



[INSERT DATE]

PROJECT NUMBER & NAME

XXXXX

SITE ADDRESS

XXXXX

CITY LIGHT CUSTOMER

XXXXX

GLOSSARY OF TERMS

“Adjusted Baseline Energy” represents what the baseline energy use would have been if the Project ECMs had never been installed, under the same set of post-retrofit conditions.

“Agreement” means this Participation Agreement.

“Avoided Energy Use” (for existing buildings) means the reduction in electricity use that occurred in the Performance Period, relative to what would have occurred if the facility had been equipped and operated as it was in the baseline period, but under Performance Period conditions. Unless and until City adopts another method of quantification consistent with industry best practices, City will base Avoided Energy Use for Existing Buildings on a formula in this format:

$$\text{Avoided Energy Use (or Energy Savings)} = \text{Adjusted Baseline Energy} - \text{Performance Period Energy} +/- \text{Non-Routine Adjustments}$$

For New Construction, City will consider the difference between the City of Seattle Energy Code target energy use (C401) and the Participant’s actual energy use to be the Avoided Energy Use unless and until City adopts another method of quantification.

“Baseline Conditions” means the conditions of the existing buildings as found in the baseline period. Baseline Conditions are generally described in an Energy Audit (e.g.: ASHRAE Level II audit).

“Baseline Data” means the measurements and facts describing facility operations and design during the baseline period. This will include energy use or demand, parameters of facility operation that govern energy use or demand, and definition of Static Factors for the Site.

“Baseline Model” means the mathematical representation or calculation procedure that is used to predict the energy use in a building or facility had no ECMs been implemented. Models may be based on equations that specifically represent the physical processes, may be the result of statistical analysis of energy-use data, or other techniques City reasonably determines to be appropriate for Project purposes.

“Baseline Model Equation” means the mathematical representation or equation governing the prediction of energy use had no ECMs been implemented at the Site.

“City” means the City of Seattle, a Washington State municipal corporation, doing business by and through its Seattle City Light department (“City Light”).

“Efficiency Energy” means the calculated Avoided Energy Use harvested at the Site by the EE Developer. This is an energy efficiency resource. City Light will determine Efficiency Energy based on quantification provided by the M&V Consultant.

“Energy Conservation Measure” (“ECM”) means any type of energy efficiency or energy conservation project or activity conducted, related to the installation, repair, or replacement of energy-efficient equipment or building systems, implementation of capital projects, operational & maintenance (O&M) improvements, or new means of training or managing users of the space, intended to improve the energy productivity of or generate Efficiency Energy at the Site.

“Energy Efficiency as a Service Charge” (“EEaS Charge”) means the dollar amount per kWh of Efficiency Energy as determined by this Agreement. (See Appendix A)

“Energy Efficiency Service Fee” (“EE Service Fee”) means the charges for Efficiency Energy the City will bill Participant based on the Avoided Energy Use at the Site.

“Energy Efficiency Developer” (“EE Developer”) means the party who enters the Power Purchase Agreement with the City for the sale of Efficiency Energy to the City from the Avoided Energy Use at the Site.

“Measurement and Verification Consultant” (“M&V Consultant”) means an independent third-party hired and selected by City that will develop and implement an approach to use data-driven models with meter data and other variables to calculate Adjusted Baseline Energy, which will be used by City to determine the Avoided Energy Use and Efficiency Energy at the Site. M&V Consultant will be selected by standard City procurement procedures and is subject to change if and when required by City policy or business needs.

“Measurement and Verification Plan” (“M&V Plan”) means the Program’s M&V guidelines and methodology approved by City. The City intends for M&V Plan to follow industry standard practices for whole-building estimates of energy savings and Non-Routine Adjustments, if any are needed.

“Measurement Boundary” means the boundary drawn around whole-building meters and building systems to segregate those which are relevant to savings determination from those which are not. The Measurement Boundary shall be determined by the primary utility account and corresponding interval meters, which make up at least 90% of the Site’s electricity consumption.

“New Construction” means (1) construction of a new building or structure, (2) an increase in the conditioned floor area or height of an existing building or structure, or (3) major changes in space use type such as major renovations.

“Non-Routine Adjustments” (“NRA”s) means adjustments to the Baseline Model to account for Non-Routine Events, which occurred during the baseline or Performance Period and cannot be modeled using the independent variables.

“Non-Routine Events” (“NRE”s) are changes in building energy use not attributable to changes in the independent variables used in the Baseline Model nor to the ECMs that were installed. In the case of an NRE, the Avoided Energy Use may be adjusted by making Non-Routine Adjustments.

“Participant” is the party who owns the Site, acting either through itself or through an agent with appropriate authority, such as a management or operating entity, who is the City Light customer.

“Party” or **“Parties”** means City and/or Participant.

“Performance Period” means for Existing Buildings the period of time after the EE Developer has implemented initial ECMs at the Site resulting in a reduction in monthly energy consumption of at least 10% relative to the Baseline Model and written approval has been provided by City. For New Construction, the Performance Period begins when the building is 75% occupied and written approval has been provided by City.

“Power Purchase Agreement” (“PPA”) means the Agreement between City and the Energy Efficiency Developer for the purchase of Efficiency Energy from the Site.

“Program” means City’s Energy Efficiency as a Service Pilot Program. Components of the Program include both a Power Purchase Agreement under which the City pays EE Developer for Efficiency Energy generated at the Site, and this Agreement under which Participant pays EE Service Fees to City to receive Efficiency Energy .

“Project” means the collection of ECMs implemented at the Site by the EE Developer intended to generate Efficiency Energy throughout the term of this Agreement.

“Site” means the actual building location that the Efficiency Energy work will take place. The Site encompasses the Measurement Boundary. The Site location for this Agreement is [INSERT ADDRESS, LEGAL DESCRIPTION, PARCEL NUMBER OR OTHER SPECIFIC IDENTIFIER OR REFERENCE AND ATTACH THE SITE DETAILS AS EXHIBIT B]

“Static Factors” means energy-governing factors that are not usually expected to change (e.g., facility size, design and operation of installed equipment, number of weekly production shifts, or type or number of occupants) the associated static factors must be monitored for change throughout the reporting period.

TERMS & CONDITIONS

This Agreement is entered into by and between the Parties to enter into Energy Efficiency as a Service, a City energy conservation program. The Participant is voluntarily participating in the Program to buy verified Efficiency Energy from the City under the terms and conditions of this Agreement. This Program aims to mitigate the split incentive through a Power Purchase Agreement for the City to purchase the Efficiency Energy delivered through a deep retrofit or new construction Project from the EE Developer and through this Participation Agreement to bill the City Light Customer for the Efficiency Energy generated at the Site.

This Program requires both execution and implementation of a Power Purchase Agreement with an EE Developer at the Site and execution and implementation of this Participation Agreement by which Participant consents to be billed an Energy Efficiency Service Fee based on the Efficiency Energy generated at the Site. For avoidance of doubt, the EE Developer is not a party to this Agreement and Participant is not

a party to the Power Purchase Agreement. Efficiency Energy will be determined by City based on information provided by the M&V Consultant, operating under a contract with City and subject to City's approval.

In consideration for Participant's participation and full performance in the Program, both parties agree to the following:

- 1. Term of Agreement.** This Agreement shall become effective on the date the Agreement is signed by both Parties (execution date) and shall remain in effect until 01/22/2040 unless terminated earlier by the terms of this Agreement. The execution date must be prior to ECM equipment being ordered for projects intending to use existing building baseline methodology. Projects using new construction baseline methodology must have an execution date prior to 50% completion/construction of Project.
- 2. Entire Agreement.** This Agreement shall incorporate as terms and conditions to this Agreement only identified attachments, appendices, M&V Plan, and the Program Manual. The Agreement, including the incorporated documents, contains the entire Agreement between the Parties and supersedes any and all prior written and/or oral agreements. In the event of any conflict or inconsistency between Program Manual and the Agreement, the Agreement will control.
- 3. Voluntary Participation/Assumption of Risk.** Participant is fully aware of the risks and hazards connected with the activities of implementing ECMs, and Participant is aware that such activities include the risk of injury and even death, and Participant hereby elects to participate voluntarily in the Program knowing that the activities may be hazardous to Participant's person and property, including the Site and residents or tenants of the Site. Participant voluntarily assumes full responsibility for and waives all claims against City arising from any loss, property damage, or personal injury, including death, which may be sustained by Participant, or any loss or damage to property owned by Participant, as a result of being engaged in such activities, to the fullest extent allowed by law.
- 4. Single Program Participation.** The Participant waives any and all rights or access to any future conservation incentive programs offered by the City for this Site for the effective term this Agreement is in place and agrees that it will not apply or submit any requests for other energy conservation programs offered by City.
- 5. Energy Efficiency Service Fee.**
 - a. Contingencies.** This Agreement is contingent on City executing a Power Purchase Agreement with the EE Developer for the Project. If for any reason, the PPA for this Site terminates, this Agreement will terminate on thirty (30) days' notice to Participant without liability or obligation to either Party. If Participant revokes permission for EE Developer to use or access the Site, the Participant must notify the City within fifteen (15) days.
 - b. Payment.** Participant is obligated to pay the Energy Efficiency Service Fee for the term of this Agreement. The Participant acknowledges and agrees that the Energy Efficiency Service Fee is separate from and additional to charges for actual electricity used, which will be billed by City Electrical Rates pursuant to City Light's Policies and Procedures, as they may be updated and amended. The Energy Efficiency Service Fee is a contract payment, not a charge for electricity used by Participant. The Efficiency Energy amount posted on a monthly bill reflects Avoided Energy Use from prior billing period.
 - c. Payment Procedures and Collections.** The Energy Efficiency Service Fee will be billed to the Participant following these payment procedures:
 - i. All Participants shall receive uniform consideration and courtesy in all credit and collection matters.
 - ii. All charges are due and payable by the due date shown on the City Light bill and become delinquent thereafter. Late payments are subject to the charges described below. Participants

who question or dispute their bills are encouraged to contact City Light. An investigation will take place regarding any charges that the Participant believes are in error. Any bill adjustments made as result of an investigation will be retroactively trued-up on subsequent Participant bills.

- iii. For Participants who owe on any Program bills more than fifteen (15) calendar days past due a 1% interest fee will be charged to the Participant's account per month until paid in full. Interest will compound per billing cycle. A \$10 additional fee per month may be added to Participant's accounts to cover cost of past due administration and collection efforts.
 - iv. If Participant is unable to pay in full on next billing cycle the City Light Credit and Collections Unit, may charge additional late fees or interest, may refer accounts to the Law Department or to a collection agency, or use other available legal procedures.
 - v. Right of Appeal – Participants who disagree with the decisions of designated Department, shall have the further right to appeal to the Department's Hearing Officer.
 - vi. If nonpayment occurs for any 6 months, sequential or nonsequential, it will constitute a material breach of this Agreement and a termination notice will be provided to the Participant in writing.
- d. **Methodology & Roles.** Participant acknowledges and understands that City will use a M&V Consultant or other appropriate means to 1) develop and maintain the Baseline Model 2) calculate Avoided Energy Use (and hence the monthly Energy Efficiency Service Fee) 3) identify Non-Routine Events 4) perform Non-Routine Adjustments and 5) resolve disputes related to the quantification of the Energy Efficiency Service Fee. City will provide Participant a detailed summary of the Avoided Energy Use, Efficiency Energy, and Energy Efficiency Service Fee for each billing period. For each billable kilowatt-hour of Avoided Energy Use measured by City (through the M&V Consultant or otherwise), City will bill Participant based on the methodology described in Appendix A. If the Avoided Energy Use calculated for a billing cycle is zero or less than zero, this will result in no Energy Efficiency Service fee for that cycle for the Participant. As this is a pilot, program evaluations may be conducted and may recommend a change in the methodology used to calculate Avoided Energy Use and may be subject to change by written agreement from both Parties.
- e. **Dispute Process.** If the Participant believes there is an error in the Energy Efficiency Service Fee or the summary of the Avoided Energy Use, Participant must notify City of the perceived error (including a detailed description of the nature and effect of the error), within thirty (30) days after receiving the detailed summary for that billing cycle. Failure to provide this notice to City will waive Participant's claim and Participant will be responsible for full and prompt payment of all billed expenses. If the Parties are unable to resolve the dispute within sixty (60) days after their initial meeting, Parties will attempt to resolve the dispute through mediation. If the dispute is not resolved by mediation either applicable Party may proceed to seek any remedy that may be available to that Party at law or in equity, subject to limitations and waivers set out in this Agreement.

6. Verification Inspection & Data Collection.

- a. The Avoided Energy Use will be calculated according to the M&V protocols described in Program's M&V Plan and Program Manual.
- b. The Participant shall grant City and its M&V Consultant permission and access to the Site, and the City may, at its option, during reasonable hours and with notice to the Participant, perform pre- and post- installation monitoring and visual verification of the implemented ECMs, in order to determine the energy savings, and if necessary, to verify Participant's compliance and performance obligations under this Agreement. The Participant understands that the scope of any visual verification and review performed by the City does not include any kind of safety, code, or other compliance review or inspection, and is for administrative and verification purposes only. Failure to grant permission

and access to the City for the purposes set out in this section shall constitute a termination of this Agreement by Participant.

- c. Participant is solely responsible for obtaining permission and access rights for City verification from tenants or other entities using, occupying or residing in the Site. Upon request, Participant will provide City confirmation that tenants or occupants have granted permission for City and M&V Consultant to access all or a portion of the Site.
- d. Participant acknowledges that the City intends to collect and compile certain information, including but not limited to building design and equipment specifications, submetering data, occupancy data, invoices, ECM descriptions, status, ECM validation details, for purposes of program evaluation, Avoided Energy Use calculation, and preparing case studies under this Program.
- e. In order to conduct Avoided Energy Use calculations, the City (acting through M&V Consultant as appropriate) will require access to the data listed below in Table 1 at the frequency specified for the purpose described below. Providing the City access to this data will be the responsibility of the Participant. The Participant can provide access to this data directly, or through a third-party working behalf of the Participant.

Table 1: Data Access Required

Data Type	Purpose	Frequency
Quarterly Reports: 1. Reporting: occupancy, hours, ECMs, space use, IT loads, etc. 2. Notice of: NRE occurrences, Changes to static factors	Savings validation, performance tracking, Non-routine event identification & resolution	Quarterly
Requests For Information, which can include: 1. Updated list of ECMs, if any 2. Engineering description of building systems and operations, occupancy hours, weekend operations 3. More detail on ECMs, including a. Descriptions b. Savings calculations c. Installation and completion dates d. Operational verification reports e. Savings verification methods 4. Existing control system capabilities 5. Plans for additional metering or submetering 6. List of meters and areas served by them 7. Questions based on review of baseline period energy use data a. Operation modes b. COVID period operations c. Manual adjustments to control system settings d. Other. 8. Additional data sources available a. Sub-metering data b. BAS trends c. Records such as leased tenant space per month 9. Static factors (List of items not expected to change but have potential to in next 20 years) 10. Periodic maintenance events that may affect energy use (if any): e.g.: Pumping load after fire sprinkler test, Backup generator tests, Battery tests 11. NRE clarification data. 12. (For New Construction) Energy model data files and reports	Baseline development, savings validation, performance tracking, Non-routine event identification & resolution	Upon Request
Buildings ENERGY STAR Portfolio Manager account	Savings validation, performance tracking	Ongoing access, for the contract duration
Interval Meter Data	Baseline development, savings validation, Non-routine event identification & resolution	Ongoing access, for the contract duration

Participant acknowledges and agrees that, in the course of its engagement with the City, the City will transfer Participant's meter and Site data to the M&V Consultant or other professional selected by City to conduct energy calculation and validation. City's use of this data will be subject to federal, state and City laws on data management and privacy.

7. Adjustments & Process Requirements.

- a. **Program Requirements & Manual.** The Participant will implement ECMs at the Site in accordance with all requirements outlined in the Program Manual, M&V Plan and this Agreement. If City determines, at any time, that the ECMs do not comply with all requirements defined in the Program Manual, City may, in its sole discretion, terminate this Agreement with thirty (30) days' notice.
- b. **Non-Routine Events.** Non-Routine Events are changes in building energy use that are not attributable to changes in the independent variables used in the Baseline Model nor to the ECMs that were installed at the Site. Because these changes are unrelated to the ECMs implemented as part of the Project, they are not to be considered in the quantification of Efficiency Energy, and the Avoided Energy Use may be adjusted by making Non-Routine Adjustments. The Participant and EE Developer will be responsible for reporting potential Non-Routine Events as soon as they arise, or at a minimum, in Quarterly Reports. The Participant shall act in good faith to assist the City in investigating possible NREs. City, using M&V Consultant as appropriate, will be responsible for identifying Non-Routine Events (through review of Quarterly Reports, inspection of energy use data and post-retrofit change detection models). City, using M&V Consultant as appropriate, may collect additional data through follow-up phone interviews, requests for information, observation of unexpected energy use patterns, review of additional Project data, periodic site visits, and/or other methods, as appropriate. For existing buildings, City will use standard practice statistical and engineering methods to determine how and when the identified NREs have affected the facility's energy use. If City determines the Project is New Construction (including change of use type and major renovations), City will use the then-current Seattle Energy Code and Code Official guidance to identify and perform any adjustments to the facility's code baseline. For detailed information on how NREs will be identified, tracked or for a list of typical Non-Routine Events, please see the Program Manual.
- c. **Non-Routine Adjustments.** Non-Routine Adjustments shall be made on an annual basis, when necessary, to the Baseline Model or Adjusted Baseline Energy to account for significant Non-Routine Events which have occurred. City, after consulting with the M&V Consultant as appropriate, will apply Non-Routine Adjustments City determines, at its sole discretion, to be necessary to remove the influence of Non-Routine Events in the Avoided Energy Use calculation and quantification of Efficiency Energy. City will notify the Participant of any Non-Routine Adjustments and allow a 30-day comment period prior to implementation. All adjustments are subject to City Light approval. Until Non-Routine Adjustments are validated and finalized, City will continue to bill the Participant based on the current Baseline Model at the time of billing. Retroactive adjustments shall be made on a subsequent billing cycle. City may update procedures around Non-Routine Adjustments at any time during the Program to reflect new industry best practices.
- d. **Validation.** City may (at its discretion) conduct evaluation and validation of the M&V Consultant's work including, but not limited to: Avoided Energy Use calculations, Baseline Model, and Non-Routine Adjustments. Should evaluation and validation find the amount of Efficiency Energy delivered by the EE Developer at the Site requires adjustment, adjustments will be performed by the M&V Consultant and approved by City. If these adjustments result in an increase or decrease of Efficiency Energy delivered at the Site, payment adjustments will be reflected on subsequent EE Service Fees.

- 8. Efficiency Energy Delivery to Participant.** The City will deliver Efficiency Energy to Participant. City will procure this Efficiency Energy from the Site using a portion of the Energy Efficiency Service Fee paid by Participant. This Efficiency Energy is intended to provide Participant the same customer experience as other City Light energy users with greater conservation benefits, and to provide greater predictability in energy bill charges over time. Participant agrees that this Efficiency Energy, measured by Avoided Energy Use, constitutes sufficient consideration from the City and that no other service or product is required by City in exchange for the Energy Efficiency Service Fee.
- 9. Obligation to Disclose.** If Participant chooses to pass through Energy Efficiency Service Fee charges to Site tenants or any other person or entity, Participant will disclose to the paying person(s) that the Energy Efficiency Service Fee is not an electricity rate for actual electricity usage.
- 10. Static Factors.**
- a. A change in the static factors of the Site may change the Project baseline and, if City determines the change to be significant, could result in a Non-Routine Adjustment that changes the Energy Efficiency Service Fee to be paid by Participant to City. Participant will notify the City in writing sixty (60) days in advance of any proposed change to the Site, including
 - i. Changes in space use type, e.g: from retail to restaurant or vice versa.
 - ii. Expansion or destruction of conditioned building floor area.
 - iii. Addition or removal of large electric loads, such as data servers, kilns, and refrigerators.
 - iv. Change in operating hours or operations.
 - v. Fuel switching on water heat or space heat.
 - vi. Electric vehicle charging infrastructure (shall be sub-metered and added to the baseline).
 - vii. On-site generation (shall be metered with a revenue grade meter and removed from the Avoided Energy Use of the Site).
 - viii. Occupancy changes that are not captured in the Baseline Model, measured by leased square footage.
 - ix. Temporary, one-time, or rare events that fall outside of regular operation conditions, such as power loss or emergency operations.
 - b. City based its business decision to enter this Agreement in part on the understanding that Site is a single utility account property. City may terminate this Agreement on thirty (30) days' notice if any change in space results in a change from a single utility account to multiple utility accounts within Measurement Boundary of the Site.
- 11. On-Site Generation.** Participant must provide the City thirty (30) days' written notice before installing any energy generation equipment at the Site, including but not limited to solar panels, cogeneration or geothermal energy equipment. This notice must contain enough information for City to determine how the amount of energy produced on-site may be calculated. Any on-site generation must be metered with a revenue grade meter and data made available to the City. City will remove this produced energy from the Site's Avoided Energy Use methodology. City will not bill the Participant for this produced energy through the EE Service Fee and will not pay the EE Developer for this produced energy through the PPA Payment. If City reasonably determines that on-site generation will make calculation of the Avoided Energy Use impractical or impossible, City may terminate this Agreement under Section 5(a) after providing Participant sixty (60) days' notice of its determination. If City determines that Participant has addressed City's concern within this 60 days' notice period, City may rescind its notice of termination. Any form of on-site generation at the Site must be City sub-metered under applicable law and City requirements. Installation of on-site generation equipment without prior notice to City will be a material breach of this Agreement. If EE Developer will be participating in the installation of on-site generation equipment, notice under this section must be provided by either Participant or EE Developer.

12. Building Sale.

- a. Participant will not enter into any transaction to sell or transfer ownership or control over the Site without providing City thirty (30) days' prior written notice of intent to sell. Participant will provide the City written notice of transfer of Site ownership within five (5) days of close of sale. Participant understands the Agreement is a binding obligation for the full term regardless of Site ownership. Participant agrees to include as a term of any purchase and sale agreement, and as a condition of any property transfer, the obligation for the subsequent owner to assume all Participant obligations and rights under this Agreement.
- b. Within thirty (30) days of close of sale or property transfer, Participant and the new Site owner must execute an assignment of this Agreement in a form provided by or acceptable to City that identifies the then-current Site owner as the Participant for the remainder of the term of this Agreement and subject to all obligations herein.
- c. Failure to provide City notice of sale or transfer as required by subparagraph 12(a) or failure to provide an executed assignment as required by subparagraph 12(b) will terminate this Agreement with no further liability or obligation to City.

13. Public Records Act Compliance. The City will release documents and records related to this Agreement when the City determines it is required to do so by Washington's Public Records Act, RCW Chapter 42.56, or other disclosure laws. Additionally, as a party contracting with a governmental entity, Participant may have obligations under disclosure laws. Participant is responsible for understanding and complying with any applicable disclosure requirements.

14. Compliance with Laws. Participant represents and warrants that Participant, Participant's agent and employees, or any contractors retained to install or maintain the equipment, are familiar with, and at all times will comply with all applicable federal, state and local laws, codes, ordinances, rules and regulations, Program Manual, product specifications, and other Program policies and requirements, including, but not limited to those pertaining to the implementation of any ECMs at the Site. Efficiency Energy harvested at the Site is unique and cannot be transacted twice under any other agreement.

15. The City of Seattle Disclaimer. THE CITY DISCLAIMS, ANY AND ALL IMPLIED OR EXPRESS WARRANTIES, including without limitation, ANY REPRESENTATIONS OR PROMISES WITH RESPECT TO MATERIALS OR LABOR REQUIRED FOR THE implementation OF ANY ENERGY CONSERVATION MEASURES ON PROGRAM PARTICIPANT'S SITE, OR THE COST OF SUCH equipment, MATERIALS AND LABOR, OR ANY ENERGY SAVINGS THAT MAY ACCRUE FROM THE IMPLEMENTATION OF SUCH ENERGY CONSERVATION MEASURES. THE CITY MAKES NO IMPLIED OR EXPRESS WARRANTIES REGARDING THIS PROGRAM, ITS POLICIES, PROCEDURES, ITS ADMINISTRATIVE VERIFICATIONS, AND / OR ANY OWNER INSTALLED equipment, OR equipment INSTALLED BY A CONTRACTOR, EE DEVELOPER, AND SPECIFICALLY DISCLAIMS ANY WARRANTY OR MERCHANTABILITY OR FITNESS OF SUCH equipment FOR ANY PARTICULAR PURPOSE. Any required maintenance, repair or replacement of the equipment shall be the sole responsibility of, and at the expense of the Program Participant. THIS DISCLAIMER SHALL SURVIVE ANY CANCELLATION, COMPLETION, TERMINATION OR EXPIRATION OF THE PROGRAM PARTICIPANT'S PARTICIPATION IN THE PROGRAM.

16. Limitation of Liability, Waiver & Indemnity.

- a. Participant acknowledges and agrees participation in this Program is voluntary and that the City assumes no liability for: Participant's decision to enter into this Agreement; Participant's decision to collaborate with the EE Developer; the Energy Efficiency Measures or ECMs selected by Participant or the EE Developer; any third parties selected by Participant or EE Developer to implement such ECMs; any disputes arising out of installation, repair or replacement of the equipment installed by EE Developer or subcontractors; any promises or representations that might be made between

Participant and EE Developer, operator or occupants of the Site; or any disputes arising if Participant chooses to recoup Energy Efficiency Service Fee payments by passing on charges to tenants or other third parties. The Participant will be solely liable for any and all disputes with Site tenants related to the Program or tenant funded improvements, which may not result in reduced Energy Efficiency Service Fees. The City makes no recommendations or suitability of any EE Developer for this Project, their services, quality of work, or decisions related to the services performed by the EE Developer, this is solely within the Participant's discretion and liability. Participant further acknowledges voluntary agreement to pay Energy Efficiency Services Fee and waives, to the fullest extent allowed by law, all claims arising from or related to the imposition of Energy Efficiency Service Fee charges or inclusion of the Energy Efficiency Service Fee on City Light bills.

- b. To the fullest extent allowed by law, Participant will release, and defend, indemnify, and hold harmless the City, its departments, subsidiaries, affiliates and officers, directors, employees, agents, representatives or volunteers, from any and all claims, losses, harm, costs, liabilities, damages and expenses (including attorney's fees) of any nature whatsoever, or allegations thereof, arising directly or indirectly out of this Agreement, including, but not limited to, claims related to any method Participant may use to recoup Energy Efficiency Service Fee charges (such as requiring Site tenants to pay all or a portion of those charges), claims related to City and M&V Consultant access to and activities on the Site, claims brought by the EE Developer related to this Agreement or the PPA, and claims related to installation, maintenance and repair of ECMs intended to generate Efficiency Energy except to the extent that any such claims, losses, harm, costs, liabilities, damages and expenses are caused by the City's negligence or willful misconduct. Participant's indemnity, protection, and hold harmless obligations shall include any demand, claim, assignment, suit or judgment for damages to property or injury to or death of persons, or for any payment made by the City, or for any payment made under or in connection with any Workers' Compensation law or under any plan for employees' disability and death benefits. Participant expressly waives, by mutual negotiation, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other Workers' Compensation Act, Disability Benefit Act, or other Employee Benefit Act of any jurisdiction, which would otherwise be applicable in the case of such claim.

- 17. Governing Law and Venue.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. Any action arising from this Agreement shall be brought solely in King County Superior Court.
- 18. Marketing Colleterial.** The City reserves the right to publish general information regarding the Project for the purposes of Program and energy efficiency marketing. All collateral will be provided to the Participant before publication.
- 19. Survivability.** The provisions of Sections 3, 4, 12, 13, 14, 15 and 16 shall survive the expiration, termination, or completion of the Participant's participation in the Program.
- 20. Severability.** If any provision of this Agreement, in whole or in part, is deemed invalid by any court or administrative body of competent jurisdiction, then these provisions shall be construed as reformed to the extent necessary to render such provision valid, and the remaining provisions shall remain in effect as reformed. The Participant and the City agree that all provisions of these Terms and Conditions are severable.
- 21. Termination.** If Participant fails to comply with the obligations of this Agreement this will result in a breach of contract, and the City shall have the right to terminate this Agreement by giving written notice to Participant of such termination. Upon receipt of written notice, Participant will have 60 calendar days to cure the noncompliance or produce substantial evidence of Participant's efforts to cure. If Participant fails to do so, then the City shall terminate this Agreement.

22. **Force Majeure.** If any event or circumstances outside of the Parties control arises which makes it impossible or unlawful for either or both Parties to fulfil their contractual obligations under this Agreement, then this will constitute a termination of Agreement with no liquidated damages.
23. **No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the Parties and creates no rights enforceable by any entity other than City and Participant.
24. **Non-Waiver.** Failure or forbearance by any Party to exercise any of its rights or remedies under this Agreement shall not constitute a waiver of such rights or remedies. No Party shall be deemed to have waived or forborne any right or remedy resulting from such failure to perform unless it has made such waiver, specifically in writing.
25. **Participant as EE Developer.** Participant may be the EE Developer for this Project. In that case, Participant must comply with all terms and conditions of this Agreement and the Power Purchase Agreement for the EE Developer. If at any time, a bill payment is delinquent for an Energy Efficiency Service Fee this will cause a material breach of the Agreement. If EE Developer breaches the Power Purchase Agreement that shall also be a material breach of this Agreement.
26. **Utility Standing.** To enroll in this Program, Participant must be in good standing with the City Light Department. The Participant must have a satisfactory record of payments and/or satisfactory performance in contracting and/or transacting with Seattle City Light.
27. **Assignment.** Participant may not assign its rights or obligations under this Agreement without first obtaining prior written consent of City. In the event of a Site sale or transfer, City shall not unreasonably withhold, delay or condition assignment of this Agreement to the new Site owner.
28. **Amendments.** If either party desires a change in the items specified in this Agreement, an amendment must be requested through written notice. Changes to this Agreement will only be effective if set forth in a document signed by authorized representatives of both the City and the Participant.
29. **Construction.** The headings contained in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement. Words used in the singular included the plural and words used in the plural include the singular.
30. **Notices.** Unless otherwise provided in this Agreement, all notices, demands, requests, approvals or other communications which may be or are required to be given, served or sent pursuant to this Agreement shall be in writing and shall be emailed, hand-delivered, mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or delivered by overnight courier addressed as follows:

Email: SCLenergyadvisors@seattle.gov

Mail:

SCL Energy Advisors

Seattle City Light

700 5th Avenue, Suite 3200

Seattle, WA 98124

By signing this Agreement, I acknowledge that I have fully read, understand, and agree to be bound by the above Terms and Conditions of this Agreement for participation in the Seattle City Light Business Conservation Program.

I certify or declare, under penalty of perjury, under the laws of the State of Washington that I am the Seattle City Light Program Participant, or the legal property owner, corporate officer, agent or representative of the

business entity listed below, who is authorized on behalf of the Seattle City Light Program Participant, to execute and agree to the terms and conditions of this Agreement for participation in the Seattle City Light Business Conservation Program.

Signature of Authorized Signer of Program Participant: _____ Date:

Printed Name of Authorized Signer of Program Participant: _____

Title: _____

City of Seattle, City Light Department:

By: _____ Date: _____

Email: _____

Phone: _____

APPENDIX A. ENERGY EFFICIENCY SERVICE FEE CALCULATION METHODOLOGY

The Energy Efficiency Service Fee (EE Service Fee) shall be calculated according to the following formula:

$$\text{EE Service Fee} = (\text{EEaS Charge} \times \text{Efficiency Energy})$$

The EEaS Charge is established upon Agreement execution and differentiated based on participant's project type, customer classification of the customer's primary account at the Site, and Site location.

1. **The EEaS Charge:** The following is how the EEaS Charge will be determined for selected projects:
 - a. **Retrofit-High Demand General Service.** The initial EEaS Charge for Retrofit projects, that fall under the High Demand General Service (HDS) rate structure, will be determined by analyzing the Site's baseline period's billing prior to contract execution to determine the total kWh consumed during on-peak and off-peak hours. The volume of kWh on peak and off peak will be converted to the % of total kWh for the billing periods included in the baseline period. The on peak % will be applied to current on-peak rates and the off peak % to current off-peak rates. These totals will be combined and the average volumetric price will be used to represent a weighted-average kWh pricing using the applicable HDS rate for the Site at time of contracting.

$$\text{Initial EEaS Charge} = (\% \text{ On-Peak} * \text{On-Peak HDS rate} + \% \text{ Off-Peak} * \text{Off-Peak HDS rate})$$

Optional Demand Savings factor for Existing Building project: Existing Building projects have the option of including a Demand Savings factor in the initial EEaS Charge formula. This factor allows the inclusion of the approximate demand savings value expected as part of the EEaS project into the EEaS transactions. The Demand Savings factor is determined by the following formula:

$$\text{Demand Savings factor} = 1 + (\text{baseline period demand cost} / \text{baseline period consumption cost})$$

Under this option Initial EEaS Charge is calculated as follows:

$$\text{Initial EEaS Charge} = (\% \text{ On-Peak} * \text{On-Peak HDS rate} + \% \text{ Off-Peak} * \text{Off-Peak HDS rate}) * \text{Demand Savings factor}$$

- b. **Retrofit-Large General Service.** The initial EEaS Charge for Retrofit projects, that fall under the Large General Service (LGS) rate structure, will be determined by analyzing the Site's baseline period's billing prior to contract execution to determine the total kWh consumed during on-peak and off-peak hours. The volume of kWh on peak and off peak will be converted to the % of total kWh for the billing periods included in the baseline period. The on peak % will be applied to current on-peak rates and the off peak % to current off-peak rates. These totals will be combined and the average volumetric price will be used to represent a weighted-average kWh pricing using the applicable LGS rate for the Site at time of contracting.

Initial EEaS Charge = (% On-Peak * On-Peak LGS rate + % Off-Peak * Off-Peak LGS rate)

Optional Demand Savings factor: Retrofit projects have the option of including a Demand Savings factor in the initial EEaS Charge formula. This factor allows the inclusion of the approximate demand savings value expected as part of the EEaS project into the EEaS transactions. The Demand Savings factor is determined by the following formula:

Demand Savings factor = 1 + (baseline period demand cost / baseline period consumption cost)

Under this option Initial EEaS Charge is calculated as follows:

Initial EEaS Charge = (% On-Peak * On-Peak LGS rate + % Off-Peak * Off-Peak LGS rate) * Demand Savings factor

- c. **Retrofit-Medium General Service.** Retrofit projects that fall under the Medium General Service rate structure at time of Agreement execution will have the following initial EEaS Charge.

Customer Location	2021 EEaS Charge
Non-Downtown Network	\$0.0803/kWh
Downtown Network	\$0.0987/kWh

Optional Demand Savings factor for Existing Building project: Existing Building projects have the option of including a Demand Savings factor in the initial EEaS Charge formula. This factor allows the inclusion of the approximate demand savings value expected as part of the EEaS project into the EEaS transactions. The Demand Savings factor is determined by the following formula:

Demand Savings factor = 1 + (baseline period demand cost / baseline period consumption cost)

Under this option Initial EEaS Charge is calculated as follows:

Customer Location	2021 EEaS Charge
Non-Downtown Network	\$0.0803/kWh * Demand Savings factor
Downtown Network	\$0.0987/kWh * Demand Savings factor

- d. **Retrofit-Small General Service.** Retrofit projects that fall under the Small General Service rate structure at time of Agreement execution will have the following initial EEaS Charge.

Customer Location	2021 EEaS Charge
Non-Downtown Network	\$0.1053/kWh
Downtown Network	\$0.1053/kWh

- e. **New Construction-Large General Service.** New Construction projects that fall under the Large General Service rate structure at time of Agreement execution will have the following initial EEaS Charge.

Customer Location	2021 EEaS Charge
City Network	0.0810/kWh
Non-Downtown, Non-City Network	\$0.0874/kWh
Downtown Network	\$0.0928/kWh

- f. **New Construction-Medium General Service.** New Construction projects that fall under the Medium General Service rate structure at time of Agreement execution will have the following initial EEaS Charge.

Customer Location	2021 EEaS Charge
Non-Downtown Network	\$0.0803/kWh
Downtown Network	\$0.0987/kWh

- g. **New Construction-Small General Service.** New Construction projects that fall under the Small General Service rate structure at time of Agreement execution will have the following initial EEaS Charge.

Customer Location	2021 EEaS Charge
Non-Downtown Network	\$0.1053/kWh
Downtown Network	\$0.1053/kWh

2. **EEaS Charge Annual Adjustment.** An escalator of 2.0% will be applied to the EEaS Charge every December to establish the EEaS Charge for the subsequent year.