



AGENDA REPORT

Meeting Date: March 1, 2011

Item Number: D-4

To: Honorable Mayor & City Council

From: Alan Schneider, Director of Project Administration

Subject: RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS ADOPTING CERTAIN FINDINGS AND AUTHORIZING EXECUTION OF AN ENERGY SERVICE CONTRACT WITH ENERGY INNOVATION GROUP, LLC PURSUANT TO GOVERNMENT CODE SECTION 4217.10 ET SEQ; AND,

APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND ENERGY INNOVATION GROUP, LLC TO PARTICIPATE IN SOUTHERN CALIFORNIA EDISON'S SPECIAL BENEFIT MANAGEMENT AFFILIATES PROGRAM (MAP) TO RETROFIT CITY AND OFF STREET PARKING FACILITIES WITH ENERGY EFFICIENT EQUIPMENT TO PRODUCE ENERGY AND MAINTENANCE SAVINGS; AND

APPROPRIATING FUNDS IN THE AMOUNT OF \$1,400,000 THEREFOR; AND,

APPROVAL OF A PURCHASE ORDER IN THE NOT TO EXCEED AMOUNT OF \$1,400,000 TO ENERGY INNOVATION GROUP, LLC FOR THE ENERGY EFFICIENT EQUIPMENT; AND,

APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND SOUTHERN CALIFORNIA EDISON COMPANY FOR THE ON-BILL FINANCING AGREEMENT THIRD-PARTY IMPLEMENTED PROJECTS; AND, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

Attachments:

1. Resolution
2. Energy Innovation Group Contract
3. Southern California Edison Company On-Bill Financing Agreement Third-Party Implemented Projects

RECOMMENDATION

Staff recommends that the "City Council move to approve the Resolution adopting certain findings and authorizing the contract with Energy Innovation Group, LLC (EIG) for energy management services; approve the agreement with EIG to participate in California Edison Company's (SCE) Special Benefit Management Affiliates Program (MAP); approve an appropriation of funds; approve the agreement with SCE for zero percent On-Bill Financing to complete a broad array of energy efficiency projects at various City facilities; and authorize the City Manager to execute the agreement with SCE." The projects would be completed under the Southern California Edison MAP, operated exclusively by EIG under contract with SCE and could reduce the City's energy cost up to an estimated \$300,000 or more annually.

Proposed projects with a not to exceed cost up to \$1,400,000 less a SCE rebate estimated at \$150,000 or greater, as approved by SCE will be paid for full under SCE's 0% interest On-Bill Financing program with no capital outlay from the City. A portion of the energy savings from the monthly utility bills is used by SCE until the project cost is fully offset.

INTRODUCTION

Utility rates are expected to increase in 2011 and in subsequent years. Staff is continuously searching for "green" programs in which to participate and promote efficient energy usage and reduce the City's ongoing energy costs. The City has previously engaged EIG for a number of energy efficiency projects, including ventilation retrofits at certain City parking garages in 2008. Most recently EIG has developed the energy efficiency strategies to meet the California Energy Commission (CEC) requirements to proceed with the energy projects, which are being fully funded by a grant of \$192,706 funded by the American Recovery and Reinvestment Act (ARRA) of 2009 and an estimated \$25,976 of SCE rebates.

DISCUSSION

The City has identified additional energy saving opportunities to upgrade and install new energy-related equipment in multiple City facilities, producing over \$300,000 annual energy savings, and resulting in expected substantial savings in maintenance costs.

To implement these energy projects, EIG has recommended that the City enter into an agreement with SCE for the On-Bill Financing program. In Decision 09-09-047, the California Public Utilities Commission authorized SCE to provide zero percent interest financing for the installation of certain energy efficient equipment, which is to be repaid over a specified period through the Customer's electric utility bill ("On-Bill Financing").

Pursuant to the attached financing form of agreement, SCE will advance 100% of the funds to cover up to a maximum \$1,250,000 net cost, after SCE rebates, which are estimated to be no less than \$150,000 of the estimated \$1,400,000 gross project cost to complete the approved projects. SCE will complete an inspection of the facilities and confirm savings, rebate and the 0% on-bill financing.

The projects include, but may not be limited to replacement of HVAC air handling and cooling coil units, premium efficiency motors, upgrade of lighting units, high performance window film, and elevator drive system upgrades. These upgrades are identified for the following City facilities:

- City Hall, 455 N. Rexford Drive¹
- Police Facility, 464 N. Rexford Drive
- Library, 444 N. Rexford Drive
- Public Works Facility, 345 Foothill Road
- Fire Station #1, 445 N. Rexford Drive
- Fire Station #2, 1100 Coldwater Canyon
- Roxbury Park, 471 S. Roxbury Drive
- Will Rogers Park, 9650 Sunset Boulevard
- Coldwater Canyon Park, 1100 N. Beverly Drive

In addition, lighting and equipment upgrades at City parking structures would include:

- Santa Monica 5 Parking Structures
- Civic Center Parking Structure, 450 N. Rexford Drive
- 225 N. Crescent Drive Parking Structure
- Bedford Parking, 461 N Bedford Drive
- Camden Parking, 430 Camden Drive
- Rodeo Parking, 9510 Brighton Way
- South Beverly Parking, 216 S Beverly Drive
- Crescent Parking, 333 Crescent/9361 Dayton Way
- Beverly-Canon Parking, 438 N. Beverly Drive
- Williams Sonoma Parking, 345 N. Beverly Drive
- Third Street Parking, 9333 Third Street
- Public Gardens Parking at the Montage, 242 Beverly/241 Canon Drive
- La Cienega Tennis Center, 321 La Cienega Boulevard

It is recommended that the City enter into the agreement with EIG for management of projects under the MAP program. EIG is the sole source vendor selected by SCE after a competitive bid process for the operation and management of the MAP program. In accordance with the California Government Code sections 4217.10 and 4217.12, the City is authorized and finds that it is in the best interest of the City to enter into an energy service contract with EIG, and that the anticipated cost to the City for electrical energy will be less than the anticipated cost to the City of electrical energy that would have been consumed absent these improvements.

To assist the City to take advantage of the described energy efficiency and 0% interest on-bill financing project financing opportunities, EIG shall arrange and manage the process to:

1. Complete an on-site review of all multi-technology energy efficiency opportunities/measures for all City facilities.

¹ Energy projects planned for City Hall include replacement of fan motors for the HVAC system and LED exit signs, as examples of upgrades that were not part of the recent City Hall remodel projects.

2. Develop a scope of work, engineering, analysis of options, and specifications with estimated savings and rebates for each measure.
3. Determine the estimated cost to perform each measure from the scope of work.
4. Provide City with a scope of work, formal project completion pricing, and savings analysis of each project for approval to proceed with installation.
5. Complete and file the necessary pre-installation documentation with SCE to secure the 0% on-bill financing and to secure a rebate commitment.
6. Arrange with contractors for completion of installation of approved projects.
7. Arrange for and manage SCE pre-installation inspection for authorization to proceed with projects.
8. Coordinate installation planning meetings.
9. Perform project installation oversight.
10. Complete post-installation verification that all work was completed according to specifications and that all systems are operating properly.
11. Arrange for and manage SCE post-installation inspection.
12. Complete and file SCE post-installation documentation to meet rebate and 0% financing requirements.

FISCAL IMPACT

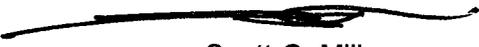
With no capital outlay, the City estimates that it can reduce annual energy costs up to an estimated \$300,000 or greater, based on current rates, in addition to substantial savings in maintenance cost. A number of projects encompass motors and other equipment, which are old and well beyond their expected useful life. Without this program, it is contemplated that a considerable portion of this equipment is expected to be replaced in the next few years with some equipment failing altogether and requiring emergency replacement. As a result of this project, the City will avoid such adverse operating conditions and avoid the future capital outlay requirements, which would otherwise be required for such equipment.

SCE will calculate the average estimated monthly savings after an inspection of the existing equipment and the energy efficiency upgrade. Once the project cost is determined, it is divided by the monthly savings to determine the number of months that the savings are to be used to fully cover the project cost (Cost Recovery Period). That calculated monthly savings amount will remain on the SCE bill for the Cost Recovery Period, so that there is no payment required by the City at any time. At the end of the Cost Recovery Period, the full amount of savings from that time forward will reduce the bill to the City.

Based on an estimated maximum amount to be paid by SCE of \$1,250,000 for the City's energy saving projects, and estimated energy savings of approximately \$25,000 per month, the Cost Recovery Period is 50 months (\$1.25 million/\$25,000) to offset the project cost advanced by SCE. SCE provides these funds at 0% interest. The City, at no time, has any capital outlay and will have an immediate reduction in maintenance cost.

The requested appropriation in this agenda report in the amount of \$1,400,000 is for the anticipated revenues from SCE to cover the full cost of the energy saving projects. The appropriation funding is recommended as follows:

<u>From:</u>	<u>To:</u>
\$1,400,000	\$1,400,000
0805901-61010	35080823-85040
Facilities Fund-Other Financing Sources- Proceeds from Loan-Southern California Edison	Miscellaneous Small Construction Projects CIP-Construction account



Scott G. Miller
Finance Approval

 David D. Gustavson 

Approved By

Attachment 1

RESOLUTION NO. 11-R-

RESOLUTION OF THE COUNCIL OF THE CITY OF
BEVERLY HILLS ADOPTING CERTAIN FINDINGS AND
AUTHORIZING EXECUTION OF AN ENERGY SERVICE
CONTRACT WITH ENERGY INNOVATION GROUP, LLC
PURSUANT TO GOVERNMENT CODE SECTION 4217.10 ET
SEQ

The Council of the City of Beverly Hills does resolve as follows:

A. California Government Code sections 4217.10 et seq. authorize cities to enter into energy service contracts for the implementation of energy related improvements if (1) a city finds that it is in the best interest of the city to enter into such energy service contracts, and (2) the anticipated cost to the city for thermal, electrical and other energy will be less than the anticipated marginal cost to the city of the thermal, electrical and other energy that would have been consumed by the city absent these improvements.

B. On March 1, 2011 the City Council conducted a duly noticed public hearing as required by Government Code section 4217.12.

The Council of the City of Beverly Hills does hereby resolve as follows:

Section 1. The City Council hereby finds that it is in the best interest of the City of Beverly Hills to enter into an energy service contract with Energy Innovation Group, LLC for the implementation of certain energy related improvements to City facilities. The anticipated cost to the City will be less than the anticipated marginal cost to the City of the thermal, electrical and other energy that would have been consumed by the City absent the implementation of the improvements as described in the agenda report dated March 1, 2011.

Section 2. The City Council hereby authorizes the City Manager or his designee to execute the energy services contract with Energy Innovation Group, LLC and to perform such other tasks as are reasonably necessary for the implementation of the energy related improvements to City facilities in accordance with California Government Code sections 4217.10 et seq.

Section 3. The City Clerk shall certify to the adoption of this resolution and shall cause this resolution and his certification to be entered in the Book of Resolutions of the Council of this City.

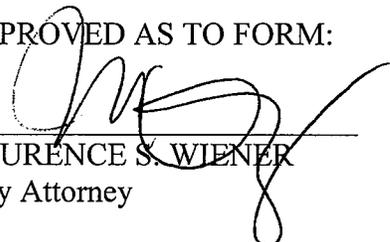
Adopted:

JIMMY DELSHAD
Mayor of the City of Beverly Hills,
California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:



DAVID D. GUSTAVSON
Director of Public Works & Transportation

SCOTT G. MILLER
Director of Administrative Services/Chief
Financial Officer

Attachment 2

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND ENERGY INNOVATION GROUP, LLC TO PARTICIPATE IN SOUTHERN CALIFORNIA EDISON'S SPECIAL BENEFIT MANAGEMENT AFFILIATES PROGRAM (MAP) TO RETROFIT CITY AND OFF STREET PARKING FACILITIES WITH ENERGY EFFICIENT EQUIPMENT TO PRODUCE ENERGY AND MAINTENANCE SAVINGS

NAME OF CONSULTANT: Energy Innovation Group, LLC

RESPONSIBLE PRINCIPAL OF CONSULTANT: Sid Pelston, Managing Director

CONSULTANT'S ADDRESS: 11965 Venice Bl., Suite #408
Los Angeles, CA 90066
Attention: Sid Pelston, Managing Director

CITY'S ADDRESS: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210
Attention: David Gustavson, Director of Public Works & Transportation

COMMENCEMENT DATE: Upon Written Notice to Proceed

TERMINATION DATE: December 31, 2011

CONSIDERATION: All project costs are to be paid through payments received from Southern California Edison Company 0% on-bill financing agreement

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND ENERGY INNOVATION GROUP, LLC TO PARTICIPATE IN SOUTHERN CALIFORNIA EDISON'S SPECIAL BENEFIT MANAGEMENT AFFILIATES PROGRAM (MAP) TO RETROFIT CITY AND OFF STREET PARKING FACILITIES WITH ENERGY EFFICIENT EQUIPMENT TO PRODUCE ENERGY AND MAINTENANCE SAVINGS

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "CITY"), and Energy Innovation Group, LLC (hereinafter called "CONSULTANT").

RECITALS

A. CITY desires to have certain services and/or goods provided as set forth in Exhibit A (the "Scope of Work"), attached hereto and incorporated herein.

B. CONSULTANT represents that it is qualified and able to perform the Scope of Work.

NOW, THEREFORE, the parties agree as follows:

Section 1. CONSULTANT's Scope of Work. CONSULTANT shall perform the Scope of Work described in Exhibit A. CONSULTANT shall arrange and manage all CITY-approved third party contractors in connection with CITY approved energy efficiency installations in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. CONSULTANT is not a licensed contractor and will be performing its duties in planning, management, and oversight as the Project Director as described in Exhibit A.

Section 2. Time of Performance.

CONSULTANT shall commence its services under this Agreement upon receipt of a written notice to proceed from CITY. CONSULTANT shall complete the performance of services by the Termination Date set forth above and/or in conformance with the project timeline set forth in Exhibit A.

The City Manager or his designee may extend the time of performance in writing for a period not to exceed one year from the date of termination pursuant to the same terms and conditions of this Agreement.

Section 3. Compensation.

(a) Compensation

CITY shall not compensate CONSULTANT from CITY funds for CONSULTANT's services. CONSULTANT shall receive compensation solely through funds received by CITY from Southern California Edison ("SCE") through SCE's 0% on-bill financing program. CITY agrees to pay such funds to CONSULTANT in the amounts approved by SCE and agreed upon by CITY and CONSULTANT in writing for the services and/or goods provided under this

Agreement. CONSULTANT agrees to accept in full satisfaction for such services, such payment by SCE.

(b) Additional Services. CITY may from time to time request CONSULTANT to perform additional services not included in the Scope of Services. Such requests for additional services shall be made by the City Manager or his designee in writing and shall be subject to CONSULTANT'S written approval.

Section 4. Method of Payment. CONSULTANT shall submit to CITY a detailed accounting, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each accounting shall itemize the services rendered during the period and the amount due from SCE. CITY shall authorize CONSULTANT to request payment from SCE of the on-bill financing funds upon the successful completion of CITY approved energy efficiency projects. All contractors performing work under CONSULTANT's direction at CITY facilities pursuant to the Agreement shall look solely to CONSULTANT for payment.

Section 5. Independent Contractor. CONSULTANT is and shall at all times remain, as to CITY, a wholly independent contractor. Neither CITY nor any of its agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's employees, except as herein set forth. CONSULTANT shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

Section 6. Assignment. This Agreement shall not be assigned in whole or in part, by CONSULTANT without the prior written approval of CITY. Any attempt by CONSULTANT to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

Section 7. Responsible Principal(s)

(a) CONSULTANT's Responsible Principal set forth above shall be principally responsible for CONSULTANT's obligations under this Agreement and shall serve as principal liaison between CITY and CONSULTANT. Designation of another Responsible by CONSULTANT shall not be made without prior written consent of CITY.

(b) CITY's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of CITY.

Section 8. Personnel. CONSULTANT represents that it has, or shall secure at its own expense, all personnel required to perform CONSULTANT's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified, licensed and insured to perform such Scope of Work.

Section 9. Permits and Licenses. CONSULTANT and all third parties that perform work under this Agreement shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

Section 10. Interests of CONSULTANT. CONSULTANT affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner

with the performance of the Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONSULTANT.

Section 11. Insurance.

(a) CONSULTANT shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONSULTANT.

(2) A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by CONSULTANT in performing the Scope of Work required by this Agreement.

(3) Workers' compensation insurance as required by the State of California.

(b) CONSULTANT shall require each contractor performing any services pursuant to the Agreement to maintain insurance coverage which meets all of the requirements of this Agreement.

(c) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(d) CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at CONSULTANT's expense, the premium thereon.

(e) At all times during the term of this Agreement, CONSULTANT and each of CONSULTANT's contractors shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit B, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. CONSULTANT shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general liability insurance shall contain an endorsement naming the CITY as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to CITY, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(f) The insurance provided by CONSULTANT shall be primary to any coverage available to CITY. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(g) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, CONSULTANT shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONSULTANT shall procure a bond guaranteeing payment of losses and expenses.

Section 12. Indemnification. CONSULTANT agrees to indemnify, hold harmless and defend CITY, City Council and each member thereof, and every officer, employee and agent of CITY, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT or any person employed by CONSULTANT in the performance of this Agreement.

Section 13. Termination.

(a) CITY shall have the right to terminate this Agreement for any reason or for no reason upon five calendar days' written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) In the event of termination or cancellation of this Agreement by CITY, due to no fault or failure of performance by CONSULTANT, and upon CITY's written approval, CONSULTANT shall be paid by SCE based on the percentage of work satisfactorily performed at the time of termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the services. CONSULTANT shall have no claim against CITY by reason of such termination, including any claim for compensation.

Section 14. CITY's Responsibility. CITY shall provide CONSULTANT with all pertinent data, documents, and other requested information as is available for the proper performance of CONSULTANT's Scope of Work.

Section 15. Information and Documents. All data, information, documents and drawings prepared for CITY and required to be furnished to CITY in connection with this Agreement shall become the property of CITY, and CITY may use all or any portion of the work submitted by CONSULTANT and compensated by CITY pursuant to this Agreement as CITY deems appropriate.

Section 16. Records and Inspections. CONSULTANT shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of 5 years. CITY shall have access, without charge, during normal business hours to such records, and the right to examine and audit the same and to make copies and transcripts therefrom, and to inspect all program data, documents, proceedings and activities.

Section 17. Changes in the Scope of Work. The CITY shall have the right to order, in writing, changes in the scope of work or the services to be performed. Any changes in the scope of work requested by CONSULTANT must be made in writing and approved by both parties.

Section 18. Notice. Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage

prepaid to the addresses set forth above, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

Section 19. Attorney's Fees. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

Section 20. Time is of the Essence. The parties hereto agree that time is of the essence with respect to each term and condition set forth in this Agreement.

Section 21. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and CONSULTANT, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and CONSULTANT.

Section 22. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

Section 23. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 24. CITY Not Obligated to Third Parties. CITY shall not be obligated or liable under this Agreement to any party other than CONSULTANT.

Section 25. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

EXECUTED the ____ day of _____ 2011, at Beverly Hills, California.

CITY OF BEVERLY HILLS
A Municipal Corporation

JEFFREY KOLIN
City Manager

CONSULTANT: ENERGY INNOVATION
GROUP, LLC

SID PELSTON
Managing Director

[Signatures continue]

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

DAVID D. GUSTAVSON
Director of Public Works & Transportation

ALAN SCHNEIDER
Director of Project Administration

KARL KIRKMAN
Risk Manager

EXHIBIT A

SCOPE OF WORK

CONSULTANT and CITY have identified energy savings opportunities to upgrade and install new energy-related equipment in multiple CITY facilities at CITY Project Manager direction, which is estimated to provide approximately \$300,000 annual energy savings, and result in expected substantial savings in maintenance costs in the event all noted opportunities are implemented.

CONSULTANT shall act as the “Energy Efficiency Project Director”, which is authorized to arrange and manage the development and installation of CITY approved energy projects as part of Southern California Edison’s (SCE) Management Affiliates Program (MAP). Approval for all the projects by CITY, with an approximate cost up to \$1,400,000 less an SCE rebate estimated at \$150,000 or greater, is subject to the execution by SCE of all reasonably required documents to pay for the project in full under SCE’s 0% interest on-bill financing program with no capital outlay from CITY. A portion of the monthly energy savings shall be used by SCE until the project cost is fully offset.

The projects for completion are expected to include, but may not be limited to:

City Hall and Courtyards

- Replace two Package Heat Pumps
- Upgrade HVAC units with CMUs
- Premium Efficiency Motors
- Replace Air Handling Units
- Upgrade HVAC Cooling Coils with UVC Emitters
- High Performance Window Film
- Elevator Drive System Upgrade

Public Works and Vehicle Shop

- VFD Chilled Water Pumps
- Upgrade HVAC units with CMUs
- Upgrade HVAC Cooling Coils with UVC Emitters
- Premium Efficiency Motors
- High Performance Window Film
- Elevator Drive System Upgrade

Police Facility

- Replace Air Handlers
- Upgrade HVAC Cooling Coils with UVC Emitters
- Premium Efficiency Motors
- High Performance Window Film
- Elevator Drive System Upgrade

Library

Replace Air Handlers
Upgrade HVAC units with CMUs
Upgrade HVAC Cooling Coils with UVC Emitters
Premium Efficiency Motors
High Performance Window Film
Elevator Drive System Upgrade

Fire Station 1

Chilled Water Pump Variable Frequency Drive
Heating Hot Water Pump Variable Frequency Drive
Premium Efficiency Motors
Upgrade Kitchen Hood Controls
Upgrade HVAC units with CMUs
Upgrade HVAC Cooling Coils with UVC Emitters
High Performance Window Film
Elevator Drive System Upgrade

Fire Station 2

Premium Efficiency Motors
Upgrade HVAC units with CMUs
Replace Air Handlers
Upgrade Kitchen Hood Controls
High Performance Window Film

Coldwater Park

Upgrade HVAC units with CMUs
Premium Efficiency Motors
Fountain Pump Variable Frequency Drive
Replace Air Handlers

Will Rogers Park

Lighting Retrofit
Fountain Pump Variable Frequency Drive
Premium Efficiency Motors

Roxbury Park

Lighting Retrofit
Upgrade HVAC units with CMUs
Upgrade HVAC Cooling Coils with UVC Emitters.
Premium Efficiency Motors
Replace Air Handlers

Parking Structures

Upgrade Lighting with High Efficiency Fluorescent or LEDs and Replace Motors as Necessary with Premium Efficiency Motors at:

Santa Monica 5 (Metered Parking at 485 Rodeo, 485 Beverly, 485 Camden, 485 Roxbury, 485 Bedford)

Civic Center Parking (450 N. Rexford Drive)

Whole Foods/Senior Housing Parking (225 N. Crescent Drive)

Beverly Canon Parking (438 N. Beverly Drive)

Williams Sonoma Parking (345 N. Beverly Drive)

La Cienega Tennis Center (321 La Cienega)

Camden Parking (430 N. Camden Drive)

Rodeo Parking (9510 Brighton Way)

Bedford Parking (461 N. Bedford Drive)

South Beverly Parking (216 S. Beverly Drive)

Crescent Parking (333 Crescent/9361 Dayton Way)

Third Street Parking (9333 Third Street)

Montage Parking (242 Beverly/241 Canon)

In order to assist CITY to take advantage of the described energy efficiency project savings and 0% interest on-bill financing project financing opportunities, CONSULTANT shall provide the following services:

1. Complete an on-site review of all multi-technology energy efficiency opportunities/measures for all CITY facilities.
2. Develop a scope of work, engineering, analysis of options, and specifications with estimated savings and rebates for each measure.
3. Determine the estimated cost to perform each measure from the scope of work.
4. Provide CITY with a scope of work, formal project completion pricing, and savings analysis of each project. Obtain CITY's prior written approval in order to commence work on each project.
5. Complete and file the necessary pre-installation documentation with SCE in order to secure the 0% on-bill financing and to secure a rebate commitment.
6. After CITY approval of the projects, enter into agreements with a general contractor and subcontractors for installation of such projects.
7. Arrange for and manage SCE pre-installation inspection for authorization from SCE to proceed with CITY approved projects.
8. Coordinate installation planning meetings with contractors and/or CITY staff.
9. Perform construction management services including CITY approved project installation oversight.
10. Complete post-installation verification that all work was completed according to specifications and that all systems are operating properly.

11. Arrange for and manage SCE post-installation inspection.
12. Complete and file SCE post-installation documentation to meet rebate and 0% financing requirements.
13. Upon completion of installation of CITY approved projects, obtain CITY's written approval that all work was completed to the full satisfaction of CITY and in accordance with design criteria.

CONSULTANT shall require all contractors it hires to perform services in connection with CITY approved projects to enter an agreement which includes the terms set forth in Attachment 1, attached hereto and incorporated herein.

CONSULTANT shall require all contractors to provide CITY with one year warranties on all installed materials, products and equipment and ninety day warranties on labor.

Deliverables

CONSULTANT shall submit a comprehensive written report of all field data and findings from the assessment of CITY properties, and the resultant recommendations for CITY consideration in pursuing energy savings and conservation projects.

Project Timeline

CONSULTANT shall complete the performance of the services required by this Agreement within six (6) months of the date of the written Notice to Proceed.

ATTACHMENT 1
TERMS OF CONTRACT WITH CONTRACTOR

I. RETENTION: In accordance with the payment procedures in Appendix A, ten percent of any progress payment will be withheld as a retention.

II. PERFORMANCE PERIOD. Contractor shall commence Work within five (5) business days of receipt of Notice to Proceed from EIG, and Contractor agrees to complete all Work within one hundred twenty (120) days from the date of Notice to Proceed.

A. If all the Contract work is not completed in full within the time specified in this section, EIG shall have the right to grant or deny an extension of time for completion.

B. The Contractor shall not be assessed with liquidated damages during any delay in the completion of the work caused by acts of God or of the Public Enemy, acts of the State, fire not due to acts of contractors or subcontractors, floods, epidemics, quarantine, restrictions, strikes, freight embargo or unusually or severe weather, or delays of subcontractors due to such causes, provided that the Contractor shall, within ten (10) days from the beginning of such delay, notify EIG, in writing, of the cause of the delay.

III. LIQUIDATED DAMAGES: Time is of the essence on this Contract and should the Contractor fail to finish the work on or before the time stated above, the Contractor shall be charged by EIG, as liquidated and ascertained damages, the sum of One Thousand Dollars (\$1,000) assessment for each calendar day that the work remains incomplete beyond the time specified it being hereby expressly impracticable and extremely difficult to fix the actual damage which would or will be suffered in the event that the Contractor should fail fully to complete the work within the time specified, and it would be further agreed that the charges per day as aforementioned shall be reasonable and proper in premise. The amount so charged shall be deducted by EIG from any monies which otherwise are or become payable to the Contractor.

IV. WORK TO BE PERFORMED.

A. **Scope of Work**. Contractor shall furnish at Contractor's own expense all labor, materials, supplies, equipment, tools, parts, implements, transportation and other items of expense necessary for, or appurtenant to, _____ (the "Work") and in accordance with the terms and conditions of this Contract. The Work may be generally described as follows:

B. The Work shall be done in accordance with the provisions of the most current edition of "STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION" (commonly known as "the GREEN BOOK") including Supplements, prepared and promulgated by the Southern California Chapter of the American Public Works Association and the Associated General Contractors of California, which specifications are hereinafter referred to as the "Standard Specifications" and are incorporated herein by this reference. In the event of a conflict, the provisions of the Specifications shall apply and/or shall supersede, as the case may be, provisions of the Standard Specifications.

V. SPECIAL CONDITIONS.

- A. **Storage.** Storage will be limited to the project area.
- B. **Temporary Structures.** Contractor shall provide all temporary structures, measures, apparatus and services required to prosecute the Work under this Contract.
- C. **Utilities.** All utility service and building system connections or required interruptions shall be coordinated in advance with EIG and City of Beverly Hills ("City").
- D. **Trash Removal.** Rubbish, debris, waste, dust or surplus materials shall not be allowed to accumulate and shall be removed continuously and disposed of by the Contractor as the work progresses. Specific rubbish removal companies are allowed to operate within the City, a list of these companies may be obtained by calling the City at 310-285-2806.
- E. **Drawings, Warranties and Service Manuals.** Contractor shall submit as-built drawings, warranties and service manuals upon completion of the work.
- F. **Materials And Workmanship.**
1. EIG shall have the right to inspect any material used. Material furnished shall be new, complete, ready-for-use and of the latest model, shall not have been used in demonstration or other services and shall have all the usual equipment as shown by its manufacturer's current specifications and catalogs, unless otherwise specified. Equipment, supplies or services that fail to comply with the Contract requirements regarding design, material or workmanship may be rejected at the option of EIG. Any materials rejected shall be removed from City premises at the Contractor's sole expense.
 2. All Work must be approved by EIG. For unsatisfactory Work not corrected, EIG may, at its option, withhold payment for the unsatisfactory Work, deduct the amount from the invoiced amount, or have the Work corrected by another contractor at Contractor's cost and expense.
- G. **License And Permits.** Except as provided in this subsection, the Contractor shall obtain and pay for all permits and licenses required by federal, state or local law, rule or regulation and pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the work. Costs for obtaining City permits required under this Contract will be waived. NOTE: All requirements for obtaining permits (including City permits) remain in effect and are not waived; only the costs of City permits are waived.
- H. **Changes to the Work.**
1. EIG may by written notice initiate any change within the scope of the Contract. If Contractor desires to make any change, Contractor must submit a written request for that change to EIG, but Contractor may make that change only upon written order of EIG. The changes may or may not result in a change in the amount of Work. When the Contractor considers that any change order in writing by EIG involves extra work, the

Contractor shall immediately notify EIG in writing as to when and where extra work is to be performed and shall make claim for compensation each month not later than the first day of the month following that in which the work claimed as extra work was performed. If the changes do, in the opinion of EIG, change the amount of Work, the Contract Price shall be adjusted as "extra work".

2. New and unforeseen work will be classed as extra work only when said work is not covered and cannot be paid for under any of the various items or combination of items for which a bid price appears on the proposal form. The Contractor shall not do any extra work except upon written order from EIG. Compensation for such extra work shall be agreed upon in writing between the Contractor and EIG prior to commencement of extra work .
3. Extra work, when ordered and accepted pursuant to paragraph 1 of this subsection, shall be paid for under a written work order in accordance with the terms therein provided. Payment for extra work will be made at the unit price or lump sum agreed upon between Contractor and EIG. All extra work shall be adjusted daily upon report sheets prepared by EIG, furnished to the Contractor, and signed by both parties, and said daily reports shall be considered thereafter the true record of extra work done.

VI. TERMINATION OF WORK.

A. **For Cause.** Upon notice to Contractor, EIG may terminate the Work or any part thereof immediately for cause, without any prior notification to Contractor.

B. **Without Cause.** EIG may terminate the Work or any part thereof upon five (5) days prior notice to Contractor.

C. **Payment.** Upon termination of the Contract in whole or in part due to no fault or failure of performance of Contractor, EIG shall pay Contractor, subject to all provisions of the Contract for retention of funds, for all Work completed prior to the date of termination.

VII. BONDS AND INSURANCE. Prior to the execution of this Contract, Contractor shall file with EIG and the City the bonds and certificates of insurance specified herein.

A. **Payment Bond.** The Contractor shall file with EIG and the City a Payment (Labor and Materials) Bond on the form attached hereto and incorporated herein as Appendix B in the amount of 100% of the Contract Price

B. Requirement for acceptance of sureties.

1. The surety on any bond or undertaking must be a corporation authorized by the Insurance Commissioner of the Department of Insurance of the state to transact surety business in the state; and

2. There must be on file with EIG and the City Clerk of the City of Beverly Hills or submitted with the bond, a copy, duly certified by the proper authority and attested by the seal of the corporation, of the transcript or record of appointment entitling or authorizing the person or persons purporting to execute an undertaking or bond for and on behalf of such corporation to act in the premises.

C. **Insurance and Workers' Compensation.** Contractor shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the Contractor, his agents, representatives, employees or subcontractors, pursuant to this Contract. Insurance, together with an endorsement, shall be of the type, in the amounts and subject to the provisions described below.

1. **Commercial general liability** coverage at least as broad as Insurance Services Office Commercial General Liability occurrence coverage ("occurrence" form CG0001, Ed. 11/88) with a limit of not less than \$2,000,000 per occurrence. If the insurance includes a general aggregate limit, that limit shall apply separately to this Contract or it shall be at least twice the required per occurrence limit.
2. **Business automobile liability** insurance at least as broad as Insurance Services office form CA 0001 (Ed. 12/90) covering Automobile Liability, code 1 "any auto" and endorsement CA 0029 (Ed. 12/88) with a limit not less than \$1,000,000 per accident.
3. **Workers Compensation** Insurance as required by the State of California and employers liability insurance with a limit not less than \$1,000,000 per accident. Contractor shall certify to the following:

"I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provision before commencing the performance of the work of this Contract."
4. **Evidence of Coverage:** Prior to commencement of work under this Contract, Contractor shall file certificates of insurance with original endorsements evidencing coverage in compliance with this Contract and on the proof of insurance form, Appendix C.
 - (a) Contractor shall provide to EIG, on request, a complete copy, including all endorsements and riders, of any insurance policy.
 - (b) During the term of this Contract, Contractor shall maintain current valid proof of insurance coverage, with EIG and City at all times. Proof of renewals shall be filed prior to expiration of any required

coverage and shall be provided on the proof of insurance form, Appendix C.

- (c) Failure to submit any required evidences of insurance within the required time period shall be cause for termination for default.
- (d) In the event Contractor does not maintain current, valid evidence of insurance on file with EIG or City, City may, at its option, withhold payment of any moneys owed to Contractor, or which it subsequently owes to Contractor, until proper proof is filed.
- (e) All insurance coverages shall be provided by insurers with a rating of B+;VII, or better in the most recent edition of Best's Key Rating Guide, Property-Casualty Edition.
- (f) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided or canceled and shall not be reduced in coverage or limits except after 30 days prior written notice provided to EIG and the City. Upon prior request of the carrier, the notice period may be reduced to 10 days in the event of nonpayment of premium.
- (g) All liability coverages shall name EIG, the City, its City Council and every officer, agent and employee of City as additional insureds with respect to work under this bid or any subsequent Contract.
- (h) Contractor's insurance and any insurance provided in compliance with these specifications, shall be primary with respect to any insurance or self-insurance programs covering EIG, the City, its City Council and any officer, agent or employee of City.
- (i) Where available, the insurer shall agree to waive all rights of subrogation against EIG, the City, its City Council and every officer, agent and employee of City.
- (j) Any deductibles or self-insured retention's shall be declared to and must be approved by EIG and City.
- (k) In the event that Contractor does not provide continuous insurance coverage, EIG shall have the right, but not the obligation, to obtain the required insurance coverage at Contractor's cost, and EIG may deduct all such costs from moneys EIG owes to the Contractor or from moneys which it subsequently owes to the Contractor.

VIII. LEGAL RELATIONS AND RESPONSIBILITY TO THE CITY

A. **Laws To Be Observed.** The Contractor shall be knowledgeable of all existing and pending State and national laws and all municipal ordinances and regulations of the City, which in any manner affect those employed in the work, or the material used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having jurisdiction or authority over the same. The Contractor shall particularly observe all ordinances of the City in relation to the obstruction of streets or conduct of the work, keeping open passageways and protecting the same where they are exposed or dangerous to traffic.

B. **Social Security Requirements.** The Contractor shall furnish to EIG satisfactory evidence that he/she and all subcontractors are complying with all requirements of the Federal and State Social Security legislation. The Contractor, at any time on request, shall satisfy EIG that the Social Security and Withholding Tax are being properly reported and paid.

C. **Labor Laws and Prevailing Wages.** Contractor shall comply with and adhere to all applicable labor laws, such as, but not limited to, alien labor, prevailing wages, etc. Contractor shall comply with the provisions of Sections 1770-1777.5 of the California Labor Code.

1. In accordance with the provisions of Section 1770 et seq., of the Labor Code, the Director of the Department of Industrial Relations of the State of California has ascertained the general prevailing rate of wages applicable to the work to be done under contract for public improvement. The Contractor shall pay to all employees on the project sums not less than the sums set forth in the documents entitled "General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1."
2. Contractor shall execute simultaneously with the execution of this Contract a statement acknowledging obligation to comply with California Labor Law requirements. That statement is attached as Appendix D and incorporated herein by reference.

D. **Payroll Records.** The Contractor's attention is directed to Section 1776 of the Labor Code, relating to accurate payroll records, which imposes responsibility upon the Contractor for the maintenance, certification, and availability for inspection of such records for all persons employed by the Contractor or by the subcontractors in connection with the project. The Contractor shall agree through the Contract to comply with this section and the remaining provisions of the Labor Code.

E. **Working Hours.** Contractor's workers and subcontractors employed in the execution of this Contract shall not be required to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, in violation of the provisions of Article 3, Chapter 1, Part 7, Division 2 of the Labor Code (Section 1810 et seq.).

F. **Apprentices.** Attention is directed to the provisions of Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any

subcontractor. The Contractor and all subcontractors shall comply with the requirements of said sections in the employment of apprentices. Information relative to apprenticeship standards and administration of the apprenticeship program may be obtained from the Department of Industrial Relations, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

G. Fair Employment Practices/Equal Opportunity Acts. In the performance of the Work described in this Contract, Contractor and every supplier of materials and services shall comply with all applicable provisions of the California Fair Employment Practices Act (California Government Code Sections 12940-48) and the applicable equal employment provisions of the Civil Rights Act of 1964 (42 U.S.C. §§ 200e-217), whichever is more restrictive.

H. Registration Of Contractors. Only a Contractor licensed in accordance with the provisions of Chapter 9, Division 3 of the Business and Professions Code shall be permitted to enter into a contract with the City for any public improvement. The Contractor shall at all times possess a valid California Contractor's License Class BI or other appropriate license classification under the State Contracting Code.

I. Patents. The Contractor shall assume all responsibility arising from the use of any patented, or allegedly patented, materials, equipment, devices, or processes used on or incorporated in the work, and shall defend, indemnify, and hold harmless EIG and the City, and each of its officers, agents, and employees from and against any and all liabilities, demands, claims, damages, losses, costs, and expenses, of whatsoever kind or nature, arising from such use.

J. Indemnity. The Contractor agrees to defend, indemnify, and save harmless EIG, the City and each of its officers, agents, and employees, from and against any and all liabilities, demands, claims, damages, losses, costs and expenses of whatsoever kind or nature, including, but not limited to, any and all direct and indirect cost of defense (including attorney fees and court costs), made against, or incurred or suffered by, any such indemnitee as a direct or indirect consequence of entering into this Contract or of injury, sickness, or disease, including death, to persons or injury to, or destruction of, property, including, but not limited to, the loss of use of property, resulting directly or indirectly from, or in any manner connected with or pertaining to any and all operations, and any and all activities, omissions and conditions in any manner connected therewith or pertaining thereto, of the Contractor under this Contract.

K. Resolution Of Claims And Disputes. Public Contract Code Sections 20104 et seq. apply to this Contract. Those Public Contract Code Sections are attached hereto as Appendix E. In any arbitration to resolve a dispute relating to or arising out of this Contract, the arbitrator's award shall be supported by law and substantial evidence. The arbitrator shall file a written decision with the court and serve a copy of it on each of the parties. The written decision shall contain a summary of the evidence, reasons underlying the decision, and unless the parties otherwise agree, findings of fact and conclusions of law.

L. Assignment of Unfair Business Practices. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works

contract, the contractor or a subcontractor offers and agrees to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arises from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time EIG tenders final payment to the Contractor, without further acknowledgment by the parties.

IX. PROSECUTION AND PROGRESS OF THE WORK

A. Subletting and Assignment.

1. The Contractor shall give personal attention to the fulfillment of this Contract and shall be in control of the work. The Contractor shall not assign, transfer nor sublet any part of the Work, nor shall the Contract be assigned, transferred, or sublet, in whole or in part, without the written consent of EIG. and of the Surety of the Contractor's bond, and such consent of Surety, together with a copy of the subcontract, shall be filed with EIG. No assignment, transfer or subletting, even though consented to, shall relieve the Contractor of liability under the Contract. Subcontractors shall not be recognized as such, and all persons engaged in the project will be considered as employees of the Contractor, their work being subject to the provisions of the Contract and the specifications. Should any subcontractor fail to perform work to the satisfaction of EIG, said subcontractor shall be removed immediately from the project and shall not again be employed on the work, and the Contractor shall be held liable for the deficient work.
2. The Contractor shall submit to EIG a list with the names, addresses, and telephone numbers of all subcontractors.
3. Any assignment, transfer or subletting of the Contract in violation of this subsection A is null and void.

B. Character of Workman - The Contractor shall employ none but competent foremen, laborers, and mechanics. Any overseer, superintendent, laborer or other person employed on the work by the Contractor who is intemperate, incompetent, troublesome, or otherwise undesirable, or who fails or refuses to perform the work in the manner specified herein, shall be discharged immediately and such person shall not again be employed on the work.

C. Agents or Foreperson - In the absence of the Contractor from the site of the project, even if such is only of a temporary duration, the Contractor must provide and leave at the site a competent and reliable agent or foreperson in charge.

D. Temporary Stoppage Of Construction Activities. EIG shall have the authority to suspend the Contract work wholly or in part, for such a period of time as it may deem necessary, due to unsuitable weather, or to such other conditions as he considers unfavorable for

the proper prosecution of the work, or for such time as he may deem necessary due to failure on the part of the Contractor to carry out orders or to perform any of the requirements of this Contract. The Contractor shall immediately comply with such an order from EIG and shall not resume operations until so ordered in writing.

E. **REMOVAL OF DEFECTIVE OF UNAUTHORIZED WORK.** Only first class work, materials, and workmanship will be acceptable. All work which is defective in its construction or deficient in any of the requirements of the specifications shall be remedied, or removed and replaced by the Contractor in an acceptable manner, and no compensation will be allowed for such correction. Any work done beyond the lines shown on the plans, or any extra work done without written authority will be considered as unauthorized and will not be paid for. EIG shall have authority to cause defective work to be remedied or removed and replaced, and unauthorized work to be removed, and to deduct the costs thereof from any monies due or to become due the Contractor.

F. **Supervision.** All manufactured products, materials, and appliances used and installed and all details of the work done shall at all times be subject to the supervision, test, and approval of EIG and City. EIG and City shall have access to the work at all times during construction, and shall be furnished with every reasonable facility for securing full knowledge with regard to the progress, workmanship and character of the materials used or employed in the work.

G. **Final Cleaning Up.** Upon completion of the project and before making application to EIG for acceptance of the work, the Contractor shall clean all the streets and grounds occupied by him in connection with the project, of all rubbish, debris, excess material, temporary structures and equipment, leaving the entire site of the work in a neat presentable condition.

H. **Loss Or Damage.** Any loss or damage arising from any omission or act of the Contractor or any agent or person employed by him or by any action which had not been authorized in the provisions of the specifications, shall be sustained by the Contractor.

X. **SAFETY AND PROTECTION OF WORKERS.** Pursuant to Public Contract Code Section 7104, if any work under this Contract involves digging trenches or other excavations that extend deeper than four feet below the surface:

A. The Contractor shall promptly, and before the following conditions are disturbed, notify EIG and City, in writing, of any:

1. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
2. Subsurface or latent physical conditions at the site differing from those indicated.

3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the Contract.

B. EIG shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the Contract.

C. In the event that a dispute arises between EIG and the Contractor, whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

As required by Labor Code Section 6705 and in addition thereto, whenever work under the Contract that involves an estimated expenditure in excess of twenty-five thousand dollars (\$25,000) for the excavation of any trench or trenches five (5) feet or more in depth, Contractor shall submit for acceptance by EIG and City in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation, of such trench or trenches. If such plan varies from the shoring system standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by Contractor, and all costs therefore shall be included in the price of the Contract. Nothing in this provision shall be deemed to allow the use of a shoring, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this provision shall be construed to impose tort liability on the City or on any City officer, agent, consultant, representative, or employee. All plans, processing and shoring costs are Contractor's responsibility and must be included in Contractor's bid.

XI. THIRD-PARTY CLAIMS

Pursuant to Public Contract Code Section 9201, the City has full authority to compromise or otherwise settle any claim relating to this Contract at any time. The City shall timely notify Contractor of the receipt of any third-party claim relating to the Contract. The City shall be entitled to recover its reasonable costs incurred in providing the notification required by Public Contract Code Section 9201(b).

XII. LICENSES

Contractor is aware of California Labor Code Sections 1777.1 and 1777.7, which prohibit Contractor or any subcontractors who have been found by the Labor Commissioner or the Director of Industrial Relations to be in violation of certain provisions of the Labor Code, from bidding on, being awarded, or performing work as a contractor or subcontractor on a public works project for specified periods of time. [PCCs6109]

XIII. EXHIBITS; PRECEDENCE

In the event of any conflict between the specific provisions of this Contract, and any attachment or exhibit hereto, the provisions of this Contract shall govern.

APPENDIX A

PAYMENT PROCEDURES

1.0 PROGRESS PAYMENTS

1.1 Based upon Applications for Payment submitted to EIG, EIG shall make progress payments on account of the Contract Sum as set forth in Section 1 of the Contract to the Contractor as provided below.

1.2 The period covered by each Application for Payment shall be one calendar month.

1.3 EIG shall make payment to the Contractor within thirty (30) days after receipt of a proper Application for Payment.

1.4 Each Application for Payment shall be based upon the approved Schedule of Values submitted by the Contractor. The Schedule of Values shall allocate the entire Contract Sum among the Various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as may be required.

1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for payment.

1.6 The amount of each progress payment shall be computed as follows:

1.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retention of ten percent (10%).

1.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by EIG, suitably stored off the site at a location agreed upon in writing), less retention of ten percent (10%).

1.6.3 Subtract the aggregate of previous payments made by EIG.

1.7 Reduction or limitation of retainage, if any, shall be upon written request by the Contractor. EIG, at its discretion, may reduce the total retention withheld or release retention for a specific item of work where extended withholding of retention is not warranted.

2.0 FINAL PAYMENT

2.1 Final Payment, constituting the entire unpaid balance of the Contract Sum, shall be made by EIG to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as agreed to between EIG and the Contractor; and (2) a final Certificate for Payment has been submitted by the Contractor and approved by EIG and City; and (3) the work has been accepted by the City

Council of the City of Beverly Hills; and (4) a Notice of Completion has been filed. Final payment shall be made by EIG not more than forty (40) days after completion of the above, but only to the extent that no stop notices or other requirements to withhold funds are then in effect.

APPENDIX B

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

_____;
hereinafter designated as "Principal," has entered into a Contract with _____;

WHEREAS, said Principal is required under the terms of the Contract and the California Civil Code, to secure the payment of claims of laborers, mechanics, materialmen and other persons, as provided by law;

NOW, THEREFORE, we, the undersigned Principal, and _____,
("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, are held and firmly bound unto the City of Beverly Hills in the penal sum of:

_____ Dollars (\$ _____),
this amount being not less than one hundred percent (100%) of the total Contract Price, in lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bounded Principal, its heirs, executors, administrators, successors, assigns, or subcontractors shall fail to pay any of the persons named in Section 3181, of the California Civil Code, or any amounts due under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to work or labor performed under the Contract, the Surety will pay for the same in an amount not exceeding the penal sum specified in this bond; otherwise, the above obligation shall be null and void.

This bond shall inure to the benefit of any of the persons named in Section 3181 of the California Civil Code so as to give a right of action to such persons or other assigns in any suit brought upon the bond.

In case suit is brought upon this bond, the said Surety will pay all court costs and reasonable attorneys' fees in an amount to be fixed by the court.

FURTHER the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or modification of the Contract Documents, or of the work to be performed thereunder, shall in any way affect the obligations of this bond, and it does hereby waive notice of any such change, extension of time, alteration, addition or modification of the Contract Documents or to the work or specifications thereunder. Surety hereby waives the provisions of California Civil Code § 2845 and 2849.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by the Principal and Surety named herein, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

DATE: _____

"PRINCIPAL"

"SURETY"

BY: _____
Its

BY: _____
Its

BY: _____
Its

BY: _____
Its

{ SEAL }

{ SEAL }

NOTE: THIS BOND MUST BE EXECUTED IN TRIPLICATE AND DATED. ALL SIGNATURES MUST BE NOTARIZED, AND EVIDENCE OF THE AUTHORITY OF ANY PERSON SIGNING AS ATTORNEY-IN-FACT MUST BE ATTACHED.

APPENDIX C

CERTIFICATE OF INSURANCE
(PUBLIC LIABILITY)

XIV. This is to certify that the following endorsement is part of the policy(ies) described below:

Named Insured (Contractor) A. Companies Affording Coverage

A.

Address

B.

C.

Policy Number	Company A,B,C	Coverage	Expiration Date	B.I.	Limits P.D.	Aggregate
		<input type="checkbox"/> Automobile Liability				
		<input type="checkbox"/> General Liability				
		<input type="checkbox"/> Products/Completed Operations				
		<input type="checkbox"/> Blanket Contractual				
		<input type="checkbox"/> Contractor's Protective				
		<input type="checkbox"/> Personal injury				
		<input type="checkbox"/> Other				
		<input type="checkbox"/> Excess Liability				
		<input type="checkbox"/> Workers' Compensation				

B. It is hereby understood and agreed that the City of Beverly Hills, its City Council and each member thereof and every officer and employee of the City shall be named as a joint and several assureds with respect to claims arising out of the following project: **Water Valve Replacements on Water Lines within the City of Beverly Hills, California**

It is further agreed that the following indemnity agreement between the City of Beverly Hills and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all cost and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents, or others employed by contractor while engaged by contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right on contribution with insurance which may be available to City of Beverly Hills.

In the event of cancellation or material change in the above coverage, the company will give 45 days' written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, condition of any contract or other document with respect to which this certification or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE	_____	BY	_____
			AUTHORIZED INSURANCE REPRESENTATIVE
AGENCY	_____	TITLE	_____
	_____	ADDRESS	_____
	_____		_____

CERTIFICATE OF INSURANCE

(Worker's Compensation)

WHEREAS, the City of Beverly Hills has requires certain insurance to be provided by:

NOW, THEREFORE, the undersigned insurance company does hereby certify that it has issued the policy or policies described below to the following named insureds and that the same are in force at this time.

1. This certificate is issued to: City of Beverly Hills, City Hall, 455 North Rexford Drive, Beverly Hills, California.
2. The insureds under such polity or policies are:

3. Worker's Compensation Policy or Policies in a form approved by the Insurance Commissioner of California covering all operations of the named insureds, as follows:

<u>POLICY NUMBER</u>	<u>EFFECTIVE DATE</u>	<u>EXPIRATION DATE</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. Said policy or policies shall not be canceled, nor shall there be any reduction in coverage or limits of liability, unless and until thirty days written notice thereof has been served upon the City Clerk of the City of Beverly Hills.

By _____
Its Authorized Representative

Approved as to form:

_____ 20 _____

By: _____
LAURENCE S. WIENER, City Attorney

APPENDIX D

STATEMENT ACKNOWLEDGING OBLIGATION TO COMPLY WITH CALIFORNIA LABOR LAW

[Labor Code § 1720, 1773.8, 1775,
1776, 1777.5, 1813, 1860, 1861, 3700]

I, the undersigned Contractor, certify that I am aware of and will fully comply with the following provisions of California law:

Contractor acknowledges that this Contract is subject to the provisions of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works and the awarding public agency ("Agency") and agrees to be bound by all provisions thereof as though set forth in full herein.

Contractor agrees to comply with the provisions of California Labor Code Section 1773.8 which require the payment of travel and subsistence payments to each worker needed to execute the work, to the extent required by law.

Contractor agrees to comply with the provisions of California Labor Code Section 1774 and 1775 concerning the payment of prevailing wages to workers and the penalties for failure to do so. Contractor shall, as a penalty to the Agency, forfeit not more than fifty dollars (\$50) for each calendar day or portion thereof, for each worker paid less than the prevailing rates, as determined by the Director of Industrial Relations, for the work or craft in which the worker is employed for any public work done under the contract by Contractor or any subcontractor.

Contractor agrees to comply with the provisions of California Labor Code Section 1776 which require Contractor and each subcontractor to (1) keep accurate payroll records, (2) certify and make those payroll records available for inspection as provided by Section 1776, and (3) inform the Agency of the location of the records. Contractor is responsible for compliance with Section 1776, by itself and all of its subcontractors.

Contractor agrees to comply with the provisions of California Labor Code Section 1777.5 concerning the employment of apprentices on public works projects, and Contractor further agrees that Contractor is responsible for compliance with Section 1777.5 and for the compliance of all of its subcontractors.

Contractor agrees to comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. Contractor shall, as a penalty to the Agency, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by Contractor or by any subcontractor for each calendar day during which such worker was required or permitted to work more than 8 hours in any one calendar day or 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the California Labor Code.

California Labor Code Sections 1860 and 3700, provide that every Contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

Date: _____ Signature: _____

APPENDIX E

PUBLIC CONTRACT CODE SECTIONS 20104 ET SEQ.

Public Contract Code § 20104.

- (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.
- (b) (1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.
- (c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.
- (d) This article applies only to contracts entered into on or after January 1, 1991.

Public Contract Code § 20104.2.

For any claim subject to this article, the following requirements apply:

- (a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
- (b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

Public Contract Code § 20104.4.

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of

both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

Public Contract Code § 20104.6.

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

EXHIBIT B

CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below:

NAMED INSURED

COMPANIES AFFORDING COVERAGE

**A.
B.
C.**

ADDRESS

COMPAN Y (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATIO N DATE	LIMITS		AGGREGATE
				B.I.	P.D.	
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS' COMPENSATION					

It is hereby understood and agreed that the City of Beverly Hills, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the City of Beverly Hills and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the City of Beverly Hills.

In the event of cancellation or material change in the above coverage, the company will give 30 days written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE: _____

BY: _____
 Authorized Insurance Representative

TITLE: _____

AGENCY: _____

ADDRESS: _____

Attachment 3



Southern California Edison
 Rosemead, California (U 338-E)

Original
 Cancelling

Cal. PUC Sheet No. 46833-E
 Cal. PUC Sheet No.

Sheet 1

On-Bill Financing Agreement
 Third-Party Implemented Projects

Form 14-905

(Continued)

(To be inserted by utility)

Advice 2456-E-A
 Decision 09-09-047

Issued by
Akbar Jazayeri
 Vice President

(To be inserted by Cal. PUC)

Date Filed Jun 29, 2010
 Effective Jul 8, 2010
 Resolution _____

On-Bill Financing Agreement Third-Party Implemented Projects

This On-Bill Financing Agreement ("OBF Agreement") is entered into on _____ 20____, (the "Effective Date") by and between the undersigned customer ("Customer") and Southern California Edison Company ("SCE") (each a "Party," collectively the "Parties").

Recitals

1. Customer and SCE entered into the Customer Agreement 2010-2012 Standard Third Party Implemented Program on or about _____, 20____ ("Third Party Agreement"), which is/are attached hereto and incorporated herein by reference.
2. Customer owns leases or rents the property listed in the Customer Information section of the Third Party Agreement ("Site") and maintains a service account with SCE for electric service. Customer has completed installation of certain energy efficient equipment ("Equipment") at the Site as set forth in the Third Party Agreement and has accepted the Equipment as being operational and in good working order.
3. In Decision 09-09-047, the California Public Utilities Commission authorized SCE to provide zero-percent interest financing for the installation of certain energy efficient equipment, which is to be repaid over a specified period through the Customer's electric utility bill ("On-Bill Financing").
4. Customer desires to enter into this OBF Agreement in order to participate in SCE's On-Bill Financing program and Customer agrees to repay SCE the Amount Financed (as defined under "Loan Terms" below) through the Customer's SCE utility bill pursuant to the terms and conditions of this OBF Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

Terms and Conditions

Defined Terms: Except as the context otherwise requires, capitalized terms used in this OBF Agreement without definition shall have the same meanings as are set forth in the Third Party Agreement.

Amount Financed: Within thirty (30) days after the Effective Date, SCE will provide a payment for the Amount Financed to Customer or to a third-party payee designated by Customer under the Loan Terms, below. Customer's designation of a third-party payee may not be changed or revoked.

Loan Terms:

Amount Financed ("Amount Financed"):	Not-to-exceed \$1.2 million
Interest Rate:	0%
Fees:	0
Months To Pay:	Not-to-exceed 78
Monthly Payment	Not-to-exceed \$16,025
Service Account to be Billed	For all building accounts
Designated Third-Party Payee (if any):	
Address of Designated Third-Party Payee	

Promise to Pay: Customer promises to pay SCE the Amount Financed in equal monthly installments as set forth in the section above (Customer's "Loan Obligation"). The first Monthly Payment of Customer's Loan Obligation will appear within sixty (60) days from the Effective Date on Customer's SCE utility bill for the Service Account listed above.

Manner of Payment: Customer's Monthly Payment amount will appear as a line item labeled "EE/OBF Installment Charge" on the monthly SCE utility bill for Customer's Service Account. Customer may pay the Loan Obligation in the monthly installments or pre-pay the Loan Obligation in one lump sum without penalty, but pre-payments for less than the remaining balance will not be allowed. Customer's Loan Obligation will appear on Customer's monthly SCE utility bill for the number of months set forth above, or until the Loan Obligation is paid in full by Customer, whichever occurs first. Customer shall make payments to SCE as directed in the SCE utility bill.

Partial Payments: If Customer is unable to make a full payment of the Loan Obligation in any given month, payment arrangements may be made at SCE's sole discretion. Any partial payments will be applied in equal proportion to the energy charges and the Loan Obligation, and Customer will be considered to be delinquent and in default of both the energy bill and the Loan Obligation.

Late Payments: No late payment charges or interest will be assessed for delinquent payments on the Loan Obligation. However, SCE may assess late payment charges for delinquent payments of energy charges pursuant to SCE's Rule 9 which is incorporated herein by reference.

Returned Payments: SCE may require payment of a \$10.00 Returned Check Charge for any check returned from Customer's financial institution unpaid. The Returned Check Charge will also apply to any forms of payment that are subsequently dishonored.

Discontinuance of Service: Amounts due under this OBF Agreement will be amounts deemed due under each SCE utility bill to the Customer's Service Account, and a default under this OBF Agreement will be treated as a default under the Customer's Service Account. Customer's Loan Obligation is subject to the discontinuance provisions of SCE's Rule 11, Discontinuance and Restoration of Service, Section B, Nonpayment of Bills or Summary Bills which is incorporated herein by reference.

Breach and Acceleration: Any breach by Customer under the Third Party Agreement or this OBF Agreement shall constitute a breach under all of the above referenced agreements. For purposes herein, SCE may determine the OBF Agreement to be breached and Customer to be in default if Customer: (1) sells, assigns or otherwise transfers ownership, possession or title of the Site or the Equipment, (2) fails to pay the Monthly Payment amount when due, (3) closes, discontinues or otherwise causes the termination of the Service Account, or (4) otherwise breaches this OBF Agreement and/or the Third Party Agreement, and the breach is not cured as specified therein. Notwithstanding anything to the contrary in the Third Party Agreement, a breach and default as set forth in this section shall not be subject to any additional cure period. Following a breach as set forth in this section, SCE shall have the right to declare the entire unpaid balance of the Loan Obligation immediately due and payable.

Purchase Money Security Interest: Customer hereby agrees that SCE may, but is not obligated to, file a UCC-1 ("Financing Statement") against the Equipment to secure Customer's obligation to repay the Amount Financed. Customer agrees to execute any and all documents in connection with the Financing Statement in order for SCE to perfect its security interest in the Equipment. Customer agrees that SCE is not waiving any of its rights of recovery as against the Customer should SCE elect to file a Financing Statement.

Confession of Judgment: Customer irrevocably authorizes and empowers SCE and SCE's attorneys, upon breach and default by Customer as described in the preceding section, to appear in any state or federal court in Los Angeles County, California, as Customer's attorney-in-fact and confess judgment against Customer by entry of a confession of judgment pursuant to Code of Civil Procedure § 1132 et. seq., or by any other appropriate means, for the full amount due plus all costs of collection, including without limitation court costs and reasonable attorneys' fees. No single exercise of the foregoing power to confess judgment will be deemed to exhaust the power, whether or not any such exercise shall be held by any court to be invalid, voidable, or void; but the power will continue undiminished and may be exercised from time to time as SCE may elect until all amounts owing under this OBF Agreement have been paid in full.

Modification: Any change to this OBF Agreement must be in writing and signed by Customer and SCE; except that during any given month, if Customer is unable to make full payment on the Loan Obligation, payment arrangements may be made at SCE's sole discretion without modifying this OBF Agreement in writing. Any written modification or amendment will not be effective unless and until signed by SCE or such condition is waived by SCE in its sole and absolute discretion.

Term and Termination: It is the Parties intent that the term of this OBF Agreement and the Third Party Agreement run concurrently. Therefore, the OBF Agreement shall continue into effect until the Loan Obligation is paid in full.

Assignment: Notwithstanding anything to the contrary in the Agreement, Customer may not assign its rights or delegate its duties under the Agreement.

Additional Representations: Each person signing this OBF Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this OBF Agreement on behalf of Customer, and to perform their obligations under this OBF Agreement. Customer further represents and warrants that if it is a legal entity, it is in good standing in its state of formation.

Miscellaneous: Except as otherwise specifically provided herein, all terms, provisions, covenants, representations, warranties, agreements and conditions of the Third Party Agreement shall remain unchanged and in full force and effect. Should a conflict exist between this OBF Agreement, the Third Party Agreement and the documents incorporated by reference, this OBF Agreement shall control. This OBF Agreement shall be construed and interpreted in accordance with, and shall be governed and enforced in all respects according to, the laws of the State of California. This OBF Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. If any one or more of the provisions contained in this OBF Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then this OBF Agreement shall be construed as if such invalid, illegal or unenforceable term or provision had never been contained herein and all other provisions of this OBF Agreement shall be construed to remain fully valid, enforceable and binding on the parties. The Recitals set forth above are hereby incorporated herein by reference.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this OBF Agreement as of the Effective Date.

Customer:

Southern California Edison Company:

Authorized Representative:

Authorized Representative:

Title:

Title:

Signature:

Signature:

Date:

Date:

Business Address:

Business Address:

Telephone No.

Telephone No.

Fax No.

Fax No.

E-Mail Address:

E-Mail Address:

Southern California Edison
On-Bill Financing Agreement

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

DAVID D. GUSTAVSON
Director of Public Works & Transportation

ALAN SCHNEIDER
Director of Project Administration

KARL KIRKMAN
Risk Manager