

**EL PASO ELECTRIC COMPANY'S 2010
RESIDENTIAL STANDARD OFFER PROGRAM
AND
HARD-TO-REACH STANDARD OFFER PROGRAM**



STANDARD OFFER PROGRAM AGREEMENT

Residential and Hard-to-Reach Standard Offer Programs Agreement

This Residential (“RES”) and Hard-to-Reach (“HTR”) Standard Offer Programs Agreement (“Agreement”) is made and entered into as of this ____ day of _____, ____ by and between _____ (“Project Sponsor”), a _____ 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.”

WHEREAS, EPE has developed the Residential Standard Offer Program (“RES SOP”) and Hard-to-Reach Standard Offer Programs (the “HTR SOPs”); and

WHEREAS, the SOPs seek to procure energy savings and peak demand savings through the installation and operation of energy efficiency measures at residential customer sites and Hard-to-Reach residential customer sites; and

WHEREAS, Project Sponsor has developed a plan for participation in the SOPs 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 Residential and Hard-to-Reach Standard Offer Programs 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 Sponsor Application (“SA”), attached hereto and incorporated herein as Exhibit A, (ii) Project Sponsor’s approved Project Application (“PA”), attached hereto and incorporated herein as Exhibit B, (iii) any additional or supplemental information provided by Project Sponsor in support of the SA and/or PA, attached hereto and incorporated herein as Exhibit C, (iv) Project Sponsor’s estimated Deemed Savings calculations and/or Measurement and Verification Plan, attached hereto and incorporated herein as Exhibit D, (v) the SOP Manual, attached hereto and incorporated herein as Exhibit E, (v) Project Sponsor’s evidence of compliance with EPE’s Insurance Requirements, attached hereto and incorporated herein as Exhibit F, and (vi) this Agreement together with any and all other exhibits, 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) that has entered into a Host Customer Agreement with Project Sponsor for the installation of Measures as a part of a Project, and (iii) is, (a) for purposes of the RES SOP, a residential customer of EPE, or (b) for purposes of the HTR SOP, a qualified residential Hard to Reach 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 the maximum average load reduction occurring during any one-hour period between 1 PM and 7 PM MDT weekdays, from May 1 through September 30 (holidays excluded), as the result of the installation of qualifying Energy Efficiency Measures at a Project Site(s). 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 result in Demand Savings and Energy Savings. Only those EEMs identified in the PA and properly installed at a Project Site under the terms of this Agreement are eligible for Incentive Payments. Except as specifically provided in the SOP Manual, no Incentive Payments will be paid by EPE for equipment, materials, or systems that are installed as a part of new construction or major rehabilitation of a building, structure, or other facility.

“Energy Efficiency Service Provider” shall mean a person or entity that installs Energy Efficiency Measures or performs other energy efficiency services.

“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.

“Hard-to-Reach Customer” shall mean a Residential customer with an annual household income at or below 200% of the federal poverty guidelines, and who has properly completed a PUCT-approved income verification form, or who has been designated as hard-to-reach through another PUCT-approved verification methodology.

“Implementation Period” shall mean the period during which Project Sponsor must complete the Project and report installation data via the EPE online database system. For all single-family, a Project Sponsor has an Implementation Period of forty-five (45) calendar days from the time its project Incentive Payment reservation is made to complete the Project and report installation data via the online database system. For multifamily projects, a Project Sponsor has an Implementation Period of sixty (60) calendar days from the time its project Incentive Payment reservation is made to complete the same tasks.

“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 Incentive Payments available to be earned by a Project Sponsor under the terms of an SOP Agreement. The Installation Payment equals 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 Project Installation Report (PIR).

“Measured Demand Savings” The maximum average load reduction occurring during any one-hour period between 1 PM and 7 PM MDT weekdays, from May 1 through September 30 (holidays excluded), as determined in accordance with the Measurement and Verification Plan set forth in Exhibit D of this Agreement.

“Measured Energy Savings” The Energy Savings derived during the Performance Period from the Measures installed at the Project Site(s), as determined in accordance with the Measurement and Verification Plan set forth in Exhibit D of the Agreement.

“Performance Payment” The second of two Incentive Payments available to be earned by a Project Sponsor under the terms of the Agreement. The Performance Payment is based on the one-year measured energy savings documented in EPE’s M&V Report and may be up to 60% of the total estimated Incentive Payment included in the SOP Agreement.

“Performance Period” The one-year period, for weather-dependent measures or shorter for non-weather-dependent measures, following the approval of a Project Sponsor’s Project Installation Forms. It is during this period that measurement and verification is to take place.

“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 approved Project Application in the form of Exhibit B, attached hereto and incorporated herein by this reference.

“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” the Energy Efficiency Service Provider that enters into this Agreement.

“PUCT” shall mean the Public Utility Commission of Texas.

“SOP Manual” shall mean EPE’s 2010 Residential and Hard-to-Reach Standard Offer Programs Manual attached as Exhibit E and incorporated herein by this reference.

“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 the terms of any of the Contract Documents, the terms of this Agreement shall prevail.

Section 3. Representations

3.1 Each Party 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 for a period of twenty-four (24) months from the Effective Date 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 13 herein. Without limiting the generality of the foregoing, Project Sponsor shall ensure that Energy Efficiency Measures installed by Contractors are used solely within EPE's service territory.

5.3 By executing this Agreement, Project Sponsor acknowledges that it received a copy of the SOP Manual (Exhibit E) 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 Section 3 of the SOP 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, or for more than one Project under this Agreement.

Section 6. Host Customer Agreement and Certification

6.1 Project Sponsor shall be solely responsible for developing and entering into an agreement with the Customer(s) (the "Host Customer Agreement" or "HCA") for the installation and operation of the Measure(s) described in the Project Application. EPE will not award or pay Incentive Payments without proper completion of the HCA as provided for in the Contract Documents. To the extent possible, HCAs will be kept confidential.

- (a) A sample HCA form may be downloaded from the www.epelectricefficiency.com website to assist the Project Sponsor's development of its own HCA.
- (b) Project Sponsor shall engage the services of a State of Texas authorized notary to witness and notarize the Customer's signature on the HCA. Project Sponsor shall submit to EPE all signed, notarized HCAs. Within ten (10) days of receiving EPE's approval of its Project Application, Project Sponsor shall submit to EPE a fully-executed and notarized HCA for each Customer affected by the Project(s). To the extent possible, HCAs will be kept confidential.
- (c) **EPE MAKES NO WARRANTY, EXPRESS OR IMPLIED, AND HEREBY DISCLAIMS ANY WARRANTY OR REPRESENTATION, THAT THE SAMPLE HCA FORM (i) COMPLIES WITH PUCT REQUIREMENTS, (ii) COMPLIES WITH OR IS OTHERWISE ENFORCEABLE UNDER TEXAS LAW, OR (iii) IS OF MERCHANTABLE QUALITY OR CHARACTER OR FIT FOR ANY PARTICULAR PURPOSE. EACH PROJECT SPONSOR IS**

STRONGLY ENCOURAGED TO OBTAIN INDEPENDENT LEGAL REVIEW OF THE FORM PRIOR TO USE.

- (d) **PROJECT SPONSOR ACKNOWLEDGES THAT (i) THE PREPARATION OF AND PROPER INCLUSION OF ALL REQUIRED PROVISIONS IN THE HCA DOCUMENT IS THE SOLE RESPONSIBILITY OF PROJECT SPONSOR AND IS NOT THE RESPONSIBILITY OF EPE, AND (ii) THE PROJECT SPONSOR SHALL INDEMNIFY AND HOLD HARMLESS EPE FROM ANY CLAIMS OR CAUSES OF ACTION ARISING OUT OF THE PREPARATION, ENFORCEMENT, OR INTERPRETATION OF THE HCA.**

6.2 Project Sponsor agrees to disclose to Customer all potential adverse environmental or health effects associated with the Measures to be installed at the Project Site. Project Sponsor further agrees to include in the HCA all PUCT-required consumer protection provisions and disclosures, including but not limited to those contained in Section 13 of this Agreement, as well as the following provisions:

- (a) Customer agrees, upon three (3) days prior oral notice, to provide EPE and the independent measurement and verification expert selected by the PUCT full and complete access to the Project Site for any purpose related to the SOP. The right of access will be subject to Customer's reasonable access requirements and, unless otherwise agreed, must occur within the normal business hours of the Customer.
- (b) Customer acknowledges that any review, inspection, or acceptance by EPE of the Project Site or of the design, construction, installation, operation, or maintenance of the Measures is solely for the information of EPE and that, in performing any such inspection or review or in accepting the Measures, EPE makes no representation or warranty whatsoever as to the economic or technical feasibility, capability, safety, or reliability of the Measures, their installation by Project Sponsor, or their compatibility with the Customer's facilities.
- (c) Customer acknowledges that Project Sponsor is an independent contractor with respect to EPE and the SOP, and that Project Sponsor is not authorized to make representations or incur obligations on behalf of EPE.
- (d) Customer acknowledges that EPE is not a party to the HCA and that the Project Sponsor and Customer are solely responsible for performance thereunder.
- (e) Customer acknowledges that EPE makes no warranty or representation regarding the qualifications of the Project Sponsor, and that the Customer is solely responsible for the selection of the Project Sponsor.
- (f) Customer acknowledges that the Customer may file a complaint with the PUCT concerning the Project Sponsor, but that EPE will play no role in resolving any disputes that arise between the Customer and the Project Sponsor.
- (g) Customer agrees to provide EPE access to Customer's utility bills, Project documentation, contractor invoices, and technical and cost information directly related to the Project.

6.3 Project Sponsor must obtain a written certification (the “Customer Certification”) from each Customer indicating that the Measures contracted for were installed at the Project Site. The certification shall comply with Section 6.4.3 of the SOP Manual. The Customer Certification shall be submitted to EPE with the Incentive Payment Invoice.

- (a) Project Sponsor shall engage the services of a State of Texas authorized notary to witness and notarize Customer’s signature on the Customer Certification. Project Sponsor shall submit to EPE all signed, notarized Customer Certifications.
- (b) If a Customer refuses to sign the Customer Certification, Project Sponsor may request, at Project Sponsor’s expense, that EPE perform an inspection of the Project Site. EPE may, at its sole discretion, require that such inspection be performed by a third-party contractor selected by EPE and may further require, as a condition precedent to any inspection under this Section 6.3(b), pre-payment of all or any portion of the applicable costs and fees for such inspection.
- (c) Final payment of Incentive Payments will not be made unless and until a Customer Certification has been submitted to EPE within the applicable Project Implementation Period.

Section 7. Project Implementation and Review

7.1 Project Sponsor agrees on and after the Effective Date to use all reasonable efforts to implement the Project without undue delay and otherwise in accordance with the terms of the Contract Documents. To qualify for the award and payment of Incentive Payment funds, the Project 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 shall submit a written work plan to EPE seven (7) days prior to installing Measures. 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 Project Sponsor shall complete and submit electronically a Project Installation Report to EPE during the Implementation Period, as set forth in Section 7 of the SOP Manual. After the Implementation Period, the Project Sponsor will not be able to access the Project record 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 will 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. After all Measure installations have been completed, Project Sponsor shall submit a hard copy of any Incentive Payment Invoices, as set forth Section 7 of the SOP Manual.

7.4 If EPE, in 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 10 business days from the date of EPE's notification to make such corrections or clarifications.

7.5 During the review of the Project 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 listed in Appendices B and C of the SOP Manual. 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 and 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:

Adjustment Factor = Total Incentive Payments for Measures selected for and that pass inspection ÷ Total Incentive Payments for all Measures selected for inspection

This algorithm assumes that all figures on the Project 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 the Project shall be performed as set forth in the Measurement and Verification ("M&V") Plan which is attached hereto as Exhibit D. The M&V activities shall be performed by the Project Sponsor.

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.

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 the 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 4, 7, and 8 of the SOP Manual. Subject to approval of all submittals required pursuant to Section 7 hereof, 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:

	Residential (RES)	Hard-to-Reach (HTR)
kW (Demand Savings)	\$278.29	\$500.40
kWh (Energy Savings)	\$0.095	\$0.171

Incentive Payment rates for RES Projects are based on 50% of avoided cost benefit. Incentive Payment rates for HTR Projects are based on 90% of avoided cost benefit. All Incentive Payments are subject to the provisions and limitations set forth in Section 4 of the SOP Manual.

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, 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 4, 7 and 8 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 Deemed Savings and Simplified M&V Savings shall be payable in one installment, and the Incentive Payment for 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 7 and 8 of the SOP Manual. As set forth in Section 4 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. Regardless of the actual Measured Demand Savings and Energy Savings for the Project, the total Incentive Payment for the Project shall be no more than the estimated Incentive Payment amount stated in Project Sponsor's Project Application approved by EPE.

- (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 Incentive Payment invoice.

- (b) For installations of Measures subject to Measured Demand Savings and 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 Section 8 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 Section 8 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:

$$\text{Recalculated Installation Payment} = \frac{\text{Amount of Installation Payment} \times (\text{Measured Demand Savings} \div \text{Demand Savings in PA} + \text{Measured Energy Savings} \div \text{Energy Savings in PA})}{1}$$

EPE shall provide Project Sponsor notice of the amount of the difference between the Installation Payment and the Recalculated Installation Payment within fourteen (14) calendar 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 21.5 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. Project Sponsors will not be given access to the reservation menu on EPE's web site if these certificates have not been received by EPE within 10 business days of Sponsor Application submittal. 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 by the Project Sponsor's insurance company. Certificates of insurance submitted to EPE by any person other than the Project Sponsor's insurance company will not be accepted. **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. 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 and 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 the Project 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. Consumer Protection

13.1 Project Sponsor shall provide clear disclosure to Customer of the following:

- (a) Customer's right to a cooling-off period of three (3) business days, during which the Host Customer Agreement may be cancelled by Customer, if otherwise permitted by applicable law.
- (b) The name, telephone number, and street address of the Project Sponsor, each of its subcontractors, and written disclosure of all warranties and disclaimers thereof.
- (c) That Incentive Payments are made available to the Project Sponsor through a

ratepayer funded program, manufacturers, or other entities.

- (d) Notice of provisions that will be included in the Host Customer Agreement as described in Section 13.3 below.
- 13.2 A form developed and approved by the PUCT may be used to satisfy the requirements of Section 13.1 above.
- 13.3 In addition to those contractual provisions required by Section 6.2 of this Agreement, the Host Customer Agreement shall include the following provisions mandated by P.U.C. SUBST. R. 25.181(o)(3):
- (1) Information on the Project Sponsor's (including each of or its subcontractors) work activities in connection with the Project and completion dates, and the terms and conditions that protect residential Customers in the event of non-performance by the Project Sponsor.
 - (2) Written and oral disclosure of the financial arrangement between the Project Sponsor and Customer. Including the Customer's total payment, the total expected interest charged, all possible penalties for non-payment, and whether the Customer's installment sales agreement may be sold.
 - (3) Disclosure of contractor liability insurance to cover property damage.
 - (4) That an "All Bills Paid" affidavit shall be provided by Project Sponsor to Customer to protect against claims of subcontractors.
 - (5) Provisions prohibiting the waiver of consumer protection statutes, performance warranties, false claims of energy savings, and reductions in energy costs.
 - (6) Information on complaint procedures offered by the Project Sponsor, or by EPE, as required by P.U.C. SUBST. R. 25.181(j)(2)(L), and toll free numbers for the Office of Customer Protection of the PUCT and the Office of Attorney General's Consumer Protection Hotline.
 - (7) Disclosure that the Project Sponsor is not part of, or endorsed by, the PUCT or EPE.

Section 14. Default and Remedies

14.1 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 the Project 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 the Project 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 14.1, which failure is not cured within thirty (30) days following the defaulting Party's receipt of written notice describing such failure in reasonable detail.

14.2 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 15. Exclusions and Limitations

15.1 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 16. Independent Contractor

16.1 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 17. Notices

17.1 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) certified or registered United States mail postage prepaid, or (iii) facsimile, provided that service by facsimile 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 St
El Paso, Texas 79901
Facsimile (915) 521-4705; and (915) 543-4197

- (c) ***if the notice is sent for the purpose described in Sections 14, 17.2, 19.3, or 20.2, with a copy to:***

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

17.2 Each party may change its address for purposes of notice under this Agreement by notice complying with Section 17.1.

Section 18. 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 19. Force Majeure

19.1 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.

19.2 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 therefor of electric service from any other source.

19.3 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 20. Nondisclosure

20.1 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. These obligations shall survive expiration or termination of this Agreement.

20.2 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 21. Miscellaneous

21.1 Project Sponsor shall not assign, transfer, or otherwise dispose of any of its obligations or duties 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.

21.2 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.

21.3 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.

21.4 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.

21.5 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. 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.

21.6 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.

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

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

21.9 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.

21.10 The following provisions shall survive the expiration or earlier termination of this Agreement: Sections 2, 3.2, 3.3, 5.4, 6.1(c), 6.1(d), 9, 11, 12.2, 12.3, 14, 15, 16, 17, 18, 20, and 21.

21.11 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: _____