

Appendix A

Sample SPC Agreement

This is a sample 2009 SPC Agreement. It is subject to change, therefore be sure to review the actual agreement you receive before signing.



2009 STANDARD PERFORMANCE CONTRACT

Application Information

Project Name: _____ o Service Account/Agreement <500kW or <250,000 therms
App. Number: _____ o Service Account/Agreement >=500kW or >=250,000 therms
Date Received: _____ o Calculated Approach o M&V Required

Utility Customer Information

COMPANY NAME _____ CORP. PARENT NAME (if applicable) _____
ADDRESS _____ CITY/STATE _____ ZIP CODE _____
CONTACT NAME _____ E-MAIL ADDRESS _____
_____ () _____ () _____
TITLE _____ TELEPHONE NO. _____ FAX NO. _____
TAX STATUS: o Corp. o Non-Corp. o Exempt Exempt Reason: _____
COMPANY/CORP. FEDERAL TAX ID _____

Project Sponsor Information

COMPANY NAME _____ CORP. PARENT NAME (if applicable) _____
ADDRESS _____ CITY/STATE _____ ZIP CODE _____
CONTACT NAME _____ E-MAIL ADDRESS _____
_____ () _____ () _____
TITLE _____ TELEPHONE NO. _____ FAX NO. _____
TAX STATUS: o Corp. o Non-Corp. o Exempt Exempt Reason: _____
COMPANY/CORP. FEDERAL TAX ID _____

Site Information

SITE NAME _____ SITE I.D. # (if applicable) _____
SITE ADDRESS _____ CITY/STATE _____ ZIP CODE _____
SITE CONTACT NAME _____ CONTACT PHONE # _____ ELECTRIC ACCOUNT(S) # _____ GAS ACCOUNT(S) # _____

Final Approved Savings Amount

MEASURE DESCRIPTION	kWh	kW	therms	\$ Amount
Sub-Total				
Measure Cost Adjustment				
Site Cap Adjustment				
Total Incentive				
10% Measurement and Verification Adder				

STANDARD PERFORMANCE CONTRACT TERMS AND CONDITIONS:

This Standard Performance Contract ("Agreement") is entered into by Southern California Edison Company ("SCE") and _____ (the "Project Sponsor"). SCE and Project Sponsor may be individually referred to as a "Party" and collectively as the "Parties."

1.0 PROJECT DESCRIPTION This Agreement is limited to those Project(s) described in the 2009 Standard Performance Contract ("SPC") Program Application (together with all forms attached thereto, the "Application"). As stated in the Application, SCE shall pay Incentives to Project Sponsor, or such other party properly authorized to receive payment, in accordance with the terms and conditions of this Agreement.

2.0 DOCUMENTS INCORPORATED BY REFERENCE The following documents are hereby incorporated by reference and made part of this Agreement: Project Sponsor's completed, signed and submitted Application, SCE acceptance letter(s) of the energy saving measures proposed in the Application, and the 2009 SPC Program Procedures Manual ("Program Manual").

3.0 ELIGIBILITY SPC Program funding is limited and is available on a first-come, first-served basis. Funds will be reserved only upon both SCE's written approval of the Application and SCE's receipt of the fully executed Agreement. Projects must meet the following requirements to be eligible for payment of Program Incentives ("Incentive(s)"): (1) Project Site must be a nonresidential facility located within SCE's service territory. (2) SCE Customers must pay the Public Purpose Program ("PPP") surcharge, on the SCE electric meter, which the energy efficient equipment is installed. (3) Projects will be evaluated using the Calculated Approach and/or Measurement and Verification ("M&V"). (4) Projects must exceed the Title 24 energy efficiency requirements set by the California Energy Commission ("CEC") applicable at the time this Agreement is signed or current industry standards using SCE-approved project baselines if Title 24 standards are not available. (5) Projects must meet all other Program requirements, terms and conditions. (6) The Project Sponsor and Customer certify that this Project has not and will not receive any funds from any other program (energy efficiency or otherwise) funded by the PPP surcharge, the CEC or the California Public Utilities Commission ("CPUC") for any measure applied for herein.

4.0 SUBMITTAL REQUIREMENTS FOR PAYMENT Project Sponsor shall submit to SCE the documents described below prior to being eligible for payment of Incentives. Required documents include, but are not limited to: (1) This Agreement, fully executed and with the attached documents referenced in Item 2.0 above; (2) Complete engineering calculations to demonstrate energy savings and documentation, if applicable (including archival diskette, CD, etc.); (3) Schematic drawings and/or manufacturer specification sheets, if applicable; (4) Invoices and/or documentation to support measure costs at SCE's request; (5) Additional Project-specific documents as requested by SCE; (6) Project Installation Report; (7) Operating Report, if M&V is required; and (8) Any other documents related to the Project, Project Site, measures, energy savings or otherwise requested by SCE, in its sole discretion.

5.0 INSPECTIONS Project Sponsor is solely responsible for ensuring that SCE has reasonable access for all inspections, including but not limited to: (1) Pre-installation equipment inspection to examine the existing/baseline equipment and to check the accuracy of Project Sponsor's equipment survey; (2) Post-installation equipment inspection to check installed equipment and to verify accuracy of Project Sponsor's equipment survey; and (3) Inspection for any other reason that SCE, in its sole discretion, deems necessary.

6.0 REVIEW AND DISCLAIMER SCE'S AND/OR ITS CONSULTANTS' REVIEW OF THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF THE PROJECT OR ENERGY EFFICIENCY MEASURES ("EEMs") SHALL NOT CONSTITUTE ANY REPRESENTATION AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY, OR RELIABILITY OF THE PROJECT OR EEMs, NOR SHALL THE PROJECT SPONSOR, IN ANY WAY, MAKE SUCH A REPRESENTATION TO A THIRD PARTY. PROJECT SPONSOR IS SOLELY RESPONSIBLE FOR THE ECONOMIC AND TECHNICAL FEASIBILITY, CONSTRUCTION, OPERATIONAL CAPABILITY AND RELIABILITY OF PROJECT SPONSOR'S PROJECT AND EEMs. SCE MAKES NO WARRANTY, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, USE OR APPLICATION.

7.0 PAYMENTS Payments of Incentives will be made only after all Program requirements are met by Project Sponsor to SCE's sole satisfaction. Project Sponsor may authorize payment of the Incentives to Customer, and Customer may authorize payment of the Incentives to Project Sponsor. Such authorization is strictly between Customer and Project Sponsor and may be revoked or modified at any time by providing written notification to SCE specifying the change. Should a dispute arise regarding the authorization, the most recently dated written communication or authorization shall govern.

7.1 SCE retains sole discretion to determine the appropriate baseline values and energy savings calculations used to determine Incentive payments. Incentives shall only be paid on Projects that exceed Title 24 standards (or current industry standards in the absence of Title 24 standards) applicable when this Agreement is signed. SCE reserves the right to modify or cancel the Incentive amount if the actual measure installed differs from the installation as set forth in this agreement.

7.2 The total incentive payment under the Calculated Savings Approach or Measured Savings Approach shall not exceed the total incentive in the Final Approved Savings Estimate (as presented on Page 2 of this Agreement). Projects using the Measured Savings Approach are eligible for up to an additional 10% of the approved incentive amount (not to exceed \$50,000.00) in the event that actual energy savings are higher than projected. The total Incentive payment may be limited by a Customer Project Site Cap of 15% of the average annual SCE SPC incentive budget per individual site or \$2,400,000 per calendar year and/or the Project Cap of 50% of the total project costs for calculated measures. Incentive rates shall apply for the following types of retrofit projects: Lighting, \$0.05/kWh; Air Conditioning & Refrigeration I, \$0.15/kWh; Air Conditioning & Refrigeration II, \$0.09/kWh; and Other, \$0.09/kWh. The following Permanent Peak Demand Reduction Incentive Rates shall apply for the type of retrofit projects: Lighting, \$100/kW; Air Conditioning & Refrigeration I, \$100/kW; Air Conditioning & Refrigeration II, \$100/kW; and Other, \$100/kW.

7.3 Energy savings for which Incentives are paid cannot exceed the actual usage provided by the utility. Non-utility supply, such as cogeneration or deliveries from another commodity supplier, does not qualify as usage from the utility (with the exception of Direct Access customers or customers paying departing load fees for which the utility collects PPP surcharges).

7.4 SCE will make the applicable Incentive payment to the designated payee, in one or more installments, only after all required and/or requested documents have been submitted to and approved by SCE, and the appropriate inspection(s) of the Project or Project Site have been completed to SCE's satisfaction.

7.5 All Projects and/or measures must be completely installed and fully operational one year from SCE's written Project Application approval date to be eligible for Incentive payments. SCE reserves the right to cease making Incentive payment(s), require the return of the total or prorated Incentive payments and/or terminate this Agreement if the Project(s) is not completely installed and fully operational by applicable date as indicated above, unless an installation extension is granted by SCE, at its sole discretion.

8.0 PAYMENT DISQUALIFICATION Any Incentives received by Project Sponsor shall be repaid to SCE, in whole or in part, as follows:

8.1 If Customer fails to pay the PPP surcharge throughout the Term of this Agreement. In this event, the total estimated amount of the Incentives shall be prorated and any Incentive payment shall be based on the energy savings that occur during the payment of the PPP surcharge.

8.2 If (1) Project Sponsor does not provide SCE with 100% of the related benefits specified in this Agreement for a period of five (5) years from the SCE approved installation date, or (2) the energy benefit to SCE ceases in any way, including but not limited to Customer and/or the Project Site ceasing to receive electricity from SCE, the measure, equipment and/or Project ceasing to function, or Customer ceasing the use of the equipment, measure or Project Site. Project Sponsor shall refund to SCE any prorated amount of the Incentive dollars that SCE determines must be repaid, in its sole discretion, based on the actual period of time for which Customer provided the energy benefit.

8.3 Project Sponsor shall repay any Incentive amounts due to SCE within thirty (30) calendar days of notification by SCE. Repayment is required in accordance with Sections 8.1 and 8.2 above. SCE shall be entitled to offset against payments owed to Project Sponsor any amount due to SCE that remains unpaid forty (40) calendar days after SCE's written demand for payment.

9.0 TERM AND TERMINATION The term of this Agreement shall commence on the last date that a Party executes this Agreement and shall terminate no later than five (5) years from SCE's written Project Installation Report approval date, unless terminated earlier pursuant to this Agreement ("Term").

10.0 ASSIGNMENT Project Sponsor consents to SCE's assignment of all of SCE's rights, duties and obligations under this Agreement to the CPUC and/or its designee. Such assignment shall relieve SCE of all rights, duties and obligations arising under this Agreement. Other than SCE's assignment to the CPUC or its designee, neither Party shall assign its rights or delegate its duties without the prior written consent of the other Party, except in connection with the sale or merger of a substantial portion of its properties. Any such assignment or delegation without written consent shall be null and void. Consent to assignment shall not be unreasonably withheld. If an assignment is requested, Project Sponsor is obligated to provide additional information if requested by SCE.

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

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

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

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

13.2 Project Sponsor shall, on SCE's request, defend any action, claim or suit asserting a claim that may be covered by this indemnity. Project Sponsor shall pay all costs and expenses that may be incurred by SCE in enforcing this indemnity, including reasonable attorney's fees. This indemnity shall survive the termination of this Agreement for any reason.

13.3 If this Agreement is assigned pursuant to Section 10.0, Project Sponsor agrees that this indemnification shall continue to apply to SCE and shall apply to the assignee.

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

15.0 WRITTEN NOTICE Any written notice, demand or request required or authorized in connection with this Agreement shall be deemed properly given if delivered in person or sent by facsimile, email, nationally recognized overnight courier, or first class mail, postage prepaid, to the address specified below, or to another address specified in writing by SCE.

Southern California Edison	
Program Manager	_____
Address	_____
City, State, Zip	_____
Fax # (facsimile)	_____

PROJECT SPONSOR	
Name	_____
Company	_____
Address	_____
City, State, Zip	_____
Fax # (facsimile)	_____

Notices shall be deemed received (a) if personally or hand-delivered, upon the date of delivery to the address of the person to receive such notice if delivered before 5:00 p.m., or otherwise on the Business Day following personal delivery; (b) if mailed, three Business Days after the date the notice is postmarked; (c) if by facsimile or email, upon electronic confirmation of transmission, followed by telephone notification of transmission by the noticing Party; or (d) if by overnight courier, on the Business Day following delivery to the overnight courier within the time limits set by that courier for next-day delivery.

16.0 CONFLICTS BETWEEN TERMS Should a conflict exist between the main body of this Agreement and the documents incorporated by reference, the main body of this Agreement shall control. Should a conflict exist in the documents incorporated by reference, the documents shall control in the following order: 1) SPC Program Manual; 2) SCE acceptance letter(s) and Incentive estimate(s); and 3) Project Sponsor's approved Application(s). Should a conflict exist between an applicable federal, state, or local law, rule, regulation, order or code and this Agreement, the law, rule, regulation, order or code shall control. Varying degrees of stringency among the main body of this Agreement, the documents incorporated by reference, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any conflict or inconsistency concerning this Agreement.

17.0 MISCELLANEOUS This Agreement shall at all times be subject to such changes or modifications by the CPUC as it may from time to time direct in the exercise of its jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the State of California, without regard to its conflict of laws provisions. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. This Agreement constitutes the entire agreement and understanding between the Parties as to the subject matter of this Agreement and supersedes all prior agreements, representations, writings and discussions between the Parties, whether oral or written, with respect to the subject matter hereof. No amendment, modification or change to this Agreement shall be binding or effective unless expressly set forth in writing and signed by SCE's representative authorized to execute the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

SOUTHERN CALIFORNIA EDISON COMPANY

PROJECT SPONSOR

By: _____

By: _____

Title: _____

Title: _____

Name
Printed: _____

Name
Printed: _____

Date: _____

Date: _____