

SACRAMENTO MUNICIPAL UTILITY DISTRICT
HOME PERFORMANCE PROGRAM
Contractor Participation Agreement

12-10-14

In support of the Sacramento Municipal Utility District's (SMUD or District) vision and mission, the Home Performance Program (Program or HPP) proposes to expand the residential marketplace for the Whole House approach to higher energy-efficient products and services in an effort to save personal, economic, and natural resources while enhancing customer comfort and lifestyle. The Program will strive to form alliances with our contractor community by developing and implementing programs that promote excellence in products, workmanship, and high quality customer service.

This Agreement is made with respect to the operations of the SMUD Home Performance Program. It governs the terms of the relationship between SMUD and the Contractor, at times referred to individually as "Party" and collectively as "Parties," that is providing home performance improvement services through the aforementioned program. It is effective upon signature by both Parties. In the oversight of this program SMUD may collaborate with other utilities (water, gas, electric) and local jurisdictions (cities, counties) to provide a common Home Performance Program for the benefit of customers and contractors.

I. DEFINITIONS

- A. **Building Performance Institute (BPI)** is a national standards development organization for residential energy efficiency and weatherization retrofit work and supports the development of the professional building performance industry through individual certifications, company accreditation, and a rigorous quality assurance program. [Building Analyst](#) is one of the BPI certification offerings.
- B. **Efficiency First California** (formerly the California Building Performance Contractors Association [CBPCA]) is a nonprofit organization based in California, whose mission is to promote energy efficiency in housing.
- C. **Contractor** means a firm that provides home improvement services.
- D. **Contractor Handbook** – The SMUD Home Performance Program Contractor Handbook is the basic reference for all program implementation details. The most current version of the handbook is posted at <http://cbpca-hpp.org/library/>.
- E. **EPA** means the U.S. Environmental Protection Agency.
- F. **Intellectual Property** means all marketing pieces, explanatory materials, websites, signs, and any and all documentation developed by SMUD and its subcontractors in connection with the SMUD Home Performance Program.
- G. **Program Administrator** – SMUD will have a third-party Program Administrator for the Home Performance Program. The administrator will provide contractor training, certify contractors, capture/review data, provide field support, perform quality assurance and quality control, etc.

Efficiency First California is currently the Program Administrator for the Home Performance Program.

- H. **Program** means the SMUD Home Performance Program.
- I. **Sacramento Municipal Utility District (SMUD/District)** means the utility implementing the Home Performance Program.

II. PROGRAM DESCRIPTION

Contractors will perform a walkthrough audit of the existing home, explain the required energy and safety measures, and perform post-retrofit test-out to confirm the program requirements were met.

Measures may include, but are not limited to:

- Seal air infiltration gaps throughout the attic/home per BPI standards
- Upgrade attic insulation to R-38 per BPI quality installation standards
- Perform duct testing and sealing to SMUD program standards
- Install Carbon Monoxide Detector and Smoke alarm
- Conduct BPI-standard combustion safety testing
- Meet or exceed applicable California (Title 24) standards

Contractor must attend SMUD training webinar. Contractors are required to follow all California Contractor State License Board (CSLB) requirements to perform the installations. The Contractor must engage a qualified BPI-certified Building Analyst for required combustion safety testing. Contractors must employ at least one person who acquires and maintains a BPI Building Analyst certification.

III. TERMS & CONDITIONS

A. SMUD's Participation Requirements

1. **Contractor List** — SMUD agrees to provide SMUD customers with a list of Contractors (without specific endorsement) who are properly licensed, agree to meet participation requirements, agree to install equipment and products that meet minimum SMUD efficiency requirements and specifications, agree to install equipment and products meeting ENERGY STAR® specifications where applicable, and agree to design and install equipment and products in a professional workmanship manner and assure customer satisfaction.
2. **Inspections** — SMUD reserves the right to perform inspections in order to verify that the Contractor's equipment and material installation meet the eligibility guidelines and installation specifications contained in the Contractor Handbook as well as the terms of this Agreement.
3. **Promotion** — SMUD agrees to promote the Home Performance Program to SMUD customers.

4. **Contractor Meetings** — SMUD will conduct Contractor meetings to provide information on Program updates, changes, current marketing activities, and Program accomplishments. Furthermore Efficiency First California will also send e-mail updates and newsletters.

B. Contractor Participation and Eligibility Requirements

1. **Licenses** — Contractors must maintain all applicable licenses, permits, insurance, and bonds required by Federal, State, and local laws. Contractors shall provide evidence that they hold an active California State Contractor's License in good standing.
2. **Sales Personnel** — Contractors shall ensure that all sales personnel are registered with CSLB as a Home Improvement Salesman.
3. **Qualifications and Certifications** — SMUD Participating Contractors who successfully complete the required training and certification will gain two advantages that can be used to differentiate their services in the marketplace:
 - a. Qualification in the Program allows contractor to align its business services with the SMUD Home Performance Program, and with the U.S. EPA Home Performance with ENERGY STAR® logo and brand. These contractors will also be listed on the SMUD Home Performance Program Web site at www.smud.org for the purpose of homeowner interest and affiliated contractor networking.
 - b. Certification as a Building Analyst Professional by the Building Performance Institute (BPI) means a certified individual will be allowed to align their business services with the BPI logo and brand.
4. **Participation** — To participate in the SMUD Home Performance Program, Contractors must satisfactorily complete the basic training for Home Performance provided by the Program Administrator. The combustion safety testing must be performed by a BPI certified individual. Contractor must hold CSLB designation of "C2" and "C20," or General "B."
5. **Quality Assurance Protocols and Contractor Reporting Requirements** — A quality assurance regimen is in place to meet the requirements for maintaining a credible program and demonstrating its promise. In addition to required Contractor licensing and BPI certifications, the following quality assurance process for Contractors participating in the SMUD Program has been outlined:
 - a. **Proposed Work** — Within two weeks of going into contract to perform qualifying program work, the Contractor is to provide project details to Efficiency First California via the Vision system.
 - b. **Field Mentoring** — Field mentoring is a valuable element of quality assurance. Incorporating mentoring into the training program provides the Contractor with hands-on experience performing whole-house diagnostic tests, making recommendations, developing a scope of work, and seeing that recommended improvements are installed. Mentoring helps ensure that the Contractor is ready to perform high-quality work and deliver value through the Home Performance Program.

All Contractors will be observed and advised by a BPI-certified residential energy professional for the first three home retrofits completed. This is done to verify that an accurate audit process is used, recommendations are being reasonably presented to homeowners, and retrofit measures are completed according to established industry and program standards.

- c. **Random Sample Retesting** — SMUD or its representatives will directly inspect and retest the completed work at no less than 5% for Contractor projects to ensure appropriate recommendations are being presented to homeowners and improvements are completed according to established standards. SMUD or its representatives will randomly evaluate Participating Contractor's work, including a review of initial and final customer report/data and onsite field verification. Quality assurance inspection may occur at any time during or after completion of the work to ensure quality workmanship, accurate data, compliance with installation practices, and program requirements.
 - d. **Installation Inspection** — Contractors agree to have an installation or service representative available to assist the SMUD inspector, or SMUD's designee inspector, in completing the installation inspection, if necessary.
 - e. **Result of Installation Inspection** — Contractors are expected to pass SMUD quality assurance inspections on first inspection. If corrections are identified, Contractor agrees to correct deficiencies within twenty (20) days of notification at the Contractor's sole expense. All hazardous, unsafe, or health related conditions must be corrected within twenty-four (24) hours of notification by SMUD, or by Program Administrator.
6. **Reporting** — Contractor will submit required data and paperwork on completed installations in a timely manner as indicated in the Contractor Handbook.¹
7. **Disqualification** — This program is based upon retrofit projects. Contractors that do not perform retrofit projects will not be eligible for continued participation in the program.

To be in good standing and continue to be publically listed, Contractor must complete one retrofit project every 6 months. Repeated complaints from customers can also lead to Contractor removal.

8. **Confidentiality of Information and Data**

- a. In performance of Contractor's work under this Agreement, Contractor understands it will receive certain information and data from SMUD and SMUD's customers. Contractor agrees this information and data shall be deemed confidential.
- b. Contractor shall use commercially reasonable physical, operational, and technical safeguards to preserve the confidentiality, integrity and security of the information and data while in its possession and control.
- c. All information and data received from SMUD and/or SMUD customers shall not be used for purposes other than for the requirements of this Agreement.

¹ SMUD Home Performance Program Contractor Handbook is available at www.cbpc-a-hpp.org/library.

- d. All information and data received from SMUD and/or SMUD customers shall not be disclosed to any third party, except upon written authorization from SMUD and/or SMUD customers to allow third-party access to the information and data.

- 9. **Insurance Requirements** — Contractor agrees to meet all insurance and Workers Compensation requirements as required by the State of California and the Contractor State License Board. SMUD does not require submittal or proof of this insurance and does not require SMUD be listed as additionally insured upon any policy.

Professional Liability/Errors and Omissions insurance are not required but we strongly recommend consideration of such coverage, in consultation with Contractor's insurance broker.

- 10. **Finance** — Contractors may, upon request, attend SMUD's finance workshop and submit loan documentation in accordance with requirements set forth by SMUD's Finance Services.

- 11. **Subcontractor** — The primary Contractor shall ensure that all subcontractors comply with the eligibility, terms, and conditions of this Agreement; have a current license in the specialty for the work being done; and are limited to performing only work for which they are licensed. Primary contractor shall remain responsible for all work performed by his or her subcontractor.

- 12. **Equal Employment Opportunity** — Contractors shall not discriminate against any employee or applicant for employment on account of race, religion, sex, color, national origin, handicap, or age. Contractors shall ensure that this requirement is applied to applicants and employees in actions including, but not limited to, employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeships.

- 13. **Indemnity** — Contractors shall indemnify, defend, and hold harmless SMUD, its directors, officers, agents, and employees against all claims, loss, damage, expense, and liability asserted or incurred by other parties, including, but not limited to, SMUD's employees and Contractor's employees arising out of or in any way connected with the performance of this work and caused by the acts, omissions, intent, or negligence, whether active or passive, of the Contractor, its agents, employees, and suppliers, and excepting only such loss, damage, or liability as may be caused by the intentional acts or at the sole negligence of SMUD.

- 14. **Environmental Compliance and Indemnity** — Contractor shall defend, indemnify, and hold harmless the District, and its directors, officers, agents, and employees from and against all liabilities, damages, losses, or expenses suffered or paid as a result of any and all claims, demands, suits, causes of action, proceedings, or judgments including without limitations, preventative and mitigation costs and attorneys' fees incurred in litigation or otherwise, by or against the District or its directors, officers, agents, and employees with respect to any Hazardous Materials generated, used, stored, handled, transported, or disposed of by Contractor or its employees, agents, subcontractors, or any third party arising from or in any way related to this Agreement; except to the extent that any such damages, losses, or expenses are the result of the sole negligence or willful misconduct of the District. Contractors shall require that all of their subcontractors shall fully indemnify the District from

any claims, liability, or expense attributable to Hazardous Materials.

Hazardous Materials shall include, without limitation, substances defined or classified as "hazardous substances," "hazardous materials," "hazardous waste," or toxic substances under any Federal, State, or local law, statute, regulation, and ordinance in effect or which shall come into effect during the term of this Agreement. Contractor shall fully comply with all Federal, State, or local laws, statutes, regulations, and ordinances regarding the generation, use, storage, handling, transportation, and disposal of Hazardous Materials. Contractors shall ensure that their subcontractors fully comply with this section.

15. **Safety** — The Contractor and employees shall comply with all applicable health, safety, and environmental rules and regulations. These include, but may not be limited to, the rules and regulations promulgated by the U.S. Department of Labor Occupational Safety and Health Administrations (OSHA), California Occupational Safety and Health Administrations (CalOSHA), U.S. Environmental Protection Agency (EPA), California Department to Toxic Substances Control (Cal DTSC), Water Quality Control Board, and air quality regulators. Where the requirements of such regulatory agencies overlap, the most protective regulations will apply.

The Contractor and employees shall perform the work only by such methods and in such manner that will safeguard persons and property.

16. **Marketing** —

- a. Contractor shall not use the SMUD logo/trademark in any of its marketing, advertising, or promotional materials, without express approval from SMUD.
- b. Except as otherwise provided in subsection v. of this section, all marketing, advertising, or promotional materials that reference SMUD or the SMUD Home Performance Program shall include a disclaimer that shall state:

(Insert name of Contractor) is not an agent or affiliate of SMUD.

- i. In the case of **television marketing, advertising, or promotional spots** that reference SMUD or a SMUD program, the disclaimer requirement may be satisfied by either (i) verbally announcing the disclaimer as part of the television spot or (ii) displaying the disclaimer in a format equal to or greater than four percent of the vertical picture height, for a period of not less than four seconds, excluding fade in and fade out.
- ii. In the case of **radio marketing, advertising, or promotional spots** that reference SMUD or a SMUD program, the disclaimer shall be verbally announced as part of the radio spot.
- iii. In the case of **telemarketing efforts** that reference SMUD or a SMUD program, the disclaimer shall be included as part of the text read by the telemarketing representative when contacting or responding to SMUD customers.

- iv. In the case of **printed marketing, advertising, or promotional materials** that reference SMUD or SMUD program, the disclaimer shall appear in the text of such material and shall be printed in bold type.

All marketing materials shall NOT be designed as though they are SMUD materials. Below are some general guidelines for marketing the program and including SMUD's logo, etc.

- **Using SMUD's logo:** SMUD's logo is a valuable asset that symbolizes the quality and consistency of SMUD's brand. The logo should only be used by authorized organizations as part of the SMUD Home Performance Program. It should only be used in a manner that preserves its value and integrity. The following SMUD logo/brand guidelines should be followed at all times.
 - **Refer to the program as:** SMUD Home Performance Program
 - **Refer to your role as:**
 - o SMUD Qualified Energy Professional
 - o Qualified Energy Professional with the SMUD Home Performance Program
 - o *NOTE: Contractors cannot imply that they have an exclusive relationship with SMUD and/or are functioning in a partnership capacity with SMUD.*
 - **Mentioning SMUD by name in marketing copy:**
 - o SMUD rebates and financing options are available.
 - o [XYZ Contractor/Company] is/are Qualified Energy Professional/s with the SMUD Home Performance Program.
 - **Other copy:**
 - o Claims for other non-Program incentives, such as tax incentives, should NOT be coupled with SMUD. SMUD does NOT guarantee any tax incentives because tax incentives are provided by the State of California and/or the Federal government.
 - o Acceptable content regarding tax incentives: "Tax incentives may be available."
 - **Graphics, Visual Representations:** SMUD does NOT approve the use of the SMUD bill as a graphic representation in Contractor marketing materials.
 - **Promotions, Sweepstakes:** All promotions and sweepstakes are at the sole discretion of the individual Contractor and/or organization. Unless explicitly arranged in advance by SMUD, SMUD will not endorse any individual Contractor or organization promotion and/or sweepstakes.
- v. **Waiver** — In the case of printed marketing, advertising, or promotional materials or telemarketing texts, a Contractor may request in writing a waiver of the disclaimer requirement by submitting the proposed advertising or telemarketing text to the District for its prior approval. The District shall respond to the waiver

request within five (5) working days of receipt. The decision to grant or deny the request for waiver shall be at the District's sole discretion and shall be final and binding.

1. Contractor shall not use the California Energy Commission (CEC) identity marks and logos in any of its marketing, advertising, or promotional materials, without express approval from SMUD. Contractor agrees to abide by all of the terms and conditions regarding the use of the CEC identity marks and logos as specified by the CEC through its printed guidelines and/or written directions.
2. Contractor must use the most up-to-date SMUD-approved Home Performance Program marketing materials.
3. All marketing and advertising materials should comply with the Business and Professions Code and must include the Contractor's license number.
4. SMUD reserves the right to review and approve any and all advertising, marketing, or promotional copy or materials developed or used by the Contractor that reference the Contractor's participation in this Agreement or SMUD's Home Performance Program, financing, and other SMUD programs. At its sole discretion, SMUD may require the Contractor to submit such copy and materials for pre-approval. SMUD will respond within five (5) working days of receipt if such review is required.
5. This approval shall be granted, unless SMUD, at its sole discretion, determines that the copy or materials are misleading, in error, or fail to meet the requirements of this section. The Contractor agrees to remove from circulation or otherwise discontinue the use of any copy or materials as requested by SMUD.

17. Representation

- a. The Contractor, their representatives, and agents may not represent themselves as an agent, representative, or employee of SMUD or the CEC, or claim association or affiliation with SMUD or the CEC in any capacity other than as an independent contractor. Further, the Contractor shall not make false claims about performance or savings, nor engage in fraudulent or deceitful conduct in the sale or installation of measures.
- b. The Contractor and their employees and representatives are solely responsible for representation, sales, installation, and warranty service of products and systems under this Agreement.

18. Warranty

- a. Contractors warrant that any materials and equipment shall be free from original defects in material, workmanship, design, and installation for a minimum period of two (2) years

from the date of completion of the work and will remedy any such defect, at its sole expense and cost, during the warranty period.

- b. Contractor agrees to maintain the manufacturer's warranty and the two-year program warranty at no charge to the customer or to SMUD.
 - c. Contractors offering warranties beyond the required two years, shall clearly indicate on their contract if this extended warranty is through the Contractor, factory, or third party.
 - d. Contractors shall instruct the customer on system or product operation and maintenance, and provide customer with owner's manuals and warranty documents.
19. **Changes** — SMUD may initiate changes to the SMUD Home Performance Program as circumstances dictate. SMUD will make every effort to provide thirty (30) days written notice of changes that affect financing or other SMUD Home Performance Program activities. However, SMUD reserves the right to make immediate changes, without notice, as deemed necessary or in the best interest of SMUD and its customers.

20. **Contractor Status**

- a. **Accepted** — Upon acceptance, all Contractors will be placed on the proper Participating Contractors List. All Contractors must meet the minimum qualifications for participation in the Program and establish a satisfactory work record with SMUD.
- b. **Probation** — New Contractors will be placed on Probation. During this probation the Contractor must obtain at least one project, or show that they are diligently trying to obtain Home Performance projects. Failure to do so can lead to removal from the public list based upon SMUD Management discretion. Contractors who have had complaints made against them can also be placed upon Probation. Project approval and/or rebate payment may be contingent upon passing quality assurance requirements by SMUD or Program Administrator representatives.
- c. **Removed** — Contractors who fail to meet the Terms and Conditions of this Agreement will be removed from the list of approved Participating Contractors. Contractors who have been removed from program participation are not eligible to sell additional jobs using the SMUD Home Performance Program. The suspension shall be in effect for a minimum of 30 days and until the Contractor satisfies the following minimum conditions:
 - i. All jobs submitted through the Program with outstanding deficiencies are completed.
 - ii. Outstanding customer/contractor complaints are resolved.
 - iii. Outstanding issues concerning eligibility requirements such as insurance, bond, or license are resolved.
 - iv. Outstanding issues concerning fraudulent financing documents are resolved. Resolution may include mandatory attendance at another financing workshop.

- d. Contractors **reapplying after being removed** may be required to:
 - i. Provide proof of meeting all terms of this Agreement;
 - ii. Meet additional requirements related to ineligibility infraction(s).
 - iii. Failure to complete a Home Performance project within six months may result in removal from eligibility.

21. Customer Payment

- a. Contractor has an independent relationship with customer and is compensated for Home Performance Program construction/retrofit/installation work directly by customer.
- b. The rebate may be legally assigned to the contractor.
- c. SMUD will process all uncontested Home Performance Program Rebate Applications within 4-6 weeks following the receipt thereof.

22. Reimbursement — Any costs or expenses the Contractor incurs performing home improvement services are to be borne by the Contractor and will not be reimbursed by SMUD.

23. Customer Satisfaction — With the signing of this Agreement, Contractor commits to the following:

- a. Train internal staff to field customer inquiries about the Home Performance Program;
- b. Immediately report to SMUD, or its representatives, all customer conflicts that are not resolved to customer's full satisfaction.
- c. Participate in good faith in a conciliation conference when there is a dispute involving the Contractor that has been initiated by a customer. Options for unresolved disputes include filing a complaint with CSLB or filing legal actions to gain restitution or recover damages.

24. Place of Business — Contractors agree to maintain an established place of business within SMUD service area or adjacent counties, provide a business phone with answering service, and respond to customers within 24 hours to arrange for service work.

25. Assignment

- a. This Agreement may not be assigned.
- b. The Contractor shall not assign any monies due them or to become due from contracts under this Agreement.

26. Disputes

- a. **Scope.** All claims, disputes, controversies, or other matters in question among the Parties which arise from or in connection with this Agreement (“Dispute(s)”) shall be resolved as provided in this Section titled “Disputes.” The responsibility to substantiate a Dispute rests with the Party making the Dispute.
- b. **Continued Performance.** At all times during the pendency of a Dispute or a Dispute resolution proceeding hereunder, Contractor work shall continue unless otherwise directed in writing by SMUD.
- c. **Discussion.** Any Dispute arising between the Parties under this Agreement shall first be attempted to be resolved through informal discussions between the Parties. Both Parties hereby agree to make themselves immediately available to discuss in good faith a remedy to the alleged Dispute. The Parties will confer as often as they deem reasonably necessary in order to gather and furnish to the other Parties all information with respect to the matter in issue that the Parties believe to be appropriate and germane in connection with its resolution. The specific format for the discussions will be left to the discretion of the Parties. In the event that the Dispute is not resolved in a resolution acceptable to both Parties, the Parties shall resort to mediation.
- d. **Mediation.** In the event a Dispute is not resolved under sub-section C above, the Parties shall attempt to resolve the Dispute by mediation, with each Party designating a high level officer with full authority to resolve the Dispute, before a mediator to be appointed by the Sacramento office of the American Arbitration Association. The mediation fees shall be shared equally between the Parties. The mediators’ opinions, conclusions, and findings shall be admissible in any subsequent Dispute resolution proceeding only to the extent agreed in writing by both Parties.
- e. **Other Proceedings.** In the event a Dispute is not resolved by mediation under sub-section D above, the Parties may choose any other available legal means to settle the Dispute.

27. Mechanics' Liens

- a. The Contractor agrees to use its best efforts to ensure that its suppliers, materialmen, subcontractors, and laborers do not file or serve or cause to be filed or served a preliminary 20-day notice or mechanics' lien on the property of any District customer for which improvement work, arising from or related to this Agreement has been undertaken. Such efforts shall include, but shall not be limited to, the timely payment to suppliers, materialmen, subcontractors, and laborers for all goods, services, or labor furnished in connection with any work of improvement, arising from or related to this agreement.
- b. Failure to comply with this Section shall be a material breach of this Agreement and shall be cause for immediate termination of this Agreement. In the event of termination pursuant to this Section, Contractor expressly waives any and all claims for damage, including loss of anticipated profit, resulting from termination hereunder.

28. **Audits** — The District shall have the right, during the Contractor's normal business hours for the duration of this Agreement and for a period of three (3) years thereafter, to conduct the following audits either on District property or at the Contractor's offices, as the District may deem necessary:
- a. Audit of the Contractor's performance of services under this Agreement.
 - b. Audit of books and accounts maintained to accumulate record and segregate personnel and other recoverable costs billed under this Agreement. Contractors will not be required to relocate records from their normal location.
 - c. Such audit shall be performed either by District personnel or by an independent third-party whom the District may employ for the purpose of making such audits. The District and the Contractor shall establish procedures for performing such audits and shall preserve the confidential and proprietary status of audited documents and information.
 - d. The Contractor shall maintain, preserve, and make available for inspection, audit, and reproduction, the books, records, agreements, and other documents used in determining any cost incurred and billed to the District during the performance of this Agreement. In addition, the Contractor shall include similar audit right provisions in subcontracts reimbursed under the terms and conditions of this Agreement.

29. **Termination**

- a. SMUD may terminate this Agreement as to any or all Contractors for convenience, at its sole discretion, upon written notice to the Contractor. In the event of termination, Contractor agrees to waive any claim for damages, including loss of anticipated profit, resulting from contract termination.

SMUD may terminate this Agreement as to any or all Contractors for any violation or failure to comply with the terms of this Agreement, upon written notice to the Contractor. In the event of termination, Contractor agrees to waive any claim for damages, including loss of anticipated profit, resulting from contract termination.

While it is impossible to note every type of violation or unacceptable conduct that could lead to termination, the following will provide some guidelines:

- i. Installing equipment or materials that endanger the safety of the customer;
- ii. Failure to comply with any of the terms or conditions of this Agreement, program processes, and/or details in the Contractor Handbook;
- iii. Misrepresenting Contractor's relationship with SMUD or SMUD's incentive program either directly or through erroneous or misleading advertising, marketing, or other promotional materials;

- iv. Providing false information and/or engaging in acts of intimidation, harassment, or retaliation against any customer, SMUD employee, or person who cooperates in any investigation;
 - v. Violating any part of the Business and Professions Code;
 - vi. Failing to pay a supplier or a subcontractor in a timely manner that results in a mechanic's lien being placed against a customer's property or any equipment, material, or labor for an installation under the program;
 - vii. Failing to correct, without charge, any inspection notification within ten (10) working days; and
 - viii. Failing to repair damage to a customer's property resulting from an installation or other contractor action or inaction arising under or related to the Program.
- b. The Contractor may discontinue participation in this program by providing thirty (30) days written notice to SMUD.
30. **Fair Trade** — Contractor agrees to abide by principles of fair trade and conduct as specified by applicable State and Federal laws. Contractor specifically agrees not to participate in any price fixing with any other firm or organization taking part in SMUD Home Performance Program.
31. **Fraud and Dishonesty** — Contractor expressly warrants that it will conduct its business activities without perpetrating any fraud or dishonesty on consumers it serves through the Program. Contractor agrees that it will take all reasonable efforts to avoid doing any harm to SMUD, its subcontractors, sponsors, or the U.S. EPA organizations, their brands, or goodwill.
32. **Intellectual Property** — All Intellectual Property provided by SMUD or its representatives shall remain the sole and exclusive property of SMUD. In no event shall Contractor reproduce or use any items developed by SMUD or its subcontractors without the permission of SMUD. At the termination of this Agreement, Contractor shall return all Intellectual Property to SMUD. The Intellectual Property provision in the CEC grant flow-down Appendix C also applies to this Agreement.
33. **Legal Authority** — The signatories hereby certify possession of the legal authority to execute this Agreement.
34. **Governing Law** — This Agreement is made and entered into in the state of California and shall be governed by the laws of the State of California, and Federal rules and regulations, as applicable.
35. **Severability** — If any provision under this Agreement or its application to any person or circumstance is held invalid by any court of lawful jurisdiction, this invalidity does not affect other provisions of the Agreement which can be given effect without the invalid provision.

Sacramento Municipal Utility District Home Performance Program — Contractor Participation Agreement

36. **Contractor Changes** — Contractor agrees to notify SMUD, and Program Administrator, of any Contractor address, license, or business related changes in writing within 30 days.

37. **Entire Agreement** — This Agreement, together with any and all appendices, exhibits, and/or attachments attached hereto and any amendments, modifications, change orders, addendum, and/or any other documents attached hereto and incorporated herein constitutes the entire agreement between the Parties hereto and no changes, alterations, or modifications hereof shall be effective unless made in writing and signed by duly authorized representatives of both Parties to this Agreement.

38. **Notices** — Each party consents to service of process permitted under California law or by certified mail, return receipt requested, and any notice pursuant to this Agreement shall be sent to:

If to Contractor, at:

If to SMUD, at:

James Mills
Home Performance Program
SMUD
6301 S Street, MS A-204
Sacramento, CA 95817-1899

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

SMUD

CONTRACTOR

By: _____
Signature

By: _____
Signature

Date

Date

Printed Name and Title

Printed Name and Title

Sacramento Municipal Utility District
Printed Company Name

Printed Company Name