

**Section 1: General Information**

<b>Customer Information</b>					
Application Date:		SWEPCO Acct. No.:			
Company/Customer Name:					
Contact First Name:		Last Name:			
City:		State:		Zip:	
Primary Phone:		Secondary Phone:			
E-mail Address:					
Project Site Address:					
City:		State:	AR	Zip:	
<b>Project Information</b>					
Project Name:					
Project Type:	<input type="checkbox"/> New Construction <input type="checkbox"/> Retrofit				
<b>For Official Use</b>					
Has project changed from the initial application?	<input type="checkbox"/> Yes <input type="checkbox"/> No    If yes, provide details of change:				
What are the estimated installation start and completion dates:					
Start Date:		Completion Date:			
<b>Project Sponsor</b>					
Project Sponsor Tax ID No.		Tax Exempt? (Y/N)			
Project Sponsor Name:					
Mailing Address					
City:		State:		Zip:	

**Installation Information**

Is the installation being conducted by in-house staff or by a Contractor?

In-House Staff       Contractor

If a Contractor is used, provide the following information:

Company Name:					
Contact First Name:		Last Name:			
Mailing Address:					
City:		State:		Zip:	
Primary Phone:		Secondary Phone:			
E-mail Address:					

\*Information should match information provided on the W9 form

*This section to be completed by a SWEPCO Energy Advisor*

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

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

Project ID: \_\_\_\_\_

Energy Advisor: \_\_\_\_\_

**Incentive and Savings Information\***

Measure Description	Estimated Savings		Incentive Rate		Estimated Incentive
	kW	kWh	\$/kW	\$/kWh	
<b>Total Incentive Reserved</b>					

\*The amount listed as the Total Incentives Reserved is based on estimated savings. Actual incentive amount will be based on verified savings. The total incentives paid cannot exceed the amount noted in this section. The Arkansas Technical Reference Manual establishes the kWh savings that utilities may attribute to energy efficiency measures. Adjustments to this Manual may cause a change in incentive amounts represented on this document.

## **Section 2: Program Agreement**

This Commercial and Industrial Energy Efficiency Program Agreement (the “Agreement”) is made and entered into by and between **SOUTHWESTERN ELECTRIC POWER COMPANY**, a Delaware corporation (hereinafter “SWEPCO”), and \_\_\_\_\_ (hereinafter “Project Sponsor”), (SWEPCO and Project Sponsor each hereinafter referred to as a “Party” and together as the “Parties”).

### **ARTICLE I – TERM AND TERMINATION**

The term of this Agreement shall commence on the date of execution by SWEPCO (the “Effective Date”) and, unless otherwise terminated as set forth herein, shall continue in force and effect until payment by SWEPCO of the Performance Payment due pursuant to the Program Manual, or until eighteen (18) months following the Effective Date, whichever occurs first.

### **ARTICLE II – COMPLIANCE WITH CIEEP PROGRAM MANUAL**

- 2.1 By executing this Agreement, Project Sponsor acknowledges that it received a copy of the CIEEP Program Manual prior to submission of its Project Application. Project Sponsor represents and affirms that its participation in the CIEEP has at all times been in compliance with the procedures and conditions set forth in the CIEEP Program 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 CIEEP as described in the CIEEP Program Manual and that failure to meet the qualifications therein may be treated as a breach of this Agreement.
- 2.2 Procedures or conditions set forth in the CIEEP Program Manual may only be waived or modified by written agreement of both Parties. Any such agreement shall be attached hereto and incorporated herein for all purposes.

### **ARTICLE III – PROJECT IMPLEMENTATION**

- 3.1 Measures shall be designed, constructed and installed in a good and workmanlike manner only with materials and equipment of appropriate quality, and, in any event, in accordance with Prudent Electrical Practices.
- 3.2 Within fifteen (15) business days of completing installation of Measures at a Project Site, Project Sponsor shall so notify SWEPCO. Within thirty (30) business days of receipt of the notification, SWEPCO may complete an inspection of all or some of the Measure installations at the Project Site. This inspection shall be used to determine whether the Measures were installed and are capable of performing their intended function of producing Energy Savings. Approval shall be granted if SWEPCO reasonably determines that the Measures at the Project Site have been installed, tested and inspected to the extent

required by SWEPCO and found to be capable of providing Energy Savings in material compliance with the Contract Documents. If Measures are rejected, SWEPCO will set forth the written reasons for such rejection and Project Sponsor may attempt to remedy the deficiencies. If any Measure is rejected a second time, SWEPCO will consider it a material breach of this Agreement and will not pay any incentive for such Measure. The Estimated Savings attributable to the Measures documented in the final inspection will be used for purposes of calculating the Installation Payment.

- 3.3 Project Sponsor acknowledges that any review, inspection, or acceptance by SWEPCO of any Project Site or of the design, construction, installation, operation and maintenance of the Measures is solely for the information of SWEPCO. In performing any such inspection or review or in accepting the Measures, SWEPCO makes no representation or warranty whatsoever as to the economic or technical feasibility, capability, safety or reliability of the Measures, their installation by Project Sponsor or their compatibility with the Customer's facilities.
- 3.4 The execution of this agreement reserves incentive funds for the project detailed herein for 90 days. After 90 days, the funds reserved for this project may be released. A request to waive the 90 day requirement must be submitted in writing. SWEPCO will review said requests and may grant a reprieve for extenuating circumstances.

#### **ARTICLE IV – AUDIT AND RECORDS**

- 4.1 Project Sponsor or its assignee shall keep and maintain accurate and detailed records and documentation relating to the Project and its associated Energy Savings under this Agreement for a period of not less than three (3) years beyond the termination of this Agreement. During the retention period, such records shall be made available, upon reasonable notice, for inspection during normal business hours by SWEPCO or any governmental agency having jurisdiction over the CIEEP or any portion of the Project.
- 4.2 Project Sponsor understands that the APSC may request or require an audit of the matters addressed in this Agreement or commence an investigation or other regulatory proceeding. Project Sponsor agrees to cooperate with any such process and make available detailed records and documentation relating to the Project, upon reasonable notice by SWEPCO or any governmental agency having jurisdiction over the CIEEP.

#### **ARTICLE V – INSURANCE**

Project Sponsor represents and agrees that it and its subcontractors will carry all statutorily required insurance for the protection of its employees and that each of its subcontractors will carry such insurance for the protection of their respective employees.

#### **ARTICLE VI – INDEMNITY**

- 6.1 **PROJECT SPONSOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS, TO THE FULLEST EXTENT PERMITTED BY LAW, SWEPCO AND ITS AFFILIATES, AS WELL AS ITS RESPECTIVE DIRECTORS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, LIABILITIES, DAMAGES, LOSSES AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS, ARISING OUT OF THIRD PARTY CLAIMS TO THE EXTENT CAUSED BY OR RESULTING FROM ANY NEGLIGENT, WRONGFUL OR WILLFUL ACT OR OMISSION OF THE INDEMNIFYING PARTY OR OF ANY OFFICER, AGENT, OR EMPLOYEE OF THE INDEMNIFYING PARTY IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT.**
- 6.2 **CUSTOMER AGREES TO RELEASE SWEPCO AND ANY INDIVIDUAL, CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, TRUST, OR OTHER BUSINESS ORGANIZATION OF ANY KIND DIRECTLY OR INDIRECTLY CONTROLLING, CONTROLLED BY, OR UNDER COMMON CONTROL WITH SWEPCO AND ITS AND THEIR RESPECTIVE SHAREHOLDERS, MEMBERS, PARTNERS, OFFICERS, DIRECTORS, MANAGERS, TRUSTEES, INCORPORATIONS, AGENTS, ATTORNEYS, CONSULTANTS, SERVANTS, REPRESENTATIVES AND EMPLOYEES FROM ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, COSTS, AND LEGAL LIABILITY INCLUDING, BUT NOT LIMITED TO 1) INJURY OR DEATH OF PERSONS, 2) DAMAGE TO NATURAL RESOURCES, 3) VIOLATION OF ANY LOCAL, STATE, OR FEDERAL LAW OR REGULATION INCLUDING, BUT NOT LIMITED TO, ENVIRONMENTAL AND HEALTH AND SAFETY LAWS OR REGULATIONS, 4) STRICT LIABILITY IMPOSED BY ANY LAW OR REGULATION, 5) EQUIPMENT MALFUNCTIONS, OR 6) ENERGY SAVINGS SHORTFALLS ARISING OUT OF, RELATED TO, OR IN ANY WAY CONNECTED WITH THE PROJECT. THIS PROVISION SHALL NOT APPLY TO CLAIMS, DEMANDS, LOSSES, DAMAGES, COSTS AND LEGAL LIABILITY TO THE EXTENT CAUSED BY THE NEGLIGENCE OF SWEPCO IN THE CONDUCT OF SWEPCO'S ON SITE INSPECTION OF THE PROJECT SITE.**
- 6.3 The representations, warranties, covenants, indemnities, and other obligations or protections provided by Project Sponsor pursuant to this Article X shall not be limited by time and shall survive the completion of the Project or any other completion, expiration or termination of this Agreement.

## **ARTICLE VII – PERMITS, LICENSES AND COMPLIANCE WITH LAWS**

- 7.1 Project Sponsor shall be responsible for all royalties, fees, or claims for any licensed, copyrighted or similarly protected intellectual property, device, process or procedure used installed, or provided by it. Project Sponsor shall defend any suit that may be brought against SWEPCO and shall hold SWEPCO and any individual, corporation, partnership, limited liability company, association, trust, or other business organization of any kind directly or indirectly controlling, controlled by, or under common control with SWEPCO and its and their respective shareholders, members, partners, officers, directors, managers, trustees, incorporators, agents, attorneys, consultants, servants, representatives, and

employees harmless from any liability or infringement of any such intellectual property used by Project Sponsor in the implementation of the Project.

- 7.2 All work performed by Project Sponsor in connection with the implementation of the Project and all Measures installed or maintained by Project Sponsor shall conform to all applicable laws, statutes, ordinances, rules, regulations, and decrees of any governmental or administrative body having jurisdiction over the CIEEP or any portion of the Project, including without limitation, the Occupational Safety and Health Administration (OSHA) regulations, the National Electric Safety Code (NESC), the National Electric Code (NEC) and Sections 11-5-301 through 11-5-309 of the Arkansas Code Annotated. Handling of hazardous waste must be in compliance with all applicable federal, state and local laws, rules and regulations.

## **ARTICLE VIII – LIMITATION OF LIABILITY**

- 8.1 **SWEPCO AND ANY INDIVIDUAL, CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, TRUST, OR OTHER BUSINESS ORGANIZATION OF ANY KIND DIRECTLY OR INDIRECTLY CONTROLLING, CONTROLLED BY, OR UNDER COMMON CONTROL WITH SWEPCO AND ITS AND THEIR RESPECTIVE SHAREHOLDERS, MEMBERS, PARTNERS, OFFICERS, DIRECTORS, MANAGERS, TRUSTEES, INCORPORATORS, AGENTS, ATTORNEYS, CONSULTANTS, SERVANTS, REPRESENTATIVES, AND EMPLOYEES SHALL NOT BE LIABLE TO PROJECT SPONSOR OR ANY CUSTOMER FOR ANY LOSSES, COSTS, INJURIES, LIABILITIES, EXPENSES (INCLUDING ATTORNEY’S FEES), OR CLAIMS FOR INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE CONNECTED WITH OR RESULTING FROM**

- (i) NEGOTIATION, EXECUTION, OPERATION, OR TERMINATION OF THIS AGREEMENT;**
- (ii) PERFORMANCE OR NON-PERFORMANCE OF ANY COMMITMENT TO A CUSTOMER; OR**
- (iii) ANY ACTS, OMISSIONS, OR REPRESENTATIONS MADE BY PROJECT SPONSOR IN CONNECTION WITH SOLICITING CUSTOMERS OR PERFORMING ANY OTHER FUNCTIONS,**

**INCLUDING WITHOUT LIMITATION, CLAIMS IN THE NATURE OF LOST REVENUES, INCOME OR PROFITS, IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BASED UPON WARRANTY, NEGLIGENCE, STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE AND PROJECT SPONSOR SHALL PROTECT, INDEMNIFY AND HOLD SWEPCO HARMLESS FROM SAME.**

## **ARTICLE IX – INDEPENDENT CONTRACTOR**



A unit of American Electric Power

Project Sponsor will act as and be deemed to be an independent contractor, and nothing in this Agreement shall be construed to create the relationship of employer and employee, master and servant, principal and agent or joint ventures. Project Sponsor will be solely responsible for and have the sole right to control and directly supervise the method, manner and details of the Project providing it is in accordance with the Contract Documents. SWEPCO shall have no responsibility with respect to withholding, deductions or payment of any federal or state tax on behalf of Project Sponsor or any of Project Sponsor's employees. Project Sponsor agrees to pay and comply with and hold SWEPCO harmless from and against the payment of all contributions, taxes and premiums which may be payable by Project Sponsor under federal, state or local laws arising out of the performance of this Agreement and all other taxes of whatever nature levied or assessed against Project Sponsor arising out of this Agreement, including any interest or penalties, and Project Sponsor hereby waives any and all claims for additional compensation because of any increase in the aforementioned taxes.

**ARTICLE X – NOTICES**

10.1 All notices from one Party to the other will be deemed to have been delivered if hand delivered or sent by United States mail to the following addresses:

**Southwestern Electric Power Company**

**Project Sponsor**

Name: Gregory Perkins

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

Address: 101 W. Township

Address: \_\_\_\_\_

Fayetteville, AR

\_\_\_\_\_

Phone: (479) 973-2435

Phone: \_\_\_\_\_

E-mail: gaperkins@aep.com

E-mail: \_\_\_\_\_

10.2 Either Party may change its address by written notice to the other in accordance with this Article X.

**ARTICLE XI – AMENDMENT**

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

**ARTICLE XII – NONDISCLOSURE**



- 12.1 If either Party hereto provides confidential information to the other in writing and identified as such, the receiving Party shall protect the confidential information from disclosure to third parties. Neither Party shall be required to hold confidential any information which (i) becomes publicly available other than through the recipient; (ii) is required to be disclosed by a governmental or judicial order, rule or regulation; (iii) is independently developed by the receiving Party as evidenced by written records; or (iv) becomes available to the receiving Party without restriction from a third party. These obligations shall survive expiration or termination of this Agreement.
- 12.2 Should any person or entity seek to legally compel a receiving Party (by oral questions, interrogations, requests for information or documents, subpoena, civil investigative demands, regulation, statute or otherwise) to disclose any confidential information, the receiving Party will provide the disclosing Party prompt written notice so that the disclosing Party may seek a protective order or other appropriate remedy (including participating in any proceeding to which the receiving Party is a party, which receiving Party will use its reasonable business and legal efforts to permit). If, in the absence of a protective order, the receiving Party is, in the opinion of its legal counsel, compelled to disclose the confidential information, the receiving Party may disclose only such of the confidential information to the person or entity compelling disclosure as is required by applicable law, order, regulation or rule.

### **ARTICLE XIII – MISCELLANEOUS**

- 13.1 Project Sponsor will not assign, transfer or otherwise dispose of any of its obligations or duties without the prior written approval of SWEPCO. No assignment of this Agreement shall relieve Project Sponsor of any of its obligations under this Agreement. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee. Any assignment or transfer made without the express written approval of SWEPCO will be null and void. No part of the work contemplated under this Agreement may be performed by subcontractors without the prior written approval of SWEPCO.
- 13.2 The Contract Documents constitute the entire Agreement between the Parties with respect to the subject matter hereof and there are no express or implied warranties or representations upon which any party may rely beyond those set forth therein. The execution of this Agreement supersedes all previous agreements, discussions, communications and correspondence with respect to such subject matter.
- 13.3 In the event any provision of this Agreement is held to be void, unlawful, or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.
- 13.4 This Agreement will be governed by, construed and enforced in accordance with the laws of the State of Arkansas excluding any conflict or choice of law rules that direct the application





A unit of American Electric Power

of the laws of another jurisdiction, irrespective of the place of execution or of the order in which the signature of the Parties hereto are affixed or of the place or places of performance. Except for matters and disputes with respect to which the APSC is the sole proper venue for dispute resolution pursuant to applicable law or this Agreement, the Parties agree that the proper venue and jurisdiction for any cause of action relating to the Agreement will be in the county of Arkansas where the project was completed and the Parties hereto submit to the exclusive jurisdiction of the federal and state courts located in such county with respect to such matters and disputes.

- 13.5 Project Sponsor shall not use SWEPCO's corporate name, trademark, trade name, logo, identity or any affiliation for any reason, including soliciting customers for participation in its project, without SWEPCO's prior written consent.

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

Southwestern Electric Power Company

Project Sponsor

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

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

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

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

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

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

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

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