

Master Service Agreement

This Master Service Agreement ("Agreement") is made and entered into as of the last date signed below ("Effective Date") by and between the City of Fresno ("Customer") and Pacific Gas and Electric Company, a California corporation ("PG&E"). Customer and PG&E shall each individually be referred to as "Party" and together constitute the "Parties."

I. Recitals

- A. PG&E is a public utility regulated by the California Public Utilities Commission. PG&E provides power to customers in its service territory.
- B. Customer receives power from PG&E at Customer facilities within PG&E's service area.
- C. PG&E also provides turnkey energy related services to customers ("Turnkey Services"). Turnkey Services typically include energy related assessments of a customer facility and/or installation of energy related measures ("ERMs"). Typical ERMs include, but are not limited to, any of the following: energy efficiency measures, water efficiency measures, energy generation measures, demand control measures, energy storage measures and services to operate, maintain, repair, inspect and construct customer owned or third party electric and gas systems. Such services include, but are not limited to, infrared scanning, non-invasive testing/troubleshooting, transmission maintenance, engineering, planning, de-energized washing of electrical equipment, pipeline maintenance, excavation and leak detection, meter cabinet construction and piping extension, painting and coating of substation equipment, emergency and non-emergency repairs, gas pressure regulation and flow analysis, preventative maintenance, emergency transformer loans / generator loans (as-available service), clearance, grounding, switching and tie-in services, and other services authorized by the California Public Utilities Commission.
- D. PG&E is interested in providing Turnkey Services to Customer and Customer is interested in receiving Turnkey Services from PG&E.
- E. This Agreement sets forth the terms and conditions under which PG&E may provide Turnkey Services to Customer.
- F. Now, therefore, in consideration of the promises and covenants set out herein, Customer and PG&E agree as follows:

II. Agreement

A. Relationship of the Parties

- 1. No agency or partnership:** Nothing in this Agreement creates an agency, partnership, or other form of joint enterprise between the Parties, and neither Party may create any obligations or responsibilities on behalf of the other Party.
- 2. Subcontractors:** PG&E may perform any or all Turnkey Services through subcontractors.
- 3. Project Management:** Customer and PG&E shall each designate an authorized employee ("Authorized Person") who shall be the primary point of contact for inquiries and requests relating to this Agreement.

B. Turnkey Services

1. Preliminary Assessment ("PA"): PG&E may conduct, at no cost to Customer, a PA consisting of a brief on-site investigation and high-level evaluation of a Customer facility to identify possible ERMs. The purpose of the PA is to determine whether energy related opportunities exist and whether a more detailed assessment and/or implementation is desired by the Customer.

2. Investment Grade Assessment ("IGA"): The Customer may issue PG&E a work order to do an IGA. An IGA is a detailed assessment that describes the technical and financial feasibility of implementing one or more potential ERMs. If applicable, it provides the estimated energy savings and/or generation for each identified ERM. It may also support procurement of project financing.

The IGA work order will specify the terms for completing the IGA, including its price, scope, and schedule. Unless otherwise agreed in the IGA work order, Customer will provide PG&E, at no cost to PG&E, legible copies of all relevant facility plans and other facility-related drawings and information in order that an accurate IGA can be prepared. Customer will pay PG&E for the IGA according to the terms of the applicable IGA work order. If Customer decides to implement one or more ERMs identified in the IGA, Customer and PG&E may agree to include the cost of the IGA in the amount to be paid to PG&E under the resulting implementation work order.

3. Implementation: If Customer is interested in pursuing an implementation project as to any or all of the identified ERMs (a "Project"), the Parties will negotiate an implementation work order specifying, among other things, the ERMs to be installed as part of the Project, price, schedule, and source of funding.

4. Cooperation and Access: Customer acknowledges that PG&E's performance of Turnkey Services depends upon Customer's cooperation. Customer will use best efforts to cooperate with PG&E in PG&E's performance of Turnkey Services. Customer will provide access to the subject Customer facilities for PG&E and its subcontractors to perform any function related to this Agreement during regular business hours, or during other reasonable hours as requested by PG&E and acceptable to

Customer. PG&E will comply with all Customer access procedures. Customer and PG&E will coordinate PG&E's activities with Customer's activities and any construction or equipment installation will occur according to a schedule approved by Customer in advance.

To the extent PG&E's ability to perform depends upon Customer's performance (e.g., Customer review or approval of drawings or other submittals or Customer providing data, drawings, documents, or other information) and Customer's performance is not completed within the agreed time period, PG&E's period for performance will be extended accordingly and any costs incurred by PG&E because Customer's performance was not timely completed shall be reimbursed to PG&E.

Customer shall be responsible for ensuring that the Customer facilities that are the subject of a work order under this Agreement are safe for PG&E personnel and subcontractors performing Turnkey Services at those facilities, and shall promptly take such actions that may be requested by PG&E to help ensure a safe working environment.

Customer will use best efforts to assist PG&E in obtaining all necessary permits and approvals for the performance of the Turnkey Services.

5. Work Order Modifications for Changes in Turnkey Services: If any material addition, deletion, or modification to an IGA work order or implementation work order is proposed by either Party, the Parties will negotiate a modification to the work order which is agreeable to both Parties. If the Parties are unable to reach agreement PG&E will suspend its performance under the applicable work order until such time as the disagreement has been resolved pursuant to Section J (Dispute Resolution) and the modified work order has been executed by both Parties.

6. PG&E's Utility Obligations: Customer acknowledges that as a public utility, PG&E is obligated to maintain, repair, and service its own facilities, including those under the operation and control of the California Independent System Operator, and that this obligation takes precedence over any obligations undertaken in this Agreement. If PG&E decides, in its sole discretion, to divert personnel or resources committed to the performance of Turnkey Services under this Agreement to meet a utility obligation, PG&E's actions will not constitute a default, and PG&E will have no liability to Customer as a result. PG&E will have the option to resume the Turnkey Services as soon as possible if it determines, in its sole discretion, that such resumption will not interfere with its fulfilling its utility obligations.

C. Hazardous Materials and Other Unanticipated Conditions

1. Customer Responsibility: The Customer understands and agrees that PG&E has no responsibility to investigate or inspect a Customer facility where Turnkey Services are being provided for the presence of any hazardous, toxic or dangerous wastes, substances, chemicals, constituents, contaminants, pollutants, and materials subject to regulation under applicable law ("Hazardous Materials"), or to identify, remove, dispose of, abate or remediate Hazardous Materials. Customer shall have sole responsibility for the identification, removal, disposal, abatement or remediation of Hazardous Materials, and for the clean-up and disposal of any materials, equipment or substances

containing, exposed to or contaminated by Hazardous Materials, all in accordance with applicable laws.

2. Discovery of Hazardous Materials: If PG&E discovers Hazardous Materials during the course of providing Turnkey Services, PG&E will immediately cease work, remove all PG&E personnel or subcontractors from the site, and notify Customer. Customer will be responsible for handling and removal of such Hazardous Materials at its expense, and Customer will bear the sole risk and responsibility. PG&E will not resume the Turnkey Services until the Hazardous Materials have been removed and/or remediated to PG&E's reasonable satisfaction. Any schedule delay or increase in the Turnkey Services or costs as a result of the presence of Hazardous Materials shall be grounds for a work order modification as described in Section C.3.

3. Unanticipated Conditions: If any unanticipated conditions exist or arise at the site where the Turnkey Services are being provided (such as Hazardous Materials, environmental conditions or pollution) that would involve the incurrence by PG&E of any expenses to correct such conditions, PG&E may cease work and request that Customer mitigate such circumstances or it may submit a request for a modification of the work order to cover any corrective work and payment of related expenses. The Parties will negotiate a modification to the work order which is agreeable to both Parties. If the Parties are unable to reach agreement PG&E will suspend its performance under the applicable work order until such time as the disagreement has been resolved pursuant to the Dispute Resolution process set forth in Section J. and the modified work order has been executed by both Parties.

4. Safety Waiver: If during performance of the Turnkey Services a condition is discovered at the work site that, in the sole judgment of PG&E (a) represents an extreme safety hazard to its workers or other personnel, or (b) may cause operational failure of equipment at the site or damage to other equipment being served by the site, PG&E will immediately notify Customer of such condition and the Turnkey Services necessary to remedy the condition. At PG&E's sole discretion, it may either (a) suspend the Turnkey Services at that work site until such condition has been corrected to PG&E's satisfaction, or (b) ask that Customer sign a written notification in the form of Exhibit A (Safety Waiver). If Customer fails or refuses to either remedy the condition or sign the Safety Waiver, as designated by PG&E, PG&E shall be entitled to continue or commence suspension of the Turnkey Services at that site and refer the matter to Dispute Resolution under Section J. PG&E will not be liable for any costs incurred as a result of such suspension of Turnkey Services.

D. Compensation

1. Payment terms: Customer will pay PG&E for the Turnkey Services performed according to the payment terms contained in the relevant work order. All late payments shall be subject to an interest charge, which is the greater of: (i) one and one half percent (1.5%) per month, or (ii) the maximum legal rate.

2. Expense: Customer agrees to reimburse PG&E for all expenses incurred in connection with PG&E's performance of the Turnkey Services, consistent with the provisions of the applicable work order.

3. Taxes: Customer shall be solely responsible for the payment of any sales, use, transfer and other taxes and duties which are imposed on PG&E because of the Turnkey Services performed under this Agreement (other than taxes based on PG&E's net income).

E. Warranties

1. Substantial Completion: "Substantial Completion" means an ERM is generally capable of being used for or achieving the purpose intended by the implementation work order relating to that ERM. Substantial Completion does not occur until the ERM is commissioned and accepted by the Customer and the Customer executes the Substantial Completion form attached to the work order.

2. Services Warranty: PG&E warrants it will perform the Turnkey Services specified in a work order under this Agreement in a commercially reasonable manner consistent with applicable industry standards. The warranty period for Turnkey Services relating to an ERM is one year from the date of Substantial Completion of that ERM. If Customer notifies PG&E within that one year warranty period of any non-conformity or defect in such Turnkey Services, then PG&E will either re-perform, or refund the compensation received for such defective Turnkey Services, in full satisfaction of its liability for any breach of its Services Warranty. This Services Warranty extends to Customer only and cannot be assigned by Customer.

3. Third Party Warranties: PG&E will use commercially reasonable efforts to obtain from the manufacturers of equipment used in the Turnkey Services or ERMs installed as part of a Project standard guarantees and warranties, and will assign any such third party warranties directly to Customer. Any warranty for such equipment is limited to such third party warranties, and PG&E will not be liable for any breach of a third party warranty. If Customer notifies PG&E of a defect in equipment installed as part of a Project within the term of the applicable third party warranty, PG&E will consult with Customer regarding the appropriate remedy under the third party warranty.

4. No Guarantee of Savings: PG&E does not warrant or guarantee any level of energy, water savings, cost reductions, or equipment or ERM performance.

6. Disclaimer: Except as expressly provided in this Section E., Customer expressly agrees that PG&E makes no other warranties and assumes no other liabilities, whether in contract or in tort, in connection with the assessment, audit, design, engineering, equipment procurement, construction, implementation, operations, maintenance, services, equipment or ERMs hereunder whether express or implied, in law, in equity or in communications between PG&E and Customer. PG&E specifically disclaims any implied warranties of merchantability or fitness for a particular purpose. Customer shall have no remedies against PG&E for any defective services, installed equipment, or operation of an ERM except in accordance with the warranty set forth in this Section E or as the Parties may expressly agree in any work order or amendment to this Agreement.

F. Insurance

Prior to commencing Turnkey Services under a work order, PG&E will provide Customer with evidence that the following insurance is in full force and effect: (i) Workmen's Compensation Insurance as required by applicable workers' compensation laws; and (ii) Comprehensive general liability of \$5,000,000 per occurrence; and (iii) Automobile liability of \$1,000,000 per person and \$2,500,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage. PG&E shall have the right to self-insure with respect to any of these insurance requirements.

G. Limitation of Liability

Neither party will be liable to the other Party for any special, incidental, indirect, punitive, or consequential damages, arising out of, or in connection with, this Agreement. Further, PG&E's liability to Customer under this Agreement will not exceed the total amount paid by Customer to PG&E under the work order giving rise to the claim.

H. Term and Termination

1. Term: The term of this Agreement is five (5) years beginning on the Effective Date. The parties may renew this Agreement for two (2) additional three (3) year extensions by mutual written agreement.

2. Termination for Cause: If either Party materially defaults in the performance of its obligations under this Agreement or under a specific work order, this Agreement or that work order may be terminated by the non-defaulting party for cause upon thirty (30) days written notice. In addition to all remedies available to it at law or in equity, the non-defaulting party will be entitled to recover all costs and expenses reasonably incurred to exercise its remedies, including attorneys' fees.

3. Termination for Change in Law: Either Party may terminate this Agreement, or a specific work order, upon forty-five (45) days written notice without liability or penalty if a change in law or regulations would prohibit PG&E from providing Turnkey Services under this Agreement or that specific work order, in which event Customer would pay PG&E for the Turnkey Services provided to Customer as of the effective date of such termination and reimburse PG&E for reasonable demobilization costs incurred as a result of such termination .

4. Termination for Convenience: This Agreement or a specific work order may be terminated by either Party upon thirty (30) days written notice without liability or penalty whenever that Party determines that such termination is in its best interest. Upon such termination, Customer shall pay PG&E for those Turnkey Services provided to Customer as of the effective date of such termination and reimburse PG&E for reasonable demobilization costs incurred as a result of such termination.

5. Survival: The following sections of this Agreement shall survive expiration, cancellation or other termination of this Agreement: D., E., G., H., I., J., and L. Any other provisions of this Agreement that would generally be construed as intended to survive the expiration, cancellation or other termination of this Agreement shall also survive such expiration, cancellation or termination.

I. Force Majeure

If a Party is unable to perform its obligations under this Agreement due to any cause, event or other occurrence materially impacting the Turnkey Services that is not caused by that party or within its control to avoid or remedy ("Force Majeure Event"), this Agreement will at the other party's option: (i) remain in effect but the performing party's obligations will be suspended until the Force Majeure Event has ended; or, (ii) be terminated upon ten (10) days' notice to the non-performing party, in which event neither party will have any further liability to the other, other than Customer's obligation to pay PG&E for Turnkey Services rendered prior to the Force Majeure Event.

J. Dispute Resolution

If any dispute, excluding payment defaults or delinquencies, arises under this Agreement that is not settled promptly in the ordinary course of business, the Parties will first attempt to resolve such dispute by negotiating promptly in face-to-face negotiations between the respective designated senior managers of each Party. If the Parties are unable to resolve the dispute through these negotiations within thirty (30) business days following the start of such negotiations, then the Parties shall escalate the dispute to the business line vice president of PG&E and the appropriate senior manager within Customer's organization. If those individuals or their designees are unable to resolve the dispute within thirty (30) business days, then either Party may pursue available legal and equitable remedies.

K. Notice

Any notice required or permitted under this Agreement will be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

L. Applicable Law and Venue

This Agreement is governed, construed, and enforced in accordance with the laws of the State of California, without regard to its conflict of laws rules. Any controversy or claim arising out of or relating to this Agreement shall be litigated in a California Superior Court of competent jurisdiction; or if jurisdiction over the action cannot be obtained in a California Superior Court, in a Federal District Court of competent jurisdiction situated in the State of California, and Customer hereby consents to the personal jurisdiction of such courts.

M. General Terms

This Agreement contains the entire agreement between the Parties regarding the Turnkey Services and supersedes any other prior oral or written agreements. If a conflict or inconsistency arises between the terms of this Agreement and any work order issued under it, the work order will control. Any different or additional provisions in purchase orders, invoices or similar documents

issued by the Customer are deemed refused by PG&E and unenforceable. Any modifications to this Agreement must be in writing and signed by the Parties. A waiver by either Party of any breach does not constitute a waiver of different or subsequent breaches. If any part of this Agreement is invalid, illegal, or unenforceable for any reason, that portion shall be replaced with a valid provision appropriate to the Parties' original intent and the remainder will be enforced.

Intending to be legally bound, the Parties execute this Agreement by their duly authorized representatives.

Pacific Gas and Electric Company
245 Market Street, MC N10D
San Francisco, CA 94105

City of Fresno

By:

Name:

Title:

Date:

By:

Name:

Title:

Date:

**EXHIBIT A
SAFETY WAIVER**

PG&E has informed the Customer's on-site representative of the following condition(s) which, in the opinion of PG&E's on-site representative, should be remedied before the Turnkey Services may be resumed at the work site. Customer recognizes that if the below-listed condition at the work site is not remedied as recommended by PG&E, an accident may occur, causing damage to the work site, equipment and/or injury to persons, including but not limited to, the employees of Customer, PG&E and subcontractors.

By signing this waiver, Customer acknowledges and accepts all liability associated with this condition.

Description of condition: _____

Equipment ID#: _____ (If applicable)

Executed this ___ day of _____, _____

Facility name: _____

[CUSTOMER]

Sign: _____

Name (print): _____

Title _____

Date: _____

PACIFIC GAS AND ELECTRIC COMPANY

Sign: _____

Name (print): _____

Title _____

Date: _____