

SELF-GENERATION INCENTIVE PROGRAM CONTRACT

BETWEEN **PROGRAM ADMINISTRATOR, HOST CUSTOMER, AND APPLICANT**

This Contract is made by and between [insert Applicant's name] _____, organized and existing under California law (Applicant), jointly and severally with [insert Host Customer's name] _____ (Host Customer), organized and existing under California law, and _____, a California corporation (Program Administrator).

1.0 PROGRAM OVERVIEW AND PROJECT DESCRIPTION - The Self-Generation Incentive Program (Program), authorized by the California Public Utilities Commission (CPUC) in Decision 01-03-073, encourages the installation of several types of self-generation technologies, both renewable and non-renewable, at customer sites in California. The Program offers differential incentives for self-generation technologies (SG Unit(s)) differentiated by their fuel type, air emissions characteristics, and system costs. The Program, to be funded by California investor-owned utility customers, is administered by Program Administrator for customers within its service territory, under the auspices of the CPUC. Customers who participate in the Program must be current electric or gas distribution customers of Program Administrator who pay the Public Goods Charge (PGC) or gas Demand Side Management (DSM) surcharge. Customers can participate either by hiring a separate entity to act as Applicant, or by submitting their own Application. Applicants acting on behalf of customers must include the Host Customer's signature on the Reservation Request Form, Appendix A.

1.1 The Program provides four levels (Level 1, Level 2, Level 3-R and Level 3-N) of incentive payments, subject to the availability of Program funds. The different levels of payments and other details are set forth in detail in D. 01-03-073 and in Appendix C. Installation and operation of the SG Unit(s) must be verified by Program Administrator or its designees in accordance with this Contract before incentive payments can be made. Applicant and Host Customer, as defined in the Appendix C, Self-Generation Incentive Handbook, Section 6, must also agree to permit the Program's Measurement and Evaluation (M&E) consultant to measure and verify the amount of energy production in accordance with the M&E consultant's approved M&E Plan, as described in the Program Handbook, Appendix C, Section 5.3. Finally, Applicant and Host Customer must also agree to provide any additional cost information requested by Program Administrator in order to substantiate total qualifying project cost.

1.2 The Program requires that the SG Unit(s) be covered by warranties of three, or in some cases five, years depending on the type of SG Unit(s) involved.

1.3 This Contract is limited to Application No. _____ attached to this Contract as Appendix A. If all Program and Contract terms and conditions are complied with, Program Administrator will pay Applicant incentives based on the incentive guidelines set in forth D.01-03-073 and in Appendix C. Program Administrator reserves the right to modify or cancel the incentive offer if Applicant's actual installation of SG Unit(s) differs from the proposed installation described in Appendix A. SG Unit(s) must also be installed by the date shown on the Reservation Confirmation and Incentive Claim Form, Appendix B, issued by Program Administrator.

2.0 DOCUMENTS INCORPORATED BY REFERENCE - The following documents set forth additional terms, conditions and requirements of this Contract:

Appendix A – Self-Generation Incentive Program Reservation Request Form

Appendix B – Self-Generation Incentive Program Reservation Confirmation and Incentive Claim Form

Appendix C – Self-Generation Incentive Program Handbook, dated July 2, 2001, or as amended

Appendix D – Insurance Requirements

Appendix E – Renewable Fuel Affidavit

Applicant, and Host Customer if different, each acknowledges having received, read, and agreed to be bound by Appendices A, B, C, D and E copies of which were previously provided to Applicant and Host Customer, as the case may be, and the terms of which are incorporated herein by reference as though set forth in full. Should a conflict exist between this Contract and these Appendices, this Contract shall control.

3.0 SUBMITTAL REQUIREMENTS FOR PAYMENT - As a condition of payment, the Applicant or Host Customer, as the case may be, shall submit to Program Administrator, within the deadlines established by Program Administrator, the documents listed below and described in detail in Appendix C, Section 4.0. Each document requires review and Program Administrator's written approval before Applicant or Host Customer, as the case may be, may move to the next stage of the application process.

3.1 The Self-Generation Incentive Program Reservation Request Form (Appendix A or "Request Form") describes the Project, lists the SG Unit(s) that will be installed in the Project, and estimates its size (in projected kW which it will produce) and its costs (including interconnection fees and in some cases warranty costs). When Applicant or Host Customer, as the case may be, submit Request Form to Program Administrator, it shall include the items listed in Appendix C, Section 4.2. Program Administrator will review the Reservation Request Form and, if the Project appears to meet eligibility requirements, Program Administrator will make a conditional reservation of funds for the Project and will send Applicant or Host Customer, as the case may be, a Conditional Reservation Notice Letter, the description of which is in Appendix C, Section 4.3.

Additionally, Level 3-R and Level 1 Fuel Cells running on renewable fuel must submit the following information:

- Host Customer or Applicant, as the case may be, must demonstrate the availability of an adequate average flow rate of renewable fuel to produce electricity at the SG Unit's full rated capacity, or an appropriate de-rated capacity if supplemented with fossil fuel.

3.2 Proof of Project Advancement. Within 90 calendar days of the date on the Conditional Reservation Notice Letter, Applicant or Host Customer, as the case may be, must submit the following information to demonstrate to Program Administrator that the Project is progressing and that there is a substantial commitment to complete the Project.

- **Air Pollution Permitting** – Applicant or Host Customer, as the case may be, must submit copies of any required air pollution permitting applications, such as a Permit to Construct. This must include proof of payment for any associated application or permit fees.
- **Electrical Interconnection Application** – Applicant or Host Customer, as the case may

be, must submit a complete Application To Interconnect A Generating Facility to the local electric utility. For more information on the utility interconnection process, see Appendix C, Section 5.1.

- **Purchase Order** – Applicant or Host Customer, as the case may be, must submit purchase orders for the SG Unit(s) as soon as they are issued, and in no event later than 90 calendar days from the date of the conditional Reservation Notice Letter. If any purchase orders are revised, copies of the revised purchase orders must be submitted as soon as they are issued.
- **Project Cost Breakdown** - Applicant or Host Customer, as the case may be, must submit a breakdown of known and estimated project cost elements used to determine total project cost as submitted in the initial application. Applicants or Host Customer, as the case may be, are encouraged to use a Project Cost Breakdown worksheet (spreadsheet), available from Program Administrator web site or by e-mail request.
- **Revised Sizing or Efficiency Calculations** – If anything has changed since the initial submittal of these calculations, they should be revised and resubmitted by Applicant or Host Customer, as the case may be, at this time.
- **Self-Generation Incentive Program Contract**, including proof of insurance in accordance with Section 11.0 below.

Additionally, Level 3-R and Level 1 Fuel Cells running on renewable fuel must submit the following information:

- **Equipment Purchase Order** that indicates the fuel cleanup equipment as a separate invoice item.
- **Renewable Fuel Affidavit** – For a [Level 3-R or Fuel Cells running on a renewable fuel] Project, Applicant and Host Customer must each execute and submit the Renewable Fuel Affidavit, a form of which is attached hereto as Appendix E.

3.3 After Program Administrator reviews the Proof of Project Advancement items and determines that the Project has met all the necessary criteria, Program Administrator will send Applicant or the Host Customer, as the case may be, the **Reservation Confirmation and Incentive Claim Form (“Claim Form”)**. This Claim Form will list the specific reservation amount and the reservation expiration date (nine months later or Program termination date, whichever first occurs).

3.4 Upon Project completion, and prior to the reservation expiration date, Applicant or Host Customer, as the case may be, must complete and submit the Claim Form to request an incentive payment. In addition to the completed Claim Form, Applicants must submit the following attachments when requesting incentive payment:

- **Proof of System Interconnection** – Applicant or Host Customer, as the case may be, must submit a copy of the signed letter from their utility granting the distributed energy system owner permission to operate in parallel with the electric utility transmission and distribution system. For questions on the interconnection process, see Appendix C, Section 5.1.1.
- **Final Building Inspection Report** – Applicant or Host Customer, as the case may be, must submit a copy of their final building inspection report demonstrating that the Project meets all codes and standards of the permitting jurisdiction. Contact your local permitting jurisdiction to learn about permitting requirements.
- **Final Air Permitting Documentation** – For those technologies that require an air permit, Applicant or Host Customer, as the case may be, must submit a copy of the final

documentation indicating compliance with all applicable air pollution regulations.

- **Final Equipment and Installation Invoice** – Applicant or Host Customer, must submit a copy of invoices demonstrating final eligible Project costs. For a list of eligible Project costs, see Appendix C, Section 3.4.1.
- **Proof of Warranty** – Applicant or Host Customer, as the case may be, must submit proof of warranty for the distributed energy technology used in their Project. This could include a manufacturers warranty statement or extended maintenance and service contract terms and conditions.
- **Planned Maintenance Coordination Letter** (Level 3-N only) – Applicants with facilities sized greater than 200 kW must submit a copy of a coordination letter to the administrator which shows they will schedule planned maintenance between October and March and, if necessary, only during off-peak hours and/or weekends during the months of April to September.

3.5 The **Field Verification Visit** by the Program Administrators or their contractors will verify that the SG Unit(s) have been installed and are operating in accordance with the Request Form, Claim Form and required accompanying information. No incentive payment can be made until the Field Verification Visit has been satisfactorily completed. The terms and conditions for the Field Verification Visit are set forth in Section 4.1 below.

4.0 **INSPECTIONS** - As a condition of receiving incentive payments, Applicant and Host Customer must ensure that Program Administrator and the Program M&E consultant have access to the Project Site(s) for all Field Verification Visits summarized below and described in detail in Appendix C, Section 4.4.9. Incentive payments will not be made if the Field Verification Visit shows that the SG Unit(s) have not been installed or are not operational in accordance with the Request Form, Claim Form and required accompanying information.

4.1 At the **post-installation Field Verification Visit**, Program Administrator or its authorized agent checks installed SG Unit(s) to verify that the SG Unit(s) described in Appendix A have been installed and are operating in accordance with the Request Form, Claim Form and accompanying information. During the Field Verification Visit, Applicant and Host Customer must provide access to the SG Unit(s) and must demonstrate the operation of the SG Unit(s). During the Field Verification Visit, Applicant and Host Customer must ensure that someone is present who is knowledgeable about the SG Unit(s) and their operation.

4.2 Applicant and Host Customer must also agree to further **Field Verification Visits and interviews**, as necessary for Measurement and Evaluation under the M&E Plan submitted by the Program's M&E consultant and as discussed in Appendix C, Section 5. The same terms and conditions specified in Section 4.1 will apply to such further Field Verification Visits.

5.0 **PAYMENT** - The total incentive payment shall not exceed the Total Incentive reserved in the Claim Form under CONFIRMATION OF INCENTIVE RESERVATION. The Incentive Payment will be made payable to Applicant or Host Customer, as the Applicant and Host Customer shall designate in writing, only after the appropriate documents have been submitted (within the deadlines established by Program Administrator) and approved, and the first Field Verification Visit has been satisfactorily completed, in accordance with the Program rules set forth in Appendix C. Program Administrator's determination of the incentive amount is final and Applicant and Host Customer each agree to accept this determination.

6.0 REVIEW AND DISCLAIMER - Program Administrator's review of the design, construction, installation, operation or maintenance of the Project or the SG Unit(s) is not a representation as to their economic or technical feasibility, operational capability, or reliability. Applicant and Host Customer each agrees that neither of them will make any such representation to any third party. Applicant and Host Customer are solely responsible for the economic and technical feasibility, operational capability, and reliability of the Project and the SG Unit(s).

7.0 RENEWABLE FUEL LEVELS - For Level 3-R and Level 1 fuel cells running on renewable fuel, Applicant and Host Customer shall not, for the applicable period described below or the life of the applicable SG Unit, whichever is shorter, use fossil fuel for more than 25% of its total annual fuel requirements for such SG Unit in any calendar year.

- Five years for Level 1 fuel cell(s).
- Three years for Level 3-R.

7.1 In the event the Applicant or Host Customer fails to comply with Section 7.1 above, then Applicant and Host Customer shall, within 30 days of receipt of a written demand from Program Administrator, reimburse Program Administrator all incentive payments paid by Program Administrator pursuant to the Program and this Contract. Such reimbursement shall be in the form of a certified check or cash payable to Program Administrator.

7.2 In order to ensure reimbursement in the event the Applicant or Host Customer fails to comply with Section 7.1 above, the Program Administrator may from time to time require a bond or other forms of security acceptable to Program Administrator. Acceptable forms of security include cash deposit, irrevocable letter of credit, surety bond from an "A" rated company by A.M. Best, assignment of certificate of deposit, or corporate guarantee (guarantor subject to creditworthiness review).

8.0 TERM AND TERMINATION

8.1 The Term of this Contract shall begin on the last date that a party signs it, and shall terminate no later than the length of the required warranty, for Levels 1 & 2 is five years, for Level 3-R and 3-N is three years, unless terminated earlier pursuant to this Contract, or unless modified by order of the CPUC or by written agreement of the parties.

8.2 The Contract may be terminated by Program Administrator in the event (a) Applicant or Host Customer fails to perform a material obligation under this Contract and Applicant or Host Customer fails to cure such default within 15 days of receipt of written notice from Program Administrator, or (b) any statement, representation or warranty made by Applicant or Host Customer in connection with the Program or this Contract is false, misleading or inaccurate on the date as of which it is made.

8.3 The termination of this Contract shall not operate to discharge any liability which has been incurred by either party prior to the effective date of such termination.

9.0 ASSIGNMENT- Applicant and Host Customer consent to Program Administrator's assignment of all of Program Administrator's rights, duties and obligations under this Contract to the CPUC and/or its designee. Any such assignment shall relieve Program Administrator of all rights, duties and obligations arising under this Contract. Other than Program Administrator's assignment to the CPUC or its designee, neither party shall assign its rights or delegate its duties without the prior written consent of the other party, except in connection with the sale or merger of a substantial portion of its assets. Any such assignment or delegation without written consent shall be null and void. Consent to assignment shall not be unreasonably withheld or delayed. Applicant and Host Customer must provide assurance of the success of a Project if assigned by providing any additional information requested by Program Administrator.

10.0 PERMITS AND LICENSES – Applicant or Host Customer, at their own expense, shall obtain and maintain all licenses and permits needed to perform its work on the Project. These costs may be included as eligible project costs for the purpose of determining the maximum incentive payment

11.0 INSURANCE - Applicant and Host Customer shall, at their own expense, maintain the insurance coverage set forth in Appendix D, or an equivalent amount of self-insured coverage satisfactory to Program Administrator, and shall submit proof of such insurance to Program Administrator as part of the Proof of Project Advancement described in Section 3.2 of this Contract.

12.0 ADVERTISING, MARKETING AND USE OF PROGRAM ADMINISTRATOR'S NAME - Applicant and Host Customer shall not use Program Administrator's corporate name, trademark, trade name, logo, identity or any affiliation for any reason, including to solicit customers to participate in the Project, without prior written consent of Program Administrator. Applicant and Host Customer shall make no representations to its customers on behalf of Program Administrator.

13.0 INDEPENDENT CONTRACTOR - In assuming and performing the obligations of this Contract, Applicant and Host Customer are each an independent contractor and neither shall be eligible for any benefits which Program Administrator may provide its employees. All persons, if any, hired by Applicant or Host Customer shall be their respective employees, subcontractors, or independent contractors and shall not be considered employees or agents of Program Administrator.

14.0 RIGHT TO AUDIT AND REPORT INFORMATION - Program Administrator shall be allowed to periodically audit Applicant's and Host Customer's records related to the work done under this Contract, and report the results of its audit to the CPUC or its designee. Applicant and Host Customer must provide all requested Project documents to Program Administrator upon written request, and must, for 5 years following Contract termination, maintain copies of all Project documents, including, but not limited to, Contracts, invoices, purchase orders, reports, and all back-up documents, for Program Administrator's review.

15.0 INDEMNIFICATION

15.1 To the greatest extent permitted by applicable law, Applicant and Host Customer shall each indemnify, defend and hold harmless Program Administrator, its affiliates, subsidiaries, current and future parent company, officers, directors, agents and employees, from and against all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise), which arise from or are in any way connected with any: (i) injury to or death of persons, including but not limited to employees of Program Administrator, Host Customer, or Applicant; (ii) injury to property or other interests of Program Administrator, Host Customer, Applicant, or any third party; (iii) violation of local, state or federal common law, statute, or regulation, including but not limited to environmental laws or regulations; or (iv) strict liability imposed by any law or regulation; so long as such injury, violation, or strict liability (as set forth in (i) - (iv) above) arises from or is in any way connected with this Contract or Applicant's or Host Customer's performance of, or failure to perform, this Contract, however caused, regardless of any strict liability or negligence of Program Administrator whether active or passive, excepting only such loss, damage, cost, expense, liability, strict liability, or violation of law or regulation that is caused by the negligence or willful misconduct of Program Administrator, its officers, managers, or employees.

15.2 Applicant and Host Customer each acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any hazardous material or waste as a result of the work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from strict liability, or violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs incurred as a result of such releases or spills are expressly within the scope of this indemnity.

15.3 Applicant and Host Customer each shall, on Program Administrator's request, defend any action, claim or suit asserting a claim which might be covered by this indemnity. Applicant and Host Customer shall pay all costs and expenses that may be incurred by Program Administrator in enforcing this indemnity, including reasonable attorney's fees. This indemnity shall survive the termination of this Contract for any reason.

16.0 LIMITATION OF LIABILITY - Program Administrator shall not be liable to Applicant, Host Customer or to any of their respective subcontractors for any special, incidental, indirect or consequential damages whatsoever, including, without limitation, loss of profits or commitments, whether in contract, warranty, indemnity, tort (including negligence), strict liability or otherwise arising from Program Administrator's performance or nonperformance of its obligations under the Contract.

17.0 VENUE - This Contract shall be interpreted and enforced according to the laws of the State of California. Sole jurisdiction and venue shall be with the courts in [select County closest to Program Administrator, i.e. Los Angeles/ San Diego/San Francisco] County, California.

18.0 DISPUTE RESOLUTION - The parties to this Contract shall attempt in good faith to resolve any dispute arising out of or relating to this Contract promptly by negotiations between a

vice president of Program Administrator or his or her designated representative and an executive of similar authority from Applicant and/or Host Customer. Either party must give the other party or parties written notice of any dispute. Within twenty (20) calendar days after delivery of the notice, the executives shall meet at a mutually acceptable time and place, and shall attempt to resolve the dispute. If the matter has not been resolved within thirty (30) calendar days of the first meeting, any party may pursue other remedies, including mediation. All negotiations and any mediation conducted pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations, to which Section 1152.5 of the California Evidence Code shall apply, and Section 1152.5 is incorporated herein by reference. Notwithstanding the foregoing provisions, a party may seek a preliminary injunction or other provisional judicial remedy if in its judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Each party is required to continue to perform its obligations under this Contract pending final resolution of any dispute arising out of or relating to this Contract.

19.0 INTEGRATION AND MODIFICATION - This Contract and its appendices constitute the entire Contract and understanding between the Parties as to its subject matter. It supersedes all prior or contemporaneous contracts, commitments, representations, writings, and discussions between Applicant, Host Customer, and Program Administrator, whether oral or written, and has been induced by no representations, statements or Contracts other than those expressed herein.

NO AMENDMENT, MODIFICATION OR CHANGE TO THIS CONTRACT SHALL BE BINDING OR EFFECTIVE UNLESS EXPRESSLY SET FORTH IN WRITING AND SIGNED BY PROGRAM ADMINISTRATOR'S REPRESENTATIVE AUTHORIZED TO SIGN THE CONTRACT.

Notwithstanding the foregoing, this Contract is subject to such changes or modifications by the CPUC as it may, from time to time, direct in the exercise of its jurisdiction over Program Administrator. Furthermore, this Contract is subject to change or modification by the Program Working Group, as it may from time to time make to the Program in the exercise of its jurisdiction over the implementation of the Program. For purposes of this Contract, the "Program Working Group" shall constitute certain staff of each California investor-owned utility, the San Diego Regional Energy Office, California Energy Commission, the Energy Division of the CPUC, and the CPUC.

20.0 No Third Party Beneficiaries. This Contract is not intended to confer any rights or remedies upon any other persons other than the undersigned parties hereto

By execution of this Contract, Applicant and Host Customer each certifies the Project meets all Program eligibility requirements, and that the information supplied in Appendix A is true and correct. Applicant and Host Customer further certify that Applicant and Host Customer have read and understand the Self-Generation Incentive Program documents described in Appendix C and agree to abide by the rules and requirements set forth in this Contract and in Appendices B, C & D.

Each of the Applicant and Host Customer declare under penalty of perjury under the laws of the State of California that 1) the information provided in the attached Self Generation Incentive

Program Reservation Request Form is true and correct to the best of my/our knowledge, 2) the above SG Unit(s) described in the Self Generation Incentive Program Reservation Request Form are new and intended to offset part or all of the Host Customer's or Applicant's electrical needs at the site of installation, 3) the site of installation is located within the Program Administrator's service territory, 4) the SG Unit(s) are not intended to be used as a backup generator, and 5) the Host Customer and the Applicant each has received a copy of this Contract and the completed Reservation Request Form.

In witness whereof, the parties have executed this Contract as of the latest date below.

[PROGRAM ADMINISTRATOR]

Signature: _____

Name
Printed: _____

Title: _____

Date: _____

[APPLICANT]

Signature: _____

Name
Printed: _____

Title: _____

Date: _____

[HOST CUSTOMER]

Signature: _____

Name
Printed: _____

Title:

Date: _____

All communications under this Contract shall be forwarded directly to:

**Program Administrator
Self-Generation Incentive Program
Southern California Edison
2131 Walnut Grove Avenue
3rd Floor, B-10
Rosemead, CA 91770**

APPENDIX D—INSURANCE COVERAGE REQUIREMENTS

Workers' Compensation and Employers' Liability: Worker's Compensation insurance or self-insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, where Applicant performs work. Employers' Liability insurance shall not be less than \$1,000,000 for injury or death each accident.

Commercial General Liability: Coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, with no coverage deletions. The limit shall not be less than \$1,000,000 each occurrence for bodily injury, property damage and personal injury. If coverage is subject to a general aggregate limit, this aggregate limit shall be twice the occurrence limit. Coverage shall:

a) By "Additional Insured" endorsement add as insureds Program Administrator, its affiliates, subsidiaries, and parent company, and Program Administrator's directors, officers, agents and employees with respect to liability arising out of or connected with the work performed by or for the Applicant (ISO Form CG2010 or equivalent is preferred). In the event the Commercial General Liability policy includes a "blanket endorsement by contract," the following language added to the certificate of insurance will satisfy this requirement: "Program Administrator, its affiliates, subsidiaries, and parent company, and Program Administrator's directors, officers, agents and employees with respect to liability arising out of the work performed by or for the Applicant are additional insureds under a blanket endorsement;" and

b) Be endorsed to specify that the Applicant's insurance is primary and that any insurance or self-insurance maintained by Program Administrator shall not contribute with it.

Business Auto: Coverage shall be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, code 1 "any auto." The limit shall not be less than \$1,000,000 each accident for bodily injury and property damage. Alternative coverage may be considered by the Program Administrator.

Additional Insurance Provisions: As part of proof of project advancement documentation, Applicant shall furnish Program Administrator with certificates of insurance and endorsements of all required insurance for Applicant and Host Customer. The documentation shall state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to Program Administrator. The documentation must be signed by a person authorized by that insurer to bind coverage on its behalf and shall be submitted to this address:

**Program Administrator
Self-Generation Incentive Program
Southern California Edison
2131 Walnut Grove Avenue
3rd Floor, B-10
Rosemead, CA 91770**

A copy of all such insurance documents shall be sent to Program Administrator's Contract negotiator and Project Administrator. Program Administrator may inspect the original policies or require complete certified copies at any time. Upon request, Applicant shall furnish Program Administrator the same evidence of insurance for its Subcontractors, as Program Administrator requires of Applicant.