

PROGRAM CONTRACTOR PARTICIPATION AGREEMENT

This Agreement by and between Ecology Action (“EA”) with its office at 877 Cedar St (Suite 240), Santa Cruz, CA 95060 and _____ (“PROGRAM CONTRACTOR”) with its business at _____.

The Hospitality Program (“Hospitality” or “Program”) is implemented by EA and funded by California utility ratepayers under the auspices of the California Public Utilities Commission for qualified customers of Pacific Gas and Electric Company (“PG&E”) in the PG&E service area (“Program Area”). PROGRAM CONTRACTOR is one of the contractors pre-approved by EA who may receive requests from EA to perform work under the Program. EA wishes to engage PROGRAM CONTRACTOR to complete the installation of energy efficiency improvements in qualified businesses. It is agreed that:

I. ECOLOGY ACTION RESPONSIBILITIES

The following tasks shall be completed by Ecology Action:

1. EA will maintain a list of pre-approved program contractors who may receive requests from EA to perform work under the Program. EA will add and subtract firms from the list as needed. Policies and procedures for PROGRAM CONTRACTOR’s participation in the Program are set forth in this Agreement. Any violation of the terms of this Agreement shall result in PROGRAM CONTRACTOR being ineligible for participation in the Program.
2. EA has developed a list of installation options for energy efficient equipment upgrades. EA will conduct Energy Audits (“Audits”) with the approval of a qualified PG&E customer (“Customer”) and shall prepare an *Energy Efficiency Proposal* (“EEP”) and *Customer Work Order Agreement* (“CWO”) recommending site-specific improvements that result in energy savings for the Customer. If the Customer agrees to the work, EA will generate a *Contractor Work Order Agreement* (“CWOA”) which details the Customer contact information, project specifications, equipment to be installed, costs and related information for transmission to the assigned program contractor.
3. EA will assign jobs to the approved program contractors on a rotational basis and according to the program contractors’ preferred geographic area(s). EA does not guarantee any particular amount of work to program contractors.

4. EA shall perform Quality Control Post-Installation Inspections (“Inspections”) on all work completed under this Agreement to insure quality control and compliance with the terms of this Agreement.
5. EA shall prepare the rebate paperwork to be forwarded to PG&E for processing. EA shall pay rebates to PROGRAM CONTRACTOR within 30 days of completion and verification of the work as outlined in Sections II, III, and IV. Rebate amounts per project shall be based on the claimed energy savings as specified in each CWOA.

II. PROGRAM CONTRACTOR RESPONSIBILITIES

PRIOR TO BEGINNING WORK

INSTALLER must submit a signed Program Contractor Participation Agreement (this document) to the Supply Chain Manager. INSTALLER must also complete an IRS Form W9 Request for Taxpayer Identification Number and Certification (rebates over \$600 are reported on IRS Form 1099) in order to receive a Program rebate.

The following tasks shall be completed by the PROGRAM CONTRACTOR:

1. Perform a pre-installation visit to the business within five (5) business days of receipt of CWOA to view the site, verify Program inputs and material needs, and arrange job scheduling with the Customer.
 - A. PROGRAM CONTRACTOR may accept the CWOA as submitted or may reject it for any reason. PROGRAM CONTRACTOR must notify EA of acceptance or rejection within five (5) business days of receipt of CWOA, and must specify the reason for rejection. If jobs are rejected on three (3) successive occasions, PROGRAM CONTRACTOR may be terminated from the Program. PROGRAM CONTRACTOR shall not receive compensation from the Program for pre-installation site visits for jobs that are not subsequently accepted by PROGRAM CONTRACTOR.
 - B. Any job assigned to PROGRAM CONTRACTOR and not accepted/rejected within five (5) business days may be assigned to another program contractor.
2. Schedule the installation with the Customer and notify EA of the expected installation date(s) within five (5) business days of receipt of CWOA.
3. Present the Customer with a Contract (hereinafter “*Customer/Contractor Agreement*”) and obtain Customer’s signature on same. This Customer/Contractor Agreement will cover the Customer’s “out of pocket” portion of the job that will not be paid for by the Program rebate. PROGRAM CONTRACTOR understands that the Customer/Contractor Agreement is solely between PROGRAM CONTRACTOR and the Customer. EA and PG&E are not parties to the Agreement. Although EA shall make a good faith effort to assist PROGRAM CONTRACTOR by facilitating the relationship between PROGRAM

CONTRACTOR and Customer, EA cannot ensure compliance of the terms of the Customer/Contractor Agreement by either party.

4. Obtain and pay for all materials as specified by EA needed to complete the CWOA. Materials shall be shipped to PROGRAM CONTRACTOR who shall verify correctness of the shipment prior to installation.
5. Remove existing equipment and complete the retrofit per specifications provided by EA. Coordinate ballast and lamp removal, fixture cleaning and recycling as specified in Sections 5C and 5F.
 - A. PROGRAM CONTRACTOR shall not install previously used equipment, resale products, products leased, rebuilt, rented, received from warranty or insurance claims, exchanged, won as a prize, or new parts installed in existing products.
 - B. Each item of equipment shall be the specific product and manufacturer indicated in Attachment A, which is hereby incorporated by reference. Items not specified therein shall be custom-priced in consultation with EA's Supply Chain Manager ("SCM") and approved by the SCM or authorized designee prior to installation.
 - C. All lenses, reflectors and ballast covers shall be cleaned with window cleanser (or equivalent).
 - D. Quantity of materials shall be defined through the CWOA completed by EA.
 - E. Price of materials for installation under this Agreement are specified in Attachment A and incorporated herein by reference.
 - F. Recycle all PCB-containing ballasts, fluorescent lamps (linear and CFL), and high-intensity discharge (HID) lamps and/or other hazardous waste removed in the process of completing the CWOA using a certified recycling company, and provide EA with detailed written documentation of same.
6. Complete installation within 60 days unless otherwise specified and approved by Customer and EA.
7. **Warranty**
 - A. PROGRAM CONTRACTOR shall warrant to the Customer, in their Customer/Contractor Agreement, all labor and materials furnished or performed under this Agreement from defects in workmanship for a period of twelve (12) months after installation is completed except as noted below. All materials shall be new and of good quality, free from damage or defect. The warranty period shall commence at the time of final acceptance by the Customer and will be indicated by the date of Customer's signature on the *Project Completion and Customer Acceptance Certificate* ("PCCAC"). During this period, PROGRAM

CONTACTOR shall provide replacement materials and the necessary labor (at no additional cost to EA or the Customer) to replace the defective materials and repair incorrectly operating equipment, with the following exceptions:

- a. The labor portion of the warranty on lamps, which shall extend to 90 days after the time of final acceptance.
- b. The labor portion of the warranty on cleaning refrigeration condenser coils, air conditioner condenser coils, and air conditioner filter replacement, which shall extend to 30 days after the time of final acceptance.
- c. Customers will be directed to their original install contractor for all warranty support.

B. Equipment Warranty:

Lighting Measures

- a. Ballasts - Ballasts shall be warranted for a period of not less than 5 years.
- b. Fluorescent, LED and Induction Lamps - Lamps shall be warranted for a period of not less than 1 year.
- c. New Fixtures - New fixtures shall be warranted for a period of not less than 1 year.
- d. Controls - Photocells, time clocks and occupancy sensors shall be warranted for a period of not less than 1 year.

Non-Lighting Measures

- a. Vending Machine Controllers - All types shall be warranted for a period of not less than 5 years.
- b. Refrigeration Drop-In Fan Motors - High efficiency ECM motors shall be warranted for a period of not less than 1 year.
- c. Refrigerated Door Heater Controls - Door Heater Controls shall be warranted for a period of not less than 2 years.
- d. Comprehensive Refrigeration Controls – Fan motor controller equipment shall be warranted for a period of not less than 2 years.
- e. Package AC Replacement - AC unit shall be warranted for a period of not less than 1 year.

- f. PTAC and PTHP Replacement - PTAC and PTHP units shall be warranted for a period of not less than 1 year.
 - g. Package AC Coil Cleaning - No equipment is installed with this measure; the labor warranty on cleaning air conditioner condenser coils shall extend to 30 days after the time of final acceptance.
 - h. Package AC Refrigerant Charge & Airflow (RCA) - Refrigerant charge (if adjusted) shall be warranted for a period of not less than 1 year.
 - i. Dual-Speed and Variable-Speed Pool Pumps- Pump, booster (if installed) and controls shall be warranted for a period of not less than 1 year.
 - j. Low-flow Shower Heads and Faucet Restrictors- Shower heads and faucet restrictors shall be warranted for a period of not less than 1 year.
 - k. All other measures not listed above shall be warranted for a period of not less than 1 year (or greater as specified by manufacturer); specific manufacturer warranty information and documentation will be supplied to program participants as applicable.
8. **Change Orders:** If a change in scope of services or cost (i.e., change order) is required as a result of the site visit or Customer-requested changes, a Change Order Agreement (“COA”) must be issued and approved by the Program. Below are the Steps to follow when requesting a change order.
- A. Contractor stops work on the affected areas of the job until the change order is approved.
 - B. Contractor contacts the Program Energy Efficiency (“EES”) for verbal or email approval of the change request.
 - C. Contractor submits the suggested changes to the Installation Manager (“IM”) via email using the approved spreadsheet format.
 - D. The IM generates an updated EEP and CWO/Change Order and an updated CWOA marked as “Change Order #(X)” and emails both to the Contractor.
 - E. The Contractor will obtain customer signatures on the CWO/ Change Order and signs the CWOA and submits to the IM via email.
 - F. The Contractor will also provide an updated Customer/Contractor Agreement to reflect the updated CWO/Change Order

To minimize delay, Contractors may initiate Project changes that total less than \$100 with a verbal authorization from the EES and the customer; however the CWO/Change

Order must still be signed by the Customer and PROGRAM CONTRACTOR and sent to the IM prior to job completion.

9. Protection of Work, Persons and Property

PROGRAM CONTRACTOR shall protect the work, adjacent property and the public and shall be responsible for any damage or injury due to PROGRAM CONTRACTOR's act or neglect.

- 10. Disposal Plan and Workplace Management.** Unless otherwise agreed to by the customer, the Program Contractor will remove all trash, recyclables and tools from the premises on a daily basis. These items can be left on site if the customer has designated a staging area for this purpose. Contractor shall comply with all Federal, State and local policies concerning hazardous materials handling and recycling.

11. Invoicing and Payment

PROGRAM CONTRACTOR shall provide EA with a copy of the invoice which PROGRAM CONTRACTOR has sent to the Customer upon completion of each business installation provided under this Agreement. The invoice shall include information regarding the manufacturer and model numbers for all lamps, ballasts and fixtures. Installation cost must be equal to the amount on the original CWOA unless a change order was completed and all previously-described change order documents signed by the Customer and the PROGRAM CONTRACTOR and approved by EA prior to the installation. EA shall pay PROGRAM CONTRACTOR within 30 days of receipt of the following:

- A. Project Completion and Customer Acceptance Certificate signed by the Customer
- B. PROGRAM CONTRACTOR Invoice for work performed
- C. Energy Efficiency Specialist Quality Control Post-Installation Inspection/Verification and approval for incentive payment. Quality Control Post-Installation Inspections will be conducted by the Program Energy Efficiency Specialist or EA designee within 3 business days of receipt of signed Project Completion and Customer Acceptance Certificate and attached invoice. If installation is deemed incomplete or deficient upon inspection by EA or EA designee, PROGRAM CONTRACTOR shall satisfy all requirements within three (3) business days of notification of incompleteness or deficiency.

12. Performance Standards

- A. PROGRAM CONTRACTOR, during the course of Program related work, shall not solicit work from Customer which is not included in the Program Customer Work Order Agreement. Any subsequent work outside the scope of the Program Work Order must explicitly distinguish the PROGRAM CONTRACTOR as offering services outside of the Program.

- B. PROGRAM CONTRACTOR shall respond to work requests in a timely manner, treat Customer with courtesy and be cooperative during the installation.
- C. PROGRAM CONTRACTOR shall make every effort to leave behind a clean worksite. Including, but not limited to:
 - a. Removal of fingerprints from all surfaces touched by PROGRAM CONTRACTOR or installation staff.
 - b. Sweeping/vacuuming debris from worksite. A commercial push floor sweeper is recommended.
 - c. All lenses, reflectors and ballast covers shall be cleaned with window cleanser (or equivalent).
- D. PROGRAM CONTRACTOR shall make every effort to present and maintain a high level of professionalism, including, but not limited to the following:
 - a. A clean “Company” logo shirt or top identifying PROGRAM CONTRACTOR’s Company.
 - b. Professional introduction to Customer upon arrival and proper notification of departure, keeping Customer fully informed of work progress and any anticipated return. PROGRAM CONTRACTOR shall provide every Customer with his or her Company contact information upon arrival.
 - c. PROGRAM CONTRACTOR shall make every effort to operate in a professional manner, keeping discussion and volume to a minimum, refraining from profanity and any conversation and/or behavior that might be construed as inappropriate for a workplace.
 - d. PROGRAM CONTRACTOR will remove all trash, recyclables, and tools from the premises on a nightly basis unless otherwise pre-approved by the customer.
- E. PROGRAM CONTRACTOR shall provide all services necessary to meet completion requirements. All work shall be in accordance with all applicable federal, state and local building and energy codes. If PROGRAM CONTRACTOR or any of its employees or agents discovers a pre-existing code violation(s) prior to or in the course of performing the work that would affect the work specified in the CWO and CWOA, PROGRAM CONTRACTOR shall stop work and immediately notify both the Customer and EA of said violation(s), which must be rectified per applicable codes before the work on affected systems can recommence.

- F. Failure to meet initial inspection completion requirements on three (3) consecutive installations may result in termination from the Program.

III. PROGRAM CONTRACTOR'S OBLIGATIONS

1. OBLIGATIONS

- A. PROGRAM CONTRACTOR shall use best efforts to provide services under this Agreement in a professional manner consistent with the care and skill use by reputable members of PROGRAM CONTRACTOR'S profession.
- B. PROGRAM CONTRACTOR, and all of its employees or agents, shall conduct the authorized Work in a manner designed to safeguard persons and property from injury. PROGRAM CONTRACTOR will work in compliance with reasonable safety and work practices and applicable laws, ordinances, codes and regulations related to same, including but not limited to all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, and all other applicable federal, state, municipal and local safety regulations.
- C. PROGRAM CONTRACTOR shall not subcontract Program work to individuals, companies, or other entities who are not direct employees of PROGRAM CONTRACTOR without advance written permission from Ecology Action.
- D. PROGRAM CONTRACTOR, and all of its employees or agents, shall comply with all statutes, ordinances, rules, regulations, building codes and other laws applicable to the provision of services under this Agreement.
- E. PROGRAM CONTRACTOR shall have a signed contract with the customer for the work to be performed regardless of job dollar value.
- F. PROGRAM CONTRACTOR shall secure all permits and licenses required for performance of the services under this Agreement.
- G. PROGRAM CONTRACTOR shall ensure that all requirements of California Energy Code including code compliance, lighting controls commissioning and acceptance testing are performed to the satisfaction of the Authorities Having Jurisdiction (AHJ).
- H. PROGRAM CONTRACTOR shall ensure that all requirements of the Department of Industrial Relations are followed for public works jobs requiring prevailing wage determinations.
- I. PROGRAM CONTRACTOR shall not engage in discriminatory employment practices against any employee or applicant for employment and shall in all

respects comply with the federal, state and local laws, regulations and orders, as amended from time to time. Failure to comply with the provisions hereof shall be deemed a material default under this Agreement.

- J. PROGRAM CONTRACTOR shall not apply for or accept rebates, incentives, or financial assistance from other Programs, pilots, or demonstration projects funded by the Public Goods Charge Fund or any other State funds for the items or measure that are installed using Program funds. If PROGRAM CONTRACTOR does accept rebates from other Program for the same measure rebated under Hospitality, PROGRAM CONTRACTOR agrees to reimburse Program for the amount of the incentive payments received for the same installations. PROGRAM CONTRACTOR acknowledges that Program have provided information about other energy efficiency Program offering incentives for the same measures.

2. PROGRAM CONTRACTOR GENERATED SITE ACCESS AGREEMENTS: JOB SPECIFICATION AND BID PRICING

- A. After CONTRACTOR has obtained a signed Site Access Agreement and notified EA of the potential retrofit project, EA will schedule an Audit with the Customer. The Hospitality Energy Efficiency Specialist shall perform the Audit and specify the recommended energy efficiency upgrades using the Hospitality Equipment/Price List. EA will generate and forward a Contractor Work Order Agreement (“CWOA”) including all equipment, part numbers and costs to CONTRACTOR, who may either accept the job as priced by Hospitality, or modify the costs according to CONTRACTOR’s normal pricing practices and specify the revised cost in the CONTRACTOR’s Proposal. The cost specified in the CONTRACTOR’s final proposal may not exceed 115% of the total cost specified in the initial Hospitality Contractor Work Order Agreement.
- B. If CONTRACTOR accepts the job as priced by Hospitality, CONTRACTOR shall notify the Installation Manager of acceptance within 24 hours. Once accepted, IM will generate an Energy Efficiency Proposal (“EEP”) and Customer Work Order Agreement (“CWO”) recommending site-specific improvements that result in energy savings for the Customer. CONTRACTOR shall obtain Customer’s signature on the CWO and fax or email it to the IM within 3 business days of signing.
- C. If CONTRACTOR wishes to modify the job costs specified by the EES, CONTRACTOR must provide the IM with a proposal indicating the final job cost that the CONTRACTOR would charge the Customer (subject to the aforementioned 115% cap) using the equipment specified in the CWOA, separated into equipment and labor categories and inclusive of lamp removal/recycling charges and other fees but not including tax (unless listed separately).

- D. The specifics of equipment to be installed (manufacturer, part number, item count, lamp color temp, etc.) as shown in the CWOA shall not be modified in any way, other than through the Change Order process described in Section I-5. Fixtures not found on the Hospitality Equipment/Price List may be installed after deviation submittal and approval by the Hospitality Supply Chain Manager (“SCM”) or Program Manager (“PM”). Deviations from the EA Equipment/Price List must be submitted through the project EES. EA will apply established mark-up percentages to the CONTRACTOR’S materials costs to establish customer costs. For those same items the customer cost, labor and sales tax are used to generate a modified Energy Efficiency Proposal and Customer Work Order Agreement for subsequent approval by the Customer. The Contractor may apply additional mark-up to the accumulated cost. The final Customer/Contractor Agreement may not exceed 115% of the total cost specified in the initial Hospitality Customer Work Order Agreement. EA will fax and/or email the Energy Efficiency Proposal and Customer Work Order Agreement to CONTRACTOR within 24 hours of receipt of CONTRACTOR’S final job costs as described above. CONTRACTOR will obtain the Customer’s signature on the Customer Work Order Agreement and fax or email it to EA within 1 business days of signing. The CONTRACTOR will also obtain a signed contract which references the specification and rebate terms defined in the CWO. Once the Customer has signed the modified Customer Work Order Agreement and the CONTRACTOR contract, the CONTRACTOR shall schedule the job and proceed with the installation as detailed in this Section.
- E. If CONTRACTOR has already developed the equipment specifications for a potential project and/or supplied Customer with a bid, the CONTRACTOR’S original Customer bid must be modified so as to include only equipment from the current Hospitality Equipment/Price List as specified and approved by the Hospitality SCM and detailed in Section I.2-B above. Prior to bid modification or commencement of work, Hospitality shall perform an Audit to verify the type and number of existing equipment and to ensure that the measures qualify for Program Incentives. EA reserves the right to make changes in CONTRACTOR’S original project scope and/or equipment specifications to correspond with Hospitality practices. The Hospitality rebate amount shall be based solely on the current Hospitality Rebate Schedule and the estimated energy savings resulting from installation of equipment specified by the Hospitality Energy Efficiency Specialist and as detailed in the final CWO and CWOA. Following the Audit, the procedures outlined in Section 2-B shall be followed.
- F. The CONTRACTOR has 90 days from receipt of the finalized Energy Efficiency Upgrade Summary and Report and Customer Work Order Agreement to obtain a Customer signature. If CONTRACTOR has not “closed” the job within that time, Hospitality will re-propose the job using standard Hospitality equipment and labor pricing (without mark-ups).

3. NON-DISCLOSURE AND USE OF INFORMATION

A. CONTRACTOR shall hold Confidential Information in strict confidence, and not disclose it, or otherwise make it available, to any person or third party (including but not limited to any affiliate of PG&E that produces energy or energy-related products or services) without the prior written consent of PG&E. Confidential information includes but is not limited to (a) PG&E and customer account information and information relating to their facilities, equipment, processes, products, specifications, designs, records, data, software Program, identities marketing plans, manufacturing processes, products, technical, commercial, or financial information, energy usage, billing data, matters and practices concerning technology, ratemaking, personnel, or other confidential and proprietary information or trade secrets. The CONTRACTOR agrees that all such Confidential Information:

- a. Shall be used only for the purpose of providing work or services for PG&E; and
- b. Shall not be reproduced, copied, in whole or in part, in any form, except as specifically authorized and in conformance with PG&E's instructions when necessary for the purposes set forth in (a)above; and
- c. Shall, together with any copies, reproductions or other records thereof, in any form, and all information and materials developed by Undersigned there from, be returned to PG&E when no longer needed for the performance of Undersigned's Work or services for PG&E.

B. Data Security Measures

CONTRACTOR shall take security measures with respect to the handling of Customer Data to ensure that the Customer Data will not be compromised and shall be kept secure. Security Measures shall mean industry standards and techniques, physical and logical, including but not limited to:

- a. Password protection for access to such Customer Data,
- b. Measures to safeguard against the unauthorized access, destruction, use, alteration or disclosure of any such Customer Data.

C. Remedies for Breach

The CONTRACTOR hereby acknowledges and agrees that because (a) an award of money damages is inadequate for any breach of this Agreement by the CONTRACTOR or any of its representatives and (b) any breach causes PG&E irreparable harm, that for any violation or threatened violation of any provision of this Agreement, in addition to any remedy PG&E may have at law, PG&E is entitled to equitable relief, including injunctive relief and specific performance, without proof of actual damages.

4. INSURANCE REQUIREMENTS

PROGRAM CONTRACTOR is obligated to maintain, at PROGRAM CONTRACTOR's own expense, the following insurance coverage for all Work performed in accordance with this Agreement. The following insurance, with the exception of Worker's Compensation, are to name Ecology Action, PG&E, and their officers, directors, employees, agents, subsidiaries, parent companies, and affiliates as additional insured's as respects liabilities arising out of PROGRAM CONTRACTOR'S performance of the work under this Program. PROGRAM CONTRACTOR shall furnish a satisfactory Insurance Certificate to EA prior to PROGRAM CONTRACTOR's starting any work or entering onto the jobsite. The Form of Certificate shall be as required. The Certificate shall be signed and dated by an authorized representative of the insurance carrier(s). Certified copies of all policies shall be provided upon request of EA and/or PG&E. PROGRAM CONTRACTOR is responsible for supplying EA with proof of renewal of said coverage on an annual basis prior to its states termination date. Absent such proof of renewal, no further Work shall be performed by PROGRAM CONTRACTOR under this Agreement.

- A. Worker's Compensation and Employer's Liability: **Statutory minimum** for Statutory Coverage and Employer's Liability Insurance.
- B. Commercial General Liability: **\$1,000,000 minimum** limit of liability per occurrence and **\$2,000,000 aggregate** including contractual liability and covering bodily injury and property damage.
- C. Commercial Automobile Liability Insurance: **\$1,000,000 minimum** limit of liability for bodily injury and property damage combined and covering all owned, non-owned and hired vehicles.
- D. Professional Liability Insurance (if applicable): **\$1,000,000 minimum** limit of liability per occurrence and **\$2,000,000 aggregate**.

The documentation shall state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to EA and PG&E. The documentation must be signed by a person authorized by that insurer to bind coverage on its behalf.

Invoices may not be processed for payment until certificates evidencing insurance coverage per above are received and accepted by EA. Failure by EA to obtain such certificates in advance of the commencement of work shall not be deemed a waiver of these requirements

IV. PROGRAM CONTRACTOR LABOR AND MATERIAL RATES AND SERVICE TERRITORY

- 1. Labor and material rates for installation under this Agreement are specified in Attachment A and incorporated herein by reference.

2. PROGRAM CONTRACTOR has agreed to provide Program services in the Program Area.

V. PROGRAM CONTRACTOR PROBATIONARY PERIOD AND CORRECTIVE ACTION PROCESS

1. Probationary Period

- A. During the Probationary Period, the Contractor shall submit no more than 5 Site Access Agreements for Audits / Proposals
- B. Once the first jobs sell, the contractor shall install the first jobs in series (from customer acceptance of proposal to the customer acceptance of the install).
- C. After the first 3 successful installs EA's Supply Chain Manager will review and provide feedback on the installer's Sales and Installation Process.
- D. If the installer is successful in the first three jobs, they will no longer be on a probationary status
- E. If the installer's performance on the first three jobs, Ecology Action may choose to:
 - a. Extend the probationary period and schedule a re-review
 - b. Suspend the installer's participation until identified Corrective Actions are rectified
 - c. Disqualify the installer from participation (for gross misconduct)

2. Corrective Action Requests

- A. Ecology Action has adopted a Corrective Action Request (CAR) process to rectify problems identified within our partner community.
- B. The steps in the CAR process are defined below
 - a. Describe the Problem
 - b. Identify Team
 - c. Immediate Actions – Containment Measures
 - d. Define and Verify Root Causes
 - e. Agreement on Corrective Actions Needed
 - f. Implement Corrective Actions
 - g. Validate that Corrective Actions Prevent Problem Recurrence
 - h. Close issue, Congratulate the Team
- C. Failure to execute a CAR in an acceptable manner may lead to suspension or disqualification from Ecology Action managed Program

VI. LIABILITY AND INDEMINIFICATION

1. PROGRAM CONTRACTOR represents that the services to be provided under this Agreement are reasonable in scope and that PROGRAM CONTRACTOR has the experience and ability to provide the services.
2. PROGRAM CONTRACTOR acknowledges that neither Ecology Action nor PG&E can control the conditions at any site where the services may be provided, and accordingly, neither EA nor PG&E are liable for any claim, damage, loss, injury, or expense of any type which PROGRAM CONTRACTOR may suffer as a result of providing the services under this Agreement.
3. PROGRAM CONTRACTOR warrants that any services provided hereunder shall be done in a professional and workmanlike manner, and Customer shall have the benefit of all warranties, express or implied, which may be applicable to the services provided by PROGRAM CONTRACTOR hereunder.
4. PROGRAM CONTRACTOR shall indemnify, defend and hold harmless Ecology Action and their officers, directors, employees and agents from and against any and all claims, damages, losses, injuries and expenses (including attorneys' fees and damages for death, personal injury and property damage) which they may incur as a result of any act or omission by PROGRAM CONTRACTOR in providing services under this Agreement.
5. PROGRAM CONTRACTOR shall indemnify, defend and hold harmless PG&E and its officers, directors, employees and agents from and against any and all claims, damages, losses, injuries, and expenses (including attorney's fees and damages for death, personal injury and property damage) which they may incur as a result of any act or omission by PROGRAM CONTRACTOR in providing services under this Agreement.

VII. PROGRAM CONTRACTOR STATUS

1. PROGRAM CONTRACTOR shall provide services as an independent program contractor under this Agreement. Neither PROGRAM CONTRACTOR, nor any of its employees or agents, shall be considered employees of Ecology Action for any purpose, and neither shall PROGRAM CONTRACTOR be eligible for any compensation or benefits which EA may provide to its employees from time to time. PROGRAM CONTRACTOR shall be solely responsible for all employment and other taxes applicable to providing services hereunder, and EA shall not withhold any taxes or contributions from the compensation payable to PROGRAM CONTRACTOR under this Agreement.
2. Except for ballast and lamp recycling, none of the services provided under this Agreement may be subcontracted to another party without the express written consent of Ecology Action in advance.

VIII. TERM AND TERMINATION

1. Unless earlier terminated as provided in the following paragraphs, this Agreement shall become effective on _____ and continue through March 31, 2017.
2. This Agreement may be terminated by either party, for any reason or no reason, immediately upon ten (10) days written notice to the other party. In the event this Agreement is terminated by PROGRAM CONTRACTOR prior to the expiration of the term set forth in paragraph VII.I, PROGRAM CONTRACTOR shall fully complete under the terms of this Agreement any work that may be in progress at the time; or at EA's discretion, shall provide EA with such information as EA may request regarding the status of any ongoing project and assist EA in engaging another program contractor to provide the services.
3. Any termination of this Agreement shall not release either party from their obligations that are intended to survive the termination of this Agreement.

IX. NOTICES

All notices, requests, demands and other communications required to be given in writing under this Agreement shall be given to the other party in person or by mail as provided in this section. If delivered personally, notice shall be deemed to have been duly given on the date of delivery. If delivered by mail, such notice shall be sent via first class U.S. mail, postage prepaid, to the address set forth at the beginning of this Agreement or such other address as a party may otherwise request by written notice, and notice shall be deemed duly given three (3) business days after mailing.

X. ASSIGNMENT

This Agreement shall be binding upon and insure to the benefit of the parties and their respective heirs, successors, and assigns; provided, however, that neither party shall assign or transfer in any manner, this Agreement or any portion hereof without the prior written consent of the other party, and any attempt to assign or transfer without prior written consent shall be void and of no effect.

XI. MISCELLANEOUS

1. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
2. Headings and captions used in this Agreement are for convenience only and shall not affect the meaning of this Agreement.
3. This Agreement contains the entire agreement of the parties and supersedes all prior agreements, discussions and representations, written or oral, concerning the subject matter hereof.

4. No waiver by Ecology Action of any term or condition of this Agreement or any document referred to herein shall, whether by conduct or otherwise, be construed as a waiver or release of any other term or condition of this agreement.
5. This Agreement may only be amended in a written agreement signed by EA and PROGRAM CONTRACTOR.
6. The rights and benefits under this Agreement shall inure solely to the benefit of EA and PROGRAM CONTRACTOR, and this Agreement shall not be construed to give any rights, benefits or causes of action to any third party.
7. The invalidity or partial invalidity of any provision of this Agreement shall not invalidate the remaining provisions, and the remainder shall be construed as if the invalidated portion shall have never been a part of this Agreement.
8. This Agreement may be signed in any number of counterparts, each of which shall be deemed and original and one and the same instrument.

ACCEPTANCE

After reading this memorandum of agreement, both parties accept the terms and conditions herein, and PROGRAM CONTRACTOR agrees to provide contracting services through the Program as administered by Ecology Action.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date below:

 Program
 Supply Chain Manager

 Date

 Program Contractor

 Date

 Title

 Company

 State Contractor License Number

 License Classification

 Expiration Date