

**COLORADO SPRINGS UTILITIES  
COMMERCIAL AND INDUSTRIAL  
PEAK DEMAND REBATE PROGRAM AGREEMENT**

THIS AGREEMENT (“Agreement”) made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is entered into by and between

Colorado Springs Utilities (“Springs Utilities”), an enterprise of the City of Colorado Springs, a Colorado home rule city and municipal corporation, with its principal place of business at 121 S. Tejon Street, Colorado Springs, Colorado 80903

and

name and address

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hereinafter referred to as “Participant.”

**WITNESSETH:**

WHEREAS, Springs Utilities has created the Commercial and Industrial (C&I) Peak Demand Rebate Program (“Program”), for the purpose of encouraging Customers of Springs Utilities to install certain types of equipment or technologies in facilities or sites approved by Springs Utilities for this Program that will result in reducing such Customer’s electric demand during Springs Utilities’ Summer Peak Period; and

WHEREAS, Participant has been selected by Springs Utilities to participate in the Program and is eligible to receive payment based on the kilowatt Demand Reduction approved by Springs Utilities for an installed Eligible Measure(s) in Facility or Facilities in which Springs Utilities provides retail electrical service as more fully described hereto and in the Attachments;

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the parties identified above agree as follows:

**I. DEFINITIONS**

1. Customer — A business that currently purchases its retail electric service on a commercial or industrial rate tariff from Springs Utilities in the State of Colorado and within the Eligible Area.
2. Demand Reduction — The reduction in peak electrical demand during Springs Utilities’ Summer Peak Period. Demand Reduction is calculated in relation to a baseline demand, as defined in the Program Manual.
3. Eligible Measure — Any Energy Efficiency Measure or load shifting measure obtaining verifiable and persistent Summer Peak Period demand reduction.
4. Energy Efficiency Measure — Specific equipment or technology approved by Springs Utilities for this Program, which is to be installed by the Participant in a Facility or Facilities pre-approved by Springs Utilities pursuant to the terms and conditions of this Agreement.

5. Estimated Demand Reduction — The estimated Demand Reduction during Springs Utilities' Summer Peak Period for a Project provided by the Participant in the Installation Report and approved by Springs Utilities.
6. Facility — The Customer's site at which an Eligible Measure(s) is to be installed.
7. Host Customer — Customer within whose Facility(ies) the Project is installed or proposed to be installed by the Participant.
8. Host Customer Agreement — Document submitted by the Participant as part of the Preliminary Installation Report that must be signed by the Host Customer at the affected Facility(ies) prior to participation in the Program.
9. Incentive Rate — The incentive paid per unit of Demand Reduction, expressed in dollars per kilowatt, and established at 400 dollars per kilowatt.
10. Installation Report (IR) — The documentation established and required by Springs Utilities that must be submitted by the Participant prior to requesting a Project Installation Payment for installing the Eligible Measure(s) at a Customer's Facility. Said documentation is more fully described in the Program Manual.
11. Measurement and Verification — Activities completed by Participant and reviewed by Springs Utilities estimate the Verified Demand Reduction.
12. Measurement and Verification Methodology — The methodology proposed by Participant and approved by Springs Utilities to determine the Verified Demand Reduction for the Eligible Measure(s).
13. Participant – A Customer or a third-party designated to represent the Customer, as per the signed Host Customer Agreement.
14. Power Factor — The ratio of real power (watts) to total apparent power represented as the cosine of the phase-angle difference between the voltage and current in alternating current circuits when quantities are smooth sinusoids.
15. Power Quality Requirements — Equipment using more than 15 watts input shall operate at a Power Factor of no less than ninety percent (90%) and shall not cause more than twenty percent (20%) Total Harmonic Distortion to the current wave-form.
16. Preliminary Installation Report (PIR) — The documentation established and required by Springs Utilities that must be submitted by the Participant and approved by Springs Utilities prior to installing any portion of the Eligible Measure(s) at a Customer's Facility(ies). Said documentation is more fully described in the Program Manual. Approved Preliminary Installation Reports are incorporated as part of this Agreement as attachments.
17. Program Manual — Springs Utilities Program Manual for the Program and incorporated as part of this Agreement by reference.
18. Program Year Incentive — Incentive paid by Springs Utilities to the Participant for Verified Demand Reduction for each applicable Program Year. Said incentive is identified in attached approved Preliminary Installation Report.
19. Project — A set of proposed or installed measures and all associated improvements that are necessary to produce electric Demand Reduction at a Customer's Facility(ies).
20. Installation Payment — Payment by Springs Utilities to Participant based on Estimated Peak Demand Reduction, contingent upon satisfactory inspection of the installed measure(s) and acceptance of Installation Report.

21. Performance Payment — Payment by Springs Utilities to Participant based on Verified Demand Reduction.
22. Summer Peak Period — All weekdays, between the time of 3:00 p.m. and 6:00 p.m., from June 15 to September 15, except federal holidays.
23. Total Harmonic Distortion — The distortion factor presented as a percentage where the distortion factor is equal to 100 times the root-mean-square (RMS) equivalent of all the harmonics divided by the RMS value of the fundamental of the current waveform.
24. Verification Report — The report prepared by Participant, subject to review and approval by Springs Utilities, upon completion of any necessary activities identified in the Measurement and Verification Methodology for the said Project, which documents the Verified Demand Reduction of the Project.
25. Verification Report Deadline —

Program Year	Verification Report Deadline
2005	December 8, 2006
2006	October 31, 2007
2007	October 31, 2008
2008	October 31, 2009
2009	October 31, 2010

26. Verified Demand Reduction — The Demand Reduction amount, expressed in kW, established and verified by the Participant and approved by Springs Utilities in accordance with Program requirements identified in the Program Manual, for the purpose of determining the Performance Payment amount paid to the Participant.

**II. IT IS MUTUALLY AGREED:**

1. **Time Is Of The Essence.** Time is of the essence for this Agreement. Any failure of the Participant to abide by dates listed herein may be considered in breach of this Agreement.
2. **Host Customer Agreement.** Participant will tender and obtain the legal, authorized signature of each Host Customer(s) on the “Host Customer Agreement” form required in the Preliminary Installation Report for each Facility where Eligible Measures are to be installed. A separate Host Customer Agreement form must be executed by the Host Customer for each Facility and approved by Springs Utilities prior to the implementation or installation of the Eligible Measure(s) at said Facility. In the event a Host Customer Agreement form is not signed by the Host Customer and approved by Springs Utilities, said Facility will not be eligible to participate in this Program. Acceptance of a Facility into this Program shall be done at the sole discretion of Springs Utilities.

3. **Project Identification.**

***Preliminary Installation Report.*** Prior to installation of the Eligible Measure(s) at a Host Customer’s Facility, Participant shall provide a completed Preliminary Installation Report form.

***Approval of Preliminary Installation Report.*** Springs Utilities will review the Preliminary Installation Report, identify a Measurement and Verification Methodology as described in the

Program Manual, and conduct pre-installation inspection and Measurement and Verification activities (as necessary), at Springs Utilities' expense. Springs Utilities will make an effort to accommodate the Participant's schedule. Springs Utilities will either approve the Preliminary Installation Report or notify the Participant that the report was not approved within thirty (30) days from the date the Preliminary Installation Report was received by Springs Utilities. If the report is rejected, the Participant will have five (5) business days to submit a revised report. Springs Utilities will approve or reject the revised report within five (5) business days.

**Installation Prior to Approval.** The Eligible Measure(s) must not be implemented or installed prior to Springs Utilities approval of the Preliminary Installation Report. If it is determined by Springs Utilities that implementation or installation of an Eligible Measure has begun at a Facility prior to Participant receiving approval from Springs Utilities to proceed, the installation of the Eligible Measure in said Facility may be excluded from participating in this Program at Springs Utilities' sole discretion.

4. **Project Installation.**

**Installation Responsibility.** Participant will furnish all necessary engineering, labor, supervision, equipment, tools and materials to install the Eligible Measure(s).

**Legal Requirements.** Participant will meet all applicable requirements of federal, state and local statutes, laws, regulations and ordinances, including but not limited to those regarding the handling of hazardous or toxic substances.

**Power Quality Requirements.** Participant will insure Eligible Measure(s) are operating within Springs Utilities' Power Quality Requirements.

**IES Standards.** Where appropriate, Participant will adhere to Illuminating Engineering Society of North America (IES) illuminating design standards.

**Eligible Measures.** Participant will install Eligible Measure(s). Should Participant desire to revise the equipment previously approved by Springs Utilities as an Eligible Measure(s), Springs Utilities has the sole right to reject or approve the equipment proposed by Participant for this Program.

**Installation Report (IR).** Participant will submit to Springs Utilities a completed Installation Report for each Project.

**Approval of Installation Report.** Springs Utilities will review the report and conduct a post-installation inspection and Measurement and Verification activities (as necessary), at Springs Utilities' expense. Springs Utilities will make an effort to accommodate the Participant's schedule. Springs Utilities will either approve the Installation Report or notify the Participant that the report was not approved within thirty (30) days from the date the Installation Report was received by Springs Utilities. If the report is rejected, the Participant will have five (5) business days to submit a revised report. Springs Utilities will approve or reject the revised report within five (5) business days.

5. **Installation Payment.** As part of approval of an Installation Report, Springs Utilities will issue an approval of the Project Installation Payment. The Project Installation Payment will be equal to fifty percent (50%) of the project's Estimated Peak Demand Reduction according to the following equation:

$$\text{Installation Payment} = 50\% \times \text{Estimated Demand Reduction (kW)} \times \text{IncentiveRate (\$/kW)}$$

6. **Measurement and Verification.** Participant will be responsible for conducting Measurement and Verification activities, at their own expense, no later than the summer following approval

of Installation Reports. Participant will prepare a Verification Report summarizing the results and the Verified Demand Reduction. Final approval of the Verification Report and Verified Demand Reduction will be Springs Utilities' sole responsibility.

- 7. Performance Payment.** The Performance Payment will be based on Verified Demand Reduction. The Performance Payment will be made by Springs Utilities to Participant within thirty (30) days of acceptance of a Verification Report, and will be calculated according to the following formula:

$$\text{Performance Payment} = \text{Verified Demand Reduction (kW)} \times \text{Incentive Rate (\$/kW)} - \text{Installation Payment (\$)}$$

For an individual project, the total project award payment may not exceed the estimated project incentive reserved by the approved Preliminary Installation Report. To be eligible for award payment, projects must be installed and Verification Reports submitted by the applicable Verification Report Deadline for the Program year.

- 8. Determination of Eligible Measures and Verified Demand Reduction.** Springs Utilities has the sole right to determine the Eligible Measure(s) acceptable under the terms of this Agreement and to measure, interpret, calculate and determine the Verified Demand Reduction. Springs Utilities will not be obligated to provide any payment for any Eligible Measure(s) that fail(s) to meet the terms and conditions of this Agreement.
- 9. Insurance Requirement.** Upon execution of this Agreement and prior to commencing the implementation or installation of any Eligible Measure for this Program, Participant agrees to maintain at its own expense all legally required insurance for its premises, associates, and employees. Participant shall maintain the following insurance with limits not less than as follows: Worker's Compensation in accordance with the requirements of the laws of the State of Colorado and Employer's Liability insurance of not less than \$500,000 per occurrence; Commercial General Liability insurance with a combined single limit of \$1,000,000 per occurrence or claims made for bodily injury and property damage with an aggregate of \$2,000,000; Automobile Liability insurance including owned and hired vehicles with a combined single limit of \$500,000 per occurrence or claims made for bodily injury and property damage with an aggregate of \$2,000,000, and Excess Liability of \$1,000,000 combined single limit per occurrence. Upon request, Participant shall provide Springs Utilities with certificates of insurance. Participant shall procure and maintain at all times during this Agreement and the implementation or installation of the Eligible Measure(s), a State of Colorado Unemployment Insurance Tax Account. Participant shall require any subcontractor to obtain the same types of insurance.. Participant's obtaining the insurance required herein shall not lessen nor affect its obligations set forth elsewhere in this Agreement. Participant shall not commence the implementation or installation of the Eligible Measure(s) nor permit any subcontractor to commence the implementation or installation of the Eligible Measure(s) until the Participant or subcontractor(s) have obtained the insurance required herein. Participant shall notify Springs Utilities, in writing, within thirty (30) days prior to a reduction or cancellation of coverage. Participant shall require its general liability insurer to add Springs Utilities as an additional insured. Participant's insurance shall be primary. All insurance required shall contain provisions wherein all rights of subrogation or recovery of any kind against Springs Utilities, its agents, employees, officers, successors and assigns are specifically waived by the insuring entity.
- 10. Warranty.** Participant warrants to Springs Utilities that all work associated with the implementation and installation of the Eligible Measure(s) will conform to the terms and conditions of this Agreement and its Attachments and that the implementation and installation of said Eligible Measure(s) will be carried out by qualified personnel in

accordance with the best accepted practices applicable to the work. Participant shall provide Springs Utilities with a copy of the final design and specifying documentation when required. Springs Utilities does not warrant the equipment or installation or the operation of the Eligible Measure(s) in any way.

**11. Indemnity and Liability.**

***Hazardous or Toxic Substances.*** Participant shall hold harmless, defend and indemnify Springs Utilities for any claims or causes of action arising from the improper handling, storage, disposal and exposure of substances currently or hereinafter characterized as hazardous or toxic in connection with any actions taken by Participant or its agents in connection with this Agreement.

***Property Damage, Injury, or Death.*** Springs Utilities shall not be liable for damage to property or injury or death of any person or persons in any way connected with or arising from actions of Participant or its agents under this Agreement. Participant shall hold harmless, defend and indemnify Springs Utilities as to any such claims.

***Consequential Damages.*** Springs Utilities is not liable for consequential damages, anticipated loss of profits or revenues resulting from the work to be performed.

***DSM Measures.*** Springs Utilities' review, comment, failure to comment, or approval of any plans for the design, construction, operation, modification, or maintenance of the Eligible Measures and equipment or any other aspect of the Participant's or the Host Customer's facilities, shall not render Springs Utilities, its officials, employees, or contractors responsible for the design, construction, operation, modification, maintenance, adequacy, compatibility, technical or economic performance of the Eligible Measures and equipment at any of the Participant's or Host Customer's facilities.

In no event shall Springs Utilities be liable to Participant or any third party for any incidental, direct, indirect, special or consequential damages arising out of, or in connection with, this Agreement. Springs Utilities' liability on any claim of any kind for any loss or damage arising out of, or in connection with this Agreement or from the performance or breach thereof shall in no case exceed the sum of the Installation Payment and Performance Payment. Springs Utilities shall not be liable for penalties of any kind. Any action resulting for any breach on the part of Springs Utilities as to the Program hereunder must be commenced within one (1) year after the cause of action has accrued. Nothing in this Agreement shall be interpreted to limit or prevent the protections afforded to Springs Utilities under the Colorado Governmental Immunity Act.

**12. Term.** This Agreement begins as of the date above first written and shall terminate when Participant receives final payment for all Verified Demand Reductions.

**13. Termination by Springs Utilities.** At Springs Utilities' option, in addition to any other rights and remedies which Springs Utilities may have at law or in equity, Springs Utilities may terminate this Agreement by written notice upon Participant, if:

- (a) Any petition is filed, a receiver is appointed for Participant's properties, or any proceeding is commenced by or against Participant for relief under any bankruptcy or insolvency laws;
- (b) Participant is in breach of any material term or condition of this Agreement, Springs Utilities has notified Participant of the breach, and Participant has not cured the breach within thirty (30) days. Participant's failure to deliver all of the Estimated

Demand Reduction set forth in Attachment shall not put Participant in breach of this Agreement, but will affect payment made to Participant under this Agreement.

- (c) Participant suspends or abandons the operation of all or a substantial portion of Participant's business.

14. **Termination by Participant.** At Participant's option, in addition to any other rights and remedies that Participant may have at law or in equity, Participant may terminate this Agreement by written notice upon Springs Utilities, if:
  - (a) Any petition is filed, a receiver is appointed for Springs Utilities' properties, or any proceeding is commenced by or against Springs Utilities for relief under any bankruptcy or insolvency laws;
  - (b) Springs Utilities is in breach of any material term or condition of this Agreement, Participant has notified Springs Utilities of the breach, and Springs Utilities has not cured the breach within thirty (30) days.
  - (c) Springs Utilities suspends or abandons the operation of all or a substantial portion of Springs Utilities' business.
15. **Force Majeure.** Neither party shall be considered in default in the performance of their obligations under this Agreement to the extent that performance is delayed or prevented due to Force Majeure, defined as flood, tornado, fire and similar acts of God which are beyond the control of and without the fault or negligence of the party claiming Force Majeure. The non-performing party, as soon as practicable but in any event no more than two (2) weeks after the occurrence of the Force Majeure, shall give the other party written notice describing the particulars of the occurrence, and its anticipated duration. The following conditions shall not be considered as Force Majeure:
  - (a) lack of or unavailability of personnel to install the Eligible Measure(s) at a Customer's Facility.
  - (b) unavailability of the Eligible Measures or other equipment from the manufacturer or supplier.
16. **Sole Agreement.** This Agreement in writing constitutes the sole agreement between the parties concerning the subject matter herein and all prior negotiations, representations, understanding or agreements concerning the subject matter herein are hereby cancelled.
17. **Assignment.** This Agreement is binding upon, and inures to the benefit of, the successors and assigns of the parties. This Agreement may be assigned by Participant only upon the written consent by Springs Utilities. Notwithstanding the foregoing, Participant may assign, without obtaining the consent of Springs Utilities, its rights for payments under this Agreement to any financial institution, lender or investor in connection with a leasing or financing arrangement for the work performed by Participant under this Agreement. Participant may elect to use subcontractors in meeting its obligations hereunder. Springs Utilities may assign this Agreement to a Springs Utilities subsidiary or affiliate, or by merger, consolidation, reorganization or sale of substantially all of its assets without the consent of the Participant.
18. **Appropriation of Funds.** In accord with the City Charter, performance of Springs Utilities obligations under this Contract are expressly subject to appropriation of funds by City Council or Utilities Board. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of Springs Utilities obligations under this contract, or appropriated funds may not be expended due to the City Charter spending limitations, then this Contract shall thereafter become null and void by operation of law, and Springs Utilities shall thereafter have no liability for compensation or damages to Participant in excess of Springs Utilities' authorized appropriation for this Agreement or the applicable spending limit, whichever is less. Springs Utilities shall notify Participant as soon as reasonably

possible in the event of non-appropriation or in the event a spending limitation becomes applicable. The funds appropriated for this Agreement are equal to or exceed the Agreement amount for the year in which this Agreement was executed. For Installation Payments or Performance Payments to be completed in subsequent fiscal years, if any, Springs Utilities will notify Participant of the appropriation of funds for such payments after the adoption of Springs Utilities' annual appropriation ordinance for those years.

- 19. **Governing Laws.** This Agreement shall be construed in accordance with the laws of the State of Colorado without reference to conflict of laws, the Colorado Springs City Charter, City Code, Ordinances, Rules and Regulations. In the event of any dispute over the Agreement terms and conditions, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.
- 20. **Participant Performance.** Failure of Springs Utilities to insist upon strict performance of any of the provisions of this Agreement, or failure or delay of Springs Utilities in exercising any rights or remedies provided herein or by law, or the acceptance or approval of, or payment for, any part of or all of the work hereunder, shall not release Participant from any of its obligations under this Agreement and shall not be deemed a waiver of any rights of Springs Utilities to insist upon strict performance of Participant's obligations or be deemed a waiver of any of Springs Utilities' legal rights or remedies under this Agreement. Any waiver shall be effective only if in writing and signed by Springs Utilities' authorized representative.
- 21. **Notice.** Any notice or other communication to either party hereto pursuant to any provision of this Agreement shall be effective only if in writing and delivered personally or mailed by certified mail, to the following addresses:

If to Springs Utilities, address to:  
Springs Utilities Peak Demand Rebate Program Manager  
P.O. Box 1103, Mail Code 1300  
Colorado Springs, CO, 80947-1300

If to Participant, address to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above first written.

SPRINGS UTILITIES:

BY: \_\_\_\_\_

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

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

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

PARTICIPANT:

BY: \_\_\_\_\_

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

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

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

ATTACHMENT A  
APPROVED PRELIMINARY INSTALLATION REPORT