



# 2009 San Diego Retrocommissioning Program Owner Program Agreement

*Program Use Only*

Project ID

## **Building Owner and Facility Information**

|                               |  |       |       |
|-------------------------------|--|-------|-------|
| Company Name                  | Building Name  |       |       |
| Facility Address              | City   | State | Zip   |
| Mailing Address               | City   | State | Zip   |
| Building Owner Representative | Building Owner Title   |       |       |
| Telephone                     | <input type="checkbox"/> office<br><input type="checkbox"/> cellular | Fax   | Email |
| Building Contact              | Building Contact Title   |       |       |
| Telephone                     | <input type="checkbox"/> office<br><input type="checkbox"/> cellular | Fax   | Email |

The San Diego Retrocommissioning Program\* (Program) helps building owners improve the efficiency of their building operations by offering incentives and technical assistance for retrocommissioning (RCx) services. The Program funding is offered on a first-come, first-served basis and is effective until funding is expended or the Program is discontinued by the California Public Utilities Commission (CPUC). This Program is funded by California utility customers under the auspices of the CPUC. Portland Energy Conservation, Inc. (PECI), an independent company, implements the Program under a contract awarded by San Diego Gas & Electric Company (SDG&E®).

Program screening has determined that opportunities for cost-effective retrocommissioning measures exist in this facility. By signing the Owner Program Agreement (OPA),   (Owner) commits to proceeding with the Program and confirms their agreement to and understanding of the program process, and the following obligations and responsibilities.

### ***Incentive Reservation Period***

Program funding is first-come, first-served until allocated funds are depleted. The Program may be modified or terminated without notice. PECI's commitment to reserve the incentive amounts contained in the Incentive Summary table expires and will be void if this signed Agreement is not post-marked or received electronically by PECI within 45 days, or by **Month, Date, Year** (Expiration Date).

### ***PECI Responsibilities***

1. PECI will assign a Program Representative to be the Owner's (or Owner's designated Building Contact(s)) point of contact for the project. The Program Representative will assist the Owner with the project, attend meetings as necessary, and work closely with the Owner to select measures for implementation that best meet the Owner's needs and budget cycles, as well as the program's energy savings goals.
2. PECI will provide a list of pre-qualified commissioning providers to perform in-depth RCx investigations and follow-up services. PECI will contract with and oversee the work of the retrocommissioning (RCx) provider selected by the Owner.
3. Upon completion of the investigation phase, PECI will provide a list of deficiencies and measures (*Master List of Findings*) to the Owner based upon the work of the RCx provider.

4. Incentives will be paid, as described below, approximately 30 business days after all the appropriate documentation is submitted to PEGI (see Incentive Summary table, below). Incentive payment is contingent upon meeting all requirements of the Program.
5. PEGI will provide a pre- and post- project ENERGY STAR® benchmark score. The post-project score will occur no later than 13 months after measure completion.

**Owner Responsibilities**

1. Owner will assign a designated staff member (designated as “Building Contact” on page 1) to be PEGI’s point of contact. The Building Contact will be responsible for working with PEGI and ensuring that all program requirements are being met in a timely fashion.
2. Owner agrees to reimburse PEGI for the investigation costs incurred to date in full should the Owner fail to implement all the required, reasonable and eligible RCx measures within six (6) months of delivery of the *Master List of Findings*, defined as the presentation of the *Master List of Findings* to the Owner by the RCx Provider. Implementation is defined as approval of the *Implementation Summary Table*.
3. Owner agrees to designate appropriate facility staff and staff hours to participate in the RCx process and project meetings, including assistance to the RCx provider during their RCx work, access to pertinent facility areas and systems, and training given by the RCx provider at the project end. Costs associated with the Owner’s facilities staff shall be at the Owner’s expense.
4. Owner agrees to pay for any ancillary expenses that may be incurred during the course of the Program, including but not limited to copying of plans or building documentation, access to equipment, security access, and documentation of contractor work (e.g. programming changes) for implemented measures.
5. Owner understands that, to optimize the RCx services, scheduled preventative maintenance and repair tasks, such as cleaning coils, changing filters, tightening belts, and calibrating strategic sensors, must be completed prior to the RCx investigation.
6. Owner understands and agrees to the program incentive structure and payment schedule, summarized in the table below.

**Summary**

|                   | <b>Incentive Paid by Program</b>  | <b>Owner Responsibility</b> | <b>Schedule</b>   |
|-------------------|---|-----------------------------|---|
| RCx Investigation | \$  | \$ 0                        | 50% paid to RCx Provider upon review and approval of <i>Master List of Findings</i><br>50% paid to RCx Provider upon review and approval of <i>RCx Investigation Report</i>                                   |
| Implementation    | Estimated at \$0.05 per conditioned square foot (see No. 7 below for more detail) | \$                          | 100 % paid to Owner upon review and approval of <i>Implementation Summary Table</i> and required evidence of implementation   |
| Follow-up         | \$  | \$ 0                        | 50% paid to RCx Provider upon review and approval of the <i>Implementation Summary Table</i> during the implementation phase.<br>50% paid to RCx Provider upon review and approval of <i>RCx Final Report</i> |

7. Upon completion of the investigation phase, PEGI, Owner, and RCx Provider will review the findings and select measures for implementation. The Owner is required to implement reasonable and eligible RCx measures that pay back in one year or less. For implementing selected measures, Owner’s required investment responsibility will not exceed: \$ \_\_\_\_\_, as described above.

The Program will offer an incentive to assist with implementing RCx measures that exceed a one year payback based upon each measure’s cost effectiveness with regards to the Program’s energy goals.

Major retrofit measures identified by the Program may not be eligible for Retrocommissioning Program funding. In these cases, PEGI will assist the owner in determining whether other potential SDG&E programs provide funding for these measures and if the facility and/or the Owner are eligible for those programs/incentives/funding.

The *Implementation Incentive Offer* will be finalized by PEGI and Owner once measures are selected for implementation. An *Implementation Incentive Offer* Form will be signed by both parties at that time.

8. The Owner shall be responsible for all aspects of implementing the agreed upon measures. This includes, but is not limited to, getting bids, negotiating scope of work, paying for materials and labor and approving the completed product. PECI will assist in this process, but the ultimate responsibility for proper implementation shall lie with the Owner.
9. Owner agrees to give SDG&E and its contractors, PECI, EM&V contractors, and RCx providers access to their facility in order to perform work for this Program and evaluate building operations both before and after measure implementation. For select projects, the Program provides support for tracking the performance of the implemented measures. If selected, Owner agrees to allow PECI and its subcontractors to install sensors, wire, and equipment, and to collect data to monitor the performance of the implemented measures. Owner agrees to exercise reasonable care to prevent loss of or damage to monitoring equipment installed on the premises.
10. Owner further understands and agrees that, neither SDG&E, the CPUC nor PECI make any warranty or representation of any kind nor are they liable for any of their contractor's, EM&V contractors, and RCx providers work.

### ***Terms and Conditions***

**INCENTIVES:** Owner confirms they have not received incentives or services for the same services from another utility, state, or local program. Owner agrees not to apply or receive incentives for the same services from another utility, state, or local program.

If Owner has existing on site cogeneration or self-generation, PECI shall not pay incentives for energy savings that exceed the Owner's annual energy usage from SDG&E. The annual energy usage shall be determined by the Owner's last 12 months of energy usage as determined from the time that the Owner signed this Agreement. This policy is subject to change with 30 day written notice to the Owner.

The implementation and follow-up incentives for measures completed after October 31, 2009, will be contingent upon CPUC approval of the 2009-2011 Program. Should the CPUC approve the 2009-2011 Program, the terms of that Program will govern this Agreement.

Implementation must be completed within 12 months of signature date, defined by the last signatory date of this Agreement.

**ELIGIBILITY:** Incentives are available to commercial, municipal and institutional electric service customers of SDG&E that pay a public goods charge (PGC). Owner certifies that it/he/she is an SDG&E customer and pays the PGC.

**SAFETY AND BUILDING CODES:** Owner represents that all equipment installed and work performed complies with all federal, state, and local safety, building and environmental codes, and any manufacturer instructions.

**PROPERTY RIGHTS:** Owner represents that it has the right to perform the energy saving measures on the property on which those measures are performed and that any necessary consents have been obtained.

**INDEMNIFICATION:** Owner shall, at its own cost, defend, indemnify and hold harmless PECI, SDG&E and its Affiliates and all officers, agents, employees, assigns, and successors in interest of SDG&E and its Affiliates, from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs, including attorney's fees (which shall include allocable costs of in-house counsel) and expenses or any of them, resulting or arising from any (i) negligent or wrongful acts or omissions of the Owner or of its officers, employees, agents, representatives, subcontractors, or affiliates, (ii) breach by the Owner of its officers, employees, agents, representatives, subcontractors, or affiliates of this Agreement, or (iii) any willful or negligent conduct of the Owner, its officers, employees, agents, representatives, and affiliates, arising out of the performance of the Owner's obligation under this Agreement.

**ENERGY INFORMATION RELEASE:** Owner agrees that the Program or PECI may include Owner's name, program services and resulting energy-savings in reports or other documentation submitted to SDG&E and/or the CPUC. PECI will treat all other information gathered in evaluations as confidential and report it only in the event that Owner agrees to release such information. PECI maintains a list of active San Diego Retrocommissioning Program participants to share publicly and acknowledge participating companies for their commitment to energy efficient building operations. Owner agrees to be included on this list and understands that, aside from Company Name and Building Address, no further identifying characteristics of the Owner's Facility shall be used for published reports, advertising, sales promotion, or other publicity without Owner's written approval.

**GOVERNING LAW and VENUE:** This Agreement shall be interpreted, governed, and construed under the laws of the State of California as if executed and to be performed wholly within the State of California. Any action brought to enforce or interpret this Agreement shall be filed in San Diego County, California.

**TERMINATION:** The term of this Agreement shall not exceed the term of the Program, or the availability of funds provided by SDG&E to pay for the services or incentive payments provided by the Program. Either party may terminate this Agreement at any time by providing the other party with 30 days advance written notification, provided however, that

if the Owner terminates participation, they agree to reimburse SDG&E for the project costs SDG&E incurred to date in full.

**DISPUTES:** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between the Parties' authorized representatives. The disputing Party shall give the other Parties written notice of any dispute. Within twenty (20) days after delivery of such notice, the authorized representatives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days of the first meeting, any Party may initiate a mediation of the dispute. The mediation shall be facilitated by a mediator that is acceptable to all Parties and shall conclude within sixty (60) days of its commencement, unless the Parties agree to extend the mediation process beyond such deadline. Upon agreeing on a mediator, the Parties shall enter into a written agreement for the mediation services with each Party paying a pro rate share of the mediator's fee, if any. The mediation shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Association; provided, however, that no consequential damages shall be awarded in any such proceeding and each Party shall bear its own legal fees and expenses.

**FORCE MAJEURE:** Failure of a Party to perform its obligations under this Agreement by reason of any of the following shall not constitute an event of default or breach of this Agreement: strikes, picket lines, boycott efforts, earthquakes, fires, floods, war (whether or not declared), revolution, riots, insurrections, acts of God, acts of government (including, without limitation, any agency or department of the United States of America), acts of terrorism, acts of the public enemy, scarcity or rationing of gasoline or other fuel or vital products, inability to obtain materials or labor, or other causes which are reasonably beyond the control of such Party.

**MISCELLANEOUS:** Neither Party may assign its rights under this Agreement without the prior written consent of the other. Any assignment of such rights hereunder without such consent shall be deemed void. No waiver, consent or modification of any other provisions of this Agreement shall be binding unless in writing and signed by duly authorized representatives of all Parties, and no waiver by any Party of any default of the other shall be deemed to be a waiver by such Party of any other default. Each Party represents and warrants to the other Party that they are duly authorized to execute, deliver and perform their respective obligations under this Agreement.

**FACSIMILE/SCANNED SIGNATURES:** Facsimile transmission of any signed original document, and the retransmission of any signed facsimile transmission, shall be the same as delivery of the original signed document. Scanned original documents transmitted to PECEI as an attachment via electronic mail shall be the same as delivery of the original signed document. At the request of PECEI, Owner shall confirm documents with a facsimile transmitted signature or a scanned signature by providing an original document.

**TAXES:** Owner is required to submit a completed W9 for tax purposes. Unless Owner is exempt, incentives greater than \$600 will be reported to the IRS as income on form 1099. Please consult your tax advisor concerning the taxability of incentives.

**BUILDING OWNER REPRESENTATIVE SIGNATURE**

|  |  |   |
|--|--|---|
| By signing this Owner Program Agreement, Owner represents and warrants that it has read, understands and agrees to the terms and conditions of this agreement. |  |   |
| Tax Status   | <input type="checkbox"/> Corporation<br><input type="checkbox"/> Exempt (Non-Profit, Tax Exempt) | <input type="checkbox"/> Individual/Sole Proprietor<br><input type="checkbox"/> Non-corporation |
|  |  | Tax ID  |
| Owner or Authorized Representative (print name):   |  |   |
| Signature:   |  | Date:   |

**PROGRAM REPRESENTATIVE SIGNATURE**

|   |       |
|---|-------|
| Authorized Program Representative (print name): |       |
| Signature:                                      | Date: |

\* The San Diego Retrocommissioning Program is administered by Portland Energy Conservation, Inc. (PECEI) under a contract awarded by San Diego Gas & Electric Company (SDG&E®). This program is funded by California utility customers under the auspices of the California Public Utilities Commission. California customers who choose to participate in this program are not obligated to purchase any additional services offered by the contractor. The trademarks used herein are the property of their respective owners. All rights reserved.