

# Appendix B:

## STANDARD OFFER AGREEMENT EXAMPLE

**(Refer to Step Two, Program Manual)**

- Attachment 1: Contract Cover Sheet
- Attachment 2: Compensation Schedule
- Attachment 3: Scope of Work
- Attachment 4: General Terms and Conditions of Service
- Attachment 5: IRS W-9

**Note to Proposers:** This Standard Offer Agreement is generally consistent with El Paso Electric Company and Public Utility Commission of Texas (PUCT) standards for the State of Texas energy efficiency Standard Offer Programs. Successful Project Sponsors will be required to execute all documents in order to participate in the El Paso Electric Load Management Program. Because this is a Standard Offer Program similar to that offered by other utilities, the Terms and Conditions are essentially non-negotiable unless it is demonstrated to El Paso Electric Company's satisfaction that the conditions are unique and thus require and deserve special conditions. To facilitate the process of selecting and qualifying candidates, it is recommended that your company initiate a legal review of these documents when you are considering your submission.

# ATTACHMENT 1: CONTRACT COVER SHEET

Date: (Contract Date)

Contract Number:

## CONTRACT

### Project Sponsor:

**Project Sponsor's Name**  
Project Sponsor's Address  
City, State Zip Code

**Direct All Correspondence To:**  
Contact: (Project Sponsor's Contact)  
Telephone:  
Fax:

Valid From: TBD  
Valid End: December 31, 2010

**Target Value:** (Maximum Incentive Payment Based on Project Sponsor Attaining Contracted Curtailment Level)

This Contract is entered into by and between El Paso Electric Company and Project Sponsor, to provide miscellaneous goods and services connected with the 2010 Load Management Program, all in accordance with the following:

- Attachment 1: Compensation Schedule
- Attachment 2: Scope of Work
- Attachment 3: General Terms and Conditions of Services

### Notice to Project Sponsor

The Target Value listed above represents an estimated, not-to-exceed amount. El Paso Electric Company does not represent, warrant, or guarantee that this value, or any other value, will be reached under this Contract. Project Sponsor shall only be paid for those goods and services actually rendered and accepted in accordance with the above noted attachments.

Nothing herein shall limit or otherwise restrict El Paso Electric Company from procuring like or similar services from other vendors, without notice to or approval of Project Sponsor.

### Other Instructions:

- The Contract number must be shown on all invoices, packages, and correspondence pertaining to the project.

**Project Sponsor's Name**

**El Paso Electric Company**

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

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

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

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

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

## ***ATTACHMENT 2: COMPENSATION SCHEDULE***

Project Sponsors will be paid based on the procedures outlined in Step Four (Monitoring and Verification) and Step Five (Incentive Payments) of the Program Manual, as set forth below.

EPE's Interval Data Recorder (IDR) meters will monitor the Project Site's kW demand during curtailments, and EPE will perform the Verification Process after any curtailment (scheduled or unscheduled) occurs. Demand savings and incentive payment amounts will be based on actual, verified load curtailments.

### **STEPS IN THE VERIFICATION PROCESS**

Following the billing period(s) during which a curtailment has occurred, the IDR data will be accessed by the Load Management Program Manager (or designee) to verify actual kW demand savings. The file will be provided by the EPE Load Research Department in a Microsoft Excel or Rich Text format showing the month, day, time, and demand (kW) for each of the 30-minute demand intervals for the following time periods: the day of the curtailment and the four previous business days.

1. EPE will review the file for the appropriate project using the Project Site's Account Number.
2. Program Manager will convert the data from Mountain Standard Time (MST), the time that the IDR meter records, to Mountain Daylight Time (MDT).
3. EPE will establish the baseline for each curtailment (the Baseline) by using a combination of data from the day of curtailment and the four previous business days, as follows:
  - a. On the day of curtailment, the average kW demand during the one-hour period that begins two hours before the start of the curtailment will be calculated.
  - b. On the four previous business days, the daily averages of the kW demand recorded throughout the same time period as the curtailment will be calculated.
  - c. The average kW demand over all hours during these five periods will establish the Baseline for each curtailment.
  - d. The average kW demand achieved during the actual curtailment is subtracted from the Baseline to determine the demand savings (the Demand Savings) for that curtailment event.

**BASELINE EXAMPLE:** Assume a curtailment is called on Friday, July 16, 2010, from 4:00 p.m. to 5:00 p.m. MDT. The first step in calculating the Baseline is to average the two 30-minute kW demand readings between 2:00 p.m. and 3:00 p.m. for the day of the curtailment. Then, the average kW demand readings for each of the previous four business days (July 12<sup>th</sup> through the 15<sup>th</sup>) for the same time period as the curtailment period (in this case, 4:00 p.m. to 5:00 p.m.) will be calculated. These five periods (2:00 p.m. – 3:00 p.m. the day of curtailment and 4:00 p.m. – 5:00 p.m. on the other four

days) are averaged together to establish the Baseline for that curtailment (see M&V Calculations below).

4. The average kW demand throughout the curtailment period is subtracted from the Baseline to determine the demand savings (the Demand Savings) for that curtailment event.
5. In the case of unscheduled curtailments, the Baseline for all of the unscheduled curtailments will be averaged in order to calculate the Performance Period Payment (see Step Five in this Manual).

**The following example demonstrates how the Demand Savings will be calculated in EPE's M&V calculation. The above example of a one-hour curtailment called on July 16, 2010 between 4:00 p.m. and 5:00 p.m. is used to illustrate the process.**

<b>Day of the Curtailment</b>			
<b>Date</b>	<b>Half-Hour Time Period Ending</b>	<b>kW Demand for Time Period</b>	<b>Average kW Demand</b>
7/16/2010	14:30	1419	1413
7/16/2010	15:00	1407	
7/16/2010	15:30	1415	Not used in calculation
7/16/2010	16:00	1405	
7/16/2010	16:30	1107	1132
7/16/2010	17:00	1157	

During the curtailment from 4:00 p.m. to 5:00 p.m., the average kW demand in the above example was 1,132 kW. The average kW demand during the one-hour period that begins two hours before the start of the curtailment was 1,413 kW. As explained above, EPE must also review the kW demand from 4:00 p.m. to 5:00 p.m. for the four business days prior to the curtailment in order to calculate the Baseline for this curtailment example. This is done so that weather and schedule-sensitive loads are captured as accurately as possible.

The following chart shows the kW demand for the prior four business days that will be used in the Baseline calculation:

<b>Four Business Days Prior to Curtailment</b>								
<b>Half-Hour Time Period Ending</b>	<b>Mon</b>		<b>Tue</b>		<b>Wed</b>		<b>Thu</b>	
	<b>07/12/10</b>		<b>07/13/10</b>		<b>07/14/10</b>		<b>07/15/10</b>	
	<b>kW Demand</b>	<b>Average kW</b>	<b>kW Demand</b>	<b>Average kW</b>	<b>kW Demand</b>	<b>Average kW</b>	<b>kW Demand</b>	<b>Average kW</b>
<b>16:30</b>	<b>1545</b>	<b>1530</b>	<b>1412</b>	<b>1403</b>	<b>1489</b>	<b>1496</b>	<b>1525</b>	<b>1508</b>
<b>17:00</b>	<b>1515</b>		<b>1394</b>		<b>1503</b>		<b>1491</b>	

The average kW demand for each of these four days, along with the average kW demand for the one-hour period that begins two hours before the start of the curtailment will be used in the Baseline Calculations as shown below. The Curtailment kW (the average kW demand during the curtailment) is subtracted from the Average Baseline kW to determine the Demand Savings. When completed, these calculations form the basis for the incentive payments, as discussed in Step Five of the Manual.

<b>Baseline Calculations</b>				
<b>Date</b>	<b>Time</b>	<b>Baseline kW</b>	<b>Curtailment kW</b>	<b>Verified Demand Savings</b>
<b>July 12, 2010</b>	<b>4:00 to 5:00 p.m.</b>	<b>1530</b>		
<b>July 13, 2010</b>	<b>4:00 to 5:00 p.m.</b>	<b>1403</b>		
<b>July 14, 2010</b>	<b>4:00 to 5:00 p.m.</b>	<b>1496</b>		
<b>July 15, 2010</b>	<b>4:00 to 5:00 p.m.</b>	<b>1508</b>		
<b>July 16, 2010</b>	<b>2:00 to 3:00 PM</b>	<b>1413</b>		
<b>July 16, 2010</b>	<b>4:00 to 5:00 p.m.</b>		<b>1132</b>	
<b>Average:</b>		<b>1470</b>	<b>1132</b>	<b>338</b>
<b>Avg. Baseline kW - Avg. Curtailment kW = Verified Demand Savings</b>				

The Curtailment kW of 1,132 kW is subtracted from the Average Baseline kW of 1,470 kW to get the Verified Demand Savings of this example curtailment of 338 kW.

### **INCENTIVE PAYMENT PROCEDURES:**

EPE will pay Project Sponsors in two installments each year the Agreement is in effect: (1) the Scheduled Curtailment Payment and (2) the Performance Period Payment. In the event a Project Sponsor fails to produce the Demand Savings as proposed in its Application, EPE reserves the right to decline to make any further incentive payments and to terminate the Agreement.

Payment of incentive(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 the Agreement. Failure by Project Sponsor to deliver any required notice, submittal, or material within the applicable period specified in the Agreement shall be deemed a material breach of the Agreement.

## Incentive Payment Prices

The SOP rules provide standard incentive prices per kW for Demand Savings achieved by Project Sponsors. The total incentive cap of \$60 per kW includes the Scheduled Curtailment Payment and the Performance Period Payment as described in this Manual. EPE will not be obligated to pay a Project Sponsor for verified Demand Savings that exceed the amount of the estimated Curtailable kW demand in the Project Sponsor’s Application. The incentive rates applicable to kW savings are set forth in the following table, subject to final PUCT rules.

<b>Program Year</b>	<b>Scheduled Curtailment Payment</b>	<b>Performance Period Payment</b>	<b>Demand Savings Goal</b>
2010	\$25 per kW	\$35 per kW	3,500 kW

## Incentive Payment Limitations

To ensure that incentives are available to multiple Project Sponsors, any individual Project Sponsor or its affiliates may be limited to a maximum of 40% of the SOP incentive budget in a given budget year. At EPE’s discretion, this limitation may be waived. Project Sponsors will be required to verify their affiliate status through an affidavit attached to the SOP Agreement.

## Scheduled Curtailment Payment

The Verification Process for the Scheduled Curtailment must be completed before the Project Sponsor will receive the Scheduled Curtailment Payment. After successful Project Sponsor participation in the Scheduled Curtailment and EPE verification of the IDR data and Demand Savings, EPE will pay the Project Sponsor the Scheduled Curtailment Payment at the rate of \$25.00 per kW of verified Demand Savings. EPE will typically make the Scheduled Curtailment Payment within sixty (60) days of the Curtailment. The Scheduled Curtailment Payment will be based upon the verified Demand Savings from the Scheduled Curtailment using the following formula:

$$\text{Scheduled Curtailment Payment} = \$25.00 \times \text{Verified Demand Savings in kW}$$

## **Performance Period Payment**

EPE will typically make the Performance Period Payment in November at the conclusion of the Performance Period and after EPE's approval of the IDR data for the Agreement year. Demand Savings used to calculate the Performance Period Payment will be based on the verified results of the Unscheduled Curtailment(s). If more than one Unscheduled Curtailment occurs, the Performance Period Payment will be based upon the average verified Demand Savings of all of the Unscheduled Curtailments during the Agreement year. The amount of the Performance Period Payment will be calculated using the following formula:

Performance Period Payment = \$35.00 x Average Verified Demand Savings for all Curtailments

In the event no Unscheduled Curtailments occur, the Demand Savings used to calculate the Performance Period Payment will be the verified Demand Savings from the yearly Scheduled Curtailment. Project Sponsors should be aware; however, that EPE fully expects and intends to call at least one Unscheduled Curtailment each year.

## *ATTACHMENT 3: SCOPE OF WORK*

**The Scope of Work, including the Project Sponsor's Application Packet and the Program Manual, is incorporated by reference and hereby made a part of the Standard Offer Agreement.**



# *ATTACHMENT 4: GENERAL TERMS AND CONDITIONS FOR SERVICES*

## **1.0 DEFINITIONS**

The following definitions shall apply to the Contract, all Contract Documents and amendments thereto and to related correspondence. A word or expression defined in this Contract containing capital letter(s) shall be identified, in any section of this Contract where the whole text is printed in block capitals, or by such word or expression being underlined and/or printed in a more prominent typeface.

1.1 "Acceptance" shall mean the official written notification of acceptance of the Work to Project Sponsor from the authorized representative of El Paso Electric following satisfactory completion of the Work in accordance with the Contract.

1.2 "Affiliate" shall mean (A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of an energy efficiency service provider; (B) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider; (C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by an energy efficiency service provider; (D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by: (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of an energy efficiency service provider; or (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider; or (E) a person who is an officer or director of an energy efficiency service provider or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider; (F) a person who actually exercises substantial influence or control over the policies and actions of an energy efficiency service provider; (G) a person over which the energy efficiency service provider exercises the control described in subparagraph (F) of this paragraph; (H) a person who exercises common control over an energy efficiency service provider, where "exercising common control over an energy efficiency service provider" means having the power, either directly or indirectly, to direct or cause the direction of the management or policies of an energy efficiency service provider, without regard to whether that power is established through ownership or voting of securities or any other direct or indirect means; or (I) a person who, together with one or more persons with whom the person is related by ownership, marriage or blood relationship, or by action in concert, actually exercises substantial influence over the policies and actions of an energy efficiency service provider even though neither person may qualify as an affiliate individually.

1.3 "Baseline Demand Usage" shall mean the amount of demand in the period(s) determined by El Paso Electric Company to be the baseline for comparison to Curtailment Demand Usage to calculate Demand Savings. Baseline Demand Usage shall be calculated by averaging the one-hour period on the day of Curtailment which began two hours prior to the start of a Curtailment, with the same period as the Curtailment for each of the four previous business days (weekdays, excluding federal holidays).

1.4 “Commercial Customer” shall mean a non-residential customer taking service at a metered point of delivery at a distribution voltage under an electric utility’s tariff during the prior calendar year including non-profit customers, government entities, and educational institutions. For purposes of this section, each metered point of delivery shall be considered a separate customer.

1.5 “Competitive Energy Efficiency Services” shall mean energy efficiency services that are defined as competitive under §25.341 of this title (relating to Definitions).

1.6 "Contract" or “Agreement” shall mean, collectively, the entire agreement between El Paso Electric and Project Sponsor, the terms and conditions incorporated herein and other documents, if any, which are by reference made a part of the Contract and providing for signature of a duly authorized representative of each party thereto.

1.7 "Contract Administrator" shall mean El Paso Electric's duly authorized agent who shall initiate and administer all contract activities related to the contractual terms and conditions.

1.8 “Contract Documents” or “Agreement Documents” shall mean 1) Project Sponsor’s approved application (“Application”) and Application Agreement, attached hereto as Attachment A and incorporated by reference herein, 2) the SOP Manual (“SOP Manual”), which is incorporated by reference herein, and 3) this Contract together with any and all other exhibits, addenda, or amendments referenced in the Agreement Documents or made a part thereof in accordance with this Agreement.

1.9 "Contract Supplement" shall mean the written instrument describing additions, changes or deletions to Project Sponsor's scope of work as defined by the Contract Documents, or in the time of performance of the Contract (or any other change desired by El Paso Electric) authorized and executed by duly authorized representatives of the parties hereto with the same formality as this Contract.

1.10 “Curtable Load” shall mean the equipment, material, or systems at a Project Site that is identified in the application as load that will be interrupted at the request of El Paso Electric pursuant to the SOP.

1.11 “Curtailement” shall mean shutting down the operation of Curtable Load at the request of El Paso Electric pursuant to the SOP.

1.12 “Curtailement Demand Usage” shall mean the average demand that occurs during the period of a Curtailement.

1.13 "Customer Agreement" shall mean the agreement between Customer and the Project Sponsor that specifies the rights and obligations of each party with respect to the installation of the measures and other related and/or unrelated matters at the Project Site.

1.14 “Demand” shall mean the rate at which electric energy is used at a given instant or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

1.15 “Demand Savings” shall mean a quantifiable reduction in demand.

1.16 "El Paso Electric" shall mean El Paso Electric Company, a Texas Corporation, or any of its representatives, successors, or assigns.

1.17 “Eligible Customers” shall mean commercial customers.

1.18 “Energy Efficiency” shall mean improvements in the use of electricity that are achieved through facility or equipment improvements, devices, or processes that produce reductions in demand or energy consumption with the same or higher level of end-use service and that do not materially degrade existing levels of comfort, convenience, and productivity.

1.19 “Energy Efficiency Measures” shall mean equipment, materials, and practices at a customer’s site that result in a reduction in electric energy consumption, measured in kilowatt-hours (kWh), or demand, measured in kilowatts (kW), or both.

1.20 “Energy Efficiency Program” shall mean the aggregate of the energy efficiency activities carried out by an electric utility under this section or a set of energy efficiency projects carried out by an electric utility under the same name and operating rules.

1.21 “Energy Efficiency Project” shall mean an energy efficiency measure or combination of measures undertaken in accordance with a standard offer or market transformation program.

1.22 “Energy Efficiency Service Provider” shall mean a person who installs energy efficiency measures or performs other energy efficiency services under this section. An energy efficiency service provider may be a retail electric provider or commercial customer.

1.23 “Estimated Demand Savings” shall mean the amount of Demand that Project Sponsor proposes in the Application to save during Summer Peak Demand Hours through Curtailments that are implemented pursuant to the SOP and that El Paso Electric approves after review of the Application and receipt of all Customer Agreements.

1.24 “Governmental Authority” shall mean any federal, state, local or municipal governmental body or agency or subdivision thereof, including, but not limited to, any legislative or judicial body, having appropriate jurisdiction to exercise authority or control over El Paso Electric, its parent corporation, or any part or all of the Work to be performed under this Contract.

1.25 “IDR” shall mean Interval Data Recorder.

1.26 “Incentive Budget” shall mean the amount of money budgeted by El Paso Electric for the SOP in each year of the Project.

1.27 “Incentive Payment” shall mean payment made by a utility to a Project Sponsor under an SOP.

1.28 “Load Control” shall mean activities that place the operation of electricity-consuming equipment under the control or dispatch of an energy efficiency service provider, an independent system operator or other transmission organization or that are controlled by the customer, with the objective of producing energy or demand savings.

1.29 “Load Management” shall mean load control activities that result in a reduction in peak demand on an electric utility system or a shifting of energy usage from a peak to an off-peak period or from high-price periods to lower price periods.

1.30 “Measurement and Verification” shall mean activities intended to determine the actual energy and demand savings resulting from energy efficiency projects as described in this section.

1.31 "Off-peak Period" shall mean the period during which the demand on an electric utility system is not at or near its maximum. For the purpose of this section, the off-peak period includes all hours that are not in the peak period.

1.32 "Peak Demand" shall mean electrical demand at the times of highest annual demand on the utility's system.

1.33 "Peak Demand Reduction" shall mean reduction in demand on the utility system during the utility system's peak period.

1.34 "Peak Period," for purposes of the load management program, shall mean the hours from one p.m. to seven p.m. during the months of June, July, August, and September.

1.35 "Performance Period" shall mean the period from June 1 through September 30 of each year of the Project.

1.36 "Performance Period Payment" shall mean the payment made by El Paso Electric to Project Sponsor for Unscheduled Curtailment Demand Savings, as calculated pursuant to the Compensation Schedule.

1.37 "Project Sponsor" shall mean the party who is the provider of the energy efficiency measure being implemented under this Contract and who is entering into this Contract with El Paso Electric.

1.38 "Project Sponsor's Representative" shall mean the person designated by the Project Sponsor to represent the Project Sponsor during the term of the Contract.

1.39 "Program Manager" shall mean El Paso Electric's designee who shall manage and coordinate the work activities furnished under this Contract.

1.40 "Notice" shall mean any formal written correspondence providing notice of action, purpose, intent or the like given under the provisions of this Contract.

1.41 "Peak Demand Savings" shall mean the Peak Demand Reduction as calculated pursuant to the Compensation Schedule.

1.42 "Personnel" shall mean Project Sponsor's employees or subcontractor employees performing Work under this Contract.

1.43 "Project Site" shall mean the location of a Customer's Curtailable Load, as identified in the Application. For the purposes of this Agreement, multiple facilities representing Curtailable Load may be combined into one Project Site as long as they are connected to a single IDR meter. The total Curtailable Load at a Project Site must have a recorded history pattern of 100 kW or more demand usage and when interrupted in operation must result in a measurable and verifiable reduction in peak demand.

1.44 "Project Sponsor Contact Telephone Number" shall be the telephone number identified in the Application as the telephone number that El Paso Electric Company will call to notify Project Sponsor of a required Curtailment.

1.45 "PUCT" shall mean the Public Utility Commission of Texas.

1.46 "Scheduled Curtailment" shall mean a Curtailment that is pre-scheduled by El Paso Electric Company to occur at the beginning of the Performance Period in every year of the Project.

1.47 “Scheduled Curtailment Demand Savings” shall mean the difference between the Baseline Demand Usage for a Scheduled Curtailment and the Curtailment Demand Usage for the same Scheduled Curtailment.

1.48 “Scheduled Curtailment Payment” shall mean the payment made by El Paso Electric Company to Project Sponsor of the Project for Scheduled Curtailment Demand Savings, as calculated pursuant to the Compensation Schedule.

1.49 "Specifications" shall mean collectively, all technical descriptions and data referenced in the Contract, and such amendments, revisions, deductions or additions as may be made and all written agreements made or to be made, pertaining to the processes, workmanship, products and quantities and qualities of the materials to be furnished under this Contract.

1.50 “Standard Offer Contract” shall mean a contract between a Project Sponsor and a participating utility specifying standard payments based upon the amount of peak demand savings achieved for this program, the measurement and verification protocols, and other terms and conditions, consistent with this section.

1.51 “Standard Offer Program” or “SOP” shall mean a program under which a utility administers standard offer contracts between the utility and the Project Sponsor.

1.52 "Subcontractor" shall mean any person, firm, partnership, association, joint venture, company, corporation or other entity, regardless of tier, engaged by Project Sponsor to provide any part of the Work under this Contract.

1.53 “Unscheduled Curtailment” shall mean a Curtailment that is requested by El Paso Electric Company in response to a notification by El Paso Electric’s Systems Operations Department.

1.54 “Unscheduled Curtailment Payment” shall mean the payment made by El Paso Electric Company to the Project Sponsor for Unscheduled Curtailment Demand Savings, as calculated pursuant to the Compensation Schedule.

1.55 "Work" shall mean any and all labor, evaluations, reports and services, including all equipment, material, duties and obligations that are the responsibility of Project Sponsor under this Contract.

## **2.0 CONTRACT DOCUMENTS**

2.1 The Contract Documents consist of the Contract Signature Page, the Compensation Schedule, the Scope of Work, these Terms and Conditions for Services, the SOP Manual, and all other exhibits, addenda, drawings, Specifications, Applications and any Contract Supplements issued subsequently.

2.2 The Contract Documents are intended to be complementary and what is set forth in any one document is as binding as if set forth in each document. In the event there are any conflicting provisions or requirements in the Contract Documents, the provisions and requirements thereof shall take the following order priority:

1. Contract Supplements
2. Compensation Schedule
3. Scope of Work

4. SOP Manual
5. Terms and Conditions for Services
6. Application
7. Contract Signature Page

El Paso Electric assumes no responsibility for bidding errors or omissions caused by failure of Project Sponsor or any of its Subcontractors to inspect and familiarize themselves with the complete set of Contract Documents.

### **3.0 EFFECT OF HEADINGS**

Article headings appearing in this Contract are for convenience and reference only and shall in no way be construed to define, limit or interpret the text hereof.

### **4.0 APPLICABLE STATE LAW**

The rights, obligations and remedies of the parties to this Contract shall be interpreted and governed in all respects by the laws of the State of Texas. Should any provision of this Contract or part thereof, or the application of any provision or part thereof, be judicially determined to be illegal or invalid or otherwise unenforceable, the validity of the remaining provisions or parts thereof and other applications of such provisions or parts thereof shall not be impaired.

### **5.0 NOTICES AND CORRESPONDENCE**

5.1 All Notices or correspondence arising from or pertaining to the legal requirements, terms & conditions or the performance required by this Contract shall be in writing and either delivered in person or sent by registered or certified mail to the appropriate individual at the following addresses:

- (a) To El Paso Electric Company:

El Paso Electric Company  
Attn: Susanne Stone  
P. O. Box 982  
El Paso, TX 79960

- (b) To Project Sponsor: Address stated on the Contract Signature Page.

5.2 All Notices or correspondence to El Paso Electric arising from or pertaining to project administration shall be in writing and either delivered in person or sent by registered or certified mail to the appropriate individual at the following address:

El Paso Electric 2010 Load Management Program  
Attn: Susanne Stone  
P.O. Box 982  
El Paso, TX 79960



5.3 Either of the parties may, at any time, change its mail or delivery address by giving the other party ten (10) days prior written Notice.

5.4 The effective date of any written Notice delivered or mailed pursuant to this Contract shall be the date of receipt by the El Paso Electric or Project Sponsor, as applicable, if delivered, or the postmark date if mailed.

## **6.0 EQUAL EMPLOYMENT OPPORTUNITY**

Project Sponsor represents that it is in compliance with all applicable laws, regulations and orders with respect to equal employment opportunity and either has heretofore provided or will provide to El Paso Electric the certifications and representations regarding equal employment opportunity that El Paso Electric may require under such laws, regulations and orders.

## **7.0 NON-WAIVER OF RIGHTS**

Failure of El Paso Electric to insist upon strict performance of any of the provisions hereof, or its failure or delay in exercising any rights or remedies provided herein or by law, or El Paso Electric's Acceptance of, or use of or payment for the Work, or any part or combination thereof, or any approval of Work by El Paso Electric, or any purported oral modification or rescission of this Contract, or any part hereof, by any employee or other authorized representative of El Paso Electric shall not release Project Sponsor of any of its obligations under this Contract and shall not be deemed as a waiver of any of El Paso Electric's rights to insist upon strict performance hereof or of any of El Paso Electric's rights or remedies under this Contract or by law, and shall not operate as a waiver of any of the provisions hereof.

## **8.0 REPRESENTATIONS AND WARRANTIES**

8.1 By executing this Agreement, Project Sponsor warrants and represents that it is aware of, is in compliance with, and will continue to comply for the term of this Agreement with, all of the Agreement Documents and all applicable laws and regulations related to the SOP.

8.2 Project Sponsor warrants and represents that the Project meets all federal, state, and local regulatory requirements, including:

The Application disclosed all potential adverse environmental or health effects associated with the Project, if any; and

The Project will not result in negative environmental or health effects and will not result in building vacancies or the re-location of existing operations to a location outside of the area served by El Paso Electric.

8.3 Project Sponsor acknowledges that it received a copy of the SOP Manual prior to submission of its Application. Project Sponsor warrants and represents that its participation in the SOP has at all times been in compliance with, and will continue to comply for the term of this Agreement with, the procedures and conditions set forth in the SOP Manual and that any failure to comply therewith may be treated as a breach of this Agreement notwithstanding the

fact that 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 Manual and that failure to meet the qualifications therein may be treated as a breach of this Agreement. Procedures or conditions set forth in the SOP Manual may only be waived or modified by written agreement of the parties. Any such Agreement shall be attached hereto and incorporated herein for all purposes.

8.4 Project Sponsor warrants and represents it and its Affiliates may be limited to 40% of the Incentive Budget for any year of the Project and that the Affidavit of Affiliate Status attached hereto is incorporated by reference herein and is true and correct.

8.5 Project Sponsor warrants and represents that any relevant Agreement(s) or agreement(s) between a Customer and the Customer's retail electric provider concerning electric service to Curtailable Load do not prohibit or inhibit Curtailments.

8.6 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 Agreement Documents.

8.7 The Project will be implemented during calendar year 2010 and beyond if this Agreement is extended by mutual covenant.

8.8 One Scheduled Curtailment shall be required to be implemented by Project Sponsor at each Project Site at the beginning of the Performance Period in each calendar year of the Project. A maximum of nine Unscheduled Curtailments shall be required to be implemented by Project Sponsor at each Project Site during Summer Peak Demand Hours of each calendar year of the Project. For curtailments:

All Curtailments shall be implemented at the time and for the duration specified by El Paso Electric.

El Paso Electric must notify Project Sponsor at least one hour prior to the required start-time of any Curtailment by calling the Project Sponsor Contact Telephone Number. A representative of Project Sponsor must be available to personally answer calls made to the Project Sponsor Contact Telephone Number during all Summer Peak Demand Hours.

Project Sponsor may change the Project Sponsor Contact Telephone Number by providing notice to the Program Manager of the new Project Sponsor Contact Telephone Number a minimum of two business days prior to the date that the new Project Sponsor Contact Telephone Number is to become effective. In order for notice of a new Project Sponsor Contact Telephone Number to be valid, Project Sponsor must verify that the El Paso Electric Program Manager has actually received such notice by the above-mentioned deadline.

Project Sponsor represents that the project schedule and applicable compensation is based on its own knowledge and judgment of the conditions and hazards involved, and not upon any representation of El Paso Electric. El Paso Electric assumes no responsibility for any understanding or representation made or alleged to have been made by any of its representatives, unless such understandings or representations are expressly and fully stated in this written Contract.



## **9.0 SAFETY AND HEALTH**

9.1 Project Sponsor shall be solely responsible for the safety and health of Project Sponsor's Personnel, its Subcontractors' Personnel, and other persons required in the execution of the Work.

9.2 Project Sponsor shall take all precautions for the safety and health of, and shall provide all protection necessary to prevent damage, injury or loss to all Personnel engaged in the Work and any other persons who may be affected thereby.

## **10.0 STANDARDS, CODES, LAWS AND REGULATIONS**

10.1 Project Sponsor shall comply with all applicable laws, rules, regulations, codes and standards of all federal, state, local and municipal Governmental Authority having jurisdiction over the Work covered by this Contract.

10.2 PROJECT SPONSOR SHALL, AT ITS OWN EXPENSE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS EL PASO ELECTRIC, ITS PARENT CORPORATION, SUBSIDIARIES AND AFFILIATES, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL LIABILITY, LOSS OR DAMAGES ASSESSED AGAINST OR INCURRED BY EL PASO ELECTRIC, ITS PARENT CORPORATION, SUBSIDIARIES AND AFFILIATES, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES OR ANY OF THEM (INCLUDING ATTORNEY'S'S FEES AND OTHER COURT COSTS INCURRED BY ANY PARTY INDEMNIFIED HEREUNDER) OR OTHERWISE SUFFERED BY ANY PARTY INDEMNIFIED HEREUNDER AS A RESULT OF NONCOMPLIANCE BY PROJECT SPONSOR WITH THIS ARTICLE 10.0.

10.3 Project Sponsor shall secure and pay for all permits, governmental fees and licenses necessary for proper execution and completion of the Work, unless otherwise specified in the Contract Documents.

## **11.0 INDEPENDENT CONTRACTOR AND SUBCONTRACTOR**

11.1 Project Sponsor agrees to perform the Work as an independent contractor and not as a subcontractor, agent or employee of El Paso Electric.

11.2 El Paso Electric shall not be responsible for any acts and omissions of its Personnel and its Subcontractors and Subcontractor's suppliers and their employees and shall be specifically responsible for sufficient and competent supervision and inspection to assure compliance in every respect with Contract requirements.

11.3 There shall be no contractual relationship between El Paso Electric and any of Project Sponsor's subcontractors or suppliers, arising out of or by virtue of this Contract.

11.4 El Paso Electric shall not be responsible for the payment of any sums to any Subcontractor or supplier.

11.5 Project Sponsor shall include in all agreements with Vendors and Subcontractors liability limitation, suspension, termination and attorneys' fees terms at least as favorable to El Paso Electric as those set forth herein. SHOULD PROJECT SPONSOR FAIL TO OBTAIN

SUCH LIABILITY LIMITATION, TERMINATION, SUSPENSION AND ATTORNEYS' FEES RIGHTS IN VENDOR AND SUBCONTRACTOR AGREEMENTS, PROJECT SPONSOR SHALL INDEMNIFY AND HOLD EL PASO ELECTRIC HARMLESS TO THE EXTENT THAT ANY SUBCONTRACTORS OR VENDORS ASSERT CLAIMS OR CAUSES OF ACTION FOR DAMAGES IN EXCESS OF AMOUNTS PERMITTED PURSUANT TO TERMINATION (WITH OR WITHOUT CAUSE) AND/OR SUSPENSION INCLUDING ATTORNEY'S FEES.

## **12.0 ASSIGNMENT AND SUBCONTRACTING**

12.1 Neither this Contract nor the duties to be performed hereunder nor monies to become due hereunder shall be subcontracted, assigned, delegated or otherwise disposed of by Project Sponsor without prior written consent of El Paso Electric.

12.2 Any permitted assignment of this Contract, or any delegation of any duties hereunder, shall not relieve Project Sponsor of any of its obligations hereunder.

12.3 If this Contract should be permitted by El Paso Electric to be assigned by Project Sponsor, it shall be binding upon and shall inure to the benefit of the permitted assignee.

## **13.0 FORCE MAJEURE**

13.1 Performance of this Contract by each party shall be pursued with due diligence in all requirements hereof; however, neither party shall be liable for any loss or damage for delay or for nonperformance due to causes not reasonably within its control, including but not limited to, acts of civil or military authority, acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, fires, or floods. In the event of any delay resulting from such causes, the time for performance of each of the parties hereto (including the payment of monies) shall be extended for a period of time reasonably necessary to overcome the effect of such delays. No further modification to other terms and conditions of this Contract shall occur.

13.2 In the event of any delay or nonperformance caused by the above causes, the party affected shall promptly notify the other in writing of the nature, cause, date of commencement and the anticipated extent of such delay, and shall indicate whether it is anticipated that any completion dates will be affected thereby

## **14.0 INDEMNITY**

PROJECT SPONSOR AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD EL PASO ELECTRIC, ITS CORPORATE AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, SUITS OR OTHER LITIGATION (INCLUDING ALL COSTS THEREOF AND ATTORNEY'S FEES) OF EVERY KIND AND CHARACTER ARISING IN FAVOR OF PROJECT SPONSOR OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, PERSONNEL FURNISHED BY PROJECT SPONSOR OR ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER) ON ACCOUNT OF BODILY INJURY, DEATH OR DAMAGE TO OR LOSS OF PROPERTY

IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF OR IN CONNECTION WITH THE WORK PERFORMED OR TO BE PERFORMED BY PROJECT SPONSOR HEREUNDER OR OCCURRING, INCIDENT TO, ARISING OUT OF OR IN CONNECTION WITH THE PRESENCE OF PROJECT SPONSOR, ITS PERSONNEL, AGENTS, SUPPLIERS AND SUBCONTRACTORS (AND THEIR RESPECTIVE PERSONNEL) ON THE PREMISES, WHERE AND TO THE EXTENT SUCH INJURY, DEATH OR DAMAGE IS CAUSED BY THE SOLE, JOINT, CONCURRENT, CONTRIBUTING OR COMPARATIVE NEGLIGENCE OR FAULT OF PROJECT SPONSOR, ITS CORPORATE AFFILIATES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS.

## **15.0 TERMINATION FOR CAUSE OR CONVENIENCE**

15.1 Either party shall have the right to terminate this Contract in whole or in part at any time by written Notice to the other party. Any such written Notice shall specify the extent to which performance of the Work is terminated, and the date upon which such termination becomes effective.

15.2 In the event of termination by El Paso Electric as provided herein, El Paso Electric shall compensate Project Sponsor for any and all Work approved in writing. El Paso Electric shall not be required to compensate Project Sponsor for expenses connected with preparation of an Initial or Final Application, or any other cost not directly approved by in writing.

15.3 In the event of termination, those provisions of this Contract that by their nature continue beyond the Termination of this Contract shall remain in full force and effect after such termination.

15.4 The rights and remedies of El Paso Electric provided in this Article 15.0 are not exclusive and are in addition to any other rights and remedies provided under this Contract, or at law, or in equity.

## **16.0 COMPLETE AGREEMENT**

This Contract is intended as the exclusive statement of the agreement between the parties. Parol or extrinsic evidence shall not be used to vary or contradict the express terms of this Contract, and recourse shall not be had to alleged prior dealings, usage of trade, course of dealing, or course of performance to vary or contradict the express terms of this Contract. This Contract shall not be amended or modified, and no waiver of any provision hereof shall be effective, unless set forth in a written instrument authorized and executed by duly authorized representatives.

## *ATTACHMENT 5: IRS W-9*

Each Project Sponsor must complete the IRS W-9 Form and attach it to this Agreement.

**Request for Taxpayer  
 Identification Number and Certification**

Give form to the requester. Do not send to the IRS.

Print or type  
 See Specific Instructions on page 2

Name (as shown on your income tax return)	
Business name, if different from above	
Check appropriate box: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ..... <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code	
List account number(s) here (optional)	

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number : : : :
OR
Employer identification number : : : :

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,