

**SOUTHWESTERN PUBLIC SERVICE COMPANY d/b/a XCEL ENERGY
2009 COMMERCIAL STANDARD OFFER PROGRAM**

STANDARD CONTRACT

This Commercial Standard Offer Program Standard Contract (the "Agreement") is made and entered into by and between SOUTHWESTERN PUBLIC SERVICE COMPANY d/b/a Xcel Energy, a New Mexico corporation (hereinafter "Xcel Energy") and _____, (hereinafter "Project Sponsor") for the purpose of obtaining demand and energy savings from efficiency measures installed at _____ (the "Project").

WHEREAS, Xcel Energy has developed a demand-side Standard Offer Program for its commercial customer classes (the "Commercial Standard Offer Program"); and

WHEREAS, the Commercial Standard Offer Program seeks to procure energy and demand savings through the installation and operation of energy efficiency measures at the facilities of such customers located within Xcel Energy's Texas service territory; and

WHEREAS, the Project Sponsor has developed a plan for participation in the Commercial Standard Offer Program through a set of proposed energy-efficiency measures and other improvements necessary to produce consistent and measurable energy and peak demand savings over a ten-year period (the "Project").

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

ARTICLE I. DEFINITIONS

- I.1 "Contract Documents" shall mean (1) the Project Sponsor's approved Initial Application, attached hereto and incorporated herein as Exhibit A, (2) the Project Sponsor's approved Final Application, attached hereto and incorporated herein as Exhibit B, (3) the Commercial Standard Offer Program Procedures Manual and (4) this Agreement together with any and all other exhibits, addenda, or amendments referenced herein or made a part hereof in accordance with this Agreement.
- I.2 "Customer" shall mean a commercial or industrial distribution system customer of Xcel Energy that owns or leases facilities at a Project Site and that has entered into a Customer Agreement with the Project Sponsor for the installation of Measures as a part of the Project. For the purposes of this Agreement, a large commercial customer shall mean a new or existing customer sites located in Xcel Energy's Texas service territory with non-residential electricity distribution service provided by Xcel Energy and a maximum demand at any individual meter greater than 100 kW, or a maximum aggregate demand equal to or greater than 250 kW. A small commercial customer shall mean a new or existing----less than 100kw or maximum aggregate less than 250 kW.
- I.3 "Demand Savings" shall mean the maximum one-hour average demand reduction, expressed in kW, that results only from those Measures included in the Project Sponsor's approved Final Application and that occurs when the Measures are operating at peak conditions during the summer period. The summer period is defined as Monday through Friday, between the hours of 1 PM and 7 PM from May 1 through September 30, excluding holidays. Any demand savings that may result from Measures installed or activities completed by the Project Sponsor that are not included in the approved Final Application will be excluded from this definition and are not

eligible for payment under the Commercial Standard Offer Program. Demand savings will be calculated based upon savings over and above standard efficiency equipment and not in relationship to existing equipment, except in cases where no standards exist. Equipment standard efficiencies are ASHRAE Standard 90.1-1989, ASHRAE Standard 90.1-1999, ASHRAE Standard 90.1m-1995, and the Xcel Energy Standard Lighting Fixture Wattage Table.

- I.4 “Energy Savings” shall mean the amount of annual (one-year) electric energy reduction, expressed in kilowatt-hours, that results only from those Measures included in the Project Sponsor’s approved Final Application. Any energy savings that may result from Measures installed or activities completed by the Project Sponsor that are not included in the approved Final Application will be excluded from this definition and are not eligible for payment under the Commercial Standard Offer Program. Energy savings will be calculated based upon savings over and above standard efficiency equipment and not in relationship to existing equipment, except in cases where no standards exist. Equipment standard efficiencies are ASHRAE Standard 90.1-1989, ASHRAE Standard 90.1-1999, ASHRAE Standard 90.1m-1995, and the Xcel Energy Standard Lighting Wattage Table.
- I.5 “Measure” shall mean new equipment, material, or systems installed pursuant to the Project that when installed and used at a customer site result in a measurable and verifiable reduction in either purchased electric energy consumption, measured in kWh, or peak demand, measured in kW, that meet the requirements of the Contract Documents, and that, in the determination of Xcel Energy or the Public Utility Commission of Texas (PUCT), do not fall into one of the categories listed in section 25.181(i)(6) of the PUCT Substantive Rules.
- I.6 “Measured Demand Savings” shall mean the Demand Savings derived from the Measures installed at the Project Site as determined in accordance with the Measurement and Verification Plan found in the Final Application, set forth in Exhibit B, and as documented in a Savings Report approved by Xcel Energy.
- I.7 “Measured Energy Savings” shall mean the Energy Savings derived from the Measures installed at the Project Site as determined in accordance with the Measurement and Verification Plan found in the Final Application, set forth in Exhibit B, and as documented in a Savings Report approved by Xcel Energy.
- I.8 “Measurement and Verification” shall mean activities completed by the Project Sponsor after Project Sponsor submits a completed Installation Report to establish the Measured Demand Savings and Measured Energy Savings according to the Measurement and Verification guidelines set forth in the Commercial Standard Offer Program Procedures Manual.
- I.9 “Performance Period” shall mean the period following approval of the Installation Report during which all necessary post-installation measurement and verification activities take place.
- I.10 “Project” shall mean a Measure or combination of Measures installed under a standard offer contract that results in both a reduction in customers’ electric energy consumption and peak demand, and energy costs.
- I.11 “Project Site” shall mean the location of a Customer’s facilities where approved Measures will be installed and from which Demand Savings and Energy Savings will be obtained. Project Sites may not include new building construction or additions to existing buildings.
- I.12 “Project Sponsor and Customer Agreement” shall mean the agreement signed by the Project Sponsor and Customer 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.

- I.13 “Prudent Electrical Practices” shall mean those practices, methods, standards and equipment commonly used in prudent Electrical engineering and operations to operate Electrical equipment lawfully and with safety, dependability and efficiency and in accordance with the National Electrical Safety Code, the National Electrical Code and any other applicable federal state and local codes provided, however, that in the event of a conflict, the applicable federal, state or local code shall govern.

ARTICLE II. TERM AND TERMINATION

- II.1 The term of this Agreement shall commence on the date of execution by Xcel Energy following execution by Project Sponsor (the “Effective Date”) and, unless otherwise terminated as set forth herein, shall continue in force and effect until December 31, 2009 or until payment by Xcel Energy of the Performance Payment due pursuant to Article VII.4 herein below, whichever is later.

ARTICLE III. ACKNOWLEDGEMENT OF PROGRAM REQUIREMENTS

- III.1 By executing this Agreement, the Project Sponsor has become familiar with the Xcel Energy Commercial Standard Offer Program Procedures Manual and all related rules and information and all applicable laws and regulations prior to submission of its Initial Application. The Project Sponsor also acknowledges that it meets or exceeds all of the following qualifications required by Xcel Energy for participation in the Commercial Standard Offer Program:

- Possesses and can demonstrate experience in implementing similar projects;
- Can produce evidence of a good credit rating;
- Can produce evidence of financial strength and capability through 10Ks or financial statements;
- Can produce evidence of possession of all applicable licenses required under state law and local building codes;
- Can produce evidence of possession of all building permits required by governing jurisdictions;
- Can produce the proof of insurance required by Article IX and Exhibit C of this Agreement; and
- Has produced a work plan for Project design and implementation.

- III.2 Project Sponsor acknowledges that its Project meets all regulatory requirements, including:

- The Project results in a reduction in purchased energy consumption and peak demand, and a reduction in energy and demand costs for the end-use customer;
- The Project will result in consistent and predictable energy and peak demand savings over a ten-year period;
- The Project discloses any potential adverse environmental or health effects associated with the energy efficiency measures to be installed;
- The Project includes appropriate and adequate measurement, verification and reporting procedures;
- The Project does not achieve demand reduction by eliminating an existing function or shutting down a facility or operation, or result in building vacancies or the re-location of existing operations to locations outside of the facility or area served by Xcel Energy
- Measures installed pursuant to the Project would not be installed even in the absence of the Project;

- The Project does not result in negative environmental or health effects, including effects that result from improper disposal of equipment and materials; and
- The Project does not involve the installation of self-generation or cogeneration equipment, but may involve renewable DSM technologies.

ARTICLE IV. PROJECT SPONSOR AND CUSTOMER AGREEMENT

IV.1 The Project Sponsor will be solely responsible for obtaining a Program Sponsor and Customer Agreement as appropriate for implementation of the Project. The Project Sponsor and Customer Agreement must include the following provisions:

- (a) A Customer agreement to provide Xcel Energy, upon three (3) days' prior oral notice, full and complete access to the Project Site for any purpose related to the Commercial Standard Offer Program. Access shall be provided during the Customer's normal business hours and in compliance with the Customer's reasonable access requirements.
- (b) A Customer acknowledgement that any view, inspection, or acceptance by Xcel Energy of the Project Site or of the design, construction, installation, operation or maintenance of the Measures is solely for the information of Xcel Energy and that, in performing any such inspection or review or in accepting the Measures, Xcel Energy makes no representations or warranty whatsoever as to the economic or technical feasibility, capability, safety or reliability of the Measures, their installation by the Project Sponsor, or their compatibility with the Customer's facilities.
- (c) A Customer acknowledgement that the Project Sponsor is an independent contractor with respect to Xcel Energy and the Commercial Standard Offer Program and that the Project Sponsor is not authorized to make representations or incur obligations on behalf of Xcel Energy.
- (d) A Customer acknowledgement that Xcel Energy is not a party to the Project Sponsor and Customer Agreement and that the Project Sponsor is solely responsible for performance thereunder.
- (e) A Customer acknowledgement that Xcel Energy 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.
- (f) A Customer acknowledgement that the Customer may file a complaint with the Public Utility Commission of Texas concerning the Project Sponsor, but that Xcel Energy will play no role in resolving any disputes that arise between the Customer and the Project Sponsor.
- (g) A Customer agreement to release Xcel Energy 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, regardless of any strict liability or negligence of Xcel Energy, 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 Xcel Energy, and resulting from its acceptance of the Project for participation in the Commercial Standard Offer Program.

ARTICLE V. PROJECT IMPLEMENTATION

- V.1 The Project Sponsor agrees on and after the Effective Date to use all reasonable efforts to implement the Project without undue delay and otherwise in accordance with the terms of the Contract Documents. To the extent of any conflict between this Agreement and other Contract Documents, the terms of this Agreement shall prevail.
- V.2 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.
- V.3 Within seven (7) days of completing installation of Measures at a Project Site, the Project Sponsor shall so notify Xcel Energy by submitting a report for review and approval documenting the Measures actually installed, including a document signed by the Customer certifying that the Measures were installed (the "Installation Report"). The Installation Report shall be submitted both electronically and by U.S. First Class Mail or other comparable U.S. courier service. If the Customer refuses to sign a certification of installation, the Project Sponsor may request that Xcel Energy inspect the Project Site, at the sole expense of the Project Sponsor, to verify the installation of the Measures. Upon receipt of the Installation Report, Xcel Energy shall have the right to inspect the Project Site to verify the installation of the Measures. Approval of the Installation Report shall be granted if Xcel Energy reasonably determines that the Measures at the Project Site have been installed, tested and inspected to the extent required by Xcel Energy and found to be capable of providing Demand Savings and Energy Savings in material compliance with the Contract Documents. If Measures are rejected, Xcel Energy will set forth the written reasons for such rejection and the Project Sponsor may attempt to remedy the deficiencies and resubmit its Installation Report only once. If any Measure is rejected for cause a second time, Xcel Energy will consider the cause for rejection to be a breach of contract and will not pay any incentive for such Measure.

ARTICLE VI. MEASUREMENT AND VERIFICATION

- VI.1 The Project Sponsor shall measure and verify the Demand Savings and Energy Savings that result from the Measures installed as a part of the Project as set forth in the Measurement and Verification Plan found in the Final Application, which is attached hereto as Exhibit B.
- VI.2 Within thirty (30) days of the conclusion of the Performance Period, the Project Sponsor shall submit for review and approval a Savings Report to Xcel Energy documenting the Measured Demand Savings and Measured Energy Savings for the Performance Period. If the Savings Report is deficient, Xcel Energy will provide, in writing, notice of the deficiency, and the Project Sponsor shall revise and resubmit the Savings Report until it is approved by Xcel Energy. Any necessary revisions shall be performed in the time-period specified by Xcel Energy in the notice of deficiency. Xcel Energy may decline to make incentive payments associated with Savings Report deficiencies that are not revised as requested by Xcel Energy.

ARTICLE VII. INCENTIVE PAYMENTS

- VII.1 Xcel Energy agrees to make incentive payments to the Project Sponsor based upon the Measured Demand Savings and Measured Energy Savings derived from the Project. The total incentive

payments due to the Project Sponsor will be calculated by multiplying the Measured Demand Savings and Measured Energy Savings by the applicable incentive prices associated with the Measures installed at the Project Site (the "Incentive Rates"). The total incentive payment shall be payable in two installments as set forth herein below. The total incentive payment for this Project shall not exceed \$ _____ based upon a Demand Savings of _____ kW and a total Annual Energy Savings of _____ kWh. No more than sixty-five percent (65%) of the Measured Demand Savings and Measured Energy Savings for the Project may be derived from lighting measures. If a project consists of lighting measures only, compensation shall not exceed sixty-five percent (65%) of the total incentive payments due to the Project Sponsor.

VII.2 The Incentive Rate applicable to each type of measure is set forth in the following table

| | Demand Incentive Rate (\$/kW) | Energy Incentive Rate (\$/kWh) |
|------------------|-------------------------------|--------------------------------|
| Large Commercial | \$195 | \$0.067 |
| Small Commercial | \$278 | \$0.095 |

VII.3 Upon completion of Measure installation and approval of the Installation Report, the Project Sponsor shall submit an invoice to Xcel Energy for review and approval for the first installment of the incentive payment (the "Installation Payment"). Xcel Energy will make the Installation Payment within thirty (30) days of its approval of the invoice. The Installation Payment will be forty percent (40%) of the total incentive payment due based upon the Estimated Demand Savings and Estimated Energy Savings using the following equation:

$$\text{Installation Payment} = 0.4 \times [(\text{Estimated Demand Savings} \times \text{Demand Incentive Rate}) + (\text{Estimated Annual Energy Savings} \times \text{Energy Incentive Rate})].$$

VII.4 At the conclusion of the Performance Period and upon Xcel Energy approval of the Savings Report, the Project Sponsor shall submit an invoice to Xcel Energy for review and approval for the second installment of the incentive payment (the "Performance Payment"). The Performance Payment will be the remaining amount of the total incentive payment due based upon the Measured Demand Savings and Measured Energy Savings. The amount of the Performance Payment shall be calculated using the following formula:

$$\text{Performance Payment} = [(\text{Measured Demand Savings} \times \text{Demand Incentive Rate}) + (\text{Measured Energy Savings} \times \text{Energy Incentive Rate})] - \text{Installation Payment}.$$

Xcel Energy will make the Performance Payment within thirty (30) days of its approval of the invoice. In the event that the above formula results in a negative Performance Payment, then the Project Sponsor will refund that amount to Xcel Energy within thirty (30) days of receipt of notification of Xcel Energy's approval of the invoice.

Under no circumstances shall the Incentive Payment exceed the Estimated Payment Amount included in the Final Application, regardless of Measured Demand Savings and Measured Energy Savings.

VII.5 Under no circumstances shall Xcel Energy pay incentives for Measured Energy Savings that exceed 5,256 kWh for every 1 kW of Measured Demand Savings achieved, corresponding to a Large Commercial Project maximum load factor of 60% or pay incentives for Measured Energy Savings that exceed 3,942 kWh for every 1 kW of Measured Demand Savings achieved, corresponding to a Small Commercial Project maximum load factor of 45%.

ARTICLE VIII. AUDIT AND RECORDS

VIII.1 The Project Sponsor shall keep and maintain accurate and detailed records and documentation relating to the Project and its associated Demand Savings and 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 Xcel Energy or any governmental agency having jurisdiction over the Commercial Standard Offer Program or any portion of the Project.

ARTICLE IX. INSURANCE

IX.1 The Project Sponsor represents and agrees that it and its subcontractors, if any, will carry all statutorily required insurance for the protection of its employees. The Project Sponsor further represents and agrees that it will carry all insurance required by Exhibit C that is attached hereto and incorporated herein for all purposes. Prior to commencement of installation, the Project Sponsor shall furnish to Xcel Energy a certificate or certificates of insurance indicating the Project Sponsor compliance with this paragraph and stating that the insurance described therein shall not be canceled or terminated except on thirty (30) days written notice to Xcel Energy, Attention: Risk Management. Additionally, the Project Sponsor represents and agrees that Xcel Energy shall be named as an additional insured on all policies (except worker's compensation) in the amounts of coverage therein stated and that all policies will include a waiver of subrogation naming Xcel Energy, with the appropriate certificates of insurance evidencing that Xcel Energy has been named as an additional insured on such policies and that such policies include a waiver of subrogation naming Xcel Energy. The Project Sponsor shall furnish evidence that such policies have been issued in accordance with the requirements of this paragraph by furnishing copies of such for Xcel Energy's inspection.

ARTICLE X. INDEMNITY

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

ARTICLE XI. PERMITS, LICENSES AND COMPLIANCE WITH LAWS

XI.1 The Project Sponsor represents and warrants that prior to beginning installation of Measures, the Project Sponsor will, at its own cost and expense, obtain all permits and other authorizations from governmental authorities as then may be required to install, construct, operate and maintain the Measures in question and to perform its obligations hereunder. During the term hereof, the Project Sponsor will obtain all such additional governmental permits, licenses, and other authorizations when required with respect to any of the Measures under this Agreement. If requested by Xcel Energy, the Project Sponsor shall furnish to Xcel Energy copies of each such permit, license or other approval promptly following receipt thereof. The Project Sponsor shall maintain in full force and effect all such governmental permits, licenses and other authorizations

as may be necessary for the construction, operation or maintenance of the Measures in accordance herewith.

- XI.2 The 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. The Project Sponsor shall defend any suit that may be brought against Xcel Energy and shall hold Xcel Energy harmless from any liability or infringement of any such intellectual property used by the Project Sponsor in the implementation of the Project.
- XI.3 All work performed by the Project Sponsor in connection with the implementation of the Project and all Measures installed or maintained by the Project Sponsor shall conform to all applicable laws, statutes, ordinances, rules, regulations, and decrees of any governmental or administrative body having jurisdiction over the Commercial Standard Offer Program or any portion of the Project, including without limitation, Occupational Safety and Health Administration (OSHA) regulations, the National Electric Safety Code (NESC), the National Electric Code (NEC) and Sections 752.001 - 752.008 of the Texas Health and Safety Code.

ARTICLE XII. DEFAULT AND REMEDIES

- XII.1 Each of the following events will be deemed to be an Event of Default hereunder:
- (a) Failure of the Project Sponsor to perform its responsibilities in a timely manner or implement the Project in compliance with the Commercial Standard Offer Program Procedures Manual and other Contract Documents;
 - (b) Failure of the Project Sponsor to provide Xcel Energy and/or its contractors with sufficient access to the Project Sites for the purposes of conducting inspections or Measurement and Verification activities;
 - (c) Failure of the Project Sponsor to maintain any necessary permits, licenses or insurance required pursuant to the Contract Documents;
 - (d) The Project Sponsor's assignment or subcontracting of all or part of the duties required under the Contract Documents without the prior written consent of Xcel Energy;
 - (e) The Project Sponsor's submission to Xcel Energy of any false, misleading or inaccurate information or documentation with respect to implementation of the Project or the Project Sponsor's performance hereunder, when the Project Sponsor knew or reasonably should have known that such information was false, misleading or inaccurate; or
 - (f) Failure of either party in a material fashion to perform or observe any of the material terms, conditions or provisions of this Agreement which failure materially adversely affects the other party and continues after notice and a thirty (30) day period to cure, or, if such failure cannot reasonably be cured within thirty (30) days, after notice and such period to cure in excess of thirty (30) days as may be reasonably required (provided that the non-performing party commences action to cure within an initial period thirty (30) days after notice and thereafter pursues such cure with reasonable diligence).
- XII.2 In the event of an Event of Default, the non-default party shall be entitled to exercise any and all remedies provided for by law or in equity, including the right to terminate this agreement upon written notice to the other party. Termination shall be effective upon the receipt of properly served notice. Termination of this Agreement will not relieve the defaulting party of any obligations accruing prior to the event of termination.

ARTICLE XIII. NOTICES

XIII.1 All notices from one party to the other will be deemed to have been delivered if hand delivered or sent by United States certified mail, return receipt requested, postage prepaid to the following addresses:

Xcel Energy:
Xcel Energy
P.O. Box 1261
Amarillo, Texas 79105-1261
Attn: Doug Maxey

Project Sponsor:

Attn: _____

XIII.2 Either party may change its address by written notice to the other in accordance with this Article XIII.

ARTICLE XIV. AMENDMENT

XIV.1 No amendment or modification of this Agreement shall be binding on either party unless it is in writing and signed by both parties. Amendments to this Agreement will be attached hereto and made a part hereof for all purposes.

ARTICLE XV. FORCE MAJEURE

XV.1 Should either Party be rendered unable, either wholly or in part, by an event of Force Majeure, to fulfill its obligations under this Agreement, the obligation of the Party so rendered, that is affected by the event of Force Majeure, will be suspended only during the continuance of that inability. The Party so affected will give written notice of the existence, extent and nature of the Force Majeure to the other Party within forty-eight (48) hours after the occurrence of the event. The Party so affected will use its best efforts to remedy its inability as soon as possible and will provide the other Party with prompt notice when it is able to resume the performance of its obligations. Failure to give notice will result in the continuance of the affected Party's obligation regardless of the extent of any existing Force Majeure.

XV.2 The term "Force Majeure" as used in this Agreement will mean acts of God (except as excluded herein), strikes, lockouts, or other industrial disturbances, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, priority allocations of pipe or other materials or orders, restraints or prohibitions by any court, board, department, commission or agency of the United States or of any State, any arrests and restraints, civil disturbances, explosions, and inability despite reasonable diligence to obtain materials essential to this Agreement. Rain, snow, ice or other adverse weather conditions will not be considered events of Force Majeure.

XV.3 The term "Force Majeure" does not include: events or circumstances that affect the costs of installing the Measures but do not prevent performance, including, but not limited to, requirements, actions or failures to act on the part of governmental authorities (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by federal, state or local governmental bodies); changes in market conditions; and events or conditions attributable to normal wear and tear or flaws randomly experienced in materials and equipment and their assembly and operation, unless such events and conditions are caused by an occurrence which would fit the definition of Force Majeure set forth in Section XV.2.

- XV.4 In no event will any Force Majeure extend this Agreement beyond its stated term.
- XV.5 If any Force Majeure causes a reduction in the Measures, the Parties may at any time agree to reduce the number of Measures for the duration of the Force Majeure event.

ARTICLE XVI. MISCELLANEOUS

- XVI.1 The Project Sponsor will not assign, transfer or otherwise dispose of any of its obligations or duties without the prior written approval of Xcel Energy. Any assignment or transfer made without the express written approval of Xcel Energy will be null and void.
- XVI.2 The Project Sponsor will not subcontract the performance of any of its obligations or duties without the prior written consent of Xcel Energy.
- XVI.3 The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver or any other breach of the same or any other term, condition or covenant contained herein.
- XVI.4 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 superseded all previous agreements, discussions, communications and correspondence with respect to such subject matter.
- XVI.5 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.
- XVI.6 This Agreement will be governed by, construed and enforced in accordance with the laws of the State of Texas. The parties agree that the proper venue and jurisdiction for any cause of action relating to the Agreement will be in Potter County, Texas.
- XVI.7 The Project Sponsor shall not use Xcel Energy's corporate name, trademark, trade name, logo, identity or any affiliation for any reason, including to solicit customers for participation in its project, without Xcel Energy's prior written consent.
- XVI.8 The Project Sponsor shall have the right to file a complaint against Xcel Energy in accordance with Section 25.181(j)(2)(L) of the PUCT Substantive Rules concerning this Commercial Standard Offer Program Standard Contract.

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

**SOUTHWESTERN PUBLIC SERVICE
COMPANY d/b/a XCEL ENERGY**

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A
INITIAL APPLICATION

EXHIBIT B
FINAL APPLICATION

EXHIBIT C INSURANCE REQUIREMENTS

NOTE: Southwestern Public Service Company d/b/a Xcel Energy (Xcel Energy) shall be named an ADDITIONAL INSURED on all policies (except Worker's Compensation). Each policy shall include a Waiver of Subrogation naming Xcel Energy, and shall provide for thirty (30) days prior written notice of cancellation.

| TYPE/COVERAGE | LIMITS OF LIABILITY |
|---|---|
| WORKERS' COMPENSATION | Statutory |
| EMPLOYER'S LIABILITY) | \$100,000. Each Accident |
|) | \$500,000. Disease Policy Limit |
|) | \$100,000. Disease Employee Limit |
| COMMERCIAL GENERAL LIABILITY OCCURRENCE FORM with the following Coverage's included (not excluded): | Bodily Injury & Property Damage Combined: |
| - Premises Operations | Each Occurrence: \$1,000,000 |
| - Explosion, Collapse and Underground damage | General Aggregate: \$1,000,000 |
| - Products/Completed Operations | Products Comp/Ops. Aggregate: \$1,000,000 |
| - Contractual Insurance (applicable to indemnity clause contained in contract(s)) | |
| - Independent Contractors | |
| - Broad Form Property Damage | |
| - Personal Injury | |

AUTOMOBILE LIABILITY, with coverage of Bodily Injury and Property Damage (BI and PD) Combined: \$1,000,000
(Applicable to all owned, hired and non-owned vehicles)

EXCESS UMBRELLA LIABILITY, BI and PD Combined: \$1,000,000
OCCURRENCE FORM: Each Occurrence and Aggregate

INFORMATION FOR THE PROJECT SPONSOR:

- ** Insurance provided by the Project Sponsor must be maintained in effect during the entire term of this Agreement.
- ** A copy of this sheet and a copy of this Agreement should be furnished to the Project Sponsor's Insurance Agent.
- ** Only Xcel Energy Risk Management is authorized to amend or waive insurance requirements.

INFORMATION FOR INSURANCE AGENTS:

- ** Required insurance should be certified using the ACCORD CERTIFICATE OF INSURANCE, or a form similar thereto.
- ** The Project Sponsor's insurance agent is responsible to list on CERTIFICATE OF INSURANCE all endorsements, which eliminate any required coverages.
- ** The Project Sponsor's insurance agent is responsible to state on the CERTIFICATE OF INSURANCE that Xcel Energy is named ADDITIONAL INSURED on all policies of insurance (except Worker's Compensation) and that all policies of insurance include Waiver of Subrogation in favor of Xcel Energy.
- ** CERTIFICATE OF INSURANCE must be dated and signed by insurance agent or authorized representative.
- ** CERTIFICATE HOLDER must be shown as Xcel Energy, P.O. Box 1261, Amarillo, Texas 79105-1261.
- ** The original CERTIFICATE OF INSURANCE must be forwarded to the CERTIFICATE HOLDER.