

**City of Fayetteville Staff Review Form**

**2015-0015**

**Legistar File ID**

**2/3/2015**

City Council Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Peter Nierengarten

1/12/2015

Sustainability & Resilience /  
Chief of Staff

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

Staff recommends approval of an agreement with Southwestern Electric Power Company (SWEPCO) for a \$4967.83 incentive for the Dickson Street Lighting Retrofit project and approval of a budget adjustment. The project goal is to replace the existing lighting fixtures and install new lighting fixtures that will save the City of Fayetteville money, use less energy and light the street better.

**Budget Impact:**

|   |                                |                   |                |                  |           |  |  |                 |    |   |  |  |                 |           |                  |   |  |  |           |    |   |                               |           |                   |    |          |                                    |            |                  |           |                  |
|---|--------------------------------|-------------------|----------------|------------------|-----------|--|--|-----------------|----|---|--|--|-----------------|-----------|------------------|---|--|--|-----------|----|---|-------------------------------|-----------|-------------------|----|----------|------------------------------------|------------|------------------|-----------|------------------|
| 2100.5315.5405  | Lighting Equipment Maintenance |                   |                |                  |           |  |  |                 |    |   |  |  |                 |           |                  |   |  |  |           |    |   |                               |           |                   |    |          |                                    |            |                  |           |                  |
| Account Number  | Fund                           |                   |                |                  |           |  |  |                 |    |   |  |  |                 |           |                  |   |  |  |           |    |   |                               |           |                   |    |          |                                    |            |                  |           |                  |
| Project Number  | Project Title                  |                   |                |                  |           |  |  |                 |    |   |  |  |                 |           |                  |   |  |  |           |    |   |                               |           |                   |    |          |                                    |            |                  |           |                  |
| <table border="0" style="width: 100%;"> <tr> <td style="width: 30%;"><b>Budgeted Item?</b></td> <td style="width: 10%;"><u>Yes</u></td> <td style="width: 30%;">Current Budget</td> <td style="width: 10%; text-align: right;">\$</td> <td style="width: 10%; text-align: right;">30,000.00</td> </tr> <tr> <td></td> <td></td> <td>Funds Obligated</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td></td> <td></td> <td>Current Balance</td> <td style="text-align: right;"><b>\$</b></td> <td style="text-align: right;"><b>30,000.00</b></td> </tr> </table> | <b>Budgeted Item?</b>          | <u>Yes</u>        | Current Budget | \$               | 30,000.00 |  |  | Funds Obligated | \$ | - |  |  | Current Balance | <b>\$</b> | <b>30,000.00</b> | <table border="0" style="width: 100%;"> <tr> <td style="width: 30%;"></td> <td style="width: 10%;"></td> <td style="width: 30%;">Item Cost</td> <td style="width: 10%; text-align: right;">\$</td> <td style="width: 10%; text-align: right;">-</td> </tr> <tr> <td><b>Does item have a cost?</b></td> <td><u>No</u></td> <td>Budget Adjustment</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">4,968.00</td> </tr> <tr> <td><b>Budget Adjustment Attached?</b></td> <td><u>Yes</u></td> <td>Remaining Budget</td> <td style="text-align: right;"><b>\$</b></td> <td style="text-align: right;"><b>34,968.00</b></td> </tr> </table> |  |  | Item Cost | \$ | - | <b>Does item have a cost?</b> | <u>No</u> | Budget Adjustment | \$ | 4,968.00 | <b>Budget Adjustment Attached?</b> | <u>Yes</u> | Remaining Budget | <b>\$</b> | <b>34,968.00</b> |
| <b>Budgeted Item?</b>   | <u>Yes</u>                     | Current Budget    | \$             | 30,000.00        |           |  |  |                 |    |   |  |  |                 |           |                  |   |  |  |           |    |   |                               |           |                   |    |          |                                    |            |                  |           |                  |
|   |                                | Funds Obligated   | \$             | -                |           |  |  |                 |    |   |  |  |                 |           |                  |   |  |  |           |    |   |                               |           |                   |    |          |                                    |            |                  |           |                  |
|   |                                | Current Balance   | <b>\$</b>      | <b>30,000.00</b> |           |  |  |                 |    |   |  |  |                 |           |                  |   |  |  |           |    |   |                               |           |                   |    |          |                                    |            |                  |           |                  |
|   |                                | Item Cost         | \$             | -                |           |  |  |                 |    |   |  |  |                 |           |                  |   |  |  |           |    |   |                               |           |                   |    |          |                                    |            |                  |           |                  |
| <b>Does item have a cost?</b>   | <u>No</u>                      | Budget Adjustment | \$             | 4,968.00         |           |  |  |                 |    |   |  |  |                 |           |                  |   |  |  |           |    |   |                               |           |                   |    |          |                                    |            |                  |           |                  |
| <b>Budget Adjustment Attached?</b>  | <u>Yes</u>                     | Remaining Budget  | <b>\$</b>      | <b>34,968.00</b> |           |  |  |                 |    |   |  |  |                 |           |                  |   |  |  |           |    |   |                               |           |                   |    |          |                                    |            |                  |           |                  |

V20140710

Previous Ordinance or Resolution # \_\_\_\_\_

Original Contract Number: \_\_\_\_\_

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

Comments:

**MEETING OF FEBRUARY 3, 2015**

**TO:** Mayor and City Council  
**THRU:** Terry Gulley, Transportation Service Director  
**FROM:** Peter Nierengarten, Sustainability & Resilience Director  
**DATE:** January 12, 2015  
**SUBJECT: Dickson Street Lighting Retrofit**

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**RECOMMENDATION:**

Staff recommends approval of an agreement with Southwestern Electric Power Company (SWEPCO) for a \$4967.83 incentive for the Dickson Street Lighting Retrofit project and approval of a budget adjustment. The project goal is to replace the existing Dickson Street lighting fixtures with new lighting fixtures that will save the City of Fayetteville money, use less energy and light the street better.

**BACKGROUND:**

Recently, several business owners and citizens have complained that the existing lighting along W. Dickson Street does not provide enough light for adequate safety along the street. Currently there are 70 - 170 watt older light fixtures along W. Dickson Street.

**DISCUSSION:**

The Transportation Department has identified a 60 watt LED replacement fixture that will provide more light output at reduced energy cost. SWEPCO will provide an incentive to the city in the amount of \$4967.83 for the replacement of the existing fixtures. Total project cost is \$13,728 (\$8760 after the SWEPCO incentive). The estimated electricity savings associated with the new lighting will be \$3725 per year with a 3.5 to 4.0 year project payback.

**BUDGET/STAFF IMPACT:**

The Transportation Department will purchase and install the new LED lighting. Adequate funds are available in the Lighting Equipment Maintenance budget. The \$4967.83 incentive will be credited to that same budget.

**Attachments:**

SWEPCO Commercial & Industrial Energy Efficiency Program Application

**Section 1: General Information**

| Customer Information   |   |                   |                 |      |       |
|--|---|-------------------|-----------------|------|-------|
| Application Date:  | 12/30/14  | SWEPCO Acct. No.: | 967-311-296-0-5 |      |       |
| Company/Customer Name:   | City of Fayetteville  |                   |                 |      |       |
| Contact First Name:  | Lioneld   | Last Name:        | Jordan          |      |       |
| City:  | Fayetteville  | State:            | AR              | Zip: | 72701 |
| Primary Phone:   | (479) 575-8330  | Secondary Phone:  |                 |      |       |
| E-mail Address:  | mayor@fayetteville-ar.gov   |                   |                 |      |       |
| Project Site Address:  | W. Dickson St.  |                   |                 |      |       |
| City:  | Fayetteville  | State:            | AR              | Zip: | 72701 |
| Project Information  |   |                   |                 |      |       |
| Project Name:  | Dickson Street Lighting Retrofit  |                   |                 |      |       |
| Project Type:  | <input type="checkbox"/> New Construction <input checked="" type="checkbox"/> Retrofit                    |                   |                 |      |       |
| Has project changed from initial application?                        | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No<br>If yes, provide details of change: |                   |                 |      |       |
| Required payback period of project:                                  | 5 year  |                   |                 |      |       |
| What are the estimated installation start and completion dates:      |   |                   |                 |      |       |
| Start Date:  | 1/1/15  | Completion Date:  | 2/28/15         |      |       |
| Project Sponsor  |   |                   |                 |      |       |
| Has the Project Sponsor Changed from the Initial Project Application |   |                   |                 |      |       |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  |   |                   |                 |      |       |
| If yes, Complete the following section:                              |   |                   |                 |      |       |
| Project Sponsor Tax ID No.   | 71-6018462  | Tax Exempt? (Y/N) | N               |      |       |
| Project Sponsor Name:  | City of Fayetteville  |                   |                 |      |       |
| Mailing Address  | 113 W. Mountain St.   |                   |                 |      |       |
| City:  | Fayetteville  | State:            | AR              | Zip: | 72701 |

**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:

**For Official Use**

\*Information should match information provided on the W9 form

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

Customer Name: City of Fayetteville

Project Name: Dickson Street Lighting

Project ID: CIEEP-16472a

Energy Advisor: Alex Floyd

**Incentive and Savings Information\***

| Measure Description             | Estimated Savings |        | Incentive Rate |         | Estimated Incentive |
|---------------------------------|-------------------|--------|----------------|---------|---------------------|
|                                 | kW                | kWh    | \$/kW          | \$/kWh  |                     |
| Lighting                        | 0.00              | 41,399 | \$ 220.00      | \$ 0.12 | \$ 4,967.83         |
|                                 |                   |        |                |         |                     |
|                                 |                   |        |                |         |                     |
|                                 |                   |        |                |         |                     |
|                                 |                   |        |                |         |                     |
| <b>Total Incentive Reserved</b> |                   |        |                |         | <b>\$ 4,967.83</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.

## Section 2: Customer 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 City of Fayetteville (hereinafter "Project Sponsor"), (SWEPCO and Project Sponsor each hereinafter referred to as a "Party" and together as the "Parties").

**WHEREAS**, SWEPCO has developed a Commercial and Industrial Program (the "CIEEP"), for its commercial and industrial customer classes; and

**WHEREAS**, the CIEEP seeks to procure energy savings and peak demand savings through the installation and operation of energy efficiency measures at the facilities of such customers; and

**WHEREAS**, Project Sponsor has developed a plan for participation in the CIEEP through a set of proposed or installed energy efficiency measures and other improvements necessary to produce energy savings or peak demand savings, or both;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE I – DEFINITIONS

Business Day shall mean normal working days (8:00am – 5:00pm), Monday through Friday, January 1 through December 31, excluding holidays.

- 1.1 "Contract Documents" shall mean (i) the Project Sponsor's approved Initial Application, attached hereto and incorporated herein as Exhibit A; (ii) the Project Sponsor's approved Final Application, attached hereto and incorporated herein as Exhibit B; (iii) the CIEEP Procedures Manual, attached hereto and incorporated herein as Exhibit C; and (iv) this Agreement together with any and all other exhibits, addenda, or amendments referenced herein or made a part hereof in accordance with this Agreement.
- 1.2 "Customer" shall mean a non-residential distribution system customer of SWEPCO 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 "non-residential distribution system customer" shall mean a non-residential retail customer with a demand that exceeds 50 kW or a group of non-residential retail customers under common ownership within a service territory in which the combined demand exceeds 50 kW.
- 1.3 "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 at the Project Site(s) and other related and/or unrelated matters.

- 1.4 “Deemed Energy Savings” shall mean a pre-determined, validated estimate of Energy Savings attributable to a Measure in a particular type of application that SWEPCO may use instead of Measured Energy Savings.
- 1.5 “Deemed Peak Demand Savings” shall mean a pre-determined, validated estimate of Peak Demand Savings attributable to a Measure in a particular type of application that SWEPCO may use instead of Measured Peak Demand Savings.
- 1.6 “Deemed Savings” shall mean the sum of Deemed Energy Savings and Deemed Peak Demand Savings.
- 1.7 “Demand Savings” shall mean a quantifiable reduction in the rate at which energy is delivered to or by a system at a given instance, or average over a designated period, usually expressed in kilowatts (kW) or megawatts (MW). Demand Savings will be determined by comparing the efficiency of the installed qualifying energy efficiency equipment to that of new equipment that meets all applicable minimum efficiency standards—not to that of the customer’s existing equipment. In cases where no standard currently exists, existing equipment efficiencies will be used. Equipment standard efficiencies are ASHRAE 90.1-2001, and the SWEPCO Standard Lighting Wattage Table.
- 1.8 “Energy Savings” shall mean a quantifiable reduction in the Customer’s consumption of energy, or the amount by which the Customer’s energy consumption is reduced, as a result of the installation of qualifying energy-efficient measures. Energy Savings will be determined by comparing the efficiency of the installed measures to that of new measures that meets all applicable minimum efficiency standards—not to that of the customer’s existing measures. The exception for using existing efficiencies would be, in cases of replacing existing working equipment prior to the end of its estimated useful life, (EUL). Equipment EULs can be found in the Arkansas TRM version 1.0. In cases where no standard currently exists, existing measure efficiencies will be used. Measure standard efficiencies are ASHRAE 90.1-2001, and the SWEPCO Standard Lighting Wattage Table.
- 1.9 “Estimated Energy Savings” shall mean the Energy Savings expected to be derived in a single Performance Period from Measures to be installed or actually installed at the Project Site.
- 1.10 “Estimated Peak Demand Savings” shall mean the Peak Demand Savings expected to be derived in a single Performance Period from Measures to be installed or actually installed at the Project Site.
- 1.11 “Estimated Savings” shall mean the sum of Estimated Energy Savings and Estimated Peak Demand Savings.
- 1.12 “Measure” shall mean new equipment, material, or systems that (i) when installed and used at a Project Site, result in a measurable and verifiable reduction in either purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand measured in

kilowatts (kW), or both; (ii) meet the requirements of the Contract Documents; and (iii) in the determination of SWEPCO, are not ineligible for incentive payments. Measures may include equipment, material, or systems that are installed as part of new construction.

- 1.13 “Measured Energy Savings” shall mean the Energy Savings derived during the Performance Period 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 SWEPCO.
- 1.14 “Measured Peak Demand Savings” shall mean the Peak Demand Savings derived during the Performance Period 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 SWEPCO.
- 1.15 “Measured Savings” shall mean the sum of Measured Energy Savings and Measured Peak Demand Savings.
- 1.16 “APSC” shall mean the Arkansas Public Services Commission.
- 1.17 “Peak Demand” shall mean electrical demand at the time of highest annual demand on the utility’s system, measured in 15-minute intervals.
- 1.18 “Peak Demand Savings” shall mean Demand Savings calculated as the maximum, one-hour average demand reduction that occurs while the system undergoing retrofit is operating at full load conditions during the peak summer period, defined as weekdays, between the hours of 1 p.m. and 7 p.m. CDT from May 1 until September 30, excluding federal holidays.
- 1.19 “Performance Period” shall mean the one (1) year period following approval of the Installation Report during which measurement and verification activities take place.
- 1.20 “Project” shall mean the sum of all activities and Measures required to achieve the Estimated Energy Savings and Estimated Peak Demand Savings necessary to meet the reserved incentive amount listed in the Project Sponsor’s Final Application. New construction projects are eligible for this CIEEP.
- 1.21 “Project Site” shall mean the location of a Customer’s facilities where approved Measures will be installed and from which Energy Savings or Peak Demand Savings, or both, will be obtained.
- 1.22 “Project Sponsor” shall mean any organization, group, or individual who contracts with SWEPCO to provide Energy Savings or Peak Demand Savings, or both, under the CIEEP.
- 1.23 “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**

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 Article 7.4 herein, or until eighteen (18) months following the Effective Date, whichever occurs first.

## **ARTICLE III – COMPLIANCE WITH CIEEP PROCEDURES MANUAL**

- 3.1 By executing this Agreement, Project Sponsor acknowledges that it received a copy of the CIEEP Procedures Manual (Exhibit C) prior to submission of its Initial or Final 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 Procedures 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 Procedures Manual and that failure to meet the qualifications therein may be treated as a breach of this Agreement.
- 3.2 Procedures or conditions set forth in the CIEEP Procedures 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 IV – PROJECT SPONSOR AND CUSTOMER AGREEMENT AND CUSTOMER CERTIFICATION**

- 4.1 Project Sponsor will be solely responsible for entering into a Project Sponsor and Customer Agreement with the Customer as appropriate for implementation of the Project. A Customer acting as its own Project Sponsor will be required to provide a Customer Agreement. The Project Sponsor and Customer Agreement must be executed by the Project Sponsor and the Customer prior to Project Sponsor beginning installation of Measures at the Project Site. To the extent possible, Project Sponsor and Customer Agreements will be kept confidential.
- 4.2 Project Sponsor agrees to disclose to Customer any potential adverse environmental or health effects associated with the Measures to be installed at the Project Site. The Project Sponsor and Customer Agreement includes the following provisions:
  - (a) Customer agrees, upon five (5) business days' prior oral notice, to provide SWEPCO and the independent measurement and verification expert selected by the APSC with full and complete access to the Project Site for any purpose related to the CIEEP.



The right of access will be subject to Customer's reasonable access requirements and, unless otherwise agreed, must occur within the Customer's normal business hours.

- (b) Customer acknowledges that any review, inspection, or acceptance by SWEPCO of the Project Site or of the design, construction, installation, operation or maintenance of the Measures is solely for the information of SWEPCO and that, 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.
- (c) Customer acknowledges that Project Sponsor is an independent contractor with respect to SWEPCO and the CIEEP and that Project Sponsor is not authorized to make representations or incur obligations on behalf of SWEPCO.
- (d) Customer acknowledges that Project Sponsor and Customer are solely responsible for performance thereunder.
- (e) Customer acknowledges that SWEPCO makes no warranty or representation regarding the qualifications of Project Sponsor, and that the Customer is solely responsible for the selection of Project Sponsor.
- (f) Customer acknowledges that the Customer may file a complaint with the APSC concerning Project Sponsor, but that SWEPCO will play no role in resolving any disputes that arise between the Customer and Project Sponsor.

*Plan 1-14-2015*

~~(g) 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, INCORPORATORS, 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.~~

- 4.3 Project Sponsor must obtain a completed Customer Acknowledgement Form from each Customer indicating that the Measures contracted for were installed at the Project Site. The completed Customer Acknowledgement Form should be submitted to SWEPCO with the Installation Report described in Section 5.3 below. Final payment of incentives will not be made unless and until a completed Customer Acknowledgement Form or inspection by SWEPCO has been completed in accordance with the terms of the Contract Documents.

## **ARTICLE V – PROJECT IMPLEMENTATION**

- 5.1 Project Sponsor agrees on and after the Effective Date to use all reasonable efforts to implement the Project without undue delay and otherwise in accordance with the terms of the Contract Documents. To the extent of any conflict between this Agreement and other Contract Documents, the terms of this Agreement shall prevail.
- 5.2 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. Installation of Measures at all Project Sites shall be completed and an Installation Report, as defined below, shall be submitted to SWEPCO within six (6) months of the Effective Date. Project Sponsor may apply, in writing, for an extension of this time period. The extension may be granted to Project Sponsor for this Project at SWEPCO's sole discretion. Any extension will be for a period of no more than three (3) months beyond the initial six (6) month period. If granted, the extension must be made in writing as an amendment to this Agreement. Such amendment will be attached hereto and become a part of the Contract Documents. Furthermore, if an extension is granted, the term of this Agreement will be extended by the length of the extension.
- 5.3 Within fifteen (15) business days of completing installation of Measures at a Project Site, Project Sponsor shall so notify SWEPCO by submitting a report for review and approval documenting the Measures actually installed (the "Installation Report"). The Installation Report shall be submitted to SWEPCO pursuant to the notice provisions of Section 15.1. Within thirty (30) business days of receipt of the Installation Report, 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 and Peak Demand Savings. Approval of the Installation Report 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 and Peak Demand 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 and resubmit its Installation Report. 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 approved Installation Report will be used for purposes of calculating the Installation Payment in Section 7.3.

- 5.4 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.
- 5.5 Within thirty (30) business days of the conclusion of the Performance Period, Project Sponsor shall submit a report to SWEPCO documenting the Measured Energy Savings and Measured Peak Demand Savings for the Performance Period (the "Savings Report"). If the Savings Report is deficient, SWEPCO will provide, in writing, notice of the deficiency, and Project Sponsor shall revise and resubmit the Savings Report until it is approved by SWEPCO. Any necessary revisions shall be performed in the time-period specified by SWEPCO in the notice of deficiency.

## ARTICLE VI – MEASUREMENT AND VERIFICATION

Project Sponsor shall document the measurement and verification of the Energy Savings or Peak Demand Savings, or both, 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. The measurement and verification activities shall be performed by Project Sponsor.

## ARTICLE VII – INCENTIVE PAYMENTS

- 7.1 SWEPCO agrees to make incentive payments to Project Sponsor based upon the sum of the documented Deemed Savings and Measured Savings derived from the Project. The total incentive payments due to Project Sponsor will be calculated by multiplying the Deemed Savings and Measured Savings by the applicable "Incentive Rate" specified in Section 7.2.
- 7.2 The Incentive Rate applicable to each type of measure is set forth in Table 1:

| Measure Name                   | Incentive (\$/kW) | Incentive (\$/kWh) |
|--------------------------------|-------------------|--------------------|
| Air Compressors                | \$ 194.50         | \$ 0.0750          |
| Chillers                       | \$ 288.60         | \$ 0.0888          |
| Freezer Glass Door 0 < V < 15  |                   | \$50/unit          |
| Freezer Glass Door 15 < V < 30 |                   | \$75/unit          |
| Freezer Glass Door 30 < V < 50 |                   | \$100/unit         |
| Freezer Glass Door V = 50      |                   | \$125/unit         |
| Geothermal                     | \$ 321.10         | \$ 0.0988          |
| HVAC (DX, split, packaged)     | \$ 244.92         | \$ 0.0754          |
| Lighting Controls              |                   | \$20/unit          |

|   |                                  |           |
|---|----------------------------------|-----------|
| Lighting Screw-In CFL (11W to 40W)                          | \$2/unit                         |           |
| Lighting Screw-In CFL (41W to 200W)                         | \$4/unit                         |           |
| Lighting Linear Fluorescent Fixtures                        | \$ 175.00                        | \$ 0.0650 |
| Lighting Modular Fluorescent Fixtures                       | \$ 175.00                        | \$ 0.0650 |
| LED Fixture Lighting  | \$ 220.00                        | \$ 0.1200 |
| LED Recessed Down Light Fixture*                            | \$20.00/unit                     |           |
| LED 5W to 25W Screw-In Replacement*                         | \$10.00/unit                     |           |
| LED 1W to 4W Screw-In Replacement*                          | \$5.00/unit                      |           |
| LED Exit Signs  | \$10.00/unit                     |           |
| Motors, VFD (Pumps/Fans)                                    | \$ 244.92                        | \$ 0.0754 |
| Refrigerator Glass Door 0 < V < 15                          | \$50/unit                        |           |
| Refrigerator Glass Door 15 < V < 30                         | \$75/unit                        |           |
| Refrigerator Glass Door 30 < V < 50                         | \$100/unit                       |           |
| Refrigerator Glass Door V = 50                              | \$125/unit                       |           |
| Solar PV  | \$ 450.00                        | \$ 0.3500 |
| Solar Water Heating   | \$ 244.92                        | \$ 0.0754 |
| Wind Generation   | \$ 179.00                        | \$ 0.0501 |
| Anti-Sweat Heater Controls – Medium Temperature Application | \$29.50 / controlled linear foot |           |
| Anti-Sweat Heater Controls – Low Temperature Application    | \$68.50 / controlled linear foot |           |
| Demand Control Ventilation – commercial hoods               | \$ 0.00                          | \$0.13    |
| PC Power Management Software                                | \$0.00                           | \$0.10    |
| Other   | Case By Case Basis               |           |

\* Must be DesignLights Consortium or ENERGY STAR® approved

**Table 1 2014 CIEEP Incentive Rates**

7.3 Upon completion of Measure installation and approval of the Installation Report, Project Sponsor shall submit an invoice for review and approval to SWEPCO for the first installment of the incentive payment (the "Installation Payment"). SWEPCO will make the Installation Payment within thirty (30) business days of its approval of the invoice. The Installation Payment will be one hundred percent (100%) of the incentive payment due for Deemed Savings plus forty percent (40%) of the total incentive payment due based upon the Estimated Savings set forth in an approved Installation Report. Individual Measures will be eligible for incentive payments based on either a Deemed Savings basis or an Estimated/Measured Savings basis, but not both. The amount of the Installation Payment will be calculated using the following formula:

$$IP = DIP + EIP$$

$$DIP = [(DES \times MI) + (DDS \times MI)]$$

## ARTICLE VIII – AUDIT AND RECORDS

- 8.1 Project Sponsor or its assignee shall keep and maintain accurate and detailed records and documentation relating to the Project and its associated Energy Savings and Peak Demand Savings under this Agreement for a period of not less than three (3) years beyond the termination of this Agreement. During the retention period, such records shall be made available, upon reasonable notice, for inspection during normal business hours by SWEPCO or any governmental agency having jurisdiction over the CIEEP or any portion of the Project.
- 8.2 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 IX – 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 X – INDEMNITY

10.1 ~~EACH PARTY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS, TO THE FULLEST EXTENT PERMITTED BY LAW, THE OTHER PARTY 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.~~

10.2 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 XI – PERMITS, LICENSES AND COMPLIANCE WITH LAWS

11.1 Project Sponsor represents and warrants that prior to beginning installation of Measures, Project Sponsor will, at its own cost and expense, obtain all permits and other authorizations from governmental authorities as then may be required to install, construct, operate and maintain the Measures in question and to perform its obligations hereunder. During the term hereof, Project Sponsor will, at its own cost and expense, obtain all such additional

$$\text{EIP} = 0.40 \times [(\text{EES} \times \text{MI}) + (\text{EDS} \times \text{MI})]$$

Where:

IP is the total Incentive Payment

DIP is the portion of the incentive payment attributable to Savings

EIP is the portion of the incentive payment attributable to Estimated Savings

DES is the amount of Deemed Energy Savings;

DDS is the amount of Deemed Peak Demand Savings;

EES is the amount of Estimated Energy Savings; and

EDS is the amount of Estimated Peak Demand Savings.

MI is the measure Incentive Rate

- 7.4 At the conclusion of the Performance Period and upon SWEPCO's approval of the Savings Report, Project Sponsor shall submit an invoice for review and approval to SWEPCO for the second installment of the incentive payment (the "Performance Payment"). Subject to the limitation in Section 7.1, the Performance Payment will be the remaining amount of the total incentive payment due based upon the Measured Savings. The amount of the Performance Payment shall be calculated using the following formula:

$$\text{Performance Payment} = [(\text{MES} \times \text{MI}) + (\text{MDS} \times \text{MI})] - \text{EIP}$$

Where:

MES is the amount of Measured Energy Savings (not including DES);

MDS is the amount of Measured Peak Demand Savings (not including DDS); and

EIP is the portion of the Installation Payment attributable to Estimated Savings as calculated and paid pursuant to Section 7.3; and

MI is the measure Incentive Rate.

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

- 7.5 In the event that the final kW and kWh savings or the number of units installed results in an incentive payment higher than the reserved amount, SWEPCO will only pay up to 110% of the reserved amount on the Final Application.

governmental permits, licenses, and other authorizations when required with respect to any of the Measures under this Agreement. If requested by SWEPCO, Project Sponsor shall furnish to SWEPCO copies of each such permit, license or other approval promptly following receipt thereof. Project Sponsor shall maintain in full force and effect all such governmental permits, licenses and other authorizations as may be necessary for the construction, operation or maintenance of the Measures in accordance herewith. Failure to maintain licenses, permits and other authorizations required to perform the work detailed in this Agreement constitutes a material breach of Project Sponsor's obligations under this Agreement.

- 11.2 Project Sponsor shall be responsible for all royalties, fees, or claims for any licensed, copyrighted or similarly protected intellectual property, device, process or procedure used installed, or provided by it. Project Sponsor shall defend any suit that may be brought against 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.
- 11.3 All work performed by Project Sponsor in connection with the implementation of the Project and all Measures installed or maintained by Project Sponsor shall conform to all applicable laws, statutes, ordinances, rules, regulations, and 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 XII – DEFAULT AND REMEDIES**

- 12.1 Each of the following events will be deemed to be an Event of Default hereunder:
- (a) failure of Project Sponsor to perform its responsibilities in a timely manner or implement the Project in compliance with the CIEEP Procedures Manual and other Contract Documents;
  - (b) failure of Project Sponsor to provide SWEPCO and/or its contractors with sufficient access to the Project Sites for the purposes of conducting inspections, observations, or measurement and verification activities;
  - (c) failure of Project Sponsor to obtain or maintain any necessary permits, licenses or insurance required pursuant to the Contract Documents;

- (d) Project Sponsor's assignment or subcontracting of all or part of the duties required under the Contract Documents without the prior written consent of SWEPCO;
- (e) Project Sponsor's submission to SWEPCO of any false, misleading or inaccurate information or documentation with respect to implementation of the Project or Project Sponsor's performance hereunder, when Project Sponsor knew or reasonably should have known that such information was false, misleading or inaccurate; or
- (f) failure of either Party in a material fashion to perform or observe any of the material terms, conditions or provisions of this Agreement not otherwise described in this Section 12.1, which failure materially adversely affects the other Party and continues after notice and a thirty (30) day period to cure, or, if such failure cannot reasonably be cured within thirty (30) days, after notice and such period to cure in excess of thirty (30) days as may be reasonably required (provided that the non-performing Party commences action to cure within an initial period of thirty (30) days after notice and thereafter pursues such cure with reasonable diligence).

12.2 If an Event of Default occurs, the non-defaulting Party shall be entitled to exercise any and all remedies provided for by this Agreement, by law or in equity, including, but not limited to, the right to immediately 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 — LIMITATION OF LIABILITY**

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1-14-2015*

~~13.1 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~~



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1-14-2015

~~(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.~~

~~13.2 BOTH PARTIES AGREE THAT, IN THE EVENT OF (i) ANY DISPUTE THAT ARISES OUT OF THE NEGOTIATION, EXECUTION, OPERATION, OR TERMINATION OF THIS AGREEMENT AND ITS SUBJECT MATTER, WHETHER THE DISPUTE SOUNDS IN CONTRACT OR TORT, OR AS A RESULT OF A CLAIMED STATUTORY OR REGULATORY VIOLATION, OR (ii) ANY OTHER CLAIM THAT MAY ARISE OUT OF THE RELATIONSHIP OF THE PARTIES, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER REASONABLE ATTORNEYS' FEES, EXPERT WITNESS FEES, LITIGATION EXPENSES, AND COSTS OF COURT AND/OR ALTERNATIVE DISPUTE RESOLUTION FROM THE LOSING PARTY.~~

#### ARTICLE XIV – INDEPENDENT CONTRACTOR

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 venturers. 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 XV – NOTICES

15.1 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**

Name: Gregory Perkins  
Address: 101 W. Township  
Fayetteville, AR  
Phone: (479) 973-2435  
E-mail: gaperkins@aep.com

**Project Sponsor**

Name: City of Fayetteville  
Address: 113 W. Mountain St.  
Fayetteville, AR 72701  
Phone: (479) 575-8330  
E-mail: mayor@fayetteville-ar.gov

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

**ARTICLE XVI – 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 XVII – ARKANSAS FREEDOM OF INFORMATION ACT**

17.1 SWEPCO agrees and understands that this Agreement and documents submitted to the City pursuant hereto are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville requesting such documents, SWEPCO will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

**ARTICLE XVIII – FORCE MAJEURE**

18.1 The term “Force Majeure” as used herein means causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including, but not limited to, acts of God, labor disputes, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, change in laws or applicable regulations subsequent to the date hereof and action or inaction by any federal, state or local legislative, executive, administrative or judicial agency or body, which, in any of the foregoing cases, by exercise of due foresight such Party could not reasonably have been expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

18.2 The term "Force Majeure" shall not include any of the following:

- (a) Any removal, reduction, curtailment or interruption of operation of any or all Measures whether in whole, or in part, which removal, reduction, curtailment or interruption is caused by or arises from the action or inaction of the Customer or any third party, including without limitation, any vendor or supplier to Project Sponsor or SWEPCO, unless, and then only to the extent that, any such action or inaction was beyond the reasonable control of, and occurred without the fault or negligence of such third party, and such third party, by exercise of due foresight, could not reasonably have been expected to avoid such action or inaction;
- (b) Any outage, whether or not due to the fault or negligence of SWEPCO or Project Sponsor, of the Measures or SWEPCO's system attributable to a defect or inadequacy in the manufacture, design or installation of the Measures that prevents, curtails, interrupts or reduces the ability of the Measures to provide Peak Demand Savings and/or Energy Savings; or
- (c) Any reduction in Measured Peak Demand Savings and/or Measured Energy Savings caused by or resulting from a Customer's termination or reduction of electrical distribution service received from SWEPCO and the substitution therefor of electric service from any other source.

18.3 The Parties shall be excused from performing their respective obligations under this Agreement and shall not be liable in damages or otherwise if, and to the extent that, they are unable to so perform or are prevented from performing by an event of Force Majeure, provided that:

- (a) The non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than fourteen (14) days thereafter, gives the other Party written notice describing the particulars of the occurrence;
- (b) The suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure;
- (c) The non-performing Party uses its best efforts to remedy its inability to perform; and
- (d) As soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence, it shall give prompt written notification thereof to the other Party.

## **ARTICLE XIX – NONDISCLOSURE**

19.1 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.

- 19.2 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 XX – MISCELLANEOUS**

- 20.1 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.
- 20.2 The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either Party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance or otherwise. No waiver by the Parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition or covenant contained herein.
- 20.3 The Contract Documents constitute the entire Agreement between the Parties with respect to the subject matter hereof and there are no express or implied warranties or representations upon which any party may rely beyond those set forth therein. The execution of this Agreement supersedes all previous agreements, discussions, communications and correspondence with respect to such subject matter.
- 20.4 In the event any provision of this Agreement is held to be void, unlawful, or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.

- 20.5 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 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 Washington County, Arkansas 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.
- 20.6 The duties, obligations, and liabilities of the Parties hereto are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be liable individually and severally for its own obligations under this Agreement.
- 20.7 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.
- 20.8 The Parties expressly agree that time is of the essence for all portions of this Agreement. In no event shall the arbitration of any controversy or the settlement thereof delay the performance of this Agreement.
- 20.9 The descriptive headings of the various sections of this Agreement have been inserted for convenience of reference only and shall in no way define, modify, or restrict any of the terms and provisions thereof.

**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: Phillip Watkins

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

Signature: *Phillip Watkins*

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

Title: Manager, Consumer Programs

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

Date: 1-14-2015

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

[CIEEP Final Project Application 20140616.docx]