

LADWP Retrocommissioning (RCx) Program

Terms and Conditions

This Agreement is entered into by the Los Angeles Department of Water and Power (“LADWP”) and _____ (the “Customer/Project Sponsor”).

1.0 PROJECT DESCRIPTION This Agreement is limited to the RCx Program Project(s) (“Project(s)”) described on the (“Application”) and incorporated by reference in this Agreement.

2.0 DOCUMENTS INCORPORATED BY REFERENCE The following documents are incorporated by reference and are made part of this Agreement: Approved Project Application, Measure Specific Data Collection Form, Building Optimization Analysis (BOA) Tool, Reservation of Funds Form and LADWP’s acceptance letter(s) based on energy saving measures proposed in the Application.

3.0 ELIGIBILITY A). Program funding is limited and is available on a first come, first served basis. Funds will be reserved only upon LADWP approval of the Application. *Incomplete applications, applications submitted without the requisite supporting documents, such as data collection forms, will not be processed or approved.* B). Projects must meet the following requirements to be eligible for RCx incentives: (1) Project must be nonresidential and located within LADWP’S service territory. (2) Applicant must be an LADWP electric customer. (3) Measure(s) can be paid in phases within a facility project portfolio as long as all relevant forms and verifications pertaining to the specific phase are completed and authorized in accordance with program guidelines. *(3a) If projects are paid in phases, each phase will be paid individually. (3b) All phases will be paid based on the individual phase invoicing submitted and will be limited to the available funding for the project phases that have been completed at the time of the phase invoice submittal. (3c) No payments will be made for any work based on future expected measure completion. Only completed work can be paid an incentive.* (4) Measures can be bundled together to allow aggregated costs to be paid by aggregated incentive amounts for a particular facility or site. Separate facilities cannot bundle measures across utility accounts unless those accounts are located as a single contiguous site. (5) Labor may be provided by an outside provider or in-house labor. In-house labor costs shall be limited to \$75/hour and shall be excluded when calculating the limit on the gas incentive. (6) All costs, materials and labor, will be reviewed for reasonableness by the program administrator. Only reasonable costs incurred for the implementation of the prescribed measures will be approved for payment by the program. (7) All calculations of energy savings, and associated incentives, will be based on the ‘Building Optimization Analysis’ (BOA) tool. (7a) Any overrides to limitations in the BOA tool will be considered by the LADWP on a case by case basis. (8) Project must meet all other RCx requirements as specified in the program application. (9) The Customer certifies this project has not and will not receive any funds from any other end user energy conservation program unless the LADWP Administrator has advised that one of the limited exceptions to this rule applies. (10) **This program may be modified or terminated without notice.**

4.0 SUBMITTAL REQUIREMENTS FOR APPLICATION As a condition of payment, Customer/Project Sponsor shall submit to LADWP the documents described below. Required documents include but are not limited to:

(1) Completed, signed Application; (1a) Only the prescribed measures pre-approved by the program can be submitted for implementation and incentives under the program. These measures are listed in the Project Application Form.

(2) Completed Measure Specific Data Collection Forms.

- a) **Cost estimates for individual measures and bundled measure phases are required** as part of the measure specific data collection forms or BOA calculation tool submittals that accompany each phase.
 - i) These costs are required to be broken out by labor and materials during this initial stage of the process.
 - ii) If the BOA calculation tool is provided in lieu of the Measure Specific Data Collection Forms, the estimated cost by measure will be required as an addendum to the BOA calculation tool.
- b) Each phase of the project will need to have implementation costs estimated separately from other phases.

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(3) Invoices and/or documentation to support measure costs at LADWP'S request; (4) additional Project-specific documents as requested by LADWP prior to payment of incentives; and (5) project "Installation Report".

5.0 INSPECTIONS As a condition of payment, Customer/Project Sponsor is responsible for ensuring that LADWP has reasonable access for all inspections, including but not limited to those as described below: 1) pre-installation equipment inspection to examine the existing/baseline equipment and to check the accuracy of Customer/Project Sponsor's Program Application inputs; *No measures can be implemented prior to the pre-inspection verification and issuance of the official 'Authorization to Proceed' included as part of the 'Funding Reservation' document.* 2) post-installation equipment inspection to check implementation of prescribed measures and to verify accuracy of energy savings; 3) measurement and verification.

6.0 Time to Complete Project must be completed within 18 months from the receipt of LADWP's offer letter reserving the incentive funding as well as authorizing Customer/Project Sponsor or Customer representative to proceed with implementation. If additional time is requested, an extension request can be made and will be considered on a case by case basis.

7.0 REVIEW AND DISCLAIMER LADWP'S AND/OR ITS CONSULTANTS' REVIEW OF THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF THE PROJECT OR ENERGY EFFICIENCY MEASURES (EEMs) SHALL NOT CONSTITUTE ANY REPRESENTATION AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY, OR RELIABILITY OF THE PROJECT EEMs, NOR SHALL THE PROJECT SPONSOR, IN ANY WAY, MAKE SUCH A REPRESENTATION TO A THIRD PARTY. CUSTOMER/CUSTOMER CONTRACTOR/PROJECT SPONSOR IS SOLELY RESPONSIBLE FOR THE ECONOMIC AND TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY AND RELIABILITY OF PROJECT AND EEMs. LADWP MAKES NO WARRANTY, WHETHER STATUTORY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS OF EEMs FOR ANY PARTICULAR PURPOSE.

8.0 SUBMITTAL REQUIREMENTS FOR PAYMENTS Incentive payments will be paid to Customer/Project Sponsor only after all requirements are met by Customer/Project Sponsor to LADWP'S satisfaction. The Customer may designate in writing the Project Sponsor as the recipient of the incentive payments. LADWP retains sole discretion to determine the appropriate baseline values and energy savings calculations used to determine incentive payments. LADWP reserves the right to modify or cancel the incentive amount if the actual measures implemented differ from the measures indicated in the Customer's approved Application(s)ⁱ.

8.1 Incentive Payments The program pays \$0.15 per kWh and \$1.00 per therm saved (annualized) for the implementation of one or more of 13 prescribed measures not to exceed the reasonable cost of the installation of the measure. Incentives for the installation and purchase of equipment are capped at 75 percent. *Gas incentives are limited to 50% of the project cost (excluding taxes and internal labor).*

8.2 LADWP will make the applicable incentive payment(s) to Customer/Project Sponsor only after the appropriate documents have been submitted and approved, and the appropriate inspections of the Project have been satisfactorily completed, in accordance with the rules set forth in the Program terms and conditions.

8.3 All Project(s) must be installed and fully operational by _____ to be eligible for incentive payments. LADWP reserves the right to cease making incentive payments, require the return on incentive payments and/or terminate this Agreement if the Project(s) is not installed and fully operational by _____. Extensions may or may not be given. LADWP reserves the right to accept or deny an extension request, after such request is made in writing to the LADWP Program manager.

9.0 PAYMENT DISQUALIFICATION A prorated part of the incentives received by Customer/Project Sponsor shall be repaid to LADWP if:

ⁱ LADWP will adjust the incentive amount based on project's actual operation at start up

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9.1 Customer fails to pay their electric bill throughout the Term of this Agreement. In this event, the total estimated energy savings incentive shall be prorated and any incentive payment shall be based on the energy savings that occur during any applicable billing period.

9.2 LADWP did not receive the energy benefit for which the incentive is paid, for a period of not less than five years or the rated life of the equipment if that is less than five years. Customer agrees that if 1) Customer does not provide LADWP with 100 percent of the related benefits specified in the Application, for a period of five years from the LADWP approved installation date, or 2) the energy benefit to LADWP ceases (for example, if LADWP Customer's company stops using the equipment or no longer pays its electric bill), Customer will return to LADWP the prorated portion of the incentive dollars based on the actual period of time for which LADWP Customer provide the energy benefit.

9.3 Customer/Project Sponsor shall repay any payments made by LADWP within 30 calendar days of notification by LADWP that repayment is required. LADWP is entitled to offset against payments owed to Customer/Project Sponsor any amount due to LADWP that remains unpaid 40 calendar days after LADWP'S written demand for payment.

10.0 TERM AND TERMINATION The Term of this Agreement shall commence on the last date that a Party executes this Agreement and shall terminate on _____ unless terminated earlier pursuant to this Agreement.

11.0 ASSIGNMENT Neither party shall assign this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld.

12.0 PERMITS AND LICENSES Customer/Project Sponsor, at its own expense, shall obtain and maintain and cause its contractors to obtain and maintain licenses and permits required by federal, state, local, or other relevant governing or regulatory bodies to perform work under the Agreement. Any failure by Customer/Project Sponsor or its contractors to maintain necessary licenses and permits constitutes a material breach of Customer's obligations under this Agreement.

13.0 ADVERTISING, MARKETING AND USE OF LADWP'S NAME Customer/Project Sponsor shall not use LADWP'S corporate name, trademark, trade name, logo, identity or any affiliation for any reason, **including soliciting customers to participate in the project**, without LADWP'S prior written consent. Project Sponsor shall make no representations to its customers on behalf of LADWP.

14.0 INDEMNIFICATION The Customer/Project Sponsor on behalf of itself, its successors, and assigns undertakes and agrees to indemnify and hold harmless the City of Los Angeles, the Department of Water and Power, the Board of Water and Power Commissioners of the City of Los Angeles, and all of their officers, agents, successors in interest, insurers, assigns and/or employees (individually and collectively, "Indemnitees"), and at the option of the Department of Water and Power, who reserves the right to select and approve counsel, defend the Indemnitees from and against any and all liens and claims of lien, suits, causes of action, claims, charges, damages (including but not limited to indirect, consequential, incidental, and environmental damages), demands, judgments, civil fines, penalties, or losses of any kind or nature whatsoever (collectively, "Claims") that are incurred by or alleged or asserted against the Indemnitees, for death, bodily injury or personal injury to any person, including Customer/Project Sponsor's employees and agents, for damage or destruction or loss of use of any tangible or intangible property of either party hereto, or of third persons, in any manner arising by reason of, incident to, or connected in any manner to Customer/Project Sponsor's performance or non-performance of the Agreement, breach of any term and/or condition of the Agreement, or violation of any law, statute or regulation on the part of the Customer/Project Sponsor, or the Customer/Project Sponsor's officers, agents, employees, or sub-contractors of any tier, regardless of any negligence or contribution on the part of Indemnitees, except for the proven sole negligence or proven willful misconduct of the LADWP. This indemnity shall apply whether occurring during the term of this agreement or any time thereafter, for Claims alleged or asserted to have arisen during the term of this agreement or resulting from Customer/Project Sponsor's performance of this Agreement, and shall be in addition to any other rights or remedies which Indemnitees have at law, in equity, or under this Agreement.

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15.0 LIMITATION OF LIABILITY LADWP shall not be liable for any special, incidental, indirect, or consequential damages, including without limitation, loss of profits or commitments to subcontractors, and any special, incidental, indirect or consequential damages incurred by Project Sponsor or its Customer.

16.0 WRITTEN NOTICE Any written notice, demand or request required or permitted under 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 LADWP.

Utility	Program Manager:	RCx Program Manager
	UTILITY:	Los Angeles Department of Water & Power
	Address:	111 N. Hope St., Room 1057
	City, State, Zip:	Los Angeles, CA 90012
	Phone #:	(213) 367- 4125
	Fax#:	(213) 367- 4990

17.0 CONFLICTS BETWEEN TERMS Should a conflict exist between the main body of this Agreement and the documents incorporated by reference, the main body of this Agreement shall control. Should a conflict exist in the documents incorporated by reference, the documents shall control in the following order: 1) Program Terms and Conditions; 2) LADWP acceptance letters(s) and incentive estimate(s) based on Energy Efficiency Measures (EEMs) as approved in project Application(s); and 3) Customer's Applications(s). Should a conflict exist between an applicable federal, state, or local law, rule, regulation, order or code and this Agreement, the law, rule, regulation, order or code shall control. Varying degrees of stringency among the main body of this Agreement, the documents incorporated by reference, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any conflict or inconsistency concerning this Agreement.

18.0 ATTORNEY FEES & COSTS Both Parties agree that in any action to enforce the terms of this Agreement that each Party shall be responsible for its own attorney fees and costs.

19.0 MISCELLANEOUS This Agreement shall be governed and construed in accordance with the laws of the State of California, without regard to its conflict of laws provisions. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. This Agreement constitutes the entire Agreement and understanding between the Parties as to the subject matter of the Agreement. No amendment, modification or change to this Agreement shall be binding or effective unless expressly set forth in writing and signed by LADWP's representative authorized to execute the Agreement.

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LOS ANGELES DEPARTMENT OF WATER & POWER

CUSTOMER

By: _____
Title: _____
Name
Printed: _____
Date: _____

By: _____
Title: _____
Name
Printed: _____
Date: _____

PROJECT SPONSOR/CONTRACTOR

By: _____
Title: _____
Name
Printed: _____
Date: _____