

RESOLUTION NO. 2015-040

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING AN AGREEMENT BETWEEN THE CITY OF ROHNERT PARK AND PACIFIC GAS AND ELECTRIC COMPANY TO PURCHASE AND INSTALL 836 LIGHT EMITTING DIODE STREETLIGHTS FOR REPLACEMENT PURPOSES

WHEREAS, the City spends owns and maintains 2,941 high pressure sodium (HPS) streetlights; and

WHEREAS, HPS streetlights have high operation and maintenance costs and are not energy efficient; and

WHEREAS, LED lighting consumes 35% less energy than HPS lighting, reduces light pollution and last much longer than HPS bulbs; and

WHEREAS, the City adopted a new LED street light standard for new and replacement streetlights in January 2014; and

WHEREAS, Staff is proposing to convert 836 existing City-owned streetlights from HPS to LED through an agreement with PG&E; and

WHEREAS, the 836 streetlights targeted for replacement are located along the following major arterial and collector streets within the City to provide the maximum benefit possible: Rohnert Park Expressway, Commerce Boulevard, State Farm Drive, Snyder Lane, Redwood Drive, Business Park Drive, Labath Avenue, Golf Course Drive, Southwest Boulevard, Camino Colegio Drive and East Cotati Boulevard.

WHEREAS, PG&E has a Turnkey Program that utilizes their Energy Efficiency Retrofit Loan Program, called On-Bill Financing (OBF), where PG&E will finance the project at 0% interest, and the City will pay the loan through the realized savings on the monthly utility bills; and

WHEREAS, participation in the Turnkey Program requires the City to execute an agreement with PG&E and complete paperwork for billing and rebates; and

WHEREAS, California Government Code Sections 4217.10 - 4217.18 allow the City to pursue an alternative procurement processes for "energy services contracts" and "energy financing contracts" if it finds it best serves the City interest;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that it does hereby authorize and approve an agreement by and between PG&E and the City of Rohnert Park, a municipal corporation, to purchase and install 836 LED streetlights.


BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to take all actions to effectuate this agreement for and on behalf of the City of Rohnert Park, including execution, if necessary, in substantially similar form to the agreement attached hereto and incorporated by this reference as Exhibit "A," subject to minor modifications by the City Manager or City Attorney ("Agreement").

BE IT FURTHER RESOLVED that the City Council hereby finds based upon evidence in the record that the Agreement is a qualified energy financing contract and that entering into the Agreement is in the best interest of the City, that public notice was properly given, and that funds for the repayment are projected to be available from revenues available from funding that would otherwise have been used for purchase of electrical energy.

DULY AND REGULARLY ADOPTED this 10th day of March, 2015.

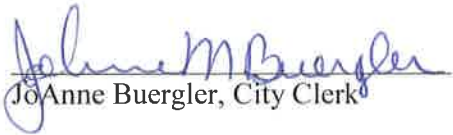


CITY OF ROHNERT PARK



Amy O. Ahanotu, Mayor

ATTEST:



JoAnne Buergler, City Clerk

Attachment: Exhibit A

CALLINAN: AYE MACKENZIE: AYE STAFFORD: AYE BELFORTE: AYE AHANOTU: AYE
AYES: (5) NOES: (0) ABSENT: (0) ABSTAIN: (0)

EXHIBIT A
WORK ORDER
STREETLIGHT REPLACEMENT

This WORK ORDER ("Work Order"), effective as of _____, 20__ ("Work Order Effective Date") is made and entered into by and between City of Rohnert Park ("Customer") and Pacific Gas and Electric Company ("PG&E"). This Work Order is subject to the terms and conditions of the PG&E Services Agreement between Customer and PG&E entered into on or about February 24, 2014 ("Services Agreement").

In accordance with the provision of the Services Agreement, the Customer wishes to engage PG&E and its Subcontractor to provide PG&E's street light replacement services, subject to the terms of the Services Agreement and hereby notifies PG&E to commence work on the following Project:

PROJECT NAME: City of Rohnert Park– Streetlight Replacement

CONTRACT No. SST-LED-RP-001

AMOUNT OF WORK ORDER: \$249,682

ESTIMATED START DATE: March 15, 2015

1. SCOPE OF WORK

1.1 The streetlight replacement services ("Services") to be performed by PG&E and its Subcontractors are described in the Scope of Work (Exhibit A), which is attached hereto and incorporated by reference herein.

1.2 PG&E EXPRESSLY RESERVES ALL ITS RIGHTS, INCLUDING BUT NOT LIMITED TO THE FOLLOWING: THE RIGHT TO UTILIZE OTHERS TO PERFORM THE SERVICES OF THE TYPE CONTEMPLATED BY THIS WORK ORDER; THE RIGHT TO REQUEST WORK ORDERS FROM OTHERS FOR THE SERVICES OF THE TYPE CONTEMPLATED BY THIS WORK ORDER AND THE UNRESTRICTED RIGHT BY PG&E TO BID OR PERFORM ANY SUCH SERVICES OR WORK.

2. ORDER OF PRECEDENCE

In the event of a conflict between the provisions of the Work Order, the Scope of Work, and the Services Agreement, the following order of precedence shall apply (in descending order): (a) this Work Order, (b) the Scope of Work, and (c) the Services Agreement.

3. DELIVERABLES

For purposes of this Work Order, the deliverables will consist of the following items (collectively, the "Deliverable"):

- Summary report listing street lights fixtures that were replaced, energy savings and project cost
- Revised GIS-based inventory of the affected streetlights
- Copies of third party warranties for the new streetlights and photo controls

- Certified payrolls for subcontractors performing the streetlight fixture replacements

4. PERFORMANCE OF SERVICES

PG&E shall have no obligations to perform any Services under this Work Order unless and until both Parties have signed this Work Order. The issuance of this Work Order does not commit PG&E to perform any future work for Customer.

5. AUTHORIZATION

Upon receipt of the Work Order, Customer shall review the Work Order and verify that the terms of the Work Order are acceptable to Customer. Customer's execution of this Work Order shall indicate its acceptance of the terms and conditions set forth herein.

6. ACCEPTANCE

6.1 Upon completion of the Services, Customer will inspect all of the streetlights that have been replaced and confirm that each streetlight has been installed per the Specifications in the Scope of Work (Exhibit A). Upon PG&E's notice that the Project has been completed, Customer will have fifteen (15) business days from the date of PG&E's notice that the streetlights have been installed per the Specifications.

6.2 If a streetlight has not been installed per the Specifications, Customer shall promptly notify PG&E in writing and set forth in reasonable detail the reason(s) why the streetlight has not been properly installed. PG&E shall correct those issues identified by Customer within a period of time mutually agreed upon by the Parties. Upon PG&E's correction of the non-conforming items, Customer shall have ten (10) calendar days from the date of PG&E's notice to confirm that the streetlight has been installed per the Specifications. This process will continue until Customer confirms that all of the streetlights that have been replaced under this Project meet the Specifications. If Customer does not provide PG&E with Customer's written notice of its acceptance or rejection of the Project within thirty (30) days from the date of PG&E's completion notice, Customer will be deemed to have accepted the Project.

7. PAYMENT SCHEDULE

7.1 The total cost of the Project is set forth before Section 1. Notwithstanding anything to the contrary in the Services Agreement, Customer hereby agrees to pay PG&E for the Services as follows:

(a) Date of Payment: Customer will be invoiced for final 100% payment upon the earlier of: (i) completion of the Project, or (ii) when punch list items (if any) have been completed.

(b) Payment Procedures: If the Services performed under this Work Order qualify for a loan under PG&E's General Off-Bill and On-Bill Financing Loan program (the "OBF Program"), the payment for Services shall be made by Customer pursuant to a loan agreement (the "OBF Agreement"). Customer shall execute the OBF Agreement within ten (10) days from the date of this Work Order and the terms of the OBF Agreement shall supersede, govern and control the terms for payment of the Services performed under this Work Order. If Customer is unable to qualify for a loan for any reason, fails to execute an OBF Agreement or elects to finance the fees for the Services by other means, Customer represents and warrants that it shall pay for the Services performed hereunder in accordance with the terms set forth below in Section 7.2.



7.2 The PG&E invoice will reference this Work Order and be submitted to Customer's billing address. If Customer is unable to qualify for a loan under the OBF Program or the OBF Agreement is terminated by PG&E for any reason, Customer agrees, acknowledges and warrants that it shall pay for the Services performed under this Work Order within thirty (30) days from the invoice date. Each payment made by Customer must reference this Work Order and invoice number and be mailed to:

PACIFIC GAS AND ELECTRIC COMPANY
Attn: Sales and Service Manager, Business Development
P.O. Box 770000, Mail code: N10D
San Francisco, CA 94177

7.3 The price for the Services set forth above before Section 1 does ☒ does not ☐ subtract the value of the LED streetlight rebates (the "Rebates") from the cost to provide the Services. Customer acknowledges and understands that Rebates are subject to funding availability, which is administered by PG&E on a first-come, first-serve basis. If the funding for the Rebates is depleted, Customer acknowledges and agrees that Customer shall nonetheless be liable to PG&E and remain obligated to pay the full amount of the fee for the Services performed hereunder.

7.4 This Section 7 shall survive the expiration or termination of the Work Order.

8. NOTIFICATIONS AND INTERFACE

Both Parties shall contact and/or deliver written notices (email is allowed) to the business contacts below in the normal course of business, and in the event of any problems which may significantly affect the performance of the Services under this Work Order

BUSINESS CONTACTS

CUSTOMER

Name Terrie Zwillinger
Title Project Coordinator Public Works
Address 600 Enterprise Drive
Rohnert Park, CA 94928
Telephone (707) 588-3331
Email tzwillinger@rpcity.org

PACIFIC GAS AND ELECTRIC COMPANY

Name Brent Patera
Title Senior Business Development Manager
Address 245 Market Street
San Francisco, CA 94105
Telephone (415) 265-7232
Email bxpl@pge.com

CUSTOMER BILLING CONTACT:

Name Terrie Zwillinger
Title Project Coordinator - Public
Works
Address 600 Enterprise Drive
Rohnert Park, CA 94928
Telephone (707) 588-3331

9. INDEMNIFICATION

9.1 As stated in Section 9 Indemnification of the PG&E Services Agreement between Customer and PG&E entered into on or about February 24, 2014.

9.2 Notice and Defense Conditions. Customer shall promptly notify PG&E, in writing, of any claim, demand, proceeding or suit of which Customer becomes aware which may give rise to a right of defense under Section 9.1 ("Claim"). Notice of any Claim that is a legal proceeding, by suit or otherwise, must be provided to PG&E within thirty (30) days of Customer's first learning of such proceeding. Notice must be in writing and include an offer to tender the defense of the Claim to PG&E. Upon PG&E's acceptance of tender, Customer will cooperate with PG&E with respect to such defense and settlement. If Customer fails to cooperate in defense or settlement of the a Claim by unreasonably withholding approval of an action requested by PG&E, PG&E may terminate defense of a Claim after thirty (30) day written notice to the City providing an opportunity to cure any alleged failure to cooperate in the defense of a Claim. If a Claim is settled and to the extent permitted by law, neither party will publicize the settlement and will make every effort to ensure the settlement agreement contains a non-disclosure provision.

10. OWNERSHIP OF DELIVERABLES

10.1 Ownership and title to any Deliverable produced by or on behalf of PG&E pursuant to this Work Order will be transferred to the Customer upon Customer's payment for the particular Deliverable and no further agreement will be necessary to transfer ownership to the Customer. PG&E shall furnish the Customer all necessary copies of data used to prepare the Deliverable which are needed by Customer to complete its review and approval process.

10.2 PG&E shall not be liable for any claims, liabilities, or losses arising out of, resulting from or in any way connected with Customer's use by the Customer of the Deliverables, project documentation on other projects, except such use as may be authorized in writing by PG&E.

11. THIRD PARTY LIMITED WARRANTIES

11.1 In accordance with Section 7.3 of the Services Agreement, PG&E will, within thirty (30) days from its receipt of the final payment for the Services, assign to Customer the warranties for the lighting controls and lighting fixtures (collectively, the "Equipment") purchased by or on behalf of PG&E and installed as part of the Services under this Work Order. A copy of these third party warranties is set forth in Exhibit B.

11.2 Solely as an accommodation to Customer and not as a contractual commitment, Customer may, during the first twelve (12) months following the installation of the Equipment, contact PG&E and request that PG&E replace Defective Lighting Fixtures. After this twelve month period, but within the warranty period offered by the manufacturer of the Equipment, Customer shall contact the manufacturer of the Equipment to make a warranty claim for defective Equipment. In addition, Customer shall be solely responsible for the removal of the Equipment as well as arranging and paying for shipping of the defective Equipment to and from the manufacturer's designated facility (and for all insurance and risk of loss to the Equipment while in transit), and installation of the Equipment upon return, unless otherwise instructed in the manufacturer's designated warranty. This warranty extends to Customer only and cannot be assigned by Customer.



11.3 NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, PG&E MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. IN ADDITION, PG&E HEREBY SPECIFICALLY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES REGARDING THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY AND ALL WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

12. AUTHORITY

Each Party represents and warrants that the individual signing below, as well as any Change Orders and approvals hereunder, has and shall have all requisite power and legal authority to bind the Party on whose behalf he/she is signing to that Party's obligations hereunder.

IN WITNESS THEREOF, the parties agree to be bound by this Work Order as of the date first set forth above.

CUSTOMER	PACIFIC GAS AND ELECTRIC COMPANY
Signature: _____	Signature: _____
Print Name: _____	Print Name: <u>Roxanne Fong</u>
Title: _____	Title: <u>Manager, Business Development</u>
Date: _____	Date: _____

**EXHIBIT A
SCOPE OF WORK**

1. Services. The Scope of the Services to be performed by PG&E and its Subcontractors is set forth below:

(a) Scope of Work:

- Order and purchase the number of street light fixtures specified by Customer at Customer's expense.
- Replace 836 HPSV lights operating at 120 or 240 volts with LED lights according to the map and LED spreadsheet (identifies each location) in the City of Rohnert Park.
- Number any light poles that are not numbered using badge number stickers provided by PG&E.
- Change the PG&E street light rates to LED and provide documentation on the changes and cost for the street lights which with Customers approval may also include LS2C to LS2A rates changes. Customer Initials _____. Date _____.
- Process the rebates and provide documentation on the changes for the street lights.
- Provide a revised GIS-based inventory.
- Arrange for waste disposal of removed street light fixtures.

(b) Estimated minimum number of days to complete scope of work: TBD.

(c) Date Services are estimated to begin: March 2015.

(d) Customer sites where work is to be performed: Please see attached spreadsheet.

(e) Type and number of street light fixtures to be replaced: Please see attached spreadsheet.

(f) Specifications for installation¹:

PG&E will replace the existing lighting fixtures and connect the existing wiring to the new LED fixture on a 120-277 volt service. This replacement will include the installation of a new photo cell or shorting cap and testing said lighting fixtures so as to ensure it/they is/are operational. Please be advised that the replacement of fuses and/or troubleshooting "no power" situations are outside of the scope of the Services performed by PG&E and shall not be part of this Work Order. However, PG&E will promptly inform Customer if a fuse needs to be replaced or if there is a "no power" situation.

Customer acknowledges and agrees that PG&E will not be responsible for installing any lighting fixtures on voltage outside the 120-277 service unless Customer specifically identifies, in writing, those locations by badge number and address, before the Equipment is ordered. It is the Customer's responsibility to tell

¹ Note: The locations of the replaced streetlights may change if street lights are added to or deleted from the Project during installation. A final spreadsheet will be given to Customer upon completion of the Services.

PG&E if they have service needs outside of these voltage parameters so the proper Equipment can be ordered, otherwise, it shall be the Customer's responsibility to pay for any lighting fixtures that were ordered or damaged during installation.

2. Additional Work

2.1 If in the process of performing the Service, a condition is discovered that prevents PG&E from performing the Service as specified such as but not limited to (a) access to the street light such as overgrown trees or blocked roadway, (b) broken street light bracket, or (c) wiring defect that prevents delivery of energy to the street light fixture, PG&E will notify Customer in writing of such condition and the work necessary to remedy the condition. If the work required is estimated by PG&E at less than Five Thousand Dollars (\$5,000) and Customer approves, PG&E may perform such work and invoice Customer periodically for actual time and materials to perform such work.

2.2 If, for any reason, Customer chooses not to correct such condition, PG&E shall be relieved of any and all responsibility for performing the Service for that street light or group of street lights.

2.3 If in the process of performing the Service, active bird nests, and/or bee hives, wasps are discovered, PG&E will notify Customer of such condition and discontinue work on affected equipment.

3. Disposal of old streetlights and related materials

3.1 Customer will make space available at Customer-owned property for material storage and disposal during construction. PG&E will hold Customer harmless for damage to stored materials while on Customer's property.

3.2 PG&E will store the materials at the following site:

LOCATION: To be determined.

3.3 PG&E's Contractor will keep the lights that have been replaced in a locked container until taking them to PG&E's yard. Contractor will separate the lamp from the fixture and put them in the appropriate bins. PG&E will label the bins and ship them to a registered disposal facility.

4. Customer's Responsibilities

To the extent that performance of the Service by PG&E depends upon approvals or other decisions by Customer, or on Customer furnishing particular documents or information, including but not limited to work permits, and that Customer does not timely perform or provide the same, the minimum time estimate for PG&E's completion of the Service shall be extended to take into account Customer's delay with respect thereto. Customer shall reimburse PG&E for the costs on any required work permits. If Customer or a competent governmental authority requires any other compliance efforts, including but not limited to flagging, traffic control, or neighborhood notifications, as a condition for work to proceed, then Customer shall reimburse PG&E for the costs related to these efforts.

**EXHIBIT B
THIRD PARTY WARRANTIES**1. Street light manufacturer's contact information:

(a) Cree LED Lighting Fixtures

1200 92nd Street
Sturtevant, WI 53177-1854
Phone: (800)236-6800

- (b) The warranty period for the Cree LED Lighting Fixtures is 10 years. A copy of that warranty is set forth in Schedule 1 to this Exhibit B.

2. Photo control warrantor's contact information:

(a) Ripley Lighting Controls

2023 Platt Springs Road
P.O. Box 3229
West Columbia, SC 29169
Phone: 803-939-4700
Fax: 803-939-4777

- (b) The warranty period for the Ripley lighting controls is 8 years. A copy of that warranty is set forth in Schedule 2 to this Exhibit B.

SCHEDULE 1 TO EXHIBIT B
LIMITED WARRANTY FOR CREE® LED LIGHTING FIXTURES
(INCLUDING BETALED® TECHNOLOGY; TRUEWHITE® TECHNOLOGY; AND
ESSENTIA® FIXTURES)

This limited warranty is provided by the Cree company described below ("Seller") to you as the original purchaser of the LED lighting product that is identified on Seller's invoice reflecting its original purchase (the "Product"). The Seller is the Cree Company identified as such on the invoice. This limited warranty may be transferred to subsequent purchasers of the Product, provided that such Product is resold in new condition and in its original packaging. Seller warrants that the Product, when delivered in new condition and in its original packaging, will be free of defects in material and workmanship for a period of **TEN (10) YEARS** from the date of original purchase. The determination of whether the Product is defective shall be made by Seller in its sole discretion with consideration given to the overall performance of the Product. A Product shall not be considered defective solely as a result of the failure of individual LED components to emit light if the number of inoperable components is less than 10% of the total number of LED components in the Product.

If Seller determines the Product is defective, Seller will elect, in its sole discretion, to refund you the purchase price of the Product, repair the Product or replace the Product. This limited warranty will not apply to loss or damage to the Product caused by: negligence; abuse; misuse; mishandling; improper installation, storage or maintenance; damage due to fire or acts of God; vandalism; civil disturbances; power surges; improper power supply; electrical current fluctuations; corrosive environment installations; induced vibration; harmonic oscillation or resonance associated with movement of air currents around the Product; alteration; accident; failure to follow installation, operating, maintenance or environmental instructions prescribed by Seller or applicable electrical codes; or improper service of the Product performed by someone other than Seller or its authorized service provider. This limited warranty excludes field labor and service charges related to the repair or replacement of the Product. **THIS LIMITED WARRANTY IS VOID IF THE PRODUCT IS NOT USED FOR THE PURPOSE FOR WHICH IT IS DESIGNED.**

Seller reserves the right to utilize new, reconditioned, refurbished, repaired or remanufactured products or parts in the warranty repair or replacement process. Such products and parts will be comparable in function and performance to an original product or part, as determined by Seller in its sole discretion, and warranted for the remainder of the original warranty period.

In order to make a warranty claim, you must notify Seller in writing within sixty (60) days after your discovery of the defect, provide proof of purchase such as the invoice and comply with Seller's other warranty requirements. Upon receiving that notice, Seller may require you to promptly return the Product to Seller, or its authorized service provider, freight prepaid. Your warranty claim should be addressed to Cree c/o Ruud Lighting, Inc., 9201 Washington Avenue, Racine, WI 53406.

This limited warranty only applies to specified LED fixtures. Any warranties applicable to finish, poles, lamps, CR Series downlights, LR24™ troffers, certain BetaLED® Technology outdoor fixtures (specifically Class II as defined per IEC/EN60598), backup batteries, controls, occupancy sensors, photocells and other fixture accessories can be found at www.cree.com/lighting/products/warranty.

THE FOREGOING WARRANTY PROVISIONS ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR



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IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY AGAINST INFRINGEMENT AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, COMPENSATORY, CONSEQUENTIAL, INDIRECT, SPECIAL OR OTHER DAMAGES. SELLER'S AGGREGATE LIABILITY WITH RESPECT TO A DEFECTIVE PRODUCT SHALL IN ANY EVENT BE LIMITED TO THE MONIES PAID TO SELLER FOR THAT DEFECTIVE PRODUCT.

This warranty is effective for purchases of Product on or after the effective date set forth below. Seller reserves the right to modify this warranty from time to time. Any modification of this warranty shall be effective for all orders placed with Seller on or after the effective date of such revised warranty.



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**SCHEDULE 2 TO EXHIBIT B
WARRANTY FOR RIPLEY LIGHTING CONTROLS**

RIPLEY LIGHTING
CONTROLS

DIVISION OF SOUTHCONN TECHNOLOGIES INC

2023 Platt Springs Road
P.O. Box 3229
West Columbia, SC 29169
Phone: 803-939-4700
Fax: 803-939-4777

WARRANTY

The 6300 Series carries an 8-year warranty. If the product fails due to manufacturing defect within its warranted period, Ripley Lighting Controls will choose to either replace or repair the lighting control unit. This warranty does not cover damage caused by accident, abuse, misuse or lightning strikes. Ripley's liability hereunder shall be limited to replacement or repair and shall not cover the cost of removal or installation of the unit, nor any consequential damages. Ripley Lighting Controls assumes no further liability with respect to the sale or use of this product. This warranty is in lieu of other warranties, expressed or implied, including the warranty of merchantability. Ripley Lighting Controls makes no warranty with respect to the suitability of the user's particular application. This warranty gives the user specific legal rights.