

**EL PASO ELECTRIC COMPANY'S 2017  
COMMERICAL STANDARD OFFER PROGRAM**



**El Paso Electric**

**STANDARD OFFER PROGRAM AGREEMENT**

## EL PASO ELECTRIC COMPANY'S 2017

### COMMERCIAL STANDARD OFFER PROGRAM AGREEMENT

This Standard Offer Program Agreement (Agreement) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between \_\_\_\_\_ (Project Sponsor), a/an \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, and El Paso Electric Company (EPE), a corporation organized and existing under the laws of the State of Texas. From time to time, Project Sponsor and EPE shall each be individually referred to herein as a "Party" and collectively as the "Parties". All covenants and agreements hereinafter set forth shall apply to each project submitted or implemented by the project sponsor within the above designated program year.

**WHEREAS**, EPE has developed the Commercial Standard Offer Program (SOP); and

**WHEREAS**, the SOP seeks to procure energy savings and peak demand savings through the installation and operation of energy efficiency measures at small and large commercial customer sites; and

**WHEREAS**, Project Sponsor has developed a plan for participation in the SOP through a set of proposed or installed energy efficiency measures and other improvements necessary to produce energy savings or peak demand savings, or both;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

#### Section 1. Certain Definitions

Capitalized terms used in and not defined elsewhere in this Agreement shall have the meanings set forth in this Section 1 or the SOP Manual.

Agreement shall mean this Commercial Standard Offer Program Agreement by and between Project Sponsor and EPE for the sale and purchase of Energy Savings and Demand Savings, together with all Contract Documents, which are incorporated herein by this reference.

Budget Reservation shall mean the amount of Incentive Payment funds EPE sets aside for a Project Sponsor who has submitted a successful Project Application.

Contract Documents shall mean (i) Project Sponsor's approved Project Application (PA), (ii) any additional or supplemental information provided by Project Sponsor in support of the PA, (iii) Project Sponsor's estimated Deemed Savings calculations and/or Measurement and Verification Plan, (iv) the SOP Manual, (v) Project Sponsor's evidence of compliance with EPE's Insurance Requirements, and (vi) this Agreement together with any and all other addenda or amendments referenced herein or made a part hereof in accordance with this Agreement.

Customer shall mean a person or entity that (i) owns or leases facilities at a Project Site(s), (ii) has entered into a written agreement with Project Sponsor for the installation of Measures as a part of a Project, and (iii) is for purposes of the SOP, a retail commercial distribution customer of EPE.

Deemed Savings shall mean a pre-determined, validated estimate of Energy Savings and Demand Savings attributable to an Energy Efficiency Measure in a particular type of application that a utility may use instead of Energy Savings and Demand Savings determined through measurement and verification activities.

Demand Savings shall mean a quantifiable reduction in demand. The Demand Savings are measured against a predetermined Baseline for Deemed Savings Measures.

Energy Efficiency Measure (EEM or Measure) shall mean equipment, materials, and/or systems that, when installed and used at a Customer Site, result in Demand Savings and Energy Savings. Energy Efficiency Measures do not include equipment, materials, or systems that are installed as a part of new construction of a building, structure, or other facility, unless specifically authorized by EPE.

Energy Efficiency Service Provider (EESP) shall mean a person or entity that installs Energy Efficiency Measures or performs other energy efficiency services. An Energy Efficiency Service Provider may be a Customer, if they have executed an SOP Agreement.

Energy Savings shall mean the amount, expressed in kilowatt-hours (kWh), by which electric energy consumption is reduced as a result of the installation of qualifying Energy Efficiency Measures at the Project Site(s). Energy Savings are determined by comparing the efficiency of the installed Measures to that of an appropriate Baseline.

Implementation Period shall mean the period, beginning on the date this Agreement is executed and ending no later than November 30, 2017, during which Project Sponsor must complete the Project and report installation data via the EPE online database system.

Incentive Payment shall mean the payment available to be earned by a Project Sponsor based on the level of approved Demand Savings and Energy Savings (expressed as kW and kWh). Incentive Payment rates are based on PUCT approved avoided costs and incentive caps.

Installation Payment shall mean the first of two payments available to be earned by a Project Sponsor that uses the Measured Savings approach under the terms of this Agreement. The Installation Payment is for 40% of the total estimated Incentive Payment amount as specified in the SOP Agreement. A Project Sponsor may submit an invoice for this payment following EPE's approval of the Project Sponsor's Installation Report.

Measured Demand Savings shall mean the maximum average load reduction occurring during the peak period as defined in of Volume 1 of the Texas Technical Reference Manual (TRM).

Measured Energy Savings shall mean the Energy Savings derived during a single year from the Measures installed at the Project Site(s), as determined in accordance with the Texas TRM.

Performance Payment shall mean the second of two Incentive Payments available to be earned by a Project Sponsor using the Measured Savings approach under the terms of this Agreement. The Performance Payment is based on the one-year Measured Energy Savings documented in EPE's M&V Guidelines and may be up to 60% of the total estimated Incentive Payment included in this Agreement.

Performance Period shall mean the period following the approval of a Project Sponsor's Installation Report during which measurement and verification are to take place. Demand Savings and Energy Savings measured over this period form the basis of the Performance Payment made to the Project Sponsor at the end of the M&V process.

Project shall mean an Energy Efficiency Measure or a combination of Measures installed at a Project Site under this Agreement that results in both Energy Savings and Demand Savings.

Project Application (PA) shall mean the application submitted by an applicant to express intent to participate as a Project Sponsor in the SOP. The PA contains information on the Project Sponsor, proposed Project(s), proposed EEMs, and Demand Savings and Energy Savings estimated to result from the proposed Project(s). The Demand Savings and Energy Savings estimates are used to reserve Incentive Payment funds for the proposed Project(s). The PA also includes forms that provide the Project Sponsor's detailed plans for implementing a Project. A complete PA will contain a detailed equipment survey of the Existing Equipment and proposed equipment that includes name plate data, equipment location, and operation information, and describes the proposed Energy Efficiency Measure installations in detail, including the Project Sponsor's final M&V Plan, estimated Demand Savings and Energy Savings, and estimated Incentive Payments based on engineering analysis and site audit.

Project Site shall mean the location of a Customer's building(s), structure(s), or other facility(s) where approved Measures will be installed in accordance with this Agreement and from which Demand Savings and Energy Savings will be achieved. A single Project may include Measures installed at multiple Project Sites.

Project Sponsor shall mean the Energy Efficiency Service Provider or Eligible Customer that enters into this Agreement.

PUCT shall mean the Public Utility Commission of Texas.

SOP Manual shall mean EPE's 2017 Commercial Standard Offer Program Manual.

Term shall mean the Term of this Agreement as is defined in Section 4 hereof.

## **Section 2. General Description of Agreement**

2.1 This Agreement is a legally binding contract. The Parties are bound by the terms set forth herein and incorporated herein by reference. This Agreement shall govern the business relationship between the Parties. Each Party, by agreeing to undertake specific activities and responsibilities, acknowledges that it shall relieve and discharge the other Party of the responsibility for said activities and responsibilities.

2.2 In the event of any conflict between the terms of this Agreement and the terms of any of the Contract Documents, the terms of this Agreement shall prevail.

## **Section 3. Representations**

3.1 Project Sponsor represents that it is and shall remain in compliance with all applicable laws, including applicable PUCT requirements.

3.2 Each person executing this Agreement for the respective Party expressly represents and warrants that he or she has authority to bind the Party on whose behalf this Agreement is executed.

3.3 Each Party represents that: (a) it has the full power and authority to execute and deliver this Agreement and to perform its terms and conditions; (b) the execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party; and (c) this Agreement constitutes such Party's legal, valid, and binding obligation, enforceable against such Party in accordance with its terms.

3.4 Each Party shall: (a) exercise all reasonable care, diligence, and good faith in the performance of its duties pursuant to this Agreement; and (b) carry out its duties in accordance with applicable recognized professional standards in accordance with the requirements of this Agreement.

## **Section 4. Term**

Notwithstanding any other provisions of this Agreement, the term of this Agreement shall commence on the date of execution by EPE (the Effective Date) and, unless otherwise terminated as set forth herein, shall continue in force and effect through December 31 of the executed year or until final payment by EPE of the amounts due pursuant to Section 8 herein, whichever first occurs.

## **Section 5. General Obligations of Project Sponsor**

5.1 **Timeliness and Due Diligence:** Project Sponsor shall exercise due diligence in meeting its obligations and deadlines under this Agreement. Project Sponsor shall make all payments owed to EPE under this Agreement in a timely manner subject to applicable payment dispute provisions.

5.2 **Arrangements with Customers:** Project Sponsor shall be solely responsible for having appropriate contractual or other arrangements with Customers necessary to implement any approved Energy Efficiency Measure consistent with all applicable laws, this Agreement, and PUCT requirements, as set forth in Sections 6 and 12 herein. Without limiting the generality of the foregoing, Project Sponsor shall ensure that any Energy Efficiency Measures are installed solely within EPE's service territory.

5.3 By executing this Agreement, Project Sponsor acknowledges that it has access to a copy of the SOP Manual prior to submission of its Project Application. Project Sponsor represents and affirms that its participation in the SOP has at all times been in compliance with the procedures and conditions set forth in the SOP Manual and that any failure to comply therewith may be treated as a material breach of this Agreement regardless of whether such failure occurred prior to the execution of this Agreement. Project Sponsor also acknowledges that it meets or exceeds all of the qualifications required to participate in the SOP as described in the SOP Program Manual and that failure to meet the qualifications therein may be treated as a material breach of this Agreement.

5.4 **Ineligible EEMs/Projects:** Under no circumstances shall any EEM be eligible for inclusion in any other financial incentive program in which EPE is a funding sponsor or participant.

## **Section 6. Sponsor-Customer Agreement**

6.1 Project Sponsor shall be solely responsible for developing and entering into an agreement with the Customer(s) (the Sponsor-Customer Agreement or SCA) for the installation and operation of the Measure(s) described in the PA.

6.2 Project Sponsor shall submit a copy of the completed SCA to EPE within ten (10) business days of the date Project Sponsor submits its PA to EPE. An SCA is not required if the Customer is acting as its own Project Sponsor under this Agreement.

6.3 If a copy of the SCA is not provided to EPE within the required timeframe, EPE may terminate this Agreement and withdraw the Incentive Payment Budget Reservation for the Project(s). To the extent possible, SCAs will be kept confidential.

## **Section 7. Project Implementation and Review**

7.1 Project Sponsor agrees on and after the Effective Date to use all reasonable efforts to implement Project(s) without undue delay and otherwise in accordance with the terms of the Contract Documents. To qualify for the incentive payment, Project(s) must be fully implemented, including the installation of all Measures and the reporting of all installation data via the EPE online database system, by the end of the applicable Implementation Period. Measures shall be designed, constructed, and installed in a good and workmanlike manner only with materials and equipment of appropriate quality, and, in any event, in accordance with Prudent Electrical Practices. To the extent of any conflict between this Agreement and other Contract Documents, the terms of this Agreement shall prevail.

7.2 All Projects must be approved by EPE prior to installation. Project Sponsor's timely submittal of this work plan shall be a condition precedent to EPE's payment of Incentive Payments for all or any portion of the Project.

7.3 After all Measure installations have been completed, Project Sponsor shall submit to EPE the project for Final Approval and any Incentive Payment Invoices, as set forth in Section 11 of the SOP Manual. Project details must include a copy of itemized Project invoice with rebate line item as submitted to customer by Project Sponsor. Project Sponsor shall complete and submit the project during the Implementation Period. After the Implementation Period, the Project Sponsor will not be able to access Project record(s) on the EPE website to add installation data. If the installation has not been completed and reported to EPE prior to the expiration of the Project's applicable Implementation Period, Incentive Payment funds reserved for the Project may be withdrawn. The Project Sponsor may resubmit its Project Application; however, it will lose its initial position in the order of submittal for Incentive Payment fund reservation purposes.

7.4 If EPE, at its sole discretion, finds any discrepancies or inaccuracies in the Project Installation Report or desires clarifying data, EPE will notify the Project Sponsor. The Project Sponsor shall have ten (10) business days from the date of EPE's notification to make such corrections or clarifications.

7.5 During the review of the Installation Report, EPE will inspect a random sample of Measures at the Project Site(s) to determine if each Measure has been installed and is capable of performing its intended function. Project Sponsor shall be responsible for the proper installation of such Measures. All Measures installed in connection with this Agreement must conform to or exceed the standards set forth in the sections of the SOP Manual that are specific to such Measures. If Measures installed do not meet such standards, they will not be eligible for Incentive Payments.

7.6 Upon the completion of inspections, EPE will evaluate all installations on a Measure-by-Measure basis to calculate an adjustment factor for Energy Savings, Demand Savings and Incentive Payments. This adjustment factor will consider the ratio of savings of the Measures that pass the inspection to the total Incentive Payment specified in the Incentive Payment Invoice and Project Application. The adjustment factor will then be applied to the specified Incentive Payment to determine the Incentive Payment to be paid to Project Sponsor. The algorithm for calculating the adjustment factor is described below:

$$\text{Adjustment Factor} = \frac{\text{Total Incentive Payments for Measures that pass inspection}}{\text{Total Incentive Payments for all Measures selected for inspection}}$$

This algorithm assumes that all figures on the Installation Report are correct. Any errors will be corrected prior to finalizing the adjustment factor.

7.7 In the event the Project Sponsor disagrees with the payment adjustment, the Project Sponsor may request that all information be reviewed after providing additional clarifying information in writing to EPE no later than 5 business days from the date EPE notifies Project Sponsor of the payment adjustment.

7.8 The monitoring and measurement of the Energy Savings or Demand Savings, or both, that result from the Measures installed as a part of a Project shall be performed as set forth in the Measurement and Verification (M&V) Plan. The M&V activities shall be performed by the Project Sponsor.

**7.9 EPE'S PAYMENT OF INCENTIVE PAYMENT(S) TO PROJECT SPONSOR IS EXPRESSLY AND SPECIFICALLY CONDITIONED UPON EPE RECEIVING ALL REQUIRED NOTICES, SUBMITTALS AND MATERIALS FROM PROJECT SPONSOR WITHIN THE APPLICABLE PERIOD SPECIFIED IN THIS AGREEMENT. FAILURE BY PROJECT SPONSOR TO DELIVER ANY REQUIRED NOTICE, SUBMITTAL, OR MATERIAL WITHIN THE APPLICABLE PERIOD SPECIFIED IN THIS AGREEMENT SHALL BE DEEMED A MATERIAL BREACH OF THIS AGREEMENT. ANY PROJECT SPONSOR WHO ACCRUES THREE (3) "STRIKES" OR MATERIAL BREACHES OF AGREEMENT AND/OR PROGRAM REQUIREMENTS AS LAID OUT IN THE SOP MANUAL MAY BE SUBJECT TO PENALTIES UP TO AND INCLUDING REMOVAL FROM PROGRAM.**

## Section 8. Incentive Payments

8.1 Project Sponsor shall deliver and sell to EPE and EPE shall accept and purchase from Project Sponsor the Energy Savings and Demand Savings from Project Site(s). The delivery of Energy Savings and Demand Savings by Project Sponsor to EPE shall be in accordance with the estimated Energy Savings and Demand Savings set forth in the Project Application, as adjusted by EPE pursuant to Sections 6 and 11 of the SOP Manual. Subject to approval of all submittals required pursuant to this Agreement, the Project Application, and the SOP Manual, EPE shall pay for Energy Savings and Demand Savings delivered by the Project Sponsor from Measures pursuant to the following Incentive Payment rates:

	Incentive Payment Rate
kW (Demand Savings)	\$194.00
kWh (Energy Savings)	\$0.05

All Incentive Payments are subject to the provisions and limitations set forth in Section 6 of the SOP Manual. EPE makes no guarantee that Project Sponsor may be paid more than reserved incentive amount.

8.2 Subject to the provisions of Section 7 hereof, EPE agrees to make an Incentive Payment to the Project Sponsor based upon the sum of the Deemed Savings and Measured Savings derived from the Project(s), provided, however, that the sum of all Incentive Payments to the Project Sponsor may not exceed the total Budget Reservation approved in the Project Application and as adjusted pursuant to Sections 6 and 11 of the SOP Manual.

8.3 The total Incentive Payment due to Project Sponsor will be calculated by multiplying the approved savings as determined for Deemed Savings, Simplified M&V Savings, and Measured Savings associated with the Measures installed at the Project Site by the applicable Incentive Payment rate specified in Section 8.1 above, subject to adjustment as prescribed by Section 7.6 hereof.

8.4 The Incentive Payment for Projects producing Deemed Savings and Simplified M&V Savings shall be payable in one installment, and the Incentive Payment for Projects producing Measured Demand Savings and Measured Energy Savings shall be payable in two installments (the Installation Payment and the Performance Payment) as set forth herein and in accordance with Sections 6 and 11 of the SOP Manual. As set forth in Section 6 of the SOP Manual, a Load Factor cap governs the maximum total Incentive Payment allowed, based on the ratio between Demand Savings and Energy Savings from a Project.

(a) For installations of Measures subject to Deemed Savings and Simplified M&V Savings, the Incentive Payment amount will be one hundred percent (100%) of the estimated Incentive Payment, subject to adjustment pursuant to Section 7.6 hereof, and will be issued within 45 days after EPE's receipt and approval of the Installation Report and Incentive Payment invoice.

(b) For installations of Measures subject to Measured Demand Savings or Measured Energy Savings:

(i) EPE will pay the Installation Payment, as verified through M&V and subject to adjustment pursuant to Section 7.6 hereof, within 45 days after EPE's receipt and approval of the Installation Report and Installation Period invoice, in accordance with Sections 6 and 10 of the SOP Manual;

(ii) EPE will pay the Performance Payment, as verified through M&V and subject to adjustment pursuant to Section 7.6 hereof, within 45 days after EPE's receipt and approval of the Performance Report and Performance Period invoice, in accordance with Sections 6 and 12 of the SOP Manual.

(iii) If EPE determines that the Measured Demand Savings and Measured Energy Savings do not equal or exceed the Demand Savings and Energy Savings stated in the PA, the amount of the Installation Payment shall be recalculated according to the following formula:

$$\text{Recalculated Installation Payment} = \text{Amount of Installation Payment} \times \left( \frac{\text{Measured Demand Savings}}{\text{Demand Savings in PA}} + \frac{\text{Measured Energy Savings}}{\text{Energy Savings in PA}} \right)$$

EPE shall provide Project Sponsor notice of the amount of the difference between the Installation Payment and the Recalculated Installation Payment within ten (10) business days following receipt of the Performance Report and Project Sponsor shall pay such difference to EPE within forty-five (45) days following submittal of the Performance Report.

8.5 If there are any adjustments to be made to kW or kWh savings or Incentive Payments, EPE will notify the Project Sponsor in writing and provide the necessary supporting documentation. If the Project Sponsor disagrees with the adjustments, it must notify EPE in writing within ten (10) business days and request that a meeting between the two parties be conducted to resolve the disputed adjustment(s). Project Sponsor acknowledges that its failure to timely notify EPE shall constitute a waiver of its opportunity to dispute the adjustments. If the two parties cannot resolve these issues, the dispute resolution process provided in Section 20.5 of this Agreement shall govern and control.

## **Section 9. Records and Audit**

9.1 Project Sponsor or its assignee shall keep and maintain accurate and detailed records and documentation relating to the Project and its associated Energy Savings and Demand Savings under this Agreement for a period of not less than four (4) years beyond the termination of this Agreement. During the term of this Agreement and the retention period, such records shall be made available, upon reasonable notice, for inspection during normal business hours by EPE or any governmental agency having jurisdiction over the SOP or any portion of the Project.

9.2 Project Sponsor acknowledges that the PUCT may request or require an audit of the matters addressed in this Agreement or commence an investigation or other regulatory proceeding. Project Sponsor agrees to cooperate with any such process without claim against EPE for additional compensation or reimbursement for expenses incurred in connection therewith.

## **Section 10. Insurance**

10.1 Project Sponsor represents and agrees that it and its subcontractors shall carry all statutorily required insurance for the protection of its employees and that each of its subcontractors will carry such insurance for the protection of their respective employees. At all times during the term of this Agreement, Project Sponsor shall carry and maintain, at Project Sponsor's sole cost and expense, the following insurance coverage in each case issued by an insurer having a Best rating of A-VI or better:

- Commercial general liability coverage including broad form contractual liability with minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate;
- Business automobile liability coverage including owned, non-owned, and hired vehicles with a combined single limit of liability of not less than \$1,000,000 per occurrence; and



- Workers' compensation and employer's liability coverage with minimum limits of liability of \$500,000.

10.2 Each policy of insurance referenced in this section shall be endorsed to (i) provide EPE not less than thirty (30) days advance written notice of the expiration, termination, cancellation, or modification of such policy, (ii) waive subrogation of all claims against EPE (provided that the requirement prescribed by this Clause (ii) shall not apply to Project Sponsor's workers' compensation/employer's liability coverage), and, (iii) if providing commercial general liability or business automobile liability coverage, name EPE as an additional insured.

10.3 Project Sponsor shall furnish evidence to EPE that such policies have been issued in accordance with the requirements of this Section by providing certificates of insurance. Additionally, Project Sponsor shall provide EPE a copy of each policy endorsement upon issuance by the applicable insurer. Certificates of insurance must be provided directly to EPE by the Project Sponsor's insurance company. Certificates of insurance submitted directly by any person other than the Project Sponsor's insurance company will not be accepted. Certificates of insurance must be received prior to the submission of any project application. **EPE is not responsible for the late arrival of any certificates submitted by the insurance company and will not waive deadlines for any applicant for such late submittals.**

## **Section 11. Indemnification**

**11.1 PROJECT SPONSOR SHALL INDEMNIFY AND HOLD HARMLESS EPE, ITS DIRECTORS, OFFICERS, AND EMPLOYEES FOR, AGAINST, AND FROM ANY AND ALL CLAIMS, LIABILITIES, DAMAGES, LOSSES, COSTS, AND EXPENSES OF ANY KIND OR NATURE (INCLUDING REASONABLE ATTORNEYS' FEES) FOR PERSONAL INJURY (INCLUDING MENTAL ANGUISH) TO OR DEATH OF ANY PERSON OR FOR DESTRUCTION OR LOSS OF OR DAMAGE TO THE PROPERTY OF ANY THIRD PERSON OR ENTITY IN EACH INSTANCE TO THE EXTENT DETERMINED TO BE PROPORTIONATELY ATTRIBUTABLE TO THE (I) NEGLIGENCE (INCLUDING STRICT LIABILITY IN TORT), GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF PROJECT SPONSOR, ITS OWNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OR CONTRACTORS ARISING FROM, IN CONNECTION WITH, OR IN ANY WAY RELATED TO THIS AGREEMENT (INCLUDING THE PERFORMANCE OR NONPERFORMANCE THEREOF), OR (II) BREACH OF THIS AGREEMENT BY PROJECT SPONSOR, ITS OWNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OR CONTRACTORS. IT IS THE INTENTION OF THE PARTIES THAT THE INDEMNITEES SHALL BE ENTITLED TO COMPARATIVE INDEMNIFICATION UNDER SECTION 11.1.**

**11.2 PROJECT SPONSOR SHALL TIMELY PAY AND BE RESPONSIBLE FOR ANY AND ALL ROYALTIES, FEES, AND CLAIMS FOR ANY PATENTED, COPYRIGHTS, OR SIMILARLY PROTECTED MEASURE (INCLUDING ANY INCORPORATED INTELLECTUAL PROPERTY, DEVICE, PROCESS, OR PROCEDURE) INSTALLED IN CONNECTION WITH THE PROJECT(S). PROJECT SPONSOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS EPE, ITS DIRECTORS, OFFICERS, AND EMPLOYEES FOR, AGAINST, AND FROM ANY AND ALL LIABILITIES, LOSSES, COSTS, AND EXPENSES ARISING FROM, IN CONNECTION WITH, OR RELATED TO ANY CLAIM THAT THE MEASURES OR PROJECT SPONSOR'S SERVICES, OR BOTH, INFRINGE ANY PATENT, COPYRIGHT, OR TRADE SECRET.**

## **Section 12. Permits and Compliance with Laws**

12.1 Project Sponsor represents and warrants that, prior to beginning installation of Measures, Project Sponsor will, at its own cost and expense, obtain and maintain in full force in effect all permits, licenses, approvals, and other authorizations from governmental authorities as then may be required to install, construct, operate, and maintain the Measures in question and to perform its obligations hereunder. During the term hereof, Project Sponsor will, at its own cost and expense, obtain all such additional governmental permits, licenses, and other authorizations when required with respect to any of the Measures. If requested by EPE, Project Sponsor shall furnish to EPE copies of each such permit, license, or other approval promptly following receipt thereof.

12.2 All work performed by Project Sponsor in connection with the implementation of Project(s) and all Measures installed or maintained by Project Sponsor shall conform to all applicable laws, statutes, ordinances, rules, regulations, and decrees of any governmental or administrative body having jurisdiction over the SOP or any portion of the Project, including without limitation, all Occupational Safety and Health

Administration (OSHA) regulations, the National Electric Safety Code (NESC), the National Electric Code (NEC) and Sections 752.001 – 752.008 of the Texas Health and Safety Code. Handling of hazardous waste must be in compliance with all applicable federal, state and local laws, rules, and regulations.

### **Section 13. Default and Remedies**

13.1 Each of the following events will be deemed to be an Event of Default and a material breach of this Agreement:

- (a) The failure of Project Sponsor to perform its responsibilities in a timely manner or implement the Project in compliance with the SOP Manual and other Contract Documents;
- (b) The failure of Project Sponsor to provide EPE and/or its contractors with sufficient access to Project(s) Sites for the purposes of conducting inspections, observations, or measurement and verification activities;
- (c) The failure of Project Sponsor to obtain or maintain any necessary permits, licenses, approvals, authorizations, or insurance required pursuant to the Contract Documents;
- (d) Project Sponsor's assignment or subcontracting of all or part of the duties required under the Contract Documents without the prior written consent of EPE;
- (e) Project Sponsor's submission to EPE of any false, misleading, or inaccurate information or documentation with respect to Project(s) or Project Sponsor's performance hereunder, when Project Sponsor knew or reasonably should have known that such information was false, misleading, or inaccurate when made; or
- (f) The failure of either Party in a material fashion to perform or observe any of the material terms, conditions, or provisions of this Agreement not otherwise described in this Section 13.1, which failure is not cured within thirty (30) days following the defaulting Party's receipt of written notice describing such failure in reasonable detail.

13.2 If an Event of Default occurs, the non-defaulting Party shall be entitled to exercise any and all remedies provided for by this Agreement, by law, or in equity, including, but not limited to, the right to immediately terminate this Agreement upon written notice to the other Party. Termination shall be effective upon the receipt of properly served notice. Termination of this Agreement will not relieve the defaulting Party of any obligations accruing prior to the event of termination.

### **Section 14. Exclusions and Limitations**

**14.1 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR THE CONTRACT DOCUMENTS, IN NO EVENT SHALL EPE BE LIABLE TO PROJECT SPONSOR FOR (i) SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF PROPERTY, OR OTHER ECONOMIC DAMAGES, OR (ii) AN AMOUNT EXCEEDING THE AMOUNT OF ANY UNPAID INCENTIVE PAYMENTS OTHERWISE DUE PROJECT SPONSOR UNDER THIS AGREEMENT.**

**Section 15. Independent Contractor**

15.1 Project Sponsor will act as and be deemed to be an independent contractor, and nothing in this Agreement shall be interpreted or construed to create the relationship of employer and employee, master and servant, principal and agent or joint venturers. Project Sponsor shall be solely responsible for and have the sole right to control and directly supervise the means, method, manner, and details of the Project (including the performance thereof). EPE shall have no responsibility with respect to withholding, deductions, or payment of any federal or state tax on behalf of Project Sponsor or any of Project Sponsor’s employees. Project Sponsor agrees to pay and comply with and hold EPE harmless from and against the payment of all contributions, taxes, and premiums which may be payable by Project Sponsor under federal, state, or local laws arising out of the performance of this Agreement and all other taxes of whatever nature levied or assessed against Project Sponsor arising out of this Agreement, including any interest or penalties, and Project Sponsor hereby waives any and all claims for additional compensation because of any increase in the aforementioned taxes.

**Section 16. Notices**

16.1 Except as otherwise provided in this Agreement, all notices under this Agreement shall be in writing and be effective upon delivery if delivered by (i) hand, (ii) email, (iii) certified or registered United States mail postage prepaid, or (iv) fax, provided that service by fax after 5:00 p.m. local time of the recipient shall be deemed delivered on the following business day, as follows:

(a) ***If notice is to Project Sponsor:***

\_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile: \_\_\_\_\_; or

(b) ***If notice is to EPE:***

El Paso Electric Company  
Attention: Araceli Perea  
100 N. Stanton Street, Loc. 125  
El Paso, Texas 79901  
Fax (915) 521-4780;

(c) ***If the notice is sent to EPE for the purposes described in Sections 14 or 20.2, also send a copy to:***

El Paso Electric Company  
Office of the General Counsel  
100 N. Stanton Street  
El Paso, Texas 79901  
Fax (915) 521-4747.

16.2 Each party may change its address for purposes of notice under this Agreement by notice complying with Section 16.1.

## **Section 17. Amendment**

No amendment or modification of this Agreement shall be binding on either Party unless it is in writing and signed by both Parties.

## **Section 18. Force Majeure**

18.1 The term Force Majeure as used in this Agreement means causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including, but not limited to, acts of God, labor disputes, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, change in laws or applicable regulations subsequent to the date hereof and action or inaction by any federal, state or local legislative, executive, administrative or judicial agency or body, which, in any of the foregoing cases, by exercise of due foresight such Party could not reasonably have been expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

18.2 The term Force Majeure shall not include any of the following:

- (a) Any removal, reduction, curtailment, or interruption of operation of any or all Measures, whether in whole, or in part, that is caused by or arises from the action or inaction of the Customer or any third party, including without limitation, any vendor or supplier to the Project Sponsor, unless, and then only to the extent that, any such action or inaction was beyond the reasonable control of, and occurred without the fault or negligence of such third party, and such third party, by exercise of due foresight, could not reasonably have been expected to avoid such action or inaction;
- (b) Any outage, regardless of cause (including, without limitation, the fault or negligence of EPE or Project Sponsor) of the Measures or EPE's system attributable to a defect or inadequacy in the manufacture, design, or installation of the Measures that prevents, curtails, interrupts, or reduces the ability of the Measures to provide Demand and/or Energy Savings; or
- (c) Any reduction in Measured Demand Savings and/or Measured Energy Savings caused by or resulting from a Customer's termination or reduction of electrical distribution service received from EPE and the substitution therefore of electric service from any other source.

18.3 The Parties shall be excused from performing their respective obligations under this Agreement and shall not be liable in damages or otherwise if, and to the extent that, they are unable to so perform or are prevented from performing by an event of Force Majeure, provided that:

- (a) The non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than fourteen (14) calendar days thereafter, gives the other Party written notice describing the particulars of the event or occurrence;
- (b) The suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure event or occurrence;
- (c) The non-performing Party uses its best efforts to remedy its inability to perform; and
- (d) As soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence, it shall give prompt written notification thereof to the other Party.

## **Section 19. Nondisclosure**

19.1 If either Party hereto provides confidential information to the other in writing and identified as such, the receiving Party shall protect the confidential information from disclosure to third parties. Neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party; (ii) is required to be disclosed by a governmental or judicial order, rule, or regulation; (iii) is independently developed by the receiving Party as evidenced by written records; or (iv) becomes available to the receiving Party without restriction from a third party.

19.2 Should any person or entity seek to legally compel a receiving Party (by oral or written questions, interrogatories, requests for information or documents, subpoena, civil investigative demands, regulation, statute, or otherwise) to disclose any confidential information, the receiving Party will provide the disclosing Party prompt written notice so that the disclosing Party may seek a protective order or other appropriate remedy (including participating in any proceeding to which the receiving Party is a party, which receiving Party will use its reasonable business and legal efforts to permit). If, in the absence of a protective order, the receiving Party is, in the opinion of its legal counsel, compelled to disclose the confidential information, the receiving Party may disclose only such of the confidential information to the person or entity compelling disclosure as is required by applicable law, order, regulation, or rule.

## **Section 20. Miscellaneous**

20.1 Project Sponsor shall not assign, transfer, or otherwise dispose of any of its obligations or duties under this Agreement without the prior written approval of EPE. No assignment of this Agreement shall relieve Project Sponsor of any of its obligations under this Agreement. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee. Any assignment or transfer made without the express written approval of EPE will be null and void. No part of the work contemplated under this Agreement may be performed by subcontractors without the prior written approval of EPE.

20.2 The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either Party shall not preclude or waive its right to use any or all other remedies. Such rights and remedies are in addition to any other rights and remedies the Parties may have at law. No waiver by the Parties hereto of any default or breach of any term, condition, or covenant of this Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition, or covenant contained herein.

20.3 The Contract Documents constitute the entire Agreement between the Parties with respect to the subject matter hereof and there are no express or implied warranties or representations upon which any party may rely beyond those set forth therein. The execution of this Agreement supersedes all previous agreements, discussions, communications, and correspondence with respect to such subject matter.

20.4 In the event any provision of this Agreement is held to be invalid, void, unlawful, or otherwise unenforceable, the remaining provisions of this Agreement shall, to the extent reasonable and practicable, continue in full force and effect.

20.5 This Agreement will be governed by and construed and enforced in accordance with the laws of the State of Texas excluding any conflicts or choice of laws rules that would require the application of the laws of a different state. Except for matters and disputes with respect to which the PUCT is the sole proper venue for dispute resolution pursuant to applicable law or this Agreement, the Parties agree that the proper venue and jurisdiction for any cause of action relating to the Agreement will be in El Paso County, Texas and the Parties hereto submit to the exclusive jurisdiction of the federal and state courts located in such county with respect to such matters and disputes.

20.6 The duties, obligations, and liabilities of the Parties hereto are intended to be several and not joint or collective. Nothing contained in this Agreement shall be interpreted or construed to create an association, trust, partnership or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be liable individually and severally for its own obligations under this Agreement.

20.7 Project Sponsor shall not use EPE's corporate name, trademark, trade name, logo, identity, or any affiliation for any reason, including soliciting customers for participation in the Project, without EPE's prior written consent.

20.8 The Parties expressly agree that time is of the essence for all portions of this Agreement.

20.9 The descriptive headings of the various sections of this Agreement have been inserted for convenience of reference only and shall in no way define, modify, or restrict any of the terms and provisions thereof.

20.10 The following provisions shall survive the expiration or earlier termination of this Agreement: Sections 2, 3.2, 3.3, 5.4, 9, 11, 12, 13, 14, 15, 16, 17, 19 and 20.

20.11 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but which, when taken together, shall constitute one and the same document.

**EL PASO ELECTRIC COMPANY**

**PROJECT SPONSOR**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_