

## **RESOLUTION NO. 2015- 164**

### **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 CONSTRUCT THE PUBLIC SAFETY MAIN HVAC REPLACEMENT PROJECT AND PURCHASE AND INSTALL 642 LIGHT EMITTING DIODE (LED) CITY FACILITY LIGHTS FOR REPLACEMENT PURPOSES AND AUTHORIZE THE FINANCE DIRECTOR TO AMEND THE FY 15-16 BUDGET**

**WHEREAS**, the Public Safety Main HVAC system is in critical need of replacement because it is inefficient, unreliable, and no longer repairable; and

**WHEREAS**, Pacific Gas & Electricity (PG&E) performed an energy audit on the building in 2013 and provided recommendations for types of replacement equipment that would meet PG&E's minimum efficiency requirements, including the boiler, chiller and two water heaters; and

**WHEREAS**, because the replacement of the chiller, boiler and water heaters do not result in sufficient energy efficiency savings to pay back the loan within a 10-year period, staff and PG&E researched replacement of exterior and interior high pressure sodium (HPS) lights at various City facilities; and

**WHEREAS**, the City owns and maintains high pressure sodium (HPS) indoor and exterior lights at parks and City facilities; and

**WHEREAS**, HPS lights 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 lasts much longer than HPS bulbs; and

**WHEREAS**, Staff is proposing to convert 642 existing City-owned indoor and exterior lights from HPS to LED in combination with construction of the Public Safety Main HVAC Replacement Project through an agreement with PG&E; and

**WHEREAS**, the 642 lights targeted for replacement are within City parks and facilities.

**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 for both projects; 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; and

**WHEREAS**, the City is relying on these alternative procurement processes for the Light Replacement Project at Various City Facilities and to enter into the facility financing contract, except that the City has competitively bid and awarded the Public Safety Main Building HVAC System Replacement Project consistent with the City of Rohnert Park Purchasing Policy Section 3.6.6F *Contracts for Public Projects* because that project will not be entirely funded through the PG&E program.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Rohnert Park as follows:

Section 1. The above recitals are true and correct and material to this Resolution.

Section 2. An agreement by and between PG&E and the City of Rohnert Park, a municipal corporation, to construct the Public Safety Main HVAC System Replacement Project and purchase and install 642 LED lights is hereby authorized and approved.

Section 3. 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,” and Program Participation Agreements for the replacement lights at each City facility, subject to minor modifications by the City Manager or City Attorney (“Agreement”).

Section 4. The City Council hereby finds based upon evidence in the record that the Agreement is a qualified energy service contract and/or 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. The Council further finds that entering into the Agreement with PG&E is categorically exempt from the requirements of the California Environmental Quality Act (“CEQA”) pursuant CEQA Guidelines sections 15301 (Existing Facilities) and 15302 (Replacement or Reconstruction).

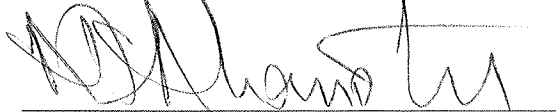
Section 5. This Resolution shall become effective immediately.

Section 6. All portions of this Resolution are severable. Should any individual component of this Resolution be adjudged to be invalid and unenforceable by a body of competent jurisdiction, then the remaining Resolution portions shall continue in full force and effect, except as to those Resolution portions that have been adjudged invalid. The City Council of the City of Rohnert Park hereby declares that it would have adopted this Resolution and each section, subsection, clause, sentence, phrase and other portion thereof, irrespective of the fact that one or more section, subsection, clause, sentence, phrase or other portion may be held invalid or unconstitutional.

**BE IT FURTHER RESOLVED** that the Finance Director is authorized to increase appropriations in the FY 15-16 budget in an amount not to exceed the rebate and final loan amount.

**DULY AND REGULARLY ADOPTED** this 22<sup>nd</sup> day of September, 2015.

**CITY OF ROHNERT PARK**



Amy O. Ahanotu, Mayor

**ATTEST:**

  
JoAnne M. Buerger, City Clerk

Attachment: Exhibit A

CALLINAN: Aye BELFORTE: Aye MACKENZIE: Aye STAFFORD: Absent AHANOTU: Aye  
AYES: ( 4 ) NOES: ( 0 ) ABSENT: ( 1 ) ABSTAIN: ( 0 )



## GENERAL OFF-BILL AND ON-BILL FINANCING LOAN AGREEMENT

The undersigned customer ("**Customer**") has contracted for the provision of energy efficiency/demand response equipment and services (the "**Work**") which qualify for one or more of PG&E's applicable rebate or incentive programs. Subject to the conditions (including the process for Adjustment and preconditions to funding) set forth below, Pacific Gas and Electric Company ("**PG&E**") shall extend a loan (the "**Loan**") to Customer in the amount of the loan balance (the "**Loan Balance**") pursuant to the terms of this On-Bill Financing Loan Agreement ("**Loan Agreement**") and PG&E's rate schedules E-OB and/or G-OB, as applicable (the "**Schedule**").

To request the Loan, Customer has submitted a completed On-Bill Financing Application and associated documentation as required by PG&E (the "**Application**"). Collectively the Application and this Loan Agreement (including any Adjustment hereunder) comprise the "Agreement".

1. Customer shall arrange for its Contractor, as identified at the end of this Agreement ("**Contractor**"), to provide the Work as described in the Application.
2. The estimated Loan Balance is set forth below. The total cost of the Work as installed, rebate/incentive for qualifying energy efficiency measures, Loan Balance, monthly payment, and loan term specified in this Loan Agreement may be adjusted, if necessary, after the Work and the post-installation inspection described in the Application and/or herein are completed (the "**Adjustment**"). The Adjustment will be calculated using the actual total cost of the Work, as installed, and the estimated energy savings (as described in the Application) of such Work. In no event will the Loan Balance be increased without Customer's written consent, even if Customer is eligible for such increased Loan Balance. Moreover, in no event will the Loan Balance exceed the maximum loan amount stipulated in the Application. Customer understands that in order to be eligible for the Loan, the initial Loan Balance for Work may not fall below the minimum loan amount, nor may the payback period exceed the maximum payback period. **Accordingly, if after the Adjustment, the Loan Balance falls below the minimum loan amount or if the simple payback period exceeds the program maximum payback period, each as described in the Application, PG&E shall have no obligation to extend the Loan, as the Work would not meet program requirements.** The Adjustment described in this paragraph will be communicated to the Customer in writing and will automatically become part of this Loan Agreement, except that any proposed increase in the Loan Balance will only become part of this Loan Agreement upon Customer's written consent to such increase.
3. **PG&E shall have no liability in connection with, and makes no warranties, expressed or implied, regarding the Work. Customer will be responsible for any and all losses and damage it may suffer in connection with, and any claims by third parties resulting from, the Work.** Customer shall indemnify and hold harmless PG&E, its affiliates, and their respective owners, officers, directors, employees and agents thereof, from and against all claims, demands, liabilities, damages, fines, settlements or judgments which arise from or are caused by (a) any breach of the Agreement by Customer; (b) any defects or problems with the Work, or the failure of the Work to deliver any anticipated energy efficiencies; (c) Customer's failure to pay any amount due or claimed by Contractor with respect to the Work; or (d) the wrongful or negligent acts or omissions of any party (including Contractor) in the conduct or performance of the Work.
4. Customer represents and warrants that (a) Customer is receiving this Loan solely for Work obtained in connection with Customer's business, and not for personal, family or household purposes; (b) Customer, if not an individual or a government agency, is duly organized, validly existing and in good standing under the laws of its state of formation, and has full power and authority to enter into this Agreement and to carry out the provisions of this Agreement. Customer is duly qualified and in good standing to do business in all jurisdictions where such qualification is required; (c) this Loan Agreement has been duly authorized by all necessary proceedings, has been duly executed and delivered by Customer and is a valid and legally binding agreement of Customer duly enforceable in accordance with its terms; (d) no consent, approval, authorization, order, registration or qualification of or with any court or regulatory authority or other governmental body having jurisdiction over Customer is required for, and the absence of which would adversely affect, the legal and valid execution and delivery of this Loan Agreement, and the performance of the transactions contemplated by this Loan Agreement; (e) the execution and delivery of this Loan Agreement by Customer hereunder and the compliance by Customer with all provisions of this Loan Agreement: (i) will not conflict with or violate any Applicable Law; and (ii) will not conflict with or result in a breach of or default under any of the terms or provisions of any loan agreement or other contract or agreement under which Customer is an obligor or by which its property is bound; and (f) all factual information furnished by Customer to PG&E in the Application and pursuant to this Agreement is true and accurate.

5. The Application must include the Federal Tax Identification Number or Social Security Number of the party who will be the recipient of the checks for the rebate/incentive or any Loan proceeds. Checks may be issued directly to the Customer or its designated Contractor or both, for the benefit of the Customer, as specified below. Customer acknowledges that PG&E will not be responsible for any tax liability imposed on the Customer or its contractor in connection with the transactions contemplated under the Agreement, whether by virtue of the Loan contemplated under the Agreement, or otherwise, and Customer shall indemnify PG&E for any tax liability imposed upon PG&E as a result of the transactions contemplated under the Agreement.
6. Upon completion of the Work, Customer shall send a written confirmation of completion to PG&E's On-Bill Financing Program Administrator at the address listed in Section 15. Within 60 days after receiving the confirmation, PG&E (a) will conduct a post installation inspection and project verification, including review of invoices, receipts and other documents as required by PG&E to verify the correctness of any amounts claimed by Customer; (b) will adjust, if necessary, the total cost, incentive, Loan Balance, monthly payment, and loan term as stated above; and (c) if PG&E deems necessary, obtain updated financial information to verify that Customer has good credit standing (as determined by PG&E) prior to making the Loan. Customer shall give PG&E reasonable access to its premises and the Work and shall provide such updated financial information to PG&E upon request. PG&E may decline to make the Loan if PG&E determines, in its sole discretion, that Customer does not have good credit standing at that time. If the Work conforms to all requirements of the Agreement and all amounts claimed by Customer as Work costs are substantiated to PG&E's reasonable satisfaction, and PG&E is satisfied that Customer has good credit standing, PG&E will issue a check ("**Check**") to Customer or Contractor (as designated by Customer in Section 15) for all amounts PG&E approves for payment in accordance with the Agreement. The date of such issuance is the "**Issuance Date**". If the Check is issued to Customer, Customer shall be responsible for paying any outstanding fees due to Contractor for the Work. If the Check is less than the amount due from Customer to Contractor, Customer shall be responsible for the excess due to the Contractor.
7. Customer shall repay the Loan Balance to PG&E as provided in this Loan Agreement irrespective of whether or when the Work is completed, or whether the Work is in any way defective or deficient, and whether or not the Work delivers energy efficiency savings to Customer.
8. The monthly payments will be included by PG&E on the Account's regular energy service bills, or by separate bill, in PG&E's discretion. Regardless whether the monthly payments are included in the regular utility bill or a separate loan installment bill, the following repayment terms will apply:
  - a. The Customer agrees to repay to PG&E the Loan Balance in the number of payments listed below and in equal installments (with the final installment adjusted to account for rounding), by the due date set forth in each PG&E utility bill or loan installment bill rendered in connection with Customer's account (identified by the number set forth below) ("Account"), commencing with the bill which has a due date falling at least 30 days after the Issuance Date.
  - b. If separate energy service bills and loan installment bills are provided, amounts due under this Loan Agreement as shown in the loan installment bill shall be deemed to be amounts due under each energy services bill to the Account, and a default under this Loan Agreement shall be treated as a default under the Account.
  - c. If the Customer is unable to make a full utility bill payment in a given month, payment arrangements may be made at PG&E's discretion.
  - d. Any partial bill payments received for a month will be applied in equal proportion to the energy charges and the loan obligation for that month, and the Customer may be considered in default of both the energy bill and the loan installment bill.
  - e. Further payment details are set forth below.
9. Any notice from PG&E to Customer regarding the Program or the transactions contemplated under the Loan Agreement may be provided within a PG&E utility bill or loan installment bill, and any such notices may also be provided to Customer at the address below or to the Customer's billing address of record in PG&E's customer billing system from time to time, and in each case shall be effective five (5) days after they have been mailed.
10. The Loan Balance shall not bear interest.
11. Customer may, without prepayment penalty, pay the entire outstanding loan balance in one lump sum payment provided the customer first notifies PG&E by telephoning the toll free phone number (1-800-468-4743), and by sending written notice to PG&E On-Bill Financing Program Administrator at the address listed below, in advance of making the lump sum payment. Accelerated payments that are received from Customer without PG&E's prior approval may, at PG&E's sole discretion, be applied proportionally to subsequent energy charges and Loan repayments and PG&E shall have no obligation to apply accelerated payments exclusively to reduction of the outstanding Loan.

12. The entire outstanding Loan Balance will become immediately due and payable, and shall be paid by Customer within 30 days if: (i) the Account is closed or terminated for any reason; (ii) Customer defaults under the Agreement; (iii) Customer sells or transfers ownership of the equipment forming part of the Work to any third party (including as part of a sale or lease of premises or transfer of business or otherwise); or (iv) Customer becomes Insolvent. Customer becomes "Insolvent" if: (i) Customer is unable to pay its debts as they become due or otherwise becomes insolvent, makes a general assignment for the benefit of its creditors, or suffers or permits the appointment of a receiver for its business or assets or otherwise ceases to conduct business in the normal course; or (ii) any proceeding is commenced by or against Customer under any bankruptcy or insolvency law that is not dismissed or stayed within 45 days.
13. Customer understands that without limiting any other remedy available to PG&E against Contractor or Customer, **failure to repay the Loan Balance in accordance with the terms of the Agreement could result in shut-off of utility energy service, adverse credit reporting, and collection procedures, including, without limitation, legal action.**
14. If there is any conflict among the documents comprising the Agreement, the following order of priority shall apply: 1. this Loan Agreement; 2. the Application; 3. any documents attached to the Application.

15. Loan Particulars.

This table is to be completed by PG&E						
Total Cost	Incentive	Customer Buy-Down (if applicable)	Loan Balance <sup>1</sup>	Monthly Payment	Term <sup>2</sup> (months)	Number of Payments
\$704,848.46	\$96,203.88	\$-	\$608,644.58	\$7,160.52	85	85

<b>Check Made Payable to Customer <input type="checkbox"/> or Contractor <input type="checkbox"/></b> [customer to select payment method. Note that only one check can be issued]
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16. This agreement at all times shall be subject to such modifications as the California Public Utilities Commission may direct from time to time in the exercise of its jurisdiction.

Customer Details	Contractor Details
Federal Tax ID or Social Security #, Customer 94-1538585	Federal Tax ID or Social Security #, Contractor

PG&E Account # / Service Agreement # 8730919544 / 8730919067
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Account Name, Customer Primary Contact Name: CITY OF ROHNERT PARK Primary MDSS Application Number: TIF ID: 003099	Name, Contractor
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Customer Address (For OBF Check Delivery)	Contractor Address (For OBF Check Delivery)

Name and Title of Authorized Representative of Customer Darrin Jenkins, City Manager	Name and Title of Authorized Representative of Contractor
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Signature of Authorized Representative of Customer

Date

ACCEPTED: Pacific Gas and Electric Company

By	Date
PG&E On-Bill Financing Authorized Representative	

Address:  
Pacific Gas and Electric Company  
On Bill Financing Program  
77 Beale Street - 3rd Floor  
San Francisco, CA 94105

<sup>1</sup> The Loan Balance shall not exceed one-hundred thousand dollars (\$100,000) for commercial customers and shall not exceed two-hundred fifty thousand dollars (\$250,000) for government agency customers, excepting loans to government agency customers where, in PG&E's sole opinion, the opportunity for uniquely large energy savings exist, in which case the Loan Balance may exceed two-hundred fifty thousand dollars (\$250,000) but shall not exceed one million dollars (\$1,000,000).

<sup>2</sup> Commercial loans may have their loan terms extended beyond five years, not to exceed the expected useful life (EUL) of the bundle of energy efficiency measures proposed, when credit and risk factors support this.

On-Bill Financing Program (OBF)  
Loan Calculation Summary Sheet  
Simple project payback per meter

Customer Name: CITY OF ROHNERT PARK

Project Number: TIF: 003099

Calculations  
from:

Original

(A) PROJECT COST FOR MEASURES	(B) REBATES or INCENTIVES	Customer Down Payment or Buy- Down	CUSTOMER TOTAL LOAN AMOUNT	(C) CUSTOMER AVERAGE RATE PER kWh	(D) CUSTOMER AVERAGE RATE PER Therm	(E) ESTIMATED ANNUAL ENERGY SAVINGS (kWh)	(F) ESTIMATED ANNUAL GAS SAVINGS (Therm)	ESTIMATED ANNUAL ENERGY COST SAVINGS	SIMPLE PAYBACK IN YEARS
\$704,848.46	\$96,203.88	\$-	\$608,644.58	\$0.16	\$1.00	531,154.20	4,484.60	\$86,817.99	7.01

PAYBACK IN MONTHS BASED ON EXPECTED ENERGY SAVINGS	LOAN TERM (MONTHS) (1 month added for bill neutrality)	CUSTOMER FIXED MONTHLY LOAN PAYMENT	ESTIMATED MONTHLY ENERGY COST SAVINGS
84	85	\$7,160.52	\$7,234.83

(C) = (From utility bill) Total \$ amount (12-month) / Total kWh (same 12-month)

(D) = (From utility bill) Total \$ amount (12-month) / Total therm (same 12-month)