

# **EWEB INDUSTRIAL ENERGY MANAGEMENT PROGRAM: ENERGY SAVINGS PURCHASE AGREEMENT**

Project Name

**THIS AGREEMENT** is made and entered into between \_\_ (“Customer”) and the Eugene Water & Electric Board (“EWEB”). In consideration of the following terms and conditions, Customer agrees to sell, and EWEB agrees to purchase, the electrical energy savings from Customer’s industrial conservation project as follows:

## **1. Purpose of EWEB's Energy Management Program**

EWEB has developed an Energy Resource Strategy as a means to use energy more efficiently, thereby benefiting all Customers. In response to this strategy, EWEB has identified various Energy Conservation Measures (ECMs) that allow Customers to use energy more efficiently.

## **2. Term of this Agreement**

This Agreement shall become effective upon execution by both parties and remain in effect through the projected life of the ECMs as specified in Section 8.

## **3. Pre-authorization Requirement**

Customer agrees that EWEB is not obligated to make an incentive payment or provide funding to Customer for any materials and labor related to the installation of ECMs described in Exhibit 1 if such purchase or work was initiated prior to EWEB and Customer signing this agreement.

## **4. Project Description and Specifications**

Attached hereto, marked Exhibit 1 and by this reference incorporated herein, is a description of Customer’s proposed project (the “Project”) and the required verification methodology. Customer agrees to install and implement ECMs as described in Exhibit 1 that will reduce and manage electrical energy consumption at its facilities.

Customer agrees to provide EWEB with a copy of bid proposals for the work to be carried out in this Project. Customer agrees to make Project drawings available to EWEB as required.

## **5. Project Schedule**

Customer agrees to complete installation of the ECMs by \_\_ and submit copies of final invoices and documentation within 45 days of completion date. If installation of the ECMs is not completed within this time period, any funding or incentive offer made by EWEB shall expire unless extended in writing by EWEB.

## **6. Payment by EWEB to Customer**

The parties agree that signing this Agreement does not obligate EWEB to make payment for energy savings unless and until the Project is completed and the energy savings described herein are verified.

Payment by EWEB to Customer for the projected annual electrical energy savings shall be made as follows:

- a. The actual payment will be based on verified energy savings as determined by the verification specifications in Exhibit 1 and the payment methodology and requirements

specified in Exhibit 2.

- b. Any changes to the Project as specified in Exhibit 1 are subject to review and authorization by EWEB prior to implementation. Changes to the Project may affect the final payment.
- c. Verification as specified in Exhibit 1 must be completed and cost documentation as specified in Exhibit 2 must be provided before any payments to Customer are made by EWEB.
- d. Payments by EWEB to Customer are based upon electrical energy savings verified at the time of Project completion. The parties acknowledge that due to variability of energy and equipment use, it is not possible for EWEB to warrant energy savings.
- e. If the installation of the ECMs is unacceptable to EWEB, EWEB shall notify Customer of deficiencies and suggest corrections. Customer agrees to correct any deficiencies before final verification and before any payments are made to Customer by EWEB.

## **7. Verification Requirements**

Customer agrees to allow EWEB or EWEB's authorized contractor to conduct on-site verification measurements as specified in Exhibit 1, to determine the actual energy savings from the Project. Customer agrees to contact EWEB prior to commencing installation of the ECMs to allow EWEB to conduct pre-installation monitoring as required. Customer agrees to contact EWEB in a timely manner to enable EWEB to conduct post-installation monitoring or any other verification required to establish the actual energy savings of this project.

In addition, Customer agrees to allow EWEB or EWEB's authorized contractor to:

- a. Inspect the installation to confirm compliance with the Project specifications.
- b. Verify the ECMs are still in place and performing as specified during the life of the ECMs.
- c. Access any applicable data related to loading, operating schedules, production data, and electrical usage of the ECMs.

## **8. Operation, Replacement, and Maintenance of ECMs**

Customer agrees to continue operation of the ECMs described in Exhibit 1 throughout their projected life of \_ years ("Project Life"). If any of the ECMs proposed under this agreement fail in whole or in part after installation, Customer agrees to repair or replace ECMs with equivalent ECMs acceptable to EWEB. Customer agrees to operate and to perform all manufacturers' recommended inspections and maintenance at its expense for all ECMs related to the Project. Where appropriate, Customer agrees to train staff to operate and to perform any necessary inspections and maintenance.

## **9. Ownership**

Any Customer equipment installed, moved, or removed as a result of this Project will remain the

property of the Customer.

#### **10. Power Quality Requirements**

The Customer acknowledges that certain ECMs may adversely affect power quality. Customer agrees to assume responsibility for identifying and installing equipment to mitigate negative impacts on power quality associated with ECMs installed under this agreement.

#### **11. Confidentiality and Public Information**

Subject to Oregon law, EWEB shall treat as confidential information designated as Proprietary Information by Customer. Exclusive of such information allowed by Oregon law to be protected as Proprietary Information, EWEB shall have the right to publicly disseminate information relating to the installation of ECMs.

#### **12. Taxability Determination**

EWEB may, from time to time, be required to report payments made by EWEB to Customer under this Agreement. Customer agrees to furnish EWEB its employer tax identification number and any other information requested by the Internal Revenue Service relating to the Project. EWEB makes no determination hereunder as to the reporting and taxability of the payments received by Customer from EWEB. Customer assumes all responsibility for reporting and taxation of all ECMs.

#### **13. Records**

Customer shall maintain, and make available to EWEB upon request, records for all Project costs, and any other records as they apply to the provisions of this agreement. The records shall be maintained for 3 years after creation of such records.

#### **14. Relationship of the Parties**

EWEB's relationship to Customer under this agreement is limited to evaluating the Project for the purpose of authorizing that the Project is eligible to participate in EWEB's conservation program, inspecting the Project to ensure it meets the specifications described in Exhibit 1, verifying the actual electrical energy savings from the Project, and making payment for ECMs as described in Exhibit 2.

Customer assumes full responsibility for the design, purchase, contracting, subcontracting, and supervision of the installation of the proposed ECMs, together with making application, obtaining permits and complying with all federal, state, or local laws, regulations, and ordinances for the design and completion of the Project. Customer shall be responsible for confirming that the Project meets any other particular requirements. Customer agrees to supervise installation and to complete the project in a workmanlike manner, correct any defects, and ensure performance that neither adversely affects the energy savings as expected from the Project nor adversely affects human health and safety.

#### **15. Indemnification**

Customer shall indemnify, hold harmless, and defend EWEB, its board, officers and agents from any and all claims, demands, liabilities, suits, or actions for any resulting property damage, bodily injury, or death arising out of or which in the future may result, directly or indirectly, from the installation and operation of the ECMs specified in this agreement. Submission of design plans and specifications to EWEB and inspections by EWEB shall in no way imply any responsibility on the part of EWEB for the design or installation of the Project. Customer shall indemnify, hold harmless and defend EWEB, its

board, officers and agents from any and all claims, demands, liabilities, suits or actions for any failure of Customer, or Customer's agents or contractors, to comply with all federal, state or local laws, regulations and ordinances for the design and completion of the Project or operation of the ECMs specified in this agreement.

## **16. Amendments**

If either party to this agreement desires to change any item specified in this agreement and its exhibits, such change must be in writing and signed by both parties prior to implementation of the change.

## **17. Continuation as EWEB Customer**

For the purposes of this agreement, Customer will maintain its standing as an EWEB electric Customer only so long as it purchases at least one half of its electric energy (kWh) from EWEB. Customer must continue to qualify as an EWEB electric Customer in order to avoid termination of this agreement.

## **18. Termination**

If Customer discontinues operation of the ECMs associated with this Project, is no longer an EWEB electric Customer, or otherwise fails to comply with the terms of this agreement, EWEB may terminate this agreement by giving written notice to Customer. Customer shall have thirty (30) days from the date of the notice within which to correct any failure to comply with the terms of this agreement. If Customer fails to correct the noncompliance, EWEB may elect to terminate this agreement. Upon termination, Customer shall repay to EWEB a portion of payments made by EWEB for energy savings as follows: Repayment amount shall be prorated to equal the original incentive payment amount times the months remaining until the end of the Project Life divided by the total Project Life in months.

If Customer sells or transfers plant ownership, this Agreement will not automatically terminate, provided the Customer obtains EWEB's written consent to accept buyer's agreement regarding continuation of the ECMs. If the parties are unable to reach such an agreement, the termination provisions specified in this section shall apply.

## **19. Dispute Resolution**

If the Parties are unable to resolve a dispute with respect to this Agreement, either Party may send a notice to the other requesting a meeting at which senior officers or officials of the Parties will attempt to resolve the dispute. If the Parties are unable to resolve the dispute within ten (10) days after the meeting notice is received by the Party to whom it is directed, either Party may demand that the matter be submitted to a single neutral arbitrator with significant experience in the power industry. If the Parties are unable to agree upon an arbitrator within ten (10) days of the demand, the arbitrator shall be selected by the Presiding Judge of the Circuit Court of Lane County, Oregon, and the Party applying for the selection of the arbitrator shall request that the selection be made on an expedited basis. Within ten (10) days of the selection of the arbitrator, the Party demanding arbitration shall submit to the arbitrator a reasonably detailed description of its position together with supporting material. Within a further ten (10) days, the other Party shall respond by submitting to the arbitrator a reasonably detailed statement of its position together with supporting material. Each Party shall deliver copies of its submissions to the other Party and shall promptly provide any additional explanation or information requested by the arbitrator. The arbitrator shall be instructed to use all reasonable efforts to render a written decision setting forth its findings and conclusions within thirty (30) days of the date on which the arbitration

proceedings are concluded. The arbitrator's decision concerning the item or items in dispute shall be final and binding on the Parties. Each Party shall bear the arbitrator's expenses equally.

**Eugene Water & Electric Board (EWEB)**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

**Customer**

By: \_\_\_\_\_

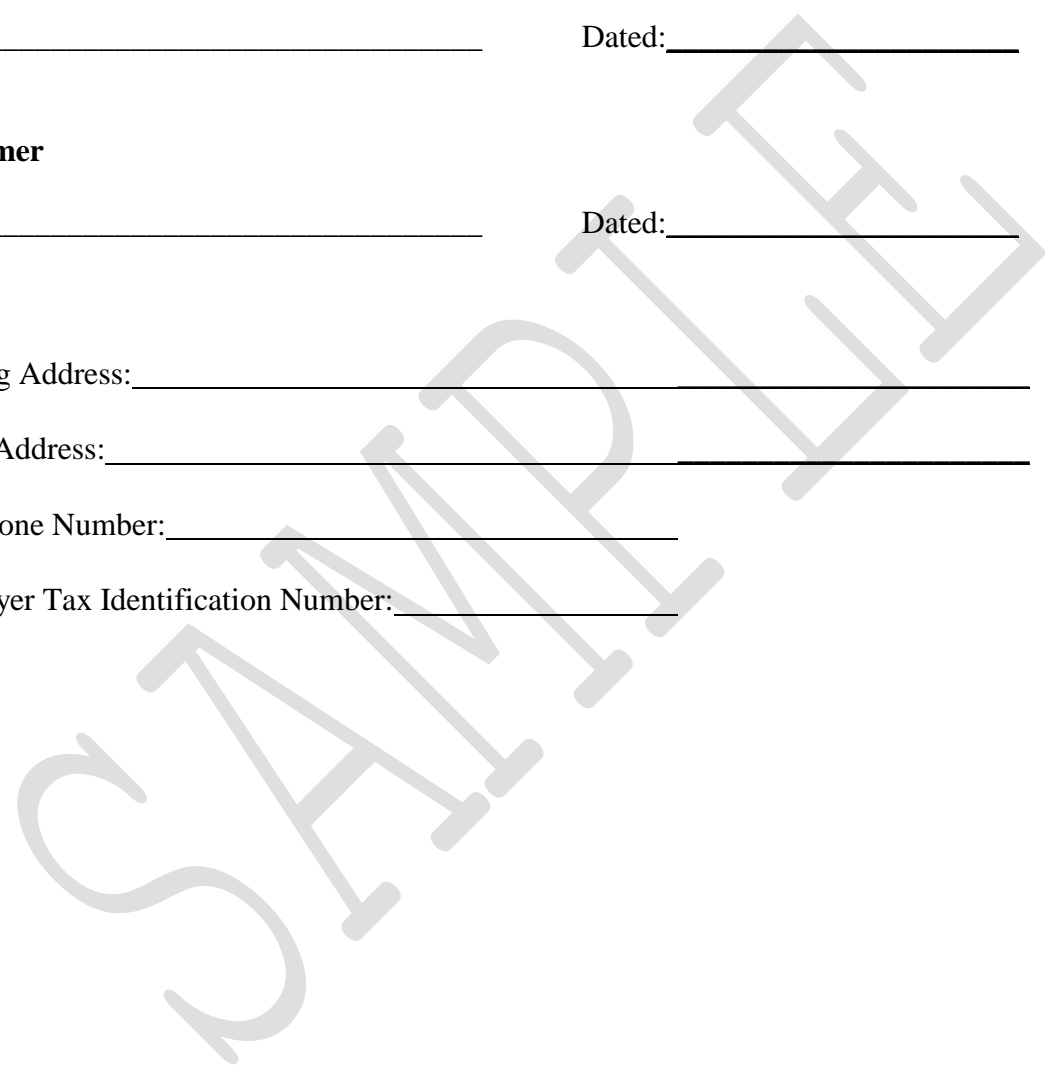
Dated: \_\_\_\_\_

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

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

Telephone Number: \_\_\_\_\_

Employer Tax Identification Number: \_\_\_\_\_



**EXHIBIT 1: PROJECT DESCRIPTION AND SPECIFICATIONS**

**Project Description**

**Verification Specifications**

SAMPLE

## **EXHIBIT 2: BASIS FOR PAYMENT BY EWEB**

EWEB's pre-installation estimate of annual energy savings and incentives for the Project are kWhs and \$\_\_\_\_\_ respectively and based on the estimated Project cost of \$\_\_\_\_\_.

EWEB will purchase energy savings from the Customer according to the following methodology:

- Upon completion of the Project described in Exhibit 1, the Customer will furnish EWEB with a copy of all final invoices which represent the actual costs for the installation of the Project listed in Exhibit 1. Using the invoice(s) EWEB will determine the total project cost.
- Upon completion of the verification of the PROJECT as described in Exhibit 1, EWEB will determine the actual annual energy savings realized from the installation of the Project.
- EWEB will purchase the energy savings for \$ per annual kWh saved as determined by the verification not to exceed \$ .