

**32368**

**AGREEMENT TO JOINTLY DELIVER THE 2010-2012  
ENERGY LEADER PARTNERSHIP PROGRAM**

**BETWEEN**

**THE CITY OF LONG BEACH**

**and**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**Dated: December 1, 2009**

**This program is funded by California utility ratepayers and administered by Southern California Edison under the auspices of the California Public Utilities Commission.**

**11-001-1-1001-01**

**ENERGY LEADER PARTNERSHIP PROGRAM AGREEMENT**

THIS AGREEMENT TO JOINTLY DELIVER THE 2010-2012 ENERGY LEADER PARTNERSHIP PROGRAM (the "Agreement") by and between SOUTHERN CALIFORNIA EDISON COMPANY ("SCE") and the City of Long Beach (the "City"), which Agreement shall be effective as of January 1, 2010 ("Effective Date"). SCE and the City may be referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, on July 21, 2008 (and as amended on March 2, 2009), SCE submitted its 2009-2011 Application for Approval of its Proposed Energy Efficiency Program Plans and Public Goods Charge and Procurement Funding Requests to the California Public Utilities Commission (the "Commission"), which application included the Energy Leader Partnership Program in which SCE will partner with cities, counties, and other local government organizations that have a vision for energy efficiency sustainability and a desire to provide energy efficiency leadership to their communities;

WHEREAS, on July 2, 2009, SCE amended its aforementioned application to the Commission, requesting approval of an extended 2010-2012 Program cycle for its proposed plans and funding requests, including the Energy Leader Partnership Program;

WHEREAS, on October 1, 2009, the Commission issued a final decision authorizing certain energy efficiency programs, including the Partnership's Energy Leader Partnership Program for the 2010-12 program cycle (the "Program");

WHEREAS the City has expressed a commitment, and has qualified, to participate in the Program, allowing the City to demonstrate energy efficiency leadership in its community while helping residents and businesses achieve sustainable reductions in energy use within SCE's service territory;

WHEREAS, the City, on November 10, 2009, passed, approved and adopted a Resolution supporting and endorsing the Program, approving the City as a Program participant with SCE, and authorizing execution of a Partnership Agreement, in substantially similar form as this Agreement; and

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.

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 Agreement as a whole, including all exhibits or other attachments to this Agreement, as the same may from time to time be amended or supplemented, and not to any particular subdivision contained in this Agreement, 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. Agreement: This document and all exhibits attached hereto, and as amended from time to time.

1.2. Authorized Budget: The Commission approved maximum budget for funding the performance by both Parties of the Program, as set forth in the Program Implementation Plan attached hereto as Exhibit C.

1.3. Authorized Work: The work authorized by the Commission for the Program as set forth in this Agreement and as more fully described in the Program Implementation Plans attached hereto as Exhibit C, and as agreed by the Parties to be performed.

1.4. Business Day: The period from one midnight to the following midnight, excluding Saturdays, Sundays, and holidays.

1.5. Calendar Day: The period from one midnight to the following midnight, including Saturdays, Sundays, and holidays. Unless otherwise specified, all days in this Agreement are Calendar Days.

1.6. Contractor: An entity contracting directly or indirectly with a Party, or any subcontractor thereof subcontracting with such Contractor, to furnish services or materials as part of or directly related to such Party's Authorized Work obligations.

1.7. Customers or Eligible Customers: Those customers eligible for Program services, which are SCE customers located in the City.

1.8. Energy Efficiency Measure (or Measure): As used in the Commission's Energy Efficiency Policy Manual, Version 4, August 2008.

1.9. EM&V: Evaluation, Measurement and Verification of the Program pursuant to Commission requirements.

1.10. Incentive: As used in the Commission's Energy Efficiency Policy Manual, Version 4, August 2008.

1.11. Partner Budget: That portion of the Authorized Budget, which represents the maximum budget and maximum allocation by period, for funding the

performance of the Program by the City and as set forth in Exhibit B, subject to amendment by SCE consistent with the terms of this Agreement.

1.12. Program Expenditures: Actual (i.e., no mark-up for profit, administrative or other indirect costs), reasonable expenditures of the City that are pre-approved, directly identifiable to and required for the Authorized Work in accordance with Section 10.3.

1.13. PIP or Program Implementation Plan: The implementation plan specific to this Partnership, together with the Energy Leader Partnership Master PIP, which include the anticipated scope of the Program in SCE's service territory, approved by the Commission and attached hereto as Exhibit C.

1.14. Public Goods Charge (PGC): The funds which make up the Partner Budget and which are collected from electric utility ratepayers pursuant to Section 381 of the California Public Utilities Code for public purposes programs, including energy efficiency programs approved by the Commission.

## 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 Agreement is to set forth the terms and conditions under which the Parties will jointly implement the Program. The work authorized pursuant to this Agreement is not to be performed for profit.

This Agreement is not intended to and does not form any "partnership" within the meaning of the California Uniform Partnership Act of 1994 or otherwise.

## 3. PROGRAM DESCRIPTION

3.1. Overview. The Energy Leader Partnership Program is designed to provide integrated technical and financial assistance to help local governments effectively lead their communities to increase energy efficiency, reduce greenhouse gas emissions, protect air quality and ensure that their communities are more livable and sustainable. The Program provides a performance-based opportunity for the City to demonstrate energy efficiency leadership in its community through energy saving actions, including retrofitting its municipal facilities as well as providing opportunities for constituents to take action in their homes and businesses. By implementing measures in its own facilities, the City will lead by example as the City and SCE work together to increase community awareness of energy efficiency and position the City as a leader in energy management practices. The Program will provide marketing, outreach, education, training and community sweeps to connect the community with opportunities to save energy, money and help the environment. Delivering sustainable energy savings, promoting energy efficiency lifestyles, and achieving an enduring leadership role for the City through this Program design is rooted in an effective relationship between the City, its constituents, and SCE.

3.2. Energy Leader Partnership Level. The Program offers a tiered Incentive structure through achievement of four separate levels of participation: "Valued Partner," "Silver," "Gold" and "Platinum." The City will enter the Program at the level indicated on Exhibit A hereto, which has been determined by the City's past participation in SCE energy efficiency and demand response programs both at the city level and at the community level. Exhibit A further explains each level and the energy savings requirements for moving to the next Energy Leader Partnership level. SCE will track the City's performance under this Agreement against the goals and objectives set forth herein, and will notify the City when it has achieved the next incentive level.

#### 4. AUTHORIZED WORK

4.1. Scope. The work authorized by the Commission is set forth broadly in the PIP (Exhibit C) and shall be performed pursuant to the terms of this Agreement. The Parties shall collaborate and mutually agree upon specific Program implementation consistent with the PIP, and the Parties shall document such details in a "Planning Document" which is intended to evolve throughout the term of the Program.

4.2. Objectives. The Program is designed to meet the specific goals and milestones set forth in Exhibit B of this Agreement, while implementing the Program strategies and meeting the general objectives and goals set forth in the PIP, attached hereto as Exhibit C.

5. **LIMITATION ON SERVICE TERRITORY** – The Parties agree that Authorized Work shall only be performed in SCE's service territory, with energy savings and demand reduction claims applicable solely to SCE's utility system. No Authorized Work shall be performed for any customers that receive electricity from a municipal utility corporation or other electricity service provider or that do not directly receive electricity service from SCE.

#### 6. OBLIGATIONS OF THE PARTIES

##### 6.1. Obligations of SCE and the City

6.1.1. Each Party will be responsible for the overall progress of its Authorized Work, to ensure that the Program remains on target (including but not limited to achieving the Program's specific energy savings and demand reduction goals as set forth in Exhibit B).

6.1.2. The Parties shall jointly coordinate and prepare all Program-related documents, including all required reporting pursuant to Section 9, and any such other reporting as may be reasonably requested by SCE.

6.1.3. To the extent practicable and with coordination by SCE, the Parties shall use the Program as a portal for other existing or selected

programs that SCE offers, including programs targeting low-income customers, demand response, self-generation, solar, and other programs as described in the PIP, with a goal to enhance consistency in rebates and other Program details, minimize duplicative administrative costs, and enhance the possibility that programs can be marketed together to avoid duplicative marketing expenditures.

- 6.1.4. Consistent with those contained in the PIP, SCE and the City will work together to develop and accomplish additional mutually agreeable goals.

## 6.2. Obligations of the City.

- 6.2.1. The City will appoint an "Energy Champion" who will be the primary contact between the City and the SCE Energy Efficiency Representative (defined in Section 6.3.1), and who will be authorized to act on behalf of the City in carrying out the City's obligations under this Agreement. Such appointment shall be communicated in writing to SCE within 10 Business Days following execution of this Agreement. The City shall communicate regularly with the SCE Energy Efficiency Representative in accordance with Section 7.2 and 7.3 hereof, and shall advise SCE immediately of any problems or delays associated with its Authorized Work obligations.
- 6.2.2. The City shall perform its Authorized Work obligations within the Partner Budget and in conformance with the schedule and goals associated with such Authorized Work as set forth in this Agreement, and shall furnish the required labor, equipment and material with the degree of skill, care and professionalism that is required by current professional standards.
- 6.2.3. The City will be actively involved in all aspects of the Program. The City will use its best efforts to (a) dedicate human resources necessary to implement the Program successfully, (b) providing support for the Program's marketing and outreach activities, and (c) working to enhance communications with SCE to address consumer needs.
- 6.2.4. The City shall obtain the approval of SCE when developing Program marketing materials and prior to their distribution, publication, circulation, or dissemination in any way to the public. SCE agrees to use its best efforts to promptly review such requests, provided however, that if SCE does not respond within fifteen (15) Business Days following receipt of a request for approval under this Section 6.2.4, then such request shall be deemed disapproved. In addition, all advertising, marketing or otherwise printed or reproduced material used to implement, refer to, or that is in any way 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."*

- 6.2.5. The City shall submit to SCE, upon its request, all contracts, agreements or other requested documents with the City's Contractors (including subcontractors) performing Authorized Work in connection with the Program.

6.3. Obligations of SCE.

- 6.3.1. SCE will appoint a Partnership representative ("SCE Energy Efficiency Representative") who will be the primary contact between SCE and the City, and who will be authorized to act on behalf of SCE in carrying out SCE's obligations under this Agreement. Such appointment shall be communicated in writing to the City within 10 Business Days following execution of this Agreement.
- 6.3.2. SCE will oversee the activities and implementation of the Program, in accordance with this Agreement.
- 6.3.3. SCE will be actively involved in all aspects of the Program. SCE will use its best efforts to add value to the Program by (a) dedicating human resources necessary to assist the City in implementing the Program successfully and providing and maintaining an SCE presence in the City, (b) providing support for the Program's marketing and outreach activities, and (c) working to enhance communications with the City to address consumer needs and provide SCE information and services.
- 6.3.4. SCE shall provide, at no cost to the City, informational and educational materials on SCE's statewide and local energy efficiency core programs.
- 6.3.5. SCE shall work with the City as requested to help identify cost-effective energy efficient projects in the City's qualifying municipal facilities within SCE's service territory.
- 6.3.6. SCE shall administer the PGC funds authorized by the Commission for the Program in accordance with this Agreement, and SCE shall reimburse the City for Program Expenditures in accordance with Section 10 below.
- 6.3.7. SCE shall be responsible for coordinating and ensuring compliance with all reporting and other filing requirements.

6.3.8. SCE shall be responsible for tracking performance of the City in accordance with Section 10.1.2, and for verifying all energy savings and demand reduction claims of the City, and for monitoring and verifying achievement of the Partner Levels as described in Exhibit A.

6.4. EM&V. Once the Commission has approved and issued an evaluation, measurement and verification ("EM&V") plan for the Program, such EM&V plan shall be attached to this Agreement as Exhibit D and shall be incorporated herein by this reference. Any subsequent changes or modifications to such EM&V plan by the Commission shall be automatically incorporated into Exhibit D. The City shall provide and comply with all Commission/SCE requests regarding activities related to EM&V. The City and its Contractors shall cooperate fully with the SCE Energy Efficiency Representative and will provide all requested information, if any, to assure the timely completion of all EM&V Plan tasks requiring the City's involvement or cooperation.

## 7. ADMINISTRATION OF PROGRAM

### 7.1. Decision-making and Approval.

7.1.1. Except as specifically provided in this Agreement, the following actions and tasks require consent of both Parties:

- a. Any material modification to the Authorized Work in connection with the Program.
- b. Any action that materially impacts the agreed-upon schedule for implementing the Program.
- c. Selection of any Contractor not previously approved by SCE.

7.1.2. Unless otherwise specified in this Agreement, the Parties shall document all material Program decisions, including, without limitation, all actions specified in Section 7.1.1 above, in meeting minutes or if taken outside a meeting, through written communication, which shall be maintained in hard copy form on file by the Parties for a period of no less than five (5) years after the expiration or termination of this Agreement.

7.2. Regular Meetings. During the term of this Agreement, the Partnership's representatives identified in writing pursuant to Section 6.2.1 and 6.3.1 respectively, along with such members of the Partnership team as the Parties deem necessary or appropriate, shall meet monthly at a location reasonably agreed upon by the Parties. In addition to any other agenda items requested by either Party, the agenda shall include a review the status of the City's performance against Partner Budget and toward achievement of the goals set forth in Exhibit B. Any decision-making shall be reached and documented in accordance with the requirements of Section 7.1 above.



7.3. Regular Communication. Regular communication among Partnership representatives is critical for the long-term success of the Partnership and achievement of Partnership goals and objectives. Notwithstanding Section 7.2, above, the Partnership representatives identified in writing by each Partner pursuant to Sections 6.2.1 and 6.3.1, respectively, shall communicate regularly with each other to review the status of the Program's goals, deliverables, schedules and budgets, and plan for upcoming Program implementation activities, and to advise the other Party of any problems associated with successful implementation of the Program. Any decision-making during this communication process shall be reached and documented in accordance with the requirements of Section 7.1 above.

7.4. Non-Responsibility for Other Party. Notwithstanding anything contained in this Agreement to the contrary, a Party shall not be responsible for the performance or non-performance hereunder of the other Party, nor be obligated to remedy any other Party's defaults or defective performance.

## 8. DOUBLE DIPPING PROHIBITED

In performing its respective Authorized Work obligations, the City shall implement the following mechanism and shall take other practicable steps to minimize double-dipping:

8.1. Prior to providing incentives or services to an Eligible Customer, the City and its Contractors shall obtain a signed form from such Eligible Customer stating that:

8.1.1. Such Eligible 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 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 Agreement.

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

8.3. The City represents and warrants that it or its Contractors has not received, and will not apply for or accept Incentives or services for any measure provided for herein or offered pursuant to this Agreement or the Program from any other SCE program or from any other utility, state or local program.

8.4. The Parties shall take reasonable steps to minimize or avoid the provision of incentives or services for the same measures provided under the Program from another program or other funding source ("double-dipping").

## 9. REPORTING

Reporting Requirements. With respect to Program Expenditures by the City pursuant to Section 10.2, if any, the Parties shall implement those reporting requirements set forth in Section 10.3 and Exhibit E attached hereto, as the same may be amended from time to time, by the Commission. The Parties agree to implement such other reporting requirements as may be required by the Commission.

## 10. PAYMENTS

### 10.1. Partner Budget.

10.1.1. Maximum Budget: The Partner Budget is set forth in Exhibit B to this Agreement and represents the City's maximum share of the Program's three-year Authorized Budget. Additionally, Exhibit B sets forth the maximum non-Incentive budget on a periodic basis during the Program. The City shall not be entitled to compensation in excess of the Partner Budget (either on a periodic basis or in total), without written authorization by SCE and receipt of a revised Exhibit B. Consistent with Commission directives to maximize cost-effectiveness and energy savings, the Partner Budget set forth in Exhibit B may be reallocated or adjusted at any time by SCE in its sole discretion, based upon SCE's evaluation of the City's commitment to, and progress toward the City's energy savings goals set forth herein.

10.1.2. Tracking: SCE will track the City's performance against the objectives set forth in Section 4.2 hereof, including tracking (or estimating) achievement towards the specific energy savings and demand reduction goals set forth in Exhibit B, and will provide such tracking information to the City on a regular basis, but in no event less than quarterly. The tracking will enable SCE, to (i) properly allocate the Authorized Budget among all the Energy Leader Partnerships according to their individual performance and achievement of respective goals and objectives, (ii) confirm or amend the Partner Budget, set forth in Exhibit B hereto, based on the City's performance of the goals and objectives set forth in this Agreement; and (iii) determine/verify the City's eligibility to move to a new Energy Leader Level as described in Section 3.2 hereof.

10.1.3. Partner Budget Adjustment: The Parties acknowledge that this Program is offered in furtherance of the Commission's strategic energy efficiency goals for California and is based on the City's commitment to attain such goals and its desire to provide leadership to its community. To this end, in the event that SCE determines, in its sole discretion and through the tracking mechanism set forth in 10.1.2 above, that the City is not performing in accordance with the

goals and objectives set forth in Section 4.2 hereof, then SCE shall have the unilateral right to reduce, eliminate, or otherwise adjust the Partner Budget for the remaining Program year or years (other than for Program Expenditures previously approved by SCE) by amending Exhibit B and providing the amended Exhibit to the City. Pursuant to this Section, any such amended Exhibit B shall automatically be incorporated into this Agreement and take effect immediately upon delivery from SCE to the City.

10.1.4. Partner Budget Categories

- a. Non-Incentive Budget: The Partner Budget is comprised of a non-incentive portion which includes separate categories for Marketing, Education & Outreach, Technical Assistance [and Direct Implementation], all of which are more fully described in the Program Implementation Plan (Exhibit C).
- b. Incentive Budget: As part of the Partner Budget, the City shall be eligible to receive certain enhanced Incentives through partnership participation in SCE core programs, as well as additional incentives consistent with the City's tier level of program participation, including completion of municipal retrofit projects further described in this Agreement and in the Program Implementation Plan. The additional Incentives will be made available as the City reaches higher Energy Leadership Partnership Levels in accordance with Exhibit A.

10.2. Program Expenditures of City. The City, with SCE's prior approval, shall be entitled to spend PGC funds, within the limits of the Partner Budget, on Program Expenditures. The City shall not be entitled to reimbursement of Program Expenditures for any item (i) not specifically identifiable to the Program, (ii) not previously approved by SCE, (iii) not expended within the term of this Agreement, or (iv) not otherwise reimbursable under this Agreement.

10.3. Payment to the City. In order for the City to be entitled to PGC funds for Program Expenditures:

- 10.3.1. The City shall submit monthly activity reports to SCE in a format acceptable to SCE and containing such information as may be required for the reporting requirements set forth in Section 9 above ("Monthly City Reports"), by the tenth (10<sup>th</sup>) Calendar Day of the calendar month following performance, setting forth all Program Expenditures.
- 10.3.2. The City shall submit to SCE, together with any Monthly City Report (if required), a monthly invoice for reimbursement of reported Program Expenditures, in a format acceptable to SCE, attaching all

documentation reasonably necessary to substantiate the Program Expenditures, including, without limitation, the following:

- a. Contractor Costs: Copies of all Contractor invoices. If only a portion of Contractor costs applies to the Program, the City shall clearly indicate the line items or percentage of the invoice amount that should be applied to the Program as provided in Exhibit E.
- b. Marketing, Education & Outreach: A copy of each distinct marketing material produced, with quantity of a given marketing material produced and the method of distribution.
- c. Other expenditures: As pre-approved by SCE, with sufficient documentation to support the expenditure.
- d. Allowable Costs: Only those costs as listed in the Allowable Cost Table contained in the Reporting Requirements attached as Exhibit E can be submitted for payment. All invoices submitted to SCE must report all costs using the allowable cost elements shown on the Allowable Cost Table.

The City understands and acknowledges that all of the City's invoices for the Program and the Monthly City Report shall be submitted to SCE.

10.3.3. SCE reserves the right to reject any City invoiced amount for any of the following reasons:

- a. The invoiced amount, when aggregated with previous Program Expenditures, exceeds the amount budgeted therefore in the Partner Budget for such Authorized Work (as set forth in Exhibit B).
- b. There is a reasonable basis for concluding that such invoiced amount is unreasonable or is not directly identifiable to or required for the Authorized Work, and/or the Program.
- c. The invoiced amount, in SCE's sole discretion, contains charges for any item not authorized under this Agreement or by the Commission, or is deemed untimely, unsubstantiated or lacking proper documentation.

10.3.4. The City shall maintain for a period of not less than five (5) years all documentation reasonably necessary to substantiate the Program Expenditures, including, without limitation, the documentation set forth in Section 10.3.2(a) through (d) above. The City shall promptly provide, upon the reasonable request by SCE, any documentation,

records or information in connection with the Program or its Authorized Work.

10.3.5. SCE shall review and either approve, dispute or reject for payment reported Program Expenditures within twenty (20) Calendar Days of receipt of the Monthly City Report and corresponding invoice. SCE shall pay all undisputed amounts after the ten (10) Calendar Day period described in Section 10.3.1, but within thirty (30) Calendar Days of receiving the Monthly City Report and corresponding invoice.

10.4. Payment of Incentives. Payment of Incentives to the City shall be made in accordance with the applicable SCE program requirements, including terms and conditions, and only after appropriate program documents have been submitted and approved, and the appropriate inspections of each Project have been completed to SCE's satisfaction.

10.5. Shifting Funds Across Budget Categories. SCE may shift funds within the Partner Budget among budget categories (Marketing, Education & Outreach, Technical Assistance, [Direct Implementation] and Incentives), which categories and budget amounts are set forth in Exhibit B. Such shifting may be made by SCE to the maximum extent permitted under, and in accordance with, Commission decisions and rulings to which the Program relates.

10.6. Reasonableness of Expenditures. The City shall bear the burden of ensuring that its Program Expenditures are objectively reasonable. The Commission has the authority to review all Program Expenditures for reasonableness. Should the Commission, at any time, issue a finding of unreasonableness as to any Program Expenditure and require a refund or return of the PGC funds paid in the reimbursement of such Program Expenditure, the City shall be solely liable for such refund or return.

## 11. END DATE FOR PROGRAM AND ADMINISTRATIVE ACTIVITIES

Unless this Agreement is terminated pursuant to Section 25 below, or unless otherwise agreed to by the Parties or so ordered by the Commission, the Parties shall complete all Program Administrative activities (as defined in the PIP) and all reporting requirements by no later than March 31, 2013, and all Direct Implementation and Marketing & Outreach activities by no later than December 31, 2012.

## 12. FINAL INVOICES

The City must submit final invoices to SCE no later than March 31, 2013.

## 13. INDEMNITY

13.1. Indemnity by the City. To the extent allowable by law or statute, the City 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) the City's negligence or willful misconduct in the City's activities under the Program or performance of its obligations hereunder, or (b) the City's breach of this Agreement or of any representation or warranty of the City contained in this Agreement.

13.2. Indemnity by SCE. SCE shall indemnify, defend and hold harmless the City, 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) SCE's negligence or willful misconduct in SCE's activities under the Program or performance of its obligations hereunder or (b) SCE's breach of this Agreement or any representation or warranty of SCE contained in this Agreement.

13.3. LIMITATION OF LIABILITY. NO 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 AUTHORIZED WORK OR TERMINATION OF THIS AGREEMENT.

#### 14. OWNERSHIP OF DEVELOPMENTS

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

## 15. REPRESENTATIONS AND WARRANTIES

15.1. Representations of both Parties. Each Party represents and warrants, as of the Effective Date and thereafter during the term of this Agreement, that:

- 15.1.1. The Authorized Work performed by a Party and/or its Contractors shall comply with the applicable requirements of all statutes, acts, ordinances, regulations, codes, and standards of federal, state, local and foreign governments, and all agencies thereof.
- 15.1.2. The Authorized Work performed by a Party and/or its Contractors 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.
- 15.1.3. Each Party shall conform to the applicable employment practices requirements of (Presidential) Executive Order 11246 of September 24, 1965, as amended, and applicable regulations promulgated thereunder.
- 15.1.4. Each Party shall contractually require each Contractor it hires to perform the Authorized Work to indemnify each other Party to the same extent such Party has indemnified each other Party under the terms and conditions of this Agreement.
- 15.1.5. Each Party shall retain, and shall cause its Contractors to retain, all records and documents pertaining to its Authorized Work obligations for a period of not less than five (5) years beyond the termination or expiration of this Agreement.
- 15.1.6. Each Party shall contractually require all of its Contractors to provide the other Parties reasonable access to relevant records and staff of Contractors concerning the Authorized Work.
- 15.1.7. Each Party will maintain, and may require its Contractors to maintain, the following insurance coverage or self insurance coverage, at all times during the term of this Agreement, with companies having an A.M. Best rating of "A-, VII" or better, or equivalent:
  - (i) Workers' Compensation/Employers Liability or Equivalent: statutory minimum
  - (ii) Commercial General Liability: \$2 million minimum per occurrence/\$4 million minimum aggregate.
  - (iii) Commercial or Business Auto: Not applicable
  - (iv) Professional Liability: Not applicable



- 15.1.8 Each Party shall take all reasonable measures, and shall require its Contractors to take all reasonable measures, to ensure that the Program funds in its possession are used solely for Authorized Work, which measures shall include the highest degree of care that such Party uses to control its own funds, but in no event less than a reasonable degree of care.

## 16. PROOF OF INSURANCE

16.1. Evidence of Insurance. Upon request at any time during the term of this Agreement, a Party shall provide evidence that its insurance policies (and the insurance policies of any Contractor, as provided in Section 16.8) are in full force and effect, and provide the coverage and limits of insurance that the Party has represented and warranted herein to maintain at all times during the term of this Agreement.

16.2. Self-Insurance. If a Party is self-insured, such Party shall upon request forward documentation to the other Party that demonstrates to the other Party's satisfaction that such Party self-insures as a matter of normal business practice before commencing the Authorized Work. Each Party will accept reasonable proof of self-insurance comparable to the above requirements.

16.3. Notice of Claims. Each Party shall immediately report to the other Party, and promptly thereafter confirm in writing, the occurrence of any injury, loss or damage incurred by such Party or its Contractors or such Party's receipt of notice or knowledge of any claim by a third party of any occurrence that might give rise to such a claim over \$100,000.

## 17. CUSTOMER CONFIDENTIALITY REQUIREMENTS

17.1. Subject to any disclosures required pursuant to the Public Records Act, each Party agrees, individually and not jointly, that

17.1.1. Each Party, its employees, agents and Contractors shall not disclose any Confidential Customer Information (defined below) to any third party during the Term of this Agreement or after its completion, without such Party having obtained the prior written consent of SCE, except as provided by law, lawful court order or subpoena and provided such Party gives SCE advance written notice of such order or subpoena.

17.1.2. "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 a Party is uncertain whether any information should be considered Confidential Customer Information, such Party shall contact SCE prior to disclosing the customer information.

17.1.3. Prior to any approved disclosure of Confidential Customer Information, SCE may require the disclosing Party to enter into a nondisclosure agreement.

17.1.4. This provision does not prohibit a Party from disclosing non-confidential information concerning the Authorized Work to the Commission in any Commission proceeding, or any Commission-sanctioned meeting or proceeding or other public forum.

17.2. Confidential Customer Information materials provided to a Party by another Party during the performance of this Agreement shall be returned upon written request to the original owner of the documents.

17.3. The Parties acknowledge that Confidential Customer Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Section 16 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 16 by any Party, the Party whose Confidential Customer Information is implicated in such breach 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.

## 18. TIME IS OF THE ESSENCE

The Parties hereby acknowledge that time is of the essence in performing their obligations under this Agreement. Failure to comply with milestones and goals stated in this Agreement, including but not limited to those set forth in Exhibit B of this Agreement, may constitute a material breach of this Agreement, resulting in its termination, payments being withheld, Partner 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.

## 19. CUSTOMER COMPLAINT RESOLUTION PROCESS

The Parties shall develop and implement a process for the management and resolution of Customer complaints in an expedited manner including, but not limited to: (a) ensuring adequate levels of professional Customer service staff; (b) direct access of Customer complaints to supervisory and/or management personnel; (c) documenting each Customer complaint upon receipt; and (d) directing any Customer complaint that is not resolved within five (5) Calendar Days of receipt by the City to SCE.

## 20. RESTRICTIONS ON MARKETING

20.1. 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 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."

20.2. Use of SCE Name. The City 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. The City shall allow five (5) Business Days for SCE review and approval. If the City 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.

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

## 21. RIGHT TO AUDIT

The Parties agrees that the other Party, and/or the Commission, or their respective designated representatives, shall have the right to review and to copy any records or supporting documentation pertaining to the their performance of this Agreement or the Authorized Work, during normal business hours, and to allow reasonable access in order to interview any staff of the City or SCE who might reasonably have information related to such records. Further, the Parties agrees to include a similar right of the other Party and/or the Commission to audit records and interview staff in any subcontract related to performance of the Authorized Work or this Agreement.

## 22. STOP WORK PROCEDURES

SCE may suspend the Authorized Work being performed in their service territory for good cause, including, without limitation, concerns relating to program funding, implementation or management of the Program, safety concerns, fraud or excessive customer complaints, by notifying the City in writing to suspend any Authorized Work being performed in SCE's service territory. Any performance of Authorized Work by the City in SCE's service territory shall stop immediately, and the City may resume its Authorized Work only upon receiving written notice from SCE that it may resume its Authorized Work.

## 23. MODIFICATIONS

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

## 24. TERM AND TERMINATION

24.1. Term. This Agreement shall be effective as of the Effective Date. Subject to Section 37, the Agreement shall continue in effect until June 30, 2013 unless otherwise terminated in accordance with the provisions of Section 24.2 or 29 below.

24.2. Termination for Breach. Any Party may terminate this Agreement in the event of a material breach by the other Party of any of the material terms or

conditions of this Agreement, provided such breach is not remedied within sixty (60) days written notice to the breaching Party thereof from the non-breaching Party.

24.3. Effect of Termination. Any termination by the City or by SCE shall constitute a termination of this Agreement in its entirety (subject, however, to the survival provisions of Section 36).

24.3.1. Subject to the provisions of this Agreement, the City shall be entitled to PGC Funds for all Program Expenditures incurred or accrued pursuant to contractual or other legal obligations for Authorized Work up to the effective date of termination of this Agreement, provided that any Monthly City Reports or other reports, invoices, documents or information required under this Agreement or by the Commission are submitted in accordance with the terms and conditions of this Agreement. The provisions of this Section 24.3.1 shall be the City's sole compensation resulting from any termination of this Agreement.

24.3.2. In the event of termination of this Agreement in its entirety, the City shall stop any Authorized Work in progress and take action as directed by SCE to bring the Authorized Work to an orderly conclusion, and the Parties shall work cooperatively to facilitate the termination of operations and of any applicable contracts for Authorized Work.

## 25. WRITTEN NOTICES

Any written notice, demand or request required or authorized in connection with this Agreement, 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:

The City:  
City of Long Beach  
Meredith Reynolds  
333 W. Ocean Bld., 13<sup>th</sup> Floor  
Long Beach, CA 90802

SCE:  
Southern California Edison Company  
Jim Hodge  
6042-A N. Irwindale Ave.  
Irwindale, CA 91702

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.

## 26. CONTRACTS

Each Party shall, at all times, be responsible for its Authorized Work obligations, and acts and omissions of Contractors, subcontractors and persons directly or indirectly employed by such Party for services in connection with the Authorized Work. Each Party shall require its Contractors to be bound by terms and conditions which are the same or similar to those contained in this Agreement, as the same may be applicable to Contractors.

## 27. RELATIONSHIP OF THE PARTIES

The Parties shall act in an independent capacity and not as officers or employees or agents of each other. This Agreement is not intended to and does not form any "partnership" within the meaning of the California Uniform Partnership Act of 1994 or otherwise.

## 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 (cancer), age (over 40), marital status, 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 Agreement 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 Authorized Work obligations.

## 29. COMMISSION/SCE AUTHORITY TO MODIFY OR TERMINATE

This Agreement and the Program shall at all times be subject to the discretion of the Commission, including, but not limited to, review and modifications, excusing a Party's performance hereunder, or termination as the Commission may direct from time to time in the reasonable exercise of its jurisdiction. In addition, in the event that any ruling, decision or other action by the Commission adversely impacts the Program, SCE shall have the right to terminate this Agreement in accordance with the provisions of Section 24 above by providing at least ten (10) days' prior written notice to the City setting forth the effective date of such termination. Notwithstanding the right to terminate, as partners in the Program, the Parties agree to share in the responsibility and to abide by Commission energy policy supporting this Program. The Parties agree to use all reasonable efforts to minimize the adverse impact to a Party resulting from such Commission actions, including but not limited to modification of the required energy savings goals set forth in Section 4.2 which are fundamental to this Agreement.

## 30. NON-WAIVER

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

### 31. ASSIGNMENT

No Party shall assign this Agreement 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 the City'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.

### 32. FORCE MAJEURE

Failure of a Party to perform its obligations under this Agreement by reason of any of the following shall not constitute an event of default or breach of this Agreement: strikes, picket lines, boycott efforts, earthquakes, fires, floods, war (whether or not declared), revolution, riots, insurrections, acts of God, acts of government (including, without limitation, any agency or department of the United States of America), acts of terrorism, acts of the public enemy, scarcity or rationing of gasoline or other fuel or vital products, inability to obtain materials or labor, or other causes which are reasonably beyond the control of such Party.

### 33. SEVERABILITY

In the event that any of the terms, covenants or conditions of this Agreement, 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 Agreement 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 Agreement.

### 34. GOVERNING LAW; VENUE

This Agreement 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 Agreement shall be filed in Los Angeles County, California.

### 35. SECTION HEADINGS

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

### 36. SURVIVAL

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

such completion or termination. Such provisions shall include, but are not limited to, Sections 9, 10, 13, 14, 15, 17, 21, 34 and 37 of this Agreement.

### 37. ATTORNEYS' FEES

Except as otherwise provided herein, in the event of any legal action or other proceeding between the Parties arising out of this Agreement 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.



### 38. COOPERATION

Each Party agrees to cooperate with the other Party in whatever manner is reasonably required to facilitate the successful completion of this Agreement.

### 39. ENTIRE AGREEMENT

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

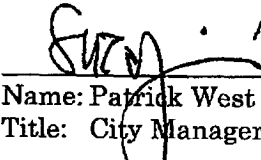
### 40. COUNTERPARTS.

This Agreement 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.

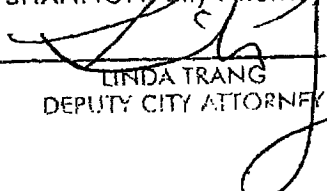
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

#### The City:

#### CITY OF LONG BEACH

 Assistant City Manager  
Name: Patrick West  
Title: City Manager  
EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

#### APPROVED AS TO FORM

12/2, 20 09  
ROBERT E. SHANNON, City Attorney  
By  LINDA TRANG  
DEPUTY CITY ATTORNEY

#### SCE:

#### SOUTHERN CALIFORNIA EDISON COMPANY

  
By: Lynda Ziegler  
Title: Senior Vice President,  
Customer Services

## EXHIBIT A

### ENERGY LEADER PARTNERSHIP - PROGRAM LEVEL

	City 2003 Baseline Consumption*	City 2003-2008 Energy Savings	Participation/ Savings Percentage	City's Energy Leader Program Level:	Retrofit Energy Savings Required for next Level	Community Energy Saving Required for next Level
Municipal Facilities	101,358,131 kWh	210,513 net kWh	0 %	Valued Partner	4,857,393 net kWh	0
Community	2,640,479,309 kWh	192,758,551 net kWh	7.3 %	N/A	N/A	0
2010 – 2012	-----	-----	-----	Valued Partner	4,857,393 net kWh	0

*\* Baseline numbers are mutually agreed upon for purposes of this Agreement only.*

#### Energy Leaders Partnership levels are:

**Valued Partner Level** – This level is the entry level for the partner to develop knowledge and establish goals towards the Silver Level. A budget is available for energy savings projects, for marketing, education, and outreach to the community, as well as for technical assistance toward upgrading or retrofitting partners' facilities. SCE's core program incentives will be offered directly to the partner. The partner will be expected to use the marketing and outreach funds to generate verifiable energy savings in their own facilities and in the community and will participate in demand response at a basic level. Valued Level provides the Partner with 3 cents per kWh paid in addition to what is paid to the Partner under SCE's core program.

**Silver Level** – To qualify for this level, the partner demonstrates past participation in SCE energy efficiency programs, develops an energy action plan, sets community and city energy reduction goals, targets 25 percent of its facilities to complete energy efficiency upgrades, and participates in demand response. An enhanced incentive is paid at the Silver Level. Silver Level provides the Partner with 6 cents per kWh paid in addition to what is paid to the Partner under SCE's core program.

**Gold Level** – To qualify for this level, the partner demonstrates higher past participation in SCE energy efficiency programs, establishes higher city and community program participation and energy savings goals and makes a higher commitment to participate in demand response. Incentive factors are higher for partner facilities' energy efficiency projects. Gold Level provides the Partner with 9 cents per kWh paid in addition to what is paid to the Partner under SCE's core program.

**Platinum Level** – To qualify for this level, the partner demonstrates even higher past participation in energy efficiency programs, is innovative and integrates Energy Action Plan policies, ordinances and procedures. All facilities are targeted for energy efficiency upgrades and the partner makes a higher commitment to participate in Demand Response. Incentive factors are highest for Partner facilities' energy efficiency projects and additional incentives are made available for customized

community energy efficiency projects. Platinum Level provides the Partner with 12 cents per kWh paid in addition to what is paid to the Partner under SCE's core program.

**EXHIBIT "B"**

**ENERGY LEADER PARTNERSHIP PROGRAM  
2010-12 GOALS & PARTNER BUDGET**

**Program Cycle Partner Budget and Goals:**

	Maximum Partner Budget	KWh Energy Savings Goal	kW Peak Demand Reduction Goal
<b>2010-12:</b>		<b>4,619,795 KWh gross</b>	<b>907 kW gross</b>
<b>Incentive:</b>	<b>\$679,266</b>		
<b>Non-Incentive:</b> (Marketing, Education & Outreach, Technical Assistance [and Direct Implementation])	<b>\$786,420</b>		

**Minimum Performance % vs. Expenditures of Non-Incentive Partner Budget:**

Performance Category	12 months into Program	24 Months into Program	30 Months into Program	36 Months into Program
Non-Incentive Budget Expended (ME&O)	NTE 40%	NTE 65%	NTE 90%	NTE 100%
Minimum kWh Achieved	15%	50%	70%	
Minimum kW Achieved	15%	50%	70%	

\* NTE = Not To Exceed

**Explanation of non-Incentive Partner Budget allocation against goals:**

Maximum Percent of total non-incentive Partner Budget expended by the end of year 1: 40%  
Minimum kWh achieved by the end of year 1: 15% of 3-year goal

Maximum Percent of total non-incentive Partner Budget expended by end of year 2: 65%  
Minimum kWh achieved by end of year 2: 50% of 3-year goal

Maximum Percent of total non-incentive Partner Budget expended by end of the 2nd quarter of year 3: 90%  
Minimum kWh achieved by the end of 2nd quarter of year 3: 70% of 3-year goal

*In accordance with Section 10 of this Agreement, SCE reserves the right to assess the progress made by the City at any time with respect to the above goals, and may in its sole discretion elect to shift funds among categories or redistribute all or part of the funding budgeted herein to other energy efficiency programs or partnerships in accordance with the Agreement..*

**EXHIBIT C**

**PROGRAM IMPLEMENTATION PLANS**

**[TO BE ATTACHED WHEN DETERMINED BY OFFICE OF SUSTAINABILITY]**

**EXHIBIT D**

**EM&V PLAN**

**[TO BE ATTACHED WHEN ISSUED BY THE COMMISSION]**

**EXHIBIT E**

**[REPORTING REQUIREMENTS]**

**[TO BE ATTACHED WHEN ISSUED BY THE COMMISSION]**

**ENERGY LEADER PARTNERSHIP PROGRAM AGREEMENT**