

# HOME ENERGY SERVICES PROGRAM AGREEMENT

BETWEEN

**Southwestern Public Service Company**

AND

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## **HOME ENERGY SERVICES PROGRAM AGREEMENT**

This Home Energy Services Standard Contract (the "Agreement") is made and entered into by and between Southwestern Public Service Company, a New Mexico corporation and \_\_\_\_\_, (hereinafter "Project Sponsor") for the purpose of obtaining demand and energy savings from efficiency measures installed at \_\_\_\_\_(the "Project").

**WHEREAS**, Southwestern Public Service Company has developed a demand-side Residential Home Energy Services Program for its residential customer class (HES); and

**WHEREAS**, the HES seeks to procure energy and peak demand savings through the installation and operation of energy efficiency measures at residential customer sites; and

**WHEREAS**, Project Sponsor has developed a plan for participation in the HES through a set of proposed energy efficiency measures and other improvements necessary to produce energy savings and peak demand savings (the "Project");

**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:

### **ARTICLE I – DEFINITIONS**

- 1.1 "Baseline" is generally defined, for the purposes of determining estimated and measured energy savings, as the energy consumed by equipment with efficiency levels that meet the applicable current federal standards and reflects current market conditions. The baseline may be determined by the equipment or conditions currently in place under the following conditions: a) when federal energy efficiency standards do not apply, or b) when the existing equipment can be shown by the Project Sponsor to have a remaining service life of at least ten years.
- 1.2 "Contract Documents" shall mean i) Project Sponsor's approved Project Application, attached hereto and incorporated herein as Exhibit A; ii) Project Sponsor's approved Supplemental Project Information dated \_\_\_\_\_, attached hereto and incorporated herein as Exhibit B; iii) the HES Manual, attached hereto and incorporated herein as Exhibit C; and v) this Agreement together with any and all other exhibits, addenda, or amendments referenced herein or made a part hereof in accordance with this Agreement.
- 1.3 "Deemed Energy Savings" shall mean a pre-determined, validated estimate of Energy Savings attributable to a Measure in a particular type of application.
- 1.4 "Deemed Peak Demand Savings" shall mean a pre-determined, validated estimate of Peak Demand Savings attributable to a Measure in a particular type of application.
- 1.5 "Energy Savings" shall mean a quantifiable reduction in a customer's consumption of energy, or the amount by which energy consumption is reduced, as a result of the installation of qualifying energy-efficient equipment. Energy

Savings will be determined by comparing the efficiency of the installed equipment to that of an appropriate baseline.

- 1.6 "Host Customer" shall mean a residential customer of Southwestern Public Service Company that owns or leases facilities at a Project Site or Sites and that has either entered into a Host Customer Agreement with Project Sponsor or is acting as its own Project Sponsor for the installation of Measures as a part of the Project.
- 1.7 "Host Customer Agreement" shall mean the agreement between Host Customer and 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.
- 1.8 "Measure" shall mean equipment, materials, and practices that when installed and used at a customer site result in a measurable and verifiable reduction in either purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kilowatts (kW), or both.
- 1.9 "Peak Demand" shall mean electrical demand at the time of highest annual demand on the utility's system, measured in 15 minute intervals.
- 1.10 "Peak Demand Savings" shall mean, for purposes of the Southwestern Public Service Company Home Energy Services Program, the maximum average load reduction occurring during any one-hour period between 1 PM and 7 PM CDT weekdays, from May 1 through September 30 (holidays excluded). Peak Demand Savings will be determined by comparing the efficiency of the installed equipment to that of an appropriate baseline.
- 1.11 "Project" shall mean an energy efficiency measure or combination of measures installed under this Agreement that results in both a reduction in customers' electric energy consumption and peak demand, and energy costs.

- 1.12 "Project Site" shall mean one or more adjacent buildings on a single meter owned or operated by a single Southwestern Public Service Company customer.
- 1.13 "Project Sponsor" shall mean any organization, group, or individual who contracts with Southwestern Public Service Company to provide Energy Savings and Peak Demand Savings under the Home Energy Services Program.
- 1.14 "Prudent Electrical Practices" shall mean those practices, methods, standards and equipment commonly used in prudent electrical engineering and operations to operate electrical equipment lawfully and with safety, dependability and efficiency and in accordance with the National Electrical Safety Code, the National Electrical Code and any other applicable federal, state and local codes provided, however, that in the event of a conflict, the applicable federal, state or local code shall govern.

## **ARTICLE II - TERM AND TERMINATION**

- 2.1 The term of this Agreement shall commence on the date of execution by Southwestern Public Service Company (the "Effective Date") and, unless otherwise terminated as set forth herein, shall continue in force and effect for a period of 18 months from the Effective Date.

## **ARTICLE III - COMPLIANCE WITH HES MANUAL**

- 3.1 By executing this Agreement, Project Sponsor acknowledges that it reviewed the HES Manual (Exhibit C) prior to submission of its Project Application. Project Sponsor represents and affirms that its participation in the HES has at all times been in compliance with the procedures and conditions set forth in the HES 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 HES as described in the HES Manual and that failure to meet the qualifications therein may be treated as a breach of this Agreement.
- 3.2 Procedures or conditions set forth in the HES 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.

## **ARTICLE IV - HOST CUSTOMER AGREEMENT AND CUSTOMER CERTIFICATION**

- 4.1 Project Sponsor will be solely responsible for entering into a Host Customer Agreement(s) with the Host Customer(s) as appropriate for implementation of the Project. Before any marketing activities are begun at a Project Site, the Project Sponsor shall submit a copy of its proposed Host Customer Agreement template to Southwestern Public Service Company for approval. The approved Host

Customer Agreement must be executed by the Host Customer prior to Project Sponsor beginning installation of Measures at the Project Site. Southwestern Public Service Company will not award incentive payments without proper completion of the Host Customer Agreement as provided for in the Contract Documents. To the extent possible, Host Customer Agreements will be kept confidential.

4.2 Project Sponsor agrees to disclose to Host Customer any 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 Host Customer Agreement all consumer protection provisions and disclosures contained in Article XII of this Agreement as well as the following provisions:

- (a) Host Customer agrees, upon three (3) days' prior oral notice, to provide Southwestern Public Service Company or the state approved Independent Evaluator with full and complete access to the Project Site for any purpose related to the HES. The right of access will be subject to Host Customer's reasonable access requirements and, unless otherwise agreed, must occur within the normal business hours of the Host Customer.
- (b) Host Customer acknowledges that any view, inspection, or acceptance by Southwestern Public Service Company, or the state approved Independent Evaluator, of the Project Site or of the design, construction, installation, operation or maintenance of the Measures is solely for the information of Southwestern Public Service Company and that, in performing any such inspection or review or in accepting the Measures, Southwestern Public Service Company 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 Host Customer's facilities.
- (c) Host Customer acknowledges that Project Sponsor is an independent contractor with respect to Southwestern Public Service Company and the HES and that Project Sponsor is not authorized to make representations or incur obligations on behalf of Southwestern Public Service Company. Host Customer further acknowledges that Southwestern Public Service Company is not a party to the Host Customer Agreement and that Project Sponsor is solely responsible for measure performance.
- (d) Host Customer agrees to provide Southwestern Public Service Company, or its agent, with access to Host Customer's utility bills, project documentation, contractor invoices, and technical and cost information directly related to the Project.

4.3 Project Sponsor must obtain a certification from each Host Customer indicating that the Measures contracted for were installed at the Project Site. The certification should be in the form of the Customer Certification form available from the official program website. The Customer Certification form(s) should be submitted to Southwestern Public Service Company with the Project Implementation Report described in Section 5.4 below. Final payment

of incentives will not be made unless and until a Customer Certification or inspection has been completed in accordance with the terms of the Contract Documents.

## **ARTICLE V - PROJECT IMPLEMENTATION**

- 5.1 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. 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.
- 5.2 The minimum amount of installations that may be performed at a Host Customer Site is \$250. Single-family projects are limited to a maximum of \$20,000 per project. Multi-family projects are limited as follows:
- Low-Income Multi-Family: \$23,000 (the Project Sponsor Maximum)
- Residential Multi-Family: \$20,000 (the Project Sponsor Maximum)
- 5.3 Project Sponsor shall notify Southwestern Public Service Company of Measure installation at each Project Site by submitting a report documenting the Measures actually installed at the Project Site (the "Project Implementation Report"). Each Project Implementation Report must be completed electronically on official Southwestern Public Service Company Project Implementation Report (PIR) forms. Project Sponsors shall submit an invoice and Customer Acknowledgements associated with the installed Measures along with the Project Implementation Report. Project Sponsors in single-family projects must complete 100% of the project installations and submit a Project Implementation Report within 30 days for single-family projects and 30 days for multi-family projects of the Project's funding reservation, or by November 15, 2015, whichever occurs first.

Within thirty (30) days of receipt of the Project Implementation Report, the Independent Evaluator shall (may) complete a random sample inspection of the Measure installations at the Project Site(s). This inspection shall be used to determine whether the Measures were installed and are capable of performing their intended function of producing Energy Savings and Peak Demand Savings. If Southwestern Public Service Company reasonably determines that the Measures at the Project Site(s) have been installed, tested and inspected to the extent required by Southwestern Public Service Company and found to be capable of providing Peak Demand Savings and/or Energy Savings in material compliance with the Contract Documents, the Project Implementation Report will be approved as submitted. The Estimated Savings attributable to the Measures documented in the approved Project Implementation Report will be used for purposes of calculating the Incentive Payment in Section 7.2.

- 5.4 If Southwestern Public Service Company determines that the Measures installed at the Project Site(s) are not capable of providing Peak Demand Savings and/or Energy Savings in material compliance with the Contract Documents, all installations may be evaluated on a measure-by-measure basis to calculate an adjustment factor for energy savings and incentives. This adjustment factor may consider the ratio of savings of the measures that pass the inspection to the total incentive specified in the Measure Inspection Report. The adjustment factor may then be applied to the incentive amount for payment. The algorithm for calculating the adjustment factor is described below:

$$\text{Adjustment Factor} = \frac{\text{Total incentives per measure that pass inspection}}{\text{Total incentives per measure on inspection report}}$$

This assumes all figures on the implementation report are correct. Any errors will be corrected prior to finalizing the adjustment factor.

- 5.5 Any view, inspection, or acceptance by Southwestern Public Service Company of any Project Site or of the design, construction, installation, operation and maintenance of the Measures is solely for the information of Southwestern Public Service Company. In performing any such inspection or review or in accepting the Measures, Southwestern Public Service Company 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 Host Customer's facilities.

#### **ARTICLE VI - INCENTIVE PAYMENTS**

- 6.1 Southwestern Public Service Company agrees to make an "Incentive Payment" to the Project Sponsor based upon the sum of the Deemed Savings derived from the Project
- 6.2 The total Incentive Payment due to Project Sponsor will be calculated by multiplying the Deemed Savings associated with the Measures installed at the Project Site by the applicable "Incentive Rate" specified in Section 7.3. The Incentive Payment for Deemed Savings shall be payable in one installment. Regardless of the actual calculated Incentive Payment for the Project, the total Incentive Payment for a single-family project shall not exceed \$20,000. The total Incentive Payment for single family and multi-family projects shall not exceed the following maximum cumulative payments.

The maximum cumulative Incentive Payment for a Project Sponsor, regardless of the number of individual Projects completed in 2018:

Residential – single family, or multi-family projects: \$500,000

Low-Income – multi-family projects: \$67,000

- 6.3 This agreement is from the \_\_\_\_\_ HES Program. The applicable Incentive Rates are as follows for savings derived from Measures installed at eligible Residential and Low Income Project Sites:

(a) Residential:

Peak Demand Savings Incentive Rate = \$347/kW

Energy Savings Incentive Rate = \$0.12/kWh

(b) Low Income:

Peak Demand Savings Incentive Rate = \$347/kW

Energy Savings Incentive Rate = \$0.12/kWh

6.4 Upon completion of Measure installation and approval of the Project Implementation Report, Project Sponsor may submit an invoice to Southwestern Public Service Company for the Incentive Payment. Southwestern Public Service Company will make the Incentive Payment within forty-five (45) days of its receipt and approval of the invoice. The Incentive Payment will be one hundred percent (100%) of the payment due for Deemed Savings Measures.

Incentive Payments are subject to load factor adjustments in accordance with the following:

For residential projects, the maximum total payment (kWh and kW payments combined) is \$650 per kW of peak summer demand savings.

#### **ARTICLE VII - AUDIT AND RECORDS**

7.1 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 Peak Demand Savings under this Agreement for a period of not less than three (3) years beyond the termination of this Agreement. During the retention period, such records shall be made available, upon reasonable notice, for inspection during normal business hours by Southwestern Public Service Company or any governmental agency having jurisdiction over the HES or any portion of the Project.

#### **ARTICLE VIII - INSURANCE**

8.1 Project Sponsor represents and agrees that it and its subcontractors will 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. Project Sponsor further represents and agrees that it will carry all insurance required by Exhibit D, which is attached hereto and incorporated herein for all purposes. Prior to commencement of installation, Project Sponsor shall furnish to Southwestern Public Service Company a certificate or certificates of insurance indicating Project Sponsor's compliance with this paragraph and stating that the insurance described therein shall not be canceled or terminated except on thirty (30) days written notice to:



Southwestern Public Service Company  
Attn: Denzil Dunn  
525 E. Bender  
Hobbs NM 88240

Additionally, Project Sponsor warrants that such policies include a waiver of subrogation naming Southwestern Public Service Company or its agents. Project Sponsor shall furnish evidence that such policies have been issued in accordance with the requirements of this paragraph by furnishing copies of such for Southwestern Public Service Company's Independent Evaluator inspection.

#### **ARTICLE IX - INDEMNITY**

- 9.1 Each party agrees to and shall defend, indemnify and hold harmless the other party, that indemnified party's parent company and all related or affiliated companies, and all affiliates, officers, directors, shareholders, associates, employees, servants and agents of each, from and against all claims, damages, expenses, including reasonable attorneys' fees and costs, losses, causes of action or suits which arise out of or relate to this Agreement, the negligent act or omission or willful misconduct of the indemnifying party, its employees, agents, servants or subcontractors, excepting only the proportional share of such liability, if any, due to the fault or negligence of the indemnified party, its employees, agents, servants or subcontractors.

#### **ARTICLE X - PERMITS, LICENSES AND COMPLIANCE WITH LAWS**

- 10.1 Project Sponsor represents and warrants that prior to beginning installation of Measures, Project Sponsor will, at its own cost and expense, obtain all permits 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 obtain all such additional governmental permits, licenses, and other authorizations when required with respect to any of the Measures under this Agreement. If requested by Southwestern Public Service Company, Project Sponsor shall furnish to Southwestern Public Service Company copies of each such permit, license or other approval promptly following receipt thereof. Project Sponsor shall maintain in full force and effect all such governmental permits, licenses and other authorizations as may be necessary for the construction, operation or maintenance of the Measures in accordance herewith.
- 10.2 Project Sponsor shall be responsible for all royalties, fees, or claims for any licensed, copyrighted or similarly protected intellectual property, device, process or procedure used, installed, or provided by it. Project Sponsor shall defend any suit that may be brought against Southwestern Public Service Company and shall hold Southwestern Public Service Company harmless from any liability or infringement of any such intellectual property used by Project Sponsor in the implementation of the Project.
- 10.3 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 the decrees of any governmental or administrative body having jurisdiction over the HES or any portion of the Project, including without limitation, 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 Environmental Protection Agency (EPA) and state and local codes.

### **ARTICLE XI – CONSUMER PROTECTION**

- 11.1 Each Project Sponsor shall provide clear disclosure to the Host Customer of the following:
- (a) The customer’s right to a cooling-off period of three business days, in which the contract may be cancelled, if applicable under law.
  - (b) The name, telephone number, and street address of the Project Sponsor, the contractor, and written disclosure of all warranties.
  - (c) The fact that incentives 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 11.3 below.
- 11.2 A form developed and approved by Southwestern Public Service Company may be used to satisfy the requirements of Section 11.1 above.
- 11.3 In addition to those contractual provisions required by Section 4.1 hereinabove, the Host Customer Agreement shall include the following provisions:
- a) Information on the Project Sponsor's or its contractors work activities and completion dates, and the terms and conditions that protect residential Host Customers in the event of non-performance by the Project Sponsor.
  - b) Written and oral disclosure of the financial arrangement between the Project Sponsor and Host Customer. This includes an explanation of the total Host Customer payments; the total expected interest charged, all possible penalties for non-payment, and whether the Host Customer’s installment sales agreement may be sold.
  - c) A notice of your cancellation rights and procedures, including a form you can sign and return to cancel the transaction.
  - d) Disclosure of contractor liability insurance to cover property damage.
  - e) An “All Bills Paid” certification is given to the Host Customer to protect against claims of subcontractors.

- f) Provisions prohibiting the waiver of consumer protection statutes, performance warranties, false claims of energy savings and reductions in energy costs.
- g) Information on complaint procedures offered by the Project Sponsor, or by Southwestern Public Service Company.
- h) A statement that the energy efficiency service provider is receiving an incentive paid for through the rates of Southwestern Public Service Company for the electricity saved by the customer's energy efficiency improvements.
- i) Disclosure that the Project Sponsor is not a part of, or endorsed by Southwestern Public Service Company.

## **ARTICLE XII - DEFAULT AND REMEDIES**

12.1 Each of the following events will be deemed to be an Event of Default hereunder:

- (a) Failure of Project Sponsor to perform its responsibilities in a timely manner or implement the Project in compliance with the HES Manual and other Contract Documents;
- (b) Failure of Project Sponsor to provide Southwestern Public Service Company and/or its contractors with sufficient access to the Project Sites for the purposes of conducting inspections.
- (c) Failure of Project Sponsor to maintain any necessary permits, licenses 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 Southwestern Public Service Company;
- (e) Project Sponsor's submission to Southwestern Public Service Company of any false, misleading or inaccurate information or documentation with respect to implementation of 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; or
- (f) Failure of either party in a material fashion to perform or observe any of the material terms, conditions or provisions of this Agreement which failure materially adversely affects the other party and continues after notice and a thirty (30) day period to cure, or, if such failure cannot reasonably be cured within thirty (30) days, after notice and such period to cure in excess of thirty (30) days as may be reasonably required (provided that the non-performing party commences action to cure within an initial period of thirty (30) days after notice and thereafter pursues such cure with reasonable diligence).

12.2 If an Event of Default occurs, the non-defaulting party shall be entitled to exercise any and all remedies provided for by law or in equity, including the right to terminate this Agreement upon written notice to the other party. Termination shall



**ARTICLE XVI - AMENDMENT**

- 16.1 No amendment or modification of this Agreement shall be binding on either party unless it is in writing and signed by both parties. Amendments to this Agreement will be attached hereto and made a part hereof for all purposes.

**ARTICLE XVII - ARBITRATION**

- 17.1 **BOTH PARTIES AGREE TO FIRST ATTEMPT TO RESOLVE DISPUTES ARISING HEREUNDER THROUGH ALTERNATIVE DISPUTE RESOLUTION TECHNIQUES, INCLUDING MEDIATION. IF, HOWEVER, SUCH DISPUTES CANNOT BE RESOLVED THROUGH SUCH MEANS, BOTH PARTIES AGREE TO SUBMIT SUCH DISPUTES FOR RESOLUTION THROUGH BINDING ARBITRATION, TO BE CONDUCTED BY ONE QUALIFIED INDEPENDENT ARBITRATOR, IN ACCORDANCE WITH THE PROVISION OF THE TEXAS GENERAL ARBITRATION ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE, SECTION 171.001 ET. SEQ.).**

**ARTICLE XVIII – FORCE MAJEURE**

- 18.1 The term “Force Majeure” as used herein means causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including, but not limited to, acts of God, labor disputes, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, change in laws or applicable regulations subsequent to the date hereof and action or inaction by any federal, state or local legislative, executive, administrative or judicial agency or body, which, in any of the foregoing cases, by exercise of due foresight such Party could not reasonably have been expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.
- 18.2 The term “Force Majeure” shall not include any of the following:
- (a) Any removal, reduction, curtailment or interruption of operation of any or all Measures whether in whole, or in part, which removal, reduction, curtailment or interruption is caused by or arises from the action or inaction of the Host Customer or any third party, including without limitation, any vendor or supplier to the Project Sponsor or Southwestern Public Service Company, 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;
  - (b) Any outage, whether or not due to the fault or negligence of Southwestern Public Service Company or Project Sponsor, of the Measures or Southwestern Public Service Company’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 Peak Demand and/or Energy Savings; or

- (c) Any reduction in Measured Peak Demand Savings and/or Measured Energy Savings caused by or resulting from a Host Customer's termination or reduction of electrical distribution service received from Southwestern Public Service Company and the substitution therefore of electric service from any other source.
- 18.3 The Parties shall be excused from performing their respective obligations under this Agreement and shall not be liable in damages or otherwise if, and to the extent that, they are unable to so perform or are prevented from performing by an event of Force Majeure, provided that:
- (a) The non-performing party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than fourteen (14) days thereafter, gives the other party written notice describing the particulars of the occurrence;
  - (b) The suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure;
  - (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.

#### **ARTICLE XIX - MISCELLANEOUS**

- 19.1 Project Sponsor will not assign, transfer or otherwise dispose of any of its obligations or duties without the prior written approval of Southwestern Public Service Company. Any assignment or transfer made without the express written approval of Southwestern Public Service Company will be null and void.
- 19.2 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. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise. 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.
- 19.3 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.

- 19.4 In the event any provision of this Agreement is held to be void, unlawful, or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.
- 19.5 This Agreement will be governed by, construed and enforced in accordance with the laws of the State of New Mexico. The parties agree that the proper venue and jurisdiction for any cause of action relating to the Agreement will be in Chaves County, New Mexico.
- 19.6 Project Sponsor shall not use Xcel Energy SPS or Southwestern Public Service Company corporate name, trademark, trade name, logo, identity or any affiliation for any reason, including soliciting customers for participation in its project.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

Southwestern Public Service Company

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

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

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

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

PROJECT SPONSOR

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

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

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

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

**EXHIBIT A - PROJECT APPLICATION**



**EXHIBIT B - SUPPLEMENTAL APPLICANT INFORMATION**

## **EXHIBIT C - HES MANUAL**

The Official Manual, for Purposes of Exhibit C, HES Manual, is the file available for download from the [www.Xcelefficiency.com](http://www.Xcelefficiency.com) site.

**EXHIBIT D - INSURANCE REQUIREMENTS**

NOTE: Each policy shall include a Waiver of Subrogation in favor of Southwestern Public Service Company (Xcel) and shall provide for 30 days prior written notice of cancellation.

TYPE/COVERAGE	LIMITS OF LIABILITY-
WORKERS' COMPENSATION	Statutory-
EMPLOYERS' LIABILITY )	\$100,000. Each Accident-
)	\$500,000. Disease Policy Limit-
)	\$100,000. Disease Employee Limit-
COMMERCIAL GENERAL LIABILITY, Combined: - OCCURRENCE FORM with the following- Coverages included (not excluded): -	Bodily Injury & Property Damage
- Premises/Operations	Each Occurrence: \$1,000,000.-
- Underground Explosion and Collapse Hazard-	General Aggregate: \$1,000,000.-
- Products/Completed Operations Hazard-	Products Comp/Ops. Aggregate: \$1,000,000. -
- Contractual Insurance (applicable to- indemnity clause contained in contract(s)-	
- Independent Contractors-	
- Broad Form Property Damage-	
- Personal Injury-	
AUTOMOBILE LIABILITY, with coverage applicable to all owned, hired, and non-owned vehicles	BI and PD Combined: - Each accident: \$1,000,000- OR: Evidence of Self-Insurance-

INFORMATION FOR PROJECT SPONSOR: -

- \*\* Insurance provided by Project Sponsor must be maintained in effect during the entire term of this Agreement. -
- \*\* A copy of this sheet and a copy of this Agreement should be furnished to Project Sponsor's Insurance Agent. -
- \*\* Amendment or waiver of the insurance requirements will only be valid if prior written consent is received from Risk & Insurance Management. -

INFORMATION FOR INSURANCE AGENTS: -

- \*\* Policies written on a claims-made basis shall be maintained for five years after performance of the Agreement is completed. -
- \*\* Required insurance should be certified using the ACCORD CERTIFICATE OF INSURANCE, or a form similar thereto. -
- \*\* Project Sponsor's insurance agent is responsible to list on CERTIFICATE OF INSURANCE all endorsements which eliminate any required coverages. -
- \*\* Project Sponsor's insurance agent is responsible to state on the CERTIFICATE OF INSURANCE that all policies of insurance include Waiver of Subrogation in favor of Southwestern Public Service Company. -
  
- \*\* CERTIFICATE OF INSURANCE must be dated and signed by insurance agent or authorized representative. -
- \*\* CERTIFICATE HOLDER must be shown as Southwestern Public Service Company –  
–525 E. Bender, Hobbs NM 88240. Attn: Denzil Dunn
- \*\* The original CERTIFICATE OF INSURANCE must be forwarded to the  
CERTIFICATE HOLDER