



Emergency Water Heater Replacement

Market-rate Participation Agreement

Program Overview

Silicon Valley Clean Energy Authority ("SVCE") has developed the Emergency Water Heater Replacement Program ("the Program"), administered by Franklin Energy Services, LLC ("Franklin Energy") and its installation subcontractors ("Subcontractor(s)") on behalf of SVCE. The Program provides eligible Property Owners ("Property Owner") living in single-family homes ("Residence") with rapid replacement of failing natural gas water heaters with a heat pump water heater ("Measure") under qualified conditions. If additional modifications are required, such as an electrical circuit, a loaner water heater may be temporarily installed to ensure hot water service continues at Residence.

The Program offers home assessments and upgrades to Property Owners who meet the Program Eligibility Requirements (Exhibit B). To receive installation of Measures as outlined in the Installation Scope of Work (Exhibit C), Property Owners and Tenants, if applicable, must sign this Market-rate Turnkey Installation Program Participation Agreement ("Agreement") and agree to work with Subcontractor to schedule an appointment for the installation.

Property Owner Acknowledgements

1. I have read and agree to the Program Terms and Conditions (Exhibit A).
2. I have read and attest that I or my Tenant, as applicable, meet all the Program Eligibility requirements (Exhibit B).
3. I agree to allow the Measures listed in Installation Scope of Work (Exhibit C) to be installed at the Residence with the property address listed below and understand that they are under my ownership upon installation.
4. I understand I am solely responsible for and agree to pay the Property Owner Cost of **#{Total Property Owner Cost}** to the Subcontractor(s) for the Installation Scope of Work as described in Exhibit C.

PROPERTY OWNER INFORMATION	
Property Owner Name <i>First Name and Last Name, or Entity Name:</i>	
Property Owner Representative (if Property Owner is an entity): <i>First Name and Last Name:</i>	
Property Address: <i>Street, City, and Zip Code</i>	
Email:	Phone:
PROPERTY OWNER AGREEMENT AND ACCEPTANCE	

Under penalties of perjury, I have read, understood, and agree to this Participation Agreement and the Program Terms and Conditions, and certify that the information I have provided is true and correct.

Property Owner Name (printed):

Property Owner or Representative Signature:

Date:

Tenant Acknowledgements

If Property Owner's Residence is tenant-occupied, Property Owner must obtain Tenant's signature:

TENANT AGREEMENT AND ACCEPTANCE

Under penalties of perjury, I have read, understood, and agree to the Participation Agreement and the Program Terms and Conditions, and certify that the information I have provided is true and correct.

Tenant Household Size:

_____ persons

Tenant Gross Annual Household Income:

\$ _____

Lease End Date:

Tenant Name (printed):

Tenant Signature:

Date:

EXHIBITS

- A. Program Terms and Conditions
- B. Program Eligibility
- C. Installation Scope of Work

Exhibit A - Program Terms and Conditions

1. **DEFINITIONS:**
 - a. **Project Cost:** The total cost of the project as determined by SVCE, Franklin Energy, and Subcontractors.
 - b. **Rebate:** Funds from SVCE or other entities flowing to Franklin Energy or its Subcontractor(s), which reduce the amount of the Project Cost. The applicable Rebate shall be deducted from the total Project Cost and, therefore, will reduce the amount paid by the Property Owner.
 - c. **Property Owner Cost:** The amount of the Project Cost less Rebates flowing to Franklin Energy or its Subcontractors. The Property Owner Cost is the cost that the Property Owner must pay to the Program.
2. **ELIGIBILITY:** Property Owner and Tenant understand and attest that they meet all Program eligibility requirements (Exhibit B) to receive installation and service. If at any time SVCE and/or Franklin Energy determines Property Owner did not meet eligibility requirements prior to installation of Measures, SVCE may remove Property Owner from the Program and may require the Property Owner to repay the full cost of installing Measures within thirty (30) days of such notice.
3. **OBLIGATIONS FOR TENANT-OCCUPIED RESIDENCES:** If Property Owner's Residence is occupied by Tenant ("Tenant-occupied Residence"), Property Owner and Tenant agree to the following obligations. If SVCE determines, in its sole discretion, that Property Owner or Tenant is in non-compliance with these obligations, SVCE may remove Property Owner from the Program, may require the Property Owner to repay the full cost of installing Measures within thirty (30) days of such notice, and may bar the Property Owner from participating in current and/or future SVCE programs. SVCE reserves the right to pursue any other remedies allowed in law or equity.
 - a. Property Owner agrees to notify Tenant(s) of the Installation Scope of Work attached herein as Exhibit C and facilitate scheduling and coordination with Franklin Energy and Subcontractor(s) for the installation of such Measures.
 - b. Property Owner agrees to not evict or commence any eviction proceeding against any current or future Tenant(s) at the Residence, except for cause and subject to all legal requirements and procedures for any such eviction and/or proceeding.
 - c. If construction requires temporary displacement, Property Owner agrees to provide Tenant the right to return to the same unit once construction is complete and state and local laws governing Tenant displacement shall apply.
 - d. Tenant understands and agrees that SVCE shall have no obligation to enforce the remedies listed above and Tenant has no right to compel such enforcement. SVCE disclaims all liability for disputes between Property Owner and Tenant and has no ability to address such disputes.
4. **SITE ACCESS:** Property Owner and Tenant authorize the Subcontractor to enter the Residence for the purposes of installing any Measure(s) agreed to in this Participation Agreement, inspecting installed Measures, evaluating the performance of the Measures and any Program-related activities. Property Owner and Tenant authorizes SVCE, Franklin Energy, Building Officials, and/or SVCE-approved consultant(s) to enter the Residence for the purposes of evaluating the performance of Measures and conducting inspections as needed. Inspections may include taking photos of the upgrades and completed work.
5. **COMPLIANCE WITH LAWS:** Property Owner, Tenant, Franklin Energy and Subcontractor(s) shall comply with all federal, state, and municipal laws, ordinances, rules, orders, and regulations which apply to its actions at the Residence and installation of Measures.
6. **WORK AUTHORIZATION AND PROJECT WORK PLAN:** Franklin Energy will meet with the Property Owner to discuss individual property objectives, provide information on options, discuss process, recommend Measures for installation, and create a work project and schedule. Subcontractor will schedule and/or monitor the Measure installation.

7. **INSTALLATION SCOPE OF WORK:** Property Owner agrees to the Installation Scope of Work attached herein as Exhibit C which defines Measures eligible for installation by Franklin Energy, or Subcontractor(s). The Program shall not cover any equipment, installations, warranties, or services not defined in the Installation Scope of Work. Property Owner or Tenant shall be solely responsible for all costs associated with any work outside of the Scope of Work. In the event of a change in the Scope of Work, Subcontractor(s) will confirm changes with Franklin Energy and installation can be completed upon review and approval. Property Owner will work directly with the Subcontractor through this process. In such an event, an updated Installation Scope of Work including updated Property Owner Cost, shall be attached to this Agreement as a mutually agreed upon amendment.
8. **PROPERTY OWNER COST OBLIGATIONS:** Property Owner is solely responsible for and agrees to pay the Property Owner Cost described in Exhibit C to the Subcontractor upon installation of Measures.
9. **LOANER WATER HEATER:** If the installation of the heat pump water heater is not immediately feasible, Property Owner understands that a loaner water heater may be temporarily installed to ensure hot water service continues at the Residence. If a loaner water heater is installed, the Property Owner agrees to work with the Subcontractor to remove the loaner regardless of whether the Property Owner moves forward with a heat pump water heater installation. After three failed attempts to contact the Property Owner and schedule the removal of the loaner water heater and installation of the heat pump water heater, Property Owner may be subject to a fee for the loss of the loaner and installation costs as determined by SVCE.
10. **NO DOUBLE-DIPPING:** Property Owner understands that Property Owner cannot receive incentives for the same product, equipment, or service from more than one SVCE program.
11. **THIRD-PARTY REBATES AND INCENTIVES:** To assist Property Owner in getting the most rebates and incentives possible, eligible projects may be enrolled in third-party incentive programs. These programs may include but are not limited to: TECH Clean CA, California Energy Smart Homes, and Equitable Building Decarbonization. Participant agrees to support Franklin Energy and Subcontractor(s) in enrolling their Residence in these third-party programs where Property Owner or Tenants actions are needed for the purpose of applying for rebates, incentives, equipment, supplies, or other benefits, providing required documentation to third party program representatives, and executing related third-party program agreements. Franklin Energy agrees to provide support and Technical Assistance to Property Owner and Tenant throughout this process. Any third-party incentives will be paid directly to Franklin Energy to reduce the Property Owner Cost as described in Exhibit C. Any third-party incentives requiring payment directly to the Property Owner will not be accounted for in the Property Owner Costs in Exhibit C. Property Owner understands that SVCE, Franklin Energy and Subcontractor(s) cannot guarantee which incentives may apply or be granted and disclaim all liability thereto.
12. **STANDARD WARRANTY:** All installations include standard one (1) year parts and labor warranty with the installing Subcontractor(s). All manufacturer equipment warranties shall be transferred to the Property Owner upon installation and a copy of the warranty shall be provided to the Property Owner. SVCE, Franklin Energy, and Subcontractor(s) shall not be responsible for any warranty remedies which are the responsibility of manufacturers.
13. **MAINTENANCE:** Property Owner and Tenant are responsible for maintaining the installed Measures for the useful life of the Measure in good condition and repair. Property Owner and Tenant are responsible for incidental maintenance of all Measures, including routine cleaning and care as needed per manufacturer's recommendations to maintain proper function and validity of any warranty. Property Owner is responsible for costs incurred from failure to properly maintain Measures and costs associated with damage caused by Property Owner or Property Owner's agents, tenants, or invitees.
14. **TAX LIABILITY and CREDITS:** Neither SVCE, Franklin Energy, nor Subcontractor are responsible for any taxes that may be imposed on the Property Owner or Tenant as a result of the Measures installed under this Program. Property Owner and Tenant are responsible for determining and applying for any tax credits for which they may be eligible.

15. **OWNERSHIP OF INFORMATION:** Franklin Energy may provide the Property Owner and Tenant with information about its findings regarding this Residence, but SVCE shall have all ownership rights, including exclusive copyright ownership, in all data reports, research results, summaries, information, or other written, recorded, photographic, or visual materials (hereinafter "Information") produced and collected during the term of this Agreement.
16. **PROPERTY OWNER INFORMATION:** Property Owner and Tenant agree that SVCE, Franklin Energy, and Subcontractor(s) may review the property's historic and future energy usage to evaluate, measure, and verify actual energy savings. Property Owner and Tenant agree that SVCE may provide their information including Property Owner's or Tenant's name, account number, electric and gas data, and Measure's installation details to a third-party(ies) for the purposes of program evaluation, measurement and verification and/or claiming third party incentives. Any third-party(ies) receiving this information will keep this information confidential.
17. **ADVERTISING:** Property Owner and Tenant agree, for no compensation, to provide testimonials or interviews, provide visual materials (photos, videos, etc.), allow a photo of equipment to be taken, and contribute to other marketing and promotional activities related to the Program. SVCE agrees not to use the names or identifying characteristics of the Property Owner's Residence for published Project reports, advertising, sales promotion, or other publicity without the Property Owner's written approval.
18. **PROGRAM DATES:** All installations must be completed by March 30, 2027, unless notified by SVCE. This Program will expire upon the earliest to occur: (i) March 30, 2027; (ii) when funds are depleted; or (iii) when the Program is terminated.
19. **PROGRAM CHANGES:** SVCE reserves the right to change, modify, or terminate this Program at any time without any liability except as expressly stated herein. Subcontractor(s) will honor all written commitments made in the Installation Scope of Work provided to Property Owner prior to the date of any change, modification, or termination of this Program, provided that Measure installations are fully completed within the time specified in a Scope of Work.
20. **DISPUTES:** Except where otherwise limited by law, SVCE reserves the right, at its sole discretion, to make the final determination regarding any disputes between SVCE and Property Owner related to the Program.
21. **DISCLAIMER:** SVCE makes no representations or warranties, express or implied, regarding the design, construction, installation, reliability, performance, operation, maintenance or any use of the Measures discussed, selected, rejected, purchased or otherwise considered by Property Owner and does not guarantee that implementation or use of the Measures purchased or installed pursuant to this Program will result in energy cost savings. SVCE hereby expressly disclaims all warranties, whether express, implied, oral or written, statutory or otherwise, regarding any subject matter of this Agreement. Any decisions regarding the selection, design, purchase, installation use, and operation of any Measures shall be at the sole discretion and are Property Owner's sole responsibility. In no event shall SVCE, Franklin Energy, or the Subcontractor(s) be liable for failure of the Measures to achieve energy savings.
22. **RELEASE OF CLAIMS AGAINST, AND HOLD HARMLESS:** Property Owner and Tenant discharge and release SVCE, Franklin Energy, and Subcontractor(s) and their officers, employers, employees, and agents ("Indemnitees") from and against any and all claims, demands, liabilities, obligations, damages or chose in action, legal or equitable, of whatever kind or nature, including negligence by Indemnitees, in which Property Owner, Tenant, and Property Owner's successors in interest, heirs, estates or personal representatives, or family members, now may have or assert, or may have had in the past or may have in the future, against Indemnitees as the result of, based upon, arising out of, or connected with Indemnitees involvement with the Project. Property Owner and Tenant are on notice of and hereby specifically and expressly waive the provisions of California Civil Code § 1542, which provides that a "general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party." Property Owner and Tenant also agree to indemnify and hold harmless

Indemnites from any and all claims, actions, suits, procedures, costs, expenses, damages, and liabilities, including attorney's fees and costs, brought as a result of Indemnites' involvement with the Project, and to reimburse Indemnites for any such expenses incurred.

23. **PROHIBITION AGAINST TRANSFERS:** This Agreement is personal to Property Owner and Tenant. Property Owner and/or Tenant may not assign or transfer rights or delegate obligations under this Agreement.
24. **CONFLICT OF LAW:** This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, with venue in Santa Clara County, without reference to its principles on conflicts of laws.

Exhibit B - Program Eligibility

The following requirements must be met by Property Owners or Tenants to qualify for the Program:

1. Property Owner must be the legal owner of the Residence. If Property Owner is an entity, entity must provide proof of signatory's ability to bind the entity;
2. Residence is a single-family home with 4 or less dwelling units and existing gas-fired equipment;
3. Residence is located in [SVCE's service area](#).

SVCE determines eligibility at its sole discretion and may request verification of eligibility requirements as needed.

Exhibit C – Installation Scope of Work

Item Name	Quantity	Project Cost	Rebate	Property Owner Cost
{Measure Name 1}	1	\$xx	\$xx	\$xx
{Measure Name 2}	1	\$xx	\$xx	\$xx
		<u>\$xx</u>	<u>\$xx</u>	<u>\$xx</u>