described herein. In the event that any such contractor or subcontractor fails to comply with the ten-day period, he or she shall, as a penalty to County on whose behalf the contract is made or awarded, forfeit \$100.00 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated.

Employment of Apprentices. Prior to commencement of any work, ESCo shall ensure that its contractors contact the Division of Apprenticeship Standards and shall be responsible for compliance with Section 1777.5, 1777.6, and 1777.7 of the Labor Code and Title 8, Cal. Code of Regulations, Div. 1 Chapter 2 concerning the employment of registered apprentices in connection with the project work. Responsibility for compliance with these requirements lies solely with ESCo and its contractors.

Registration. Contractors and subcontractors shall not be qualified to bid on, be listed in a bid proposal (subject to the requirements of Section 4104 of the Public Contract Code), or engage in the performance of any contract for project work, unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5.

Other Requirements. ESCo (and its contractor(s) and subcontractor(s), as applicable) shall comply with and/or cause compliance with all requirements specified in Labor Code Sections 1776(g), 1777.5, 1810, 1813, and 1860, including all requirements to insert required provisions in contracts, subcontracts, and other third party contracts. ESCo shall not perform any work on a project with any subcontractor who is ineligible to perform work pursuant to the Labor Code, including pursuant to Sections 1771.1 and 1777.7.

4. **Worker's Compensation.** ESCo shall certify that it is aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and that ESCo will comply with such provisions before commencing the performance of any work under any resulting ECM/project implementation agreement.

5. Statutory Compliance/Living Wage Ordinance. ESCo shall agree to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under any resulting ECM/project implementation agreement as they exist now and as they are changed, amended or modified during the term of the Agreement. ESCo shall not do nor allow to be done in or about any County property or project site anything which will violate or conflict with any statute, ordinance, rule, order, or regulation or other law which is now or may hereafter be enacted, adopted, or promulgated by any federal, state, county, or municipal authority. Without limiting the generality of the foregoing, ESCo expressly shall acknowledge and agree that any resulting ECM/project implementation agreement may be subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the agreement will be considered a material breach and may result in termination of the agreement or pursuit of other legal or administrative remedies.
6. Asbestos and Lead Paint Certification. Certain locations for audit and potential ECM work are known to contain asbestos-containing materials and lead-based paints. Work accordingly may constitute "asbestos-related work." ESCo shall comply with all applicable laws, including Labor Code 6500 et seq, in respect of Work identified by County as constituting "asbestos-related work."
7. Nondiscrimination. ESCo shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religious creed, belief, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation, genetic information, military or veteran status, or any other legally-protected category or prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law shall be incorporated into any resulting ECM/project implementation agreement.
8. Non-collusion. ESCo shall provide a statement certifying no collusion or other prohibited condition, in substance and form attached as Exhibit D.
9. Iran Contracting Act Certification. The Iran Contracting Act (ICA) prohibits persons engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more. A person who "engages in investment activities in Iran" is defined in either of two ways:
 1. The person provides goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
 2. The *person* is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2201(b) as a person engaging in the investment activities described in paragraph 1 above.

By submitting a bid or by agreeing to any resulting ECM/project implementation agreement, ESCo, under penalty of perjury, certifies as of the time of bidding and in the event of any project

implementation agreement, that ESCo is not identified on the DGS list of ineligible persons, and that ESCo is not engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

10. Notice of Retention

PG&E may withhold up to 150 percent of the disputed amount from any progress payment under any resulting ECM/project implementation agreement.

As to all contractors and subcontractors performing work under or relating to an ECM/project implementation agreement (including by or between PG&E and ESCo), any retention proceeds withheld from payment due shall not exceed five percent (5%) of the contract price. In no event shall the total retention proceeds withheld exceed five percent (5%) of the work contract price, nor shall any retention proceeds at any tier exceed the percentage specified in the applicable project implementation work order between PG&E and County.

11. Substitution Of Securities

- A. In accordance with the provisions of Public Contract Code Section 22300, substitution of securities for any moneys withheld under a resulting ECM/project implementation agreement to ensure performance is permitted under following conditions:
 - a) At request and expense of ESCo, securities listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by ESCo and PG&E which are equivalent to the amount withheld under retention provisions of the agreement shall be deposited with Controller or with a state or federally chartered bank in California, as the escrow agent, who shall then pay such moneys to ESCo. Upon satisfactory completion of Contract, securities shall be returned to ESCo.
 - b) Alternatively, ESCo may request and PG&E shall make payment of retentions earned directly to the escrow agent at the expense of ESCo. At the expense of ESCo, ESCo may direct the investment of the payments into securities and receive the interest earned on the investments upon the same terms provided for securities deposited by ESCo. Upon satisfactory completion of the work, ESCo shall receive from escrow agent all securities, interest, and payments received by the escrow agent from PG&E. ESCo shall then pay to each contractor, not later than 20 Days after receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each contractor, on the amount of retention withheld to insure the performance of ESCo.
 - c) ESCo shall be beneficial owner of securities substituted for moneys withheld and shall receive any interest thereon.
 - d) ESCo may enter into an escrow agreement as authorized under Public Contract Code Section 22300, specifying amount of securities to be deposited, terms and conditions of conversion to cash in case of default of ESCo, and termination of escrow upon completion of the ECM/project implementation agreement.
 - e) Public Contract Code Section 22300, in effect upon ESCo's execution of resulting ECM/project implementation agreement shall be incorporated in full by this reference and shall supersede anything inconsistent therewith.

12. Immigration Reform and Control Act. ESCo acknowledges that ESCo, and all contractors hired by ESCo to perform services relating to any resulting ECM/project implementation agreement, are aware of and understand the Immigration Reform and Control Act of 1986 ("IRCA") (P.L. 99-603, November 6, 1986) which prohibits the hiring, referral or recruitment of persons not authorized to work, and provides for employer verification that an individual is not unauthorized to work. ESCo is and shall remain in compliance with the IRCA and shall ensure that any contractors hired by ESCo to perform work or services under or relating to an ECM/project implementation agreement are in compliance with the IRCA. In addition, ESCo agrees to indemnify, defend and hold harmless County, its agents, officers and employees, from any liability, damages or causes of action arising out of or relating to any claims that ESCo's employees, or employees of any contractor hired by ESCo, are not authorized to work in the United States for ESCo or its contractor and/or any other claims based upon alleged IRCA violations committed by ESCo or ESCo's contractors.
13. County Reservation. County reserves the right to approve all final terms and conditions of any resulting ECM/project Contract Work Authorization between PG&E and ESCo, including to modify and/or add any legally required terms and any site-specific and project coordination requirements.

Exhibit B

CONSTRUCTION PERFORMANCE BOND

To ensure the faithful performance of all construction and related project design, delivery, and performance under the subject resulting ECM/project implementation agreement:

1. PG&E (“Contractor”) and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to County for the complete and proper performance of the subject resulting ECM/project implementation agreement, which is incorporated herein by reference.
2. Contractor and Surety acknowledge and agree that (i) the ECM/project implementation agreement has design, development, construction and performance components for the subject project (as described therein); (ii) the project design, development, construction and performance is being guaranteed and bonded by Contractor; (iii) under the subject ECM/project implementation agreement, Contractor may contract out with third party(ies) for the project delivery including its design, development, construction and performance; (iv) the occurrence of said third party contracting, shall not change, alleviate or minimize Contractor’s sole responsibility for the project delivery and all construction thereof; and (v) this Bond is made with full awareness and acceptance of the foregoing.
 - 2.1 If Contractor completely and properly performs all of its obligations under the ECM/project implementation agreement, Surety and Contractor shall have no obligation under this Bond.
3. If there is no County Default, Surety’s obligation under this Bond shall arise after:
 - 3.1 County has declared a Contractor Default under the subject ECM/project implementation agreement pursuant to the terms stated therein; and
 - 3.2 County has agreed to pay the Balance of the ECM/project implementation agreement:
 - 3.2.1 To Surety in accordance with the terms of this Bond and the ECM/project implementation agreement; or
 - 3.2.2 To a contractor selected to perform the Implementation Agreement in accordance with the terms of this Bond and the Implementation Agreement.
4. When County has satisfied the conditions of paragraph 3, Surety shall promptly (within 30 Days) and at Surety’s expense elect to take one of the following actions:
 - 4.1 Arrange for Contractor, with consent of County, to perform and complete the ECM/project implementation agreement (but County may withhold consent, in which case the Surety must elect an option described in paragraphs 4.2, 4.3 or 4.4, below); or
 - 4.2 Undertake to perform and complete the ECM/project implementation agreement itself, through its agents or through independent contractors; provided, that Surety may not select Contractor as its agent or independent contractor without County’s consent; or

- 4.3 Undertake to perform and complete the ECM/project implementation agreement by obtaining bids from qualified contractors acceptable to County for a contract for performance and completion of the ECM/project implementation agreement and, upon determination by County of the lowest responsive and responsible Bidder, arrange for a contract to be prepared for execution by County and the contractor selected with County's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Implementation Agreement; and, if Surety's obligations defined in paragraph 6, below, exceed the Balance of the total project costs, then Surety shall pay to County the amount of such excess; or
- 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances and, after investigation and consultation with County, determine in good faith its monetary obligation to County under paragraph 6, below, for the performance and completion of the ECM/project implementation agreement and, as soon as practicable after the amount is determined, tender payment therefore to County with full explanation of the payment's calculation. If County accepts Surety's tender under this paragraph 4.4, County may still hold Surety liable for future damages then unknown or unliquidated resulting from Contractor Default. If County disputes the amount of Surety's tender under this paragraph 4.4, County may exercise all remedies available to it at law to enforce Surety's liability under paragraph 6, below.
5. If Surety does not proceed as provided in paragraph 4, above, then Surety shall be deemed to be in default on this Bond ten Days after receipt of an additional written notice from County to Surety demanding that Surety perform its obligations under this Bond. At all times County shall be entitled to enforce any remedy available to County at law or under the ECM/project implementation agreement including, without limitation, and by way of example only, rights to perform work, protect Work, mitigate damages, advance critical Work to mitigate schedule delay, or coordinate Work with other consultants or contractors.
6. Surety's monetary obligation under this Bond is limited by the amount of this Bond identified herein as the Penal Sum. This monetary obligation shall augment the Balance of the Final Total Project Costs. Subject to these limits, Surety's obligations under this Bond are commensurate with the obligations of Contractor under the ECM/project implementation agreement. Surety's obligations shall include, but are not limited to:
- 6.1 The responsibilities of Contractor under the ECM/project implementation agreement for completion of the ECM/project implementation agreement and correction of Defective Work;
- 6.2 The responsibilities of Contractor under the ECM/project implementation agreement to pay liquidated damages, and for damages for which no liquidated damages are specified in the ECM/project implementation agreement, actual damages caused by non-performance of the ECM/project implementation agreement including, but not limited to, all valid and proper back charges, offsets, payments, indemnities, or other damages;

- 6.3 Additional legal, design professional and delay costs resulting from Contractor Default or resulting from the actions or failure to act of the Surety under paragraph 4, above (but excluding attorney's fees incurred to enforce this Bond).
7. No right of action shall accrue on this Bond to any person or entity other than County or its successors or assigns.
8. Surety hereby waives notice of any change, alteration or addition to the Implementation Agreement or to related subcontracts, purchase orders and other obligations, including changes of time. Surety consents to all terms of the Implementation Agreement, including provisions on changes to the Implementation Agreement. No extension of time, change, alteration, Modification, deletion, or addition to the Contract Documents, or of the Work required thereunder, shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond, unless such change, alteration, Modification, deletion or addition is a cardinal change.
9. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between County and Contractor regarding the Implementation Agreement or in the courts of the County of Sonoma. Communications from County to Surety under paragraph 3.1 of this Bond shall be deemed to include the necessary agreements under paragraph 3.2 of this Bond unless expressly stated otherwise.
10. All notices to Surety or Contractor shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to County shall be mailed or delivered as provided in the Master Agreement. Actual receipt of notice by Surety, County or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.
11. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein.
12. Definitions.
- 12.1 Balance of the Implementation Agreement: The total amount payable by County to Contractor pursuant to the terms of the Implementation Agreement after all proper adjustments have been made under the Implementation Agreement, for example, deductions for progress payments made, and approved increases/decreases to the Implementation Agreement.
- 12.2 Implementation Agreement: the Agreement between County and Contractor identified on the signature page of this Bond, sometimes referred to as or part of an "ECM/project implementation agreement" or PIWO in conjunction with PG&E pursuant to that certain "SST Master Agreement" between County and PG&E, including all exhibits attached thereto and including all changes thereto.
- 12.3 Contractor Default: Material failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Implementation

Agreement including, but not limited to, “default” or any other condition allowing a termination for cause.

- 12.4 County Default: Material failure of County, which has neither been remedied nor waived, to pay Contractor progress payments due under the Implementation Agreement or to perform other material terms of the Implementation Agreement, if such failure is the cause of the asserted Contractor Default and is sufficient to justify Contractor termination of the Implementation Agreement.

EXHIBIT C

CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

To ensure the faithful performance of all construction and related project design, delivery, and performance under the subject Implementation Agreement:

1. PG&E ("Contractor") and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to County and to Claimants, to pay for labor, materials and equipment furnished for use in the performance of the Master Agreement, which is incorporated herein by reference.
2. Contractor and Surety acknowledge and agree that (i) the ECM/project implementation agreement has design, development, construction and performance components for the subject project (as described therein); (ii) the project design, development, construction and performance is being guaranteed and bonded by Contractor; (iii) under the subject ECM/project implementation agreement, Contractor may contract out with third party(ies) for the project delivery including its design, development, construction and performance; (iv) the occurrence of said third party contracting, shall not change, alleviate or minimize Contractor's sole responsibility for the project delivery and all construction thereof; and (v) this Bond is made with full awareness and acceptance of the foregoing
 - 2.1 With respect to County, this obligation shall be null and void if Contractor:
 - 2.1.1 Promptly makes payment, directly or indirectly, for all sums due Claimants; and
 - 2.1.2 Defends, indemnifies and holds harmless County from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided County has promptly notified Contractor and Surety (at the address set forth on the signature page of this Bond) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to Contractor and Surety, and provided there is no County Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly through its Subcontractors, for all sums due Claimants. If Contractor or its Subcontractors, however, fail to pay any of the persons named in Section 9100 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to Work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor or Subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such Work and labor, then Surety shall pay for the same, and also, in case suit is brought upon this Bond, a reasonable attorney's fee, to be fixed by the court.

4. Consistent with the California Mechanic's Lien Law, Civil Code §8000, *et seq.*, Surety shall have no obligation to Claimants under this Bond unless the Claimant has satisfied all applicable notice requirements.
5. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety under this Bond.
6. Amounts due Contractor under the Implementation Agreement shall be applied first to satisfy claims, if any, under the Construction Performance Bond (simultaneously executed herewith in connection with the Master Agreement) and second, to satisfy obligations of Contractor and Surety under this Bond.
7. County shall not be liable for payment of any costs, expenses, or attorney's fees of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
8. Surety hereby waives notice of any change, including changes of time, to the Implementation Agreement or to related subcontracts, purchase orders and other obligations. Surety further hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Implementation Agreement, or to the Work to be performed there under, or materials or equipment to be furnished there under or the requirements accompanying the same, shall in any way affect its obligations under this Bond, and it does hereby waive any requirement of notice or any such change, extension of time, alteration or addition to the terms of the Implementation Agreement or to the Work or to the requirements or any other changes.
9. Suit against Surety on this Bond may be brought by any Claimant, or its assigns, at any time after the Claimant has furnished the last of the labor or materials, or both, but, per Civil Code §9558, must be commenced before the expiration of six (6) months after the period in which stop notices may be filed as provided in Civil Code §9356.
10. All notices to Surety or Contractor shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to County shall be mailed or delivered as provided in the Master Agreement. Actual receipt of notice by Surety, County or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.
11. This Bond has been furnished to comply with the California Mechanic's Lien Law including, but not limited to, Civil Code §§9550, 9554, *et seq.* Any provision in this Bond conflicting with said statutory requirements shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
13. Definitions.

- 13.1.1 Claimant: An individual or entity having a direct contract with Contractor or with a subcontractor of any tier of Contractor to furnish labor, materials or equipment for use in the performance of the Contract, as further defined in California Civil Code §9100. The intent of this Bond shall be to include without limitation in the terms “labor, materials or equipment” that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Implementation Agreement, architectural and engineering services required for performance of the Work of Contractor and Contractor’s Subcontractors, and all other items for which a stop notice might be asserted. The term Claimant shall also include the Unemployment Development Department as referred to in Civil Code §9554b).
- 13.1.2 Implementation Agreement: The agreement between County and Contractor identified on the signature page of this Bond, sometimes referred to as or part of an “PIWO” in conjunction with PG&E pursuant to that certain “SST Master Agreement” between County and PG&E, including all exhibits attached thereto and including all changes thereto.
- 13.1.3 County Default: Material failure of County, which has neither been remedied nor waived, to pay Contractor as required by the Implementation Agreement, provided that failure is the cause of the failure of Contractor to pay the Claimants and is sufficient to justify termination of the Implementation Agreement.

Exhibit D

NON-COLLUSION

PROJECT NAME: _____

The undersigned declares:

I am the _____ of _____
(Office of Affiant) (Name of Proposer)

the party making the foregoing Proposal.

The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Proposal is genuine and not collusive or sham. The Proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham Proposal. The Proposer has not directly or indirectly colluded, conspired, connived or agreed with any proposer or anyone else to put in a sham Proposal, or to refrain from proposing. The Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the Proposal price of Proposer or any other proposer, or to fix any overhead, profit or cost element of the Proposal price, or of that of any other proposer. All statements contained in the Proposal are true. The Proposer has not, directly or indirectly, submitted his or her price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, Proposal depository, or to any member or agent thereof to effectuate a collusive or sham Proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____, at _____,
(Date) (City)

(State)

(Name of Proposer)

Exhibit E

ESCo Contract for ECM/Project Implementation (PG&E-ESCo contract) - Required Terms:

In its Contract Work Authorization for any ECM implementation measure, PG&E shall, in addition to the required solicitation and agreement provisions stated in Exhibit A, include the following. County reserves the right to approve or disapprove any modification, deviation, or other change to any of said provisions.

1. Trenching Safety Plan.
 - 1.1 Prior to any excavating of any trench five feet or more in depth, ESCo shall submit for County review a detailed plan showing the shoring, bracing and sloping design and other provisions to be made for worker protection from the hazard of caving ground during the excavation, as required by Labor Code Section 6705. A civil or structural engineer registered in California shall prepare and sign any plan that varies from the shoring system standards established by the State Construction Safety Orders.
 - 1.2 All trenching work shall be in accordance with applicable laws and standards and the approved plan. County's approval or acceptance of any plan (or aspect thereof) shall not result in County liability for any matter related to or resulting from any plan, nor relieve ESCo of its responsibilities for liability otherwise under the agreement.
2. Audit rights. County shall have the right to audit and copy ESCo's books and records of any type, nature or description relating to any implementation project and/or matters connected with performance of the contract (including but not limited to financial records reflecting in any way costs claimed), and to inspect any project site at any time. County and all other applicable governmental entities shall have the right to inspect all such information and documents, at any time during the project and for a period of five years following project final payment. All contracts and subcontracts with ESCo's contractors and subcontractors shall contain provisions ensuring these audit and access rights. Such rights of inspection shall not relieve ESCo of its duties and obligations under the implementation agreement.