

# *El Paso Electric Company's 2016 Load Management Program*



## **Program Manual** **Load Management Standard Offer Program**

**El Paso Electric Company**  
P.O. Box 982  
El Paso, TX 79960

# 2016 LOAD MANAGEMENT PROGRAM

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# EXECUTIVE SUMMARY

## 2016 Load Management Program

### BACKGROUND

The El Paso Electric Company (EPE) Load Management Standard Offer Program was developed in 2009 in response to changes in the Public Utility Commission of Texas (PUCT) Substantive Rule 25.181 authorizing participating customers (Customers) or third-party sponsors to provide on-call curtailment of electric consumption during peak demand periods in return for incentive payments. Incentives are based on verified demand savings that Customers achieve in response to called interruptions.

EPE will begin accepting applications for the 2016 Load Management Program on March 30, 2016.

### PROGRAM DETAILS

The Load Management Program is designed to reduce electric demand or kW during EPE's peak demand periods, as necessary. This program is performance-based and offers incentive payments to Customers for curtailing electric load upon notice. Customers enter into an agreement with EPE to reduce their load by an agreed-upon amount during curtailments.

- Program runs from June 1<sup>st</sup> through September 30<sup>th</sup>.
- Peak demand periods are defined as weekdays from 1:00 p.m. to 7:00 p.m. Mountain Daylight Time (MDT).
- Customers agree, if called upon, to reduce their load for up to four (4) continuous hours during curtailments.
- Customers will be required to demonstrate load availability by participating in one Scheduled Curtailment at the beginning of the program period. Thereafter, Customers may be called upon up to four more times per program year for a maximum of 15 hours per year, including the Scheduled Curtailment.
- Annually, Customers will receive up to **\$48.00 per kW<sup>1</sup>** of curtailed load based on the average kW curtailment achieved as described in detail in the Program Manual<sup>2</sup> (see notes below).

### ELIGIBILITY

- Customer must be a non-residential Texas customer taking service at distribution level.
- Customer must be equipped with an EPE Interval Data Recorder (IDR) meter or an EPE meter capable of recording demand intervals.

- Customer must be capable of curtailing a minimum of 100 kW during the summer peak periods at each contracted site. At EPE's discretion, customers with aggregate curtailable load of greater than 100 kW may be eligible for this program.
- Customers who currently have special contracted rates, other than the Large Power Interruptible Rate, or are taking service at 69 KV or greater are not eligible for this program.
- Only the firm demand portion of EPE's distribution level Interruptible customers is eligible for inclusion in this program. Only Interruptible customers in good standing during the past 12-months will be eligible to participate.

## PROCESS

Participation is a Five-Step Process as described in detail in the Program Manual. The five steps are as follows:

- Application Submission and Approval: April 8<sup>th</sup> – May 31<sup>st</sup>
- Contracting: April 8<sup>th</sup> – May 31<sup>st</sup>
- Performance Period: June 1<sup>st</sup> – September 30<sup>th</sup>
- Monitoring and Verification: June 1<sup>st</sup> – October 31<sup>st</sup>
- Payment of Performance Incentive: November

## CUSTOMER COMMITMENTS

- Customers commit curtailable load to the program for one summer period at a time.
- Customers commit to a maximum of five (5) curtailments each year, including one (1) Scheduled Curtailment, plus up to four (4) Unscheduled Curtailments during each calendar year of participation.
- Upon notification, Customers will have one (1) hour to reduce their curtailable load.
- Curtailments will be held for a maximum of 15 hours per year.

For more information, please contact Walter Guerrero at (915) 521-4636 or via e-mail at [walter.guerrerowa@epelectric.com](mailto:walter.guerrerowa@epelectric.com).

## NOTES:

1. Payments are divided into \$20.00 per kW of average reduction during the Scheduled Curtailment and \$28.00 per kW of average reduction during all of the Unscheduled Curtailments.

2. Payments are subject to EPE verification. Information contained in this program description is subject to changes in the rules of the PUCT.

## BACKGROUND AND OVERVIEW

The El Paso Electric Company (EPE) Load Management Standard Offer Program was developed in 2009 in response to changes in the Public Utility Commission of Texas (PUCT) Substantive Rule 25.181. In March 2008, the PUCT issued a ruling authorizing transmission and distribution utilities in Texas to implement and manage a demand control program known as the Load Management Standard Offer Program (SOP). This ruling allowed EPE to offer incentives to eligible customers who agree to curtail pre-determined electric loads, when needed, to help preserve EPE's electric grid integrity. Participants in this program can be any EPE Texas non-residential customer (or a group of customers represented by a third party) who meet the eligibility criteria outlined in this Program Manual (Manual). For the purpose of this Manual, eligible participants are called "Project Sponsors" and must undergo a five-step process in order to receive incentive payments. Each of these steps is covered in detail in this Manual. The five basic steps are:

- **Step One – Application (Appendix A):** Project Sponsor submits the Program Application to EPE. EPE will review the proposed project for feasibility and, if accepted, will reserve incentive funding.
- **Step Two – Contracting (Appendix B):** The qualifying Project Sponsor enters into a Standard Offer Contract with EPE.
- **Step Three – Performance Period:** The Project Sponsor performs annual scheduled and unscheduled curtailments when notified by EPE.
- **Step Four – Measurement and Verification:** EPE verifies demand savings from scheduled and unscheduled curtailments (the "Verification Process").
- **Step Five – Incentive Payments:** EPE pays the Project Sponsor for the reduction in demand during the scheduled curtailment (the "Scheduled Curtailment Payment") and the average reduction in demand for all of the unscheduled curtailments (the "Performance Period Payment").

Project Sponsors must commit curtailable load to the program for one summer period. Curtailments may be called during EPE's summer peak demand period defined for this SOP as weekdays from June 1<sup>st</sup> through September 30<sup>th</sup> between the hours of 1:00 p.m. and 7:00 p.m. Mountain Daylight Time (MDT).

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.

Participants are required to curtail pre-determined and contracted electric loads for an annual maximum of up to 15 hours as follows:

- One (1) scheduled test curtailment of up to four hours duration, plus

- The possibility of up to four (4) Unscheduled Curtailments, each year, not to exceed four hours in duration for each curtailment:
  - Upon notice, Project Sponsor will have one hour to reduce their load by the contracted curtailment level.
  - Curtailments will be from a minimum of one hour to a maximum of four hours.
  - Unscheduled Curtailments will generally be called due to a need in EPE's electric grid capacity.

Annually, incentives are divided into two payments. The Scheduled Curtailment Payment is \$20.00 per kW for the average reduction achieved during the Scheduled Curtailment up to a maximum of the contracted curtailment load. The Performance Payment is \$28.00 per kW for the average reduction during ALL of the Unscheduled Curtailments called up to a maximum of the contracted curtailment load (see Step Four). Project Sponsors have the potential of receiving up to **\$48.00 per kW** of contracted curtailment load per year.

**EPE will begin accepting applications for the 2015 SOP at 10:00 a.m. Mountain Standard Time (MST) on April 8, 2016. Application Packets should be sent to the EPE Program Coordinator, Walter Guerrero, at [walter.guerrero@epelectric.com](mailto:walter.guerrero@epelectric.com) or via fax at (915) 521-4780. Originals are to be sent via mail or hand-delivered to Walter Guerrero.**

## Program Objectives

The main objectives of the SOP are to reduce EPE's summer peak demand, as necessary, in their Texas Service Territory in a cost-effective manner and to reach the demand savings goals established by the legislature and PUCT regulations. In addition, the secondary program objectives are as follows:

1. Create a simple and streamlined process to stimulate strong program participation from energy efficiency service providers and eligible customers.
2. Minimize the burden of measurement and verification requirements for the SOP by implementation of a simple verification process by EPE.
3. Encourage private sector delivery of energy demand savings during the summer peak demand period for EPE's electric grid system.

## Project Sponsor Eligibility

Eligible Project Sponsors include:

- Individual customers that identify curtailable load in their facilities and that meet all of the necessary criteria, as described in this Manual.
- National or local energy service companies (ESCOs) or other aggregation groups that contract with eligible customers.

## Project Site Eligibility

In order to be eligible for the SOP, a Project Site must meet the following criteria:

1. Must be an EPE non-residential Texas customer taking service at distribution level (below 69 KV).
2. Must be able to curtail a minimum of 100 kW during the summer peak demand period at each project site within one hour of notice. For purposes of this program, the summer peak demand period is defined as weekdays from June 1<sup>st</sup> through September 30<sup>th</sup> between the hours of 1:00 p.m. and 7:00 p.m. Mountain Daylight Time (MDT). At EPE's discretion, customers with multiple sites that have an aggregate curtailable load of greater than 100 kW may be eligible for this program.
3. Each project site must be equipped with an EPE Interval Data Recorder (IDR) meter or an EPE meter capable of recording demand intervals. A single project site may include multiple buildings served by a single IDR meter, or Project Sponsors may include more than one project site in their applications provided each project site meets the requirements laid out in this Manual. If a Project Sponsor has multiple IDR meters that are not combined for billing purposes, EPE can aggregate them during the measurement and verification step of this SOP if the results benefit the Project Sponsor.

## Curtailable Load Eligibility

Project Sponsors are given flexibility in determining the level and method of curtailing loads. Except as outlined in this section, the SOP does not specify limits to the types of eligible curtailable load. However, curtailable loads must meet the following requirements:

1. Must produce verifiable demand savings (kW reduction) following a called curtailment; and
2. Project Sponsor must be able to curtail load within one hour of notice and for up to four (4) hours for each curtailment.

The following curtailable load is excluded from consideration for the SOP:

1. Curtailable load that results in negative environmental or health impacts; and
2. Curtailable load that receives an incentive through any other Energy Efficiency Program or special tariff offered by EPE.

It is the Project Sponsor's responsibility to identify the eligible curtailable loads for each project site.

## **Standard Offer Program Review and Approval**

All SOP's are based upon the general precept of a first-come, first-served basis; however, this does not limit the right or ability of EPE to move an application up or down the priority list based upon the quality and/or amount of the proposed curtailable load, as well as the perceived likelihood of achieving the proposed curtailment level. Applications will be accepted for the SOP until all funds have been committed, but no later than May 31, 2016. Participants from the prior year will be required to submit an updated Application Packet in order to enroll in the current program year. Upon approval, the renewal for these participants will be in Letter Agreement form. EPE reserves the right to deny renewal to any Project Sponsor that did not perform as contracted during the previous Program Year.

### **Schedule and Program Timeline**

- Application Submission and Approval: April 8<sup>th</sup>– May 31<sup>st</sup>
- Contracting: April 8<sup>th</sup>– May 31<sup>st</sup>
- Performance Period: June 1<sup>st</sup> – September 30<sup>th</sup>
- Measurement and Verification: June 1<sup>st</sup> – October 31<sup>st</sup>
- Payment of Performance Incentive: During the month of November

For more information, please contact Walter Guerrero at (915) 521-4636 or via e-mail at [walter.guerrero@epelectric.com](mailto:walter.guerrero@epelectric.com).



# STEP ONE: THE APPLICATION PROCESS

A Project Sponsor's first step in participating in the SOP is the submission of an application to EPE. Applications are to be submitted using the forms provided in Appendix A. To increase the chances of being awarded a contract offer, the completed Application Packet, including all necessary forms and signed Application Agreement, should be submitted as soon as possible once EPE begins accepting applications. Applications are reviewed on a first-come, first-served basis and are subject to ranking based on factors including, but not limited to, curtailment quality, curtailment amount, and perceived likelihood of success.

**Questions concerning the Application Process may be submitted to Walter Guerrero at 915-521-4636, or by email at [walter.guerrero@epelectric.com](mailto:walter.guerrero@epelectric.com). Application Packets are to be sent to Walter Guerrero at [walter.guerrero@epelectric.com](mailto:walter.guerrero@epelectric.com) or via fax at (915) 521-4780. Originals are to be sent via mail or hand-delivered to Walter Guerrero.**

Once the Project Sponsor submits the Application Packet to EPE, it will be reviewed and, if approved, EPE will reserve funding for the Project Sponsor based on the proposed level of curtailable demand (kW reduction) stated in the Project Sponsor's Application.

If an Application is approved, EPE will forward the Project Sponsor a Standard Offer Agreement for the project. Upon execution of this Agreement, Project Sponsor will be enrolled in the SOP. Participants from the prior year will be required to submit an updated Application Packet in order to enroll in the current program. Upon approval, the renewal for prior participants will be in Letter of Extension Agreement form.

## Required Application Information

The completed Application Packet must include the following information and forms found in Appendix A:

1. **Project Sponsor Application Agreement** - Project Sponsors and/or Customers must complete and sign the Application Agreement. An example of this Application is included in this Manual in Appendix A.
2. **Project Sponsor Information Form:**
  - Project Sponsor's name and mailing address – If Customer is not the Project Sponsor, EPE will require a Letter of Release from the Customer prior to any discussion or release of information to the Project Sponsor.
  - Project Sponsor's Main Point of Contact with applicable telephone numbers and e-mail address
  - Federal Tax ID Number
  - Business or Agency Description

3. **Project Site Information Form** – If Application includes multiple Project Sites, one Project Site Information Form must be completed for each Project Site.
  - Project Sponsor’s name
  - Customer’s name (if different than Project Sponsor)
  - EPE Account Number – found on Customer’s electric bill
  - Project Site’s Physical Address
  - Project Site’s Main Points of Contact during curtailments – must include applicable telephone numbers and e-mail addresses for a minimum of two Points of Contact for each Project Site. One of the Points of Contact must be available at the numbers provided at all times during EPE’s summer peak demand period to accept and act on the curtailment notification calls. For purposes of this SOP, the summer peak demand period is defined as weekdays from June 1<sup>st</sup> through September 30<sup>th</sup> between the hours of 1:00 p.m. and 7:00 p.m. Mountain Daylight Time (MDT). Should contact information change during the term of the Agreement, it is the responsibility of the Project Sponsor to inform EPE of these changes at least two business days prior to the date that the new contact information will take effect.
  - Proposed Curtailable Load in kW – The demand or kW reduction the Project Sponsor anticipates for the Project Site during curtailments.
  - Name of individual to manage curtailment – This may be the same as the Project Site’s Main Point of Contact; however, it is possible that someone else will be in charge of ensuring that the curtailment is accomplished and this name is to be provided.
  - Indication of how curtailment will be handled – through the use of a generator or by manually shutting down equipment.
4. **Supporting Documentation** - Project Sponsors may submit any additional supporting documentation that may be relevant for the Project. EPE also reserves the right to request additional information during the course of its review of the Application, if it is deemed necessary.

As part of the Application process, EPE will review the feasibility of the proposed curtailable load and the accuracy of the demand savings estimates. EPE may request clarification of, or additional information about, any item in the submitted Application Packet. Project Sponsors must respond to such requests within the time period specified by EPE. If the clarification or additional information is not forthcoming in a timely manner, EPE may choose to discontinue its evaluation of the Application. In order to be considered, the submitted Application Packet must be complete and the appropriate Application Agreement must be signed.

For more information, please contact Walter Guerrero at 915-521-4636 or via e-mail at [walter.guerrero@epelectric.com](mailto:walter.guerrero@epelectric.com).

## **Confidentiality**

This SOP is subject to oversight by the PUCT, which may request a copy of any SOP-related materials that EPE receives. Sensitive information identified by the Project Sponsor to EPE will be treated confidentially to the fullest extent possible and will not be provided directly to outside parties other than the PUCT. Project Sponsor must identify to EPE any material it considers sensitive or proprietary. EPE will have no liability to any Project Sponsor or other party as a result of public disclosure of any submittals.

## **Submission of False Information**

EPE reserves the right to discontinue its evaluation of all submittals and terminate all Agreements with a Project Sponsor if it is determined that any portion of the submission contains false, misleading, or materially incorrect information.

## STEP TWO: THE CONTRACTING PROCESS

Once an Application has been reviewed and approved by EPE, the qualifying Project Sponsor Applicants will receive an Agreement similar to that attached as Appendix B of this Manual. Because this is a Standard Offer Program authorized by the PUCT, the terms of the Standard Offer Program Agreement (SOP Agreement) are uniform and effectively non-negotiable, except where it can be demonstrated to the satisfaction of EPE that unique circumstances merit and require revision. In order to incorporate each Project Sponsor's project information, the approved Application Packet will be incorporated by reference as an attachment to the finalized SOP Agreement. Once the SOP Agreement is signed by both the Project Sponsor and EPE, the Project Sponsor's primary obligation will be to:

1. Respond effectively to calls for Scheduled and Unscheduled Curtailments of the contracted curtailable loads when notified by EPE.
2. Monitor loads during Scheduled and Unscheduled Curtailments, and maintain the loads at the desired minimum throughout the duration of the event(s).

The primary obligations of EPE will be to:

1. Perform the measurement and verification activities for each Project Site in order to measure and verify the Demand Savings for each curtailment.
2. Calculate and issue the Scheduled Curtailment Payment based on verified Demand Savings related to the annual Scheduled Curtailment.
3. Calculate and issue the Performance Period Payment based on verified Demand Savings related to all of the Unscheduled Curtailment(s) occurring between June 1<sup>st</sup> and September 30<sup>th</sup> of the Program year.

## **STEP THREE: THE PERFORMANCE PERIOD**

The Performance Period for the SOP is EPE's summer peak demand period which is defined as weekdays from June 1<sup>st</sup> through September 30<sup>th</sup> between the hours of 1:00 p.m. and 7:00 p.m. Mountain Daylight Time (MDT) excluding Federal holidays. During this Performance Period, there will be a maximum of five curtailments per year. These curtailments include one (1) Scheduled Curtailment and a maximum of four (4) Unscheduled Curtailments of one to four hours duration each.

### **Scheduled Curtailments**

The SOP requires one (1) Scheduled Curtailment per Program year at the beginning of the Performance Period. Scheduled Curtailments are to confirm Project Sponsors' ability to reach proposed curtailment levels upon notice.

### **Unscheduled Curtailments**

The SOP requires Project Sponsors to participate in up to four (4) Unscheduled Curtailments per Program year during the Performance Period. Unscheduled Curtailments will generally be called due to a need in EPE's electric grid capacity. Upon notification by EPE, Project Sponsors will have one hour to reduce their load to the proposed curtailment level.

# STEP FOUR: MEASUREMENT & VERIFICATION

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<sup>1</sup>

Following the billing period(s) during which a curtailment has occurred, the IDR data will be accessed by the Load Management Program Coordinator (or designee) to verify actual kW Demand Savings. The file will be obtained from the EPE Meter Test Section 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 ten previous business days.

EPE will review the file for the appropriate project site, dates and times and establish the baseline as defined by the Texas Technical Reference Manual (TRM) 3.1 Vol 4 MV Protocols.

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<sup>1</sup> National standards for Load Management M&V programs are currently under development and are expected to be proposed for national adoption in the future, potentially altering the methodology presented here.

# STEP FIVE: INCENTIVE PAYMENTS

## Attachment 1:

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 a 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.

The Load Management Program is projected and planned to be a multi-year program, dependent upon future changes in PUCT regulations and rulings. EPE's overall Demand Savings Goal for the SOP in 2016 is 7,000 kW.

### Incentive Payment Prices

The SOP rules provide standard incentive prices per kW for Demand Savings achieved by Project Sponsors. The total incentive cap of \$48 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 contracted Curtailable kW demand. At their discretion, EPE may choose to pay an incentive for this excess demand should funding become available. The basic incentive rates applicable to kW savings are set forth in the following table.

<b>Program Year</b>	<b>Scheduled Curtailment Payment</b>	<b>Performance Period Payment</b>	<b>Demand Savings Goal</b>
2016	\$20 per kW	\$28 per kW	7,000 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 50% of the SOP incentive budget in a given budget year. At EPE's discretion, this limitation may be waived.

## **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 \$20.00 per kW of verified Demand Savings up to a maximum of the contracted load level. 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:

$$\text{Scheduled Curtailment Payment} = \$20.00 \times \text{Verified Demand Savings in kW}$$

## **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 all of the Unscheduled Curtailments. 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 up to a maximum of the contracted load level. The amount of the Performance Period Payment will be calculated using the following formula:

$$\text{Performance Period Payment} = \$28.00 \times \text{Average Verified Demand Savings for all Curtailments}$$

In the event that 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.

# **COMPLAINT PROCEDURES**

## **Filing a Complaint with the PUCT**

Although informal complaints may be made by telephone, it is best to submit them in writing. No special form is needed, but statements should be complete and clear so that the PUCT staff has all the facts.



The complaint should include the following information:

Your name, address, and telephone number  
Company's name, address, and telephone number  
Account number, if any  
An explanation of the facts and the specific resolution you are seeking  
Any documentation to support your complaint

If you have a complaint or inquiry, following is the contact information for the PUCT:

**Questions or Inquiries:**

**Call:** 1-888-782-8477 or in Austin (512) 936-7120 (TTY 1-800-735-2988)  
**E-mail:** [customer@puc.texas.gov](mailto:customer@puc.texas.gov)

**Complaints:**

**Call:** 1-888-782-8477 or in Austin (512) 936-7120 (TTY 1-800-735-2988)  
**Fax:** (512) 936-7003

**File a Complaint Online:**

<https://www.puc.texas.gov/consumer/complaint/Complaint.aspx>

**By Mail:**

**PUC - Customer Protection**  
P.O. Box 13326  
Austin, TX 78711-3326

## *Attachment 2:*

# Application Package

(Refer to Step One, Program Manual)

### **Project Sponsor (Customer or Third-Party Application)**

To apply for Project Sponsor status in the 2016 Load Management Program, prospective sponsors must complete the following Application Packet and return, completed and signed, to the following address. Advance copies can be sent via e-mail to [walter.guerrero@epelectric.com](mailto:walter.guerrero@epelectric.com) or by fax to (915) 521-4780.

El Paso Electric Company  
2016 Load Management Program  
Attn: Walter Guerrero  
P.O. Box 982  
El Paso, TX 79960

Questions may be directed by e-mail to the Program Coordinator:  
[walter.guerrero@epelectric.com](mailto:walter.guerrero@epelectric.com).

(See Project Sponsor Application Agreement on next page)

# EL PASO ELECTRIC COMPANY'S 2016 LOAD MANAGEMENT PROGRAM

## PROJECT SPONSOR APPLICATION AGREEMENT

By submission of this application for participation in the El Paso Electric Company's 2016 Load Management Program affirms the following:

1. Customer hereby acknowledges the following (check appropriate box and complete the remainder of the form below):  
  

CUSTOMER is acting as its own Project Sponsor and desires to participate in the El Paso Electric Load Management Standard Offer Program. **OR:**  I have entered into an Agreement with \_\_\_\_\_ (the Project Sponsor) for curtailment of Curtailable Load at the Project Site(s) identified below (the Project). The Project Sponsor is implementing the Project pursuant to the El Paso Electric Company's (El Paso Electric) 2016 Load Management Standard Offer Program.
2. Project Sponsor/Customer acknowledges that any review or acceptance by El Paso Electric of the project is solely for the information of El Paso Electric and that, in performing any such review or in accepting the Project, El Paso Electric makes no representations or warranty whatsoever as to the economic or technical feasibility, capability, safety or reliability of the Project.
3. Customer acknowledges that the Project Sponsor, whether the Customer or a third-party, is an independent contractor with respect to El Paso Electric and the Standard Offer Program, and that the Project Sponsor is not authorized to make representation or incur obligations on behalf of El Paso Electric. Customer acknowledges that El Paso Electric is not a party to this Agreement or any other agreement (if any) between the Project Sponsor and the Customer and that the Project Sponsor is solely responsible for performance hereunder.
4. Project Sponsor/Customer agrees that El Paso Electric is an intended third-party beneficiary of this Agreement and, as such, may rely on representations made therein by the Project Sponsor/Customer and enforce Project Sponsor's/Customer's obligations thereunder to the extent same are applicable to El Paso Electric.
5. If Project Sponsor is a third-party, Customer acknowledges that El Paso Electric 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.
6. If Project Sponsor is a third-party, Customer understands that it may file a complaint with the Public Utility Commission of Texas concerning the Project Sponsor, but that El Paso

Electric will play no role in resolving any disputes that arise between the Customer and the Project Sponsor.

- 7. Project Sponsor/Customer agrees to release El Paso Electric, its officers, directors, agents and employees and each of El Paso Electric’s affiliates and each of their respective officers, directors, agents and employees (collectively referred to as “El Paso Electric”) from any and all claims, losses, expenses, attorney’s fees, damages, demand, judgments, caused of action, suits and liability in tort, agreement, or any other basis and of every kind and character whatsoever ( collectively referred to as “claims”), regardless of any strict liability or negligence of El Paso Electric, Whether active or passive, excepting only such claims, demands, losses, damages, costs, expenses, liability or violation of law or regulation as may be caused by the gross negligence or willful misconduct of El Paso Electric.**

IN WITNESS WHEREOF: **Customer** causes this Agreement to be executed by its duly authorized representative.

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

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

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

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

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

IN WITNESS WHEREOF: **Project Sponsor** (if other than Customer) causes this Agreement to be executed by its duly authorized representative.

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

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

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

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

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

**El Paso Electric Company's  
2016 Load Management Program  
Project Sponsor Information Form**

<b>PROJECT SPONSOR INFORMATION</b>	<b>Project Sponsor's Name (Customer's Name if Self- Sponsored)</b>	
	<b>Mailing Address</b>	
	<b>Main Point of Contact</b>	
	<b>Office Phone Number</b>	
	<b>Cell Phone Number</b>	
	<b>Mobile Carrier and Text Address i.e. T-Mobile cell#@tmomail.com</b>	
	<b>E-mail Address</b>	
	<b>Federal Tax ID Number</b>	
<b>BUSINESS OR AGENCY DESCRIPTION</b>		

## 2016 Load Management Program Project Site Information Form

<b>Instructions: If Application includes multiple Project Sites, submit one Project Site Information Form for each Site.</b>		
<b>PROJECT SITE AND MAIN CONTACT INFORMATION</b>	<b>Project Sponsor's Name</b>	
	<b>Project Site Customer Name (if Different)</b>	
	<b>EPE Account Number</b>	
	<b>Site's Physical Address</b>	
	<b>Main Point of Contact (during Curtailments)</b>	
	<b>Office Phone Number</b>	
	<b>Cell Phone Number</b>	
	<b>Mobile Carrier and Text Address i.e. T-Mobile cell#@tmomail.com</b>	
	<b>E-mail Address</b>	
<b>SECONDARY POINT OF CONTACT INFORMATION</b>	<b>Secondary Contact Name (during Curtailments)</b>	
	<b>Office Phone Number</b>	
	<b>Cell Phone Number</b>	
	<b>Mobile Carrier and Text Address i.e. T-Mobile cell#@tmomail.com</b>	
	<b>E-mail Address</b>	
<b>THIRD POINT OF CONTACT INFORMATION</b>	<b>Tertiary Contact Name (during Curtailments)</b>	
	<b>Office Phone Number</b>	
	<b>Cell Phone Number</b>	
	<b>Mobile Carrier and Text Address i.e. T-Mobile cell#@tmomail.com</b>	
	<b>E-mail Address</b>	
<b>PROPOSED CURTAILABLE LOAD AND CURTAILMENT MANAGEMENT</b>	<b>Proposed Demand to Curtail in kW</b>	
	<b>Individual to Manage Curtailment</b>	
	<b>How will Curtailment be Handled? (Generator or Manually Shutting Down Load)</b>	

# ***AGREEMENT COVER SHEET***

Date:

**Agreement Number:**

## **AGREEMENT**

### **Project Sponsor:**

**Project Sponsor's Name**

Project Sponsor's Address  
City, State Zip Code

**Direct All Correspondence To:**

Contact:  
Telephone:  
E-Mail:

Valid From: Date of Contract  
Valid End: December 31, 2016

**Target Value:** \_\_\_\_\_ (Based on \$48 per \_\_\_\_\_ kW)

This Agreement is entered into by and between El Paso Electric Company and Project Sponsor, to provide miscellaneous goods and services connected with the 2016 Load Management Program. Please submit the following documents for consideration of participation in the 2016 Load Management Program.

- 1: Agreement Cover Sheet
- 2: Attachment 1: Incentive Payment Schedule / Compensation Schedule
- 3: Attachment 2: Application Packet
- 4: Attachment 3: General Terms and Condition of Services
- 5: W-9 of Participant

### **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 Agreement 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 3: 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 capitalized and/or 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 normal business days.



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 a commercial 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. Such a customer cannot be on a special contracted rate.

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 1:00 p.m. to 7:00 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. SOP Manual
2. Contract Supplements
3. Contract Signature Page
4. Application Agreement
5. General Terms and Conditions for Services
6. Compensation Schedule

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 and 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: Office of General Counsel  
100 N. Stanton Street  
El Paso, TX 79901

(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 2016 Load Management Program  
Attn: Walter Guerrero  
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 the relevant agreement(s) between Customer and the Customer's retail electric provider concerning electric service to Curtailable Load, if any, 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 2015 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. A representative of Project Sponsor must be available to respond to any call to curtail made to the Project Sponsor during all Summer Peak Demand Hours.
- Project Sponsor may change the Project Sponsor Contact information by providing notice to the Program Coordinator a minimum of two business days prior to the date that the new Project Sponsor Contact information is to become effective. In order for a change in Project Sponsor Contact information to be valid, Project Sponsor must verify that the El Paso Electric Program Coordinator 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.

9.3 Project Sponsor shall be solely responsible for adhering to governmental health, safety, and environmental laws and regulations.

## **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 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 directly related to this Agreement 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 ATTORNEYS' 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 representative.