

**2019 CODE CYCLE
CALCTP-AT EMPLOYER AUDIT AGREEMENT**

This California Advanced Lighting Controls Training Program-Acceptance Test (CALCTP-AT) Employer Audit agreement ("Agreement") dated the 5th day of November 2019 is

BY AND BETWEEN: A.S.F.Electric, Inc. "CALCTP-AT Certified Employers"
or "CCE")
[enter company address]

AND: **ICF Incorporated LLC** ("Auditor" or "ICF")
9300 Lee Highway, Fairfax, VA 22031

WHEREAS, Auditor has certain knowledge and experience in providing certain lighting controls quality assurance auditing services; and

WHEREAS, CCE desires to obtain the Auditor's services as described in Appendix B to conduct independent oversight and accountability measures to validate the findings by lighting controls acceptance test technician and contractors as required by the California Energy Commission, hereinafter referred to as the "Contract," and

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. **AUDITOR AGREEMENT NO.:** CALCTPAT-ICF-19-_____ (TO BE COMPLETED BY ICF)
2. **TYPE OF AGREEMENT:** FIRM FIXED PRICE
3. **GENERAL TERMS AND CONDITIONS**
 - 3.1 The general terms and conditions of this Agreement are set forth in Appendix A, attached hereto and incorporated herein by reference
4. **SCOPE OF WORK**
 - 4.1 Auditor shall provide to CCE the services set forth in Appendix B, attached hereto and incorporated herein by reference ("Services"). Auditor shall furnish all reports and deliverables as set forth in Appendix B in accordance with the terms set forth therein ("Deliverables").
5. **PERIOD OF PERFORMANCE**
 - 5.1 The period of performance for this Agreement shall be from November 5, 2019 **through 12/31/2022 (end of 2019 Code cycle)**. CALCTP-AT Employers are accredited by CALCTP-AT each Title 24 Energy Efficiency Standards Code Cycle (Code). Code cycles are three years in length. If a CALCTP-AT Employer becomes certified in the last 6 months of a Code Cycle that certification will last through the next Code.

The 2019 Code Cycle starts on 01/01/2020 and ends on 12/31/2022, or longer if extended by CEC.
6. **FEES AND PAYMENT**
 - 6.1 In consideration of tasks performed, CCE shall pay Auditor the fees set forth in Appendix B as agreed upon. Upon selection for a randomly assigned audit, CCE will be notified prior to and upon completion of the work for fee payment. Such fees shall be paid in accordance with the applicable invoice terms.

Should CCE wish to dispute an invoice, it may send a formal complaint to Auditor which must be done in writing within seven (7) days of receipt, as outlined in the CALCTP-AT Handbook. Otherwise, invoices shall be deemed accurate and payable according to the terms thereof.

7. KEY PERSONNEL

CCE: [enter name of company]			
Technical POC		Contractual POC	
Name:	John Bailey	Name:	Cathleen Lagomarsino
Phone:	415-716-4032	Phone:	650-755-9032
Fax:		Fax:	
Email:	johnb@asfelectric.net	Email:	cathy@asfelectric.net
CCE: Responsible Party for AT Verification Per Office			
Headquarters #1		Additional #2	
Name:	Cathleen Lagomarsino	Name:	John Bailey
Email:	cathy@asfelectric.net	Email:	johnb@asfelectric.net
Additional Office #1:		Additional Office #2:	
Name:	[enter name]	Name:	[enter name]
Email:	[enter email]	Email:	[enter email]
Auditor: ICF Incorporated, LLC			
Technical POC		Contractual POC	
Name:	Mark Ouellette	Name:	Bernard Molepske
Phone:	(213) 312-1794	Phone:	703-934-38786
Fax:	N/A	Fax:	703-934-2547
Email:	mark.ouellette@icf.com or info@calctp.org	Email:	bernard.molepske@icf.com

8. AUTHORIZED CHANGES IN SERVICES OR PAYMENT

8.1 The Auditor's Contractual Point of Contact is the only representative who is authorized to approve changes in the Services or approve any change to the payment terms or amounts.

9. PAYMENT/INVOICING

9.1 All Deliverables shall be submitted to the CCE, CALCTP Board, and the California Energy Commission. Questions pertaining to Deliverables shall be directed to the Auditor's Technical Point of Contact.

9.2 Invoice questions and all questions concerning payment of invoices will be sent to the CCE's Responsible Party.

9.3 Auditor shall submit invoices by the tenth (10th) day of each month following the month in which the Services were performed. CCE shall pay all invoices within 30 days.

9.4 CCE's failure to pay invoices within 120 days will mean automatic suspension from program until all payment and fees are made. During suspension time, if CCE conducts an audit they will be automatically dropped from program.

9.5 Each invoice shall contain the following certification signed by an authorized representative of the Auditor:

"I hereby certify that, to the best of my knowledge and belief, all payments requested are correct, accurate, and complete, that payment

therefore has not been received and that all amounts requested are for the appropriate purposes and in accordance with this Agreement."

10. NOTICE

10.1 Any notice given by either party shall be in writing and shall be deemed given, five (5) calendar days after deposit with the United States Postal Service, postage prepaid, certified return receipt requested, electronic mail or upon actual delivery to the other party at the following addresses:

TO CCE: Insert 1) Main contact name, 2) Company name, 3) Company address, 4) Main contact email
Cathleen Lagomarsino
A.S.F.Electric, Inc.
76 Hill Street, Daly City, CA 94014
cathy@asfelectric.net

TO Auditor:
Bernard Molepske
ICF Incorporated, LLC
9300 Lee Highway Fairfax, VA 22031
bernard.molepske@icf.com

11. AGREEMENT

11.1 Both parties acknowledge that they have read and understand this Agreement, Appendix A, the Statement of Work (SOW) Appendix B, and CALCTP-AT Handbook, Appendix C and agree to be bound by those terms. Both parties further agree that this Agreement, Appendix A, Appendix B, and Appendix C constitute the entire agreement between the parties hereto which supersedes all prior agreements, written or oral, relating to the subject matter hereof. No modification or waiver of any provision shall be binding unless in writing signed by the party against whom such modification or waiver is sought to be enforced.

IN WITNESS WHEREOF, CCE and Auditor have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

For: CCE
A.S.F.Electric, Inc.

For: Auditor
ICF INCORPORATED LLC



Signature

Signature

Cathleen Lagomarsino, Contractor/RMO

Name (Typed or Printed)

Bernard J. Molepske
Sr. Contracts Administrator

Name (Typed or Printed)

November 5, 2019

Date

Date

APPENDIX A

AUDITOR GENERAL TERMS AND CONDITIONS

1. **WARRANTY.** ICF shall perform the Services, as defined in Appendix B, utilizing the standard of care normally exercised by professional consulting firms in performing comparable services under similar conditions. The warranties set forth in this section are exclusive and in lieu of all other warranties, whether express or implied, including the implied warranties of merchant-ability and fitness for a particular purpose. Specifically, **ICF makes no warranty or guarantee regarding the accuracy of any forecasts, estimates, or analyses.**

2. **CCE'S RESPONSIBILITIES.** CCE shall provide site access and CCE data required by ICF, and shall make timely electronic payments, within forty-five days of invoice receipt. **CCE's failure to pay invoices with 120 days will mean automatic suspension from program until all payment and fees are made. During suspension time, if CCE conducts an audit they will be automatically dropped from program.** CCE shall also provide all findings from CALCTP-AT verification within 48 hours of completion. The fees for services do not include local, state, or federal sales, use, excise, personal property, or other similar taxes or duties, and any such taxes or duties shall be assumed and paid by the CCE.

3. **LICENSE GRANT/DELIVERABLES.** Subject to CCE's payment in full and to the terms of this agreement, the ICF deliverables will grant a license to the CALCTP Board for its annual reporting to the California Energy Commission and to the CCE to use the deliverables (as defined in the agreement) for CCE's internal business purposes only.

CCE shall indemnify and hold ICF harmless against any liability arising from or related to Deliverables that have been changed without ICF's written approval or have been used for a purpose other than as defined hereunder.

4. **ACCEPTANCE.** CCE shall accept all quality assurance audits upon delivery. The CCE can dispute the findings to the CALTP Board and dispute panel as outlined in the CALCTP-AT Handbook. If the CCE decides to dispute a finding, they may have to reimburse Auditor for all fees associated with presenting findings to the CALCTP Board and Dispute Panel.

5. **FAILURE TO PAY.** In the event that payment has not been made in accordance with the terms of this agreement, in addition to any other remedy which ICF may have under law or equity, ICF on behalf of CALCTP may unlicense the CCE from the CALCTP-AT program. No work can be performed during this time by the CCE under the CALCTP-AT program as articulated in the CALCTP-AT Handbook. CCE shall indemnify ICF for all reasonable costs, including actual attorney fees and related costs, necessary to obtain full and proper payment.

6. **CURRENCY OF PAYMENT.** All payments shall be in United States dollars (\$US).

7. **LIMITATIONS OF LIABILITY.** In no event shall ICF be liable for any indirect, incidental, special or consequential damages whatsoever (including but not limited to lost profits or interruption of business) arising out of or related to the services provided under this agreement, even if advised of the possibility of such damages. In no event shall ICF's liability in connection with this agreement exceed the amounts paid to ICF hereunder.

8. **TERMINATION.** Neither party may terminate this agreement as long as the CCE is a CALCTP-AT Certified Contractor as articulated in the CALCTP-AT Handbook.

9. **FORCE MAJEURE.** ICF is not liable for any delay in performance or non-performance caused by acts of god, war, civil disturbance, government action, labor dispute, computer virus, pandemic illness, inadequate access to CCE site or data, or anything else beyond ICF's reasonable control.

10. **CHANGES TO THE SERVICES.** Changes in the scope of the services, either by CCE request, Auditor request or necessitated by other events or conditions (including, without limitation, changes in law or regulation), that would increase the cost or time needed to perform the services shall be cause for an equitable increase in the contract ceiling price, extension of the schedule for performing the services, or both.

11. **DISPUTES.** Any dispute relating to this agreement shall be submitted to a CALCTP dispute panel as outlined in the CALCT-AT Handbook consisting of at least one representative of each party who shall have the authority to enter into an agreement to resolve the dispute. The CALCTP-AT Dispute Panel shall meet to resolve the dispute as outlined in the CALCTP-AT Handbook. Should this dispute resolution be unsuccessful, or if the panel has failed to meet within two (2) weeks of demand for such a meeting by either party, the matter may be submitted by either party to arbitration and no written or oral representation made during the course of any panel proceeding or other settlement negotiations shall be deemed to be a party admission

The arbitration shall be conducted in accordance with the rules of the American Arbitration Association. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof.

12. **GENERAL PROVISIONS.** ICF is an independent Contractor and shall not be deemed to be an employee or agent of the CCE or the CALCTP Board. All terms of this agreement are confidential and subject to the requirements of section 3 (above). CCE may not refer

to ICF or ICF's performance hereunder in any publication or promotional material without ICF's prior written approval.

No waiver of any breach of this agreement shall operate as a waiver of any similar subsequent breach or any breach of any other provision of this agreement. If any provision of this agreement is held invalid by a court of competent jurisdiction, such provision shall be severed from this agreement and to the extent possible, this agreement shall continue without affecting the remaining provisions.

Upon execution of this Agreement, CCE grants ICF the right to announce its relationship with CCE through a press release. ICF may also refer to CCE in its publicity material and government filings as being a CCE of ICF.

Neither party may assign this Agreement without the written consent of the other party, which consent shall not unreasonably be withheld. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns but is not otherwise intended to confer any rights or benefits on anyone other than the parties.

The validity, enforceability and interpretation of this Agreement shall be determined and governed by the laws of the Commonwealth of Virginia without regards to Virginia's conflict of laws principles. This Agreement may be executed in counterparts, and the counterparts, taken together, shall constitute the original.

In the event of a conflict in the terms and conditions of this transaction, the following order of precedence shall apply:

- i. The Audit Agreement
- ii. The General Terms and Conditions (Appendix A)
- iii. The Statement of Work (Appendix B)
- iv. CALCTP-AT Handbook (Appendix C)

APPENDIX B

STATEMENT OF WORK (SOW)

The California Energy Commission Building Energy Efficiency Standards, Section 120.5. (Section 10-103-A, subds. (c)(1) & (c)(3)(F).) requires independent oversight of the work conducted by lighting controls acceptance test technicians. ICF has been contracted to conduct quality assurance desk (paperwork) audits and on-site audits for the program.

ICF has worked with the California Energy Commission (CEC) on the development of a Quality Assurance and Public Registry System. Based on the program parameters, **a percentage of projects, chosen randomly, will receive either a paperwork "desk" review, or an on-site In person quality assurance review.**

Each review will be based upon the following fee structure.

State of California Building Code Title 24 Lighting Controls Quality Assurance Reviews

Type of Review/Audit	Fee Paid to ICF
For Each Quality Assurance Desk Review	\$200 per Audit
Per On-Site, In Person Quality Assurance Visit	\$500 per Audit

ICF shall invoice CCE for each independent audit reference above and in accordance with Section 8 of this Agreement.

APPENDIX C

CALCTP-AT Handbook

The CALCTP-AT Handbook is available upon request and can be downloaded in full on the CALCTP website at: www.calctp.org. The CALCTP Board has the authority to change any conditions in the CALCTP Program Handbook without prior consent of the CCE or Auditor that may impact this agreement.

All parties could be impacted by such changes.