

Appendix A

Port of Stockton Energy Efficiency Agreement



Port of Stockton
January 1, 2014

2014 PORT OF STOCKTON ENERGY EFFICIENCY APPLICATION & AGREEMENT

This Agreement is entered into by the Port of Stockton and the Port of Stockton Electric Customer. Customer agrees to review these terms and conditions. Any implementation of this project will be deemed the Customer's acceptance of these terms and conditions. If these terms and conditions are not acceptable, the Customer must notify the Port of Stockton and refrain from any implementation of the project, otherwise will do so at their own risk.

Application Information

Project Name: _____ ; Demand Reduction
App. Number: _____ ; New ; Retrofit
Date Received: _____ ; Calculated Approach ; M&V Required

Port of Stockton Customer Information

COMPANY NAME _____ CORP. PARENT NAME (if applicable) _____
ADDRESS _____ CITY/STATE _____ ZIP CODE _____
CONTACT NAME _____ E-MAIL ADDRESS _____
_____() _____ () _____
TITLE _____ TELEPHONE NO. _____ FAX NO. _____
TAX STATUS: ; Corp. ; Non-Corp. ; Exempt Exempt Reason: _____
COMPANY/CORP. FEDERAL TAX ID _____

Customer Designated Agent Information

COMPANY NAME _____ CORP. PARENT NAME (if applicable) _____
ADDRESS _____ CITY/STATE _____ ZIP CODE _____
CONTACT NAME _____ E-MAIL ADDRESS _____
_____() _____ () _____
TITLE _____ TELEPHONE NO. _____ FAX NO. _____
TAX STATUS: ; Corp. ; Non-Corp. ; Exempt Exempt Reason: _____
COMPANY/CORP. FEDERAL TAX ID _____

Site Information

SITE NAME _____ SITE I.D. # (if applicable) _____
SITE ADDRESS _____ CITY/STATE _____ ZIP CODE _____
SITE CONTACT NAME _____ TITLE _____ CONTACT PHONE # _____ CONTACT EMAIL _____

Approved Retrofit Estimate

MEASURE DESCRIPTION	kWh	Permanent kW	\$ Amount
Sub-Total			
Measure Cost Adjustment			
Site Cap Adjustment			
Total Incentive			

Approved Demand Response Peak Demand Reduction Estimate

MEASURE DESCRIPTION	Peak Reduction kW	\$ Amount
Total Incentive		

1.0 **PROJECT DESCRIPTION** This Agreement is limited to the **Port of Stockton Energy Efficiency Program** Project(s) (“Project(s)”) described on the Stockton Energy Efficiency Application and Form (both together referred as “Application”) incorporated by reference into this Agreement. As stated in the Application, Port of Stockton shall pay incentives in accordance with the terms and conditions of this Agreement.

1.1 **DOCUMENTS INCORPORATED BY REFERENCE** The following documents are incorporated by reference and are made part of this Agreement: Customer’s approved Application, Port of Stockton acceptance letter(s) based on measures proposed in the Application, and the Port of Stockton 2014 Energy Efficiency Program Offering Procedures Manual (“Program Manual”).

2.0 **ELIGIBILITY** Energy Efficiency Program funding is limited and is available on a first come, first served basis. Funds will be reserved only upon Port of Stockton approval of the Application. The Energy Efficiency Program offers two types of incentives, Customized Retrofit and Demand Response. A Project may be eligible for one or both of these incentives.

Customized Retrofit Projects must meet the following requirements to be eligible for incentives: (1) Project must be nonresidential and be located within the Port of Stockton’s service territory. (2) Port of Stockton Customers must pay the Public Benefit Programs (“PBP”) surcharge on their Port of Stockton bills. (3) Projects will be evaluated using either the Customized Savings Approach or the Measured & Verification Savings Approach. (4) Projects must exceed the Title 24 energy efficiency requirements set by the California Energy Commission (“CEC” applicable at the time this Agreement is signed, or current industry standards using Port of Stockton -approved project baselines if Title 24 standards are not available. (5) Projects must meet all other Customized Retrofit and Demand Response requirements. (6) The Customer certifies that the energy savings and permanent peak reduction components of this Project have not and will not receive funds from any other energy conservation program funded by the PPP fund, the CEC or the California Public Utilities Commission (“CPUC”) or any other funding source.

Demand Response Projects must meet the following requirements to be eligible for incentives: (1) Project must be

commercial, industrial, or agricultural and be located within Port of Stockton's service territory. (2) Customer must receive retail electric service from the Port of Stockton. (3) Customer must have an existing electric meter that is capable of recording usage in 15-minute intervals and that can be read remotely by Port of Stockton. (4) Projects will be evaluated using either the Calculated Savings Approach or the Measured and Verification Savings Approach (for measures requiring Measurement and Verification (M&V)). (5) Projects must meet all other Customized Retrofit and Demand Response Program requirements. Customer certifies that the peak reduction components of the Project have not and will not receive funds from any energy conservation program funded by the PBP fund, the CEC or the CPUC or any other source.

3.0 SUBMITTAL REQUIREMENTS FOR PAYMENT As a condition of payment, Customer shall submit to Port of Stockton the documents described below. Required documents include but are not limited to: 1) Completed, signed Application; 2) Complete engineering calculations and documentation to demonstrate energy savings, and permanent peak demand reduction (including archival diskette if applicable); 3) Schematic drawings and/or manufacturer specification sheets if applicable; 4) Invoices and/or documentation to support Project cost at Port of Stockton's request; 5) Additional Project-specific documents as requested by Port of Stockton prior to payment of incentives; and 6) Operating Report if the Measured and Verified Savings Approach is used.

4.0 INSPECTIONS As a condition of payment, Customer is responsible for ensuring that Port of Stockton has reasonable access for all inspections, including but not limited to those as described below: 1) Retrofit and Demand Response Pre-Installation Equipment Inspection to examine the existing/baseline equipment and to check the accuracy of Project Sponsor's equipment survey; 2) Retrofit Post-Installation Equipment Inspection to check installed equipment and to verify accuracy of Customer's equipment survey; 3) Demand Reduction load reduction demonstration(s), 4) Customized Retrofit and Demand Response Post-operation inspection to check the energy savings of the Measures after installed equipment has been operating. This inspection can take place after the Operating Report has been submitted or earlier, at Port of Stockton's discretion.

5.0 REVIEW AND DISCLAIMER PORT OF STOCKTON'S AND/OR ITS CONSULTANTS' REVIEW OF THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF THE PROJECT, ENERGY EFFICIENCY MEASURES, OR DEMAND RESPONSE MEASURES DO NOT CONSTITUTE ANY REPRESENTATION AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY, OR RELIABILITY OF THE PROJECT MEASURES. CUSTOMER SHALL IN NO WAY REPRESENT TO ANY THIRD PARTY THAT PORT OF STOCKTON'S REVIEW OF THE MEASURES OR PROJECT, INCLUDING, BUT NOT LIMITED TO, UTILITY'S AND/OR ITS CONSULTANTS' REVIEW OR ANALYSIS OF THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF THE MEASURES OR PROJECT, IS A REPRESENTATION BY THE PORT OF STOCKTON AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY, AND RELIABILITY OF SUCH MEASURES OR PROJECT. CUSTOMER IS SOLELY RESPONSIBLE FOR THE ECONOMIC AND TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY AND RELIABILITY OF CUSTOMER'S PROJECT AND MEASURES.

6.0 PAYMENTS Incentive payments will only be paid after all Customized Retrofit and Demand Response requirements are met by the Customer to Port of Stockton's satisfaction. Port of Stockton retains sole discretion to determine the appropriate baseline values, dispatchable peak reduction and energy savings calculations used to determine incentive payments. Incentive payments shall only be paid on Customized Retrofits that exceed Title 24 standards applicable when this Agreement is signed or industry standards in the absence of Title 24 standards. Demand Reduction Projects are not subject to a standard baseline. The Port of Stockton reserves the right to modify or cancel the incentive amount if the actual system installed differs from the installation in the Customer approved Application(s).

6.1 CUSTOMIZED RETOFIT INCENTIVE PAYMENTS The total incentive payment under the Calculated Savings Approach or Measured Savings Approach shall not exceed the total incentive in the Final Approved Energy Savings Estimate (as presented on Page 3 of this Agreement). Projects with increased measure costs or installation of more efficient equipment are eligible for incentive payments above the total incentive, based on actual installed measure costs and energy savings from the actual installed equipment. Projects using the Measured Savings Approach are eligible for up to an additional 10% of the approved incentive amount in the event that actual energy savings are higher than projected. See Program Manual for details. The total incentive payment may be limited as described in the Program Manual. The calculations shall be in accordance with the Program Manual. The following Energy Savings incentive rates shall apply for the types of retrofit projects: Lighting, On-Peak 5.1 cents/kWh, Off-Peak 3.9 cents/kWh, 24 hour operation 4.8 cents/kWh; Motors, On-Peak 5.1 cents/kWh, Off-Peak 3.9 cents/kWh, 24 hour operation 4.8 cents/kWh. The following Demand Reduction rates shall apply for the types of retrofit projects: Lighting, \$43/kW; AC and Motors, \$43/kW. Port of Stockton will make the applicable incentive payment to Customers, in one or more installments, only after the appropriate documents have been submitted and approved, and the appropriate inspections of the Project have been satisfactorily completed, in accordance with the rules set forth in the Program Manual. All Project(s) must be installed and fully operational by December 31, 2014. The Port of Stockton reserves the right to cease making incentive payments, require the return of incentive payments and or/terminate this Agreement if the projects(s) is not installed and fully operational by December 31, 2014. Energy savings for which incentives are paid cannot exceed the actual usage provided by the Port of Stockton. Non-utility supply, such as cogeneration or deliveries from another commodity supplier, does not qualify as usage from the Port of Stockton.

6.2 DEMAND REDUCTION INCENTIVE PAYMENTS The total demand reduction incentive payment under either the Calculated Savings or Measured Savings Approach shall not exceed the total incentive approved in the Approved Demand Reduction Estimate (as presented in this Agreement), and is limited to \$25,000 per customer. The total demand reduction (DR) incentive is limited to 40% of the incremental Demand Reduction measure cost. The calculations shall be in

accordance with the Program Manual. The following demand reduction incentive rates shall apply for the Demand Reduction; \$43/kW.

The Port of Stockton will make the applicable incentive payment in one or more installments, only after the appropriate documents have been submitted and approved, and the appropriate inspections of the Project have been satisfactorily completed, in accordance with the rules set forth in the Program Manual. The first installment, 50% of the total DR incentive, will be paid upon successful post-field inspection, and completion and approval of the Post Installation Review. The last installment, and final 50% of the total DR incentive, will be paid after successful load reduction demonstration, completion of the Demand Reduction Load Verification Review, and the load reduction must be operational for at least 3 years. The Demand Reduction Program requires the M&V process specified in Section 2.4 of the Manual. If the customer cancels out of the Demand Reduction program prior to three years, the Port of Stockton is entitled to a 100% refund of the incentive. The equipment needs to be in place for a period of not less than five years. All 2014 Project(s) must be installed and fully operational by December 31, 2014. The Port of Stockton reserves the right to cease making incentive payments, require the return of incentive payments and or/terminate this Agreement if the Project is not installed and fully operational by December 31, 2014.

7.0 PAYMENT DISQUALIFICATION A prorated part of the incentives shall be repaid by the Customer to the Port of Stockton if: For Customized Retrofit, Customer fails to pay the PPP surcharge throughout the Term of this Agreement. For DR Projects, Customer ceases to receive retail electric service from the Port of Stockton any time throughout the Term of this Agreement. For both Customized Retrofit and Demand Reduction Projects, the Port of Stockton did not receive the energy benefit for which the incentive is paid, for a period of not less than five years.

7.1 Project Sponsor agrees that if 1) Project Sponsor does not provide the Port of Stockton with 100 percent of the related benefits specified in the Application, for a period of five years from the Port of Stockton approved installation date, or 2) the energy benefit to the Port of Stockton ceases (for example, if the Port of Stockton Customer stops using the equipment, no longer pays the PBP surcharge for energy efficiency projects, or discontinues retail electric service with the Port of Stockton), Project Sponsor will return to the Port of Stockton the prorated portion of the Incentive dollars based on the actual period of time for which the Port of Stockton Customer provided the energy benefit.

7.2 The Customer shall repay any payments made by the Port of Stockton within 30 days of notification by the Port of Stockton that repayment is required. The Port of Stockton is entitled to offset against payments owed to Customer any amount due to the Port of Stockton which remains unpaid 40 calendar days after the Port of Stockton's written demand for payment. Customer may designate in writing a third party to whom the Port of Stockton shall make incentive payments.

8.0 TERM AND TERMINATION The Term of this Agreement shall commence on the last date that a Party executes this Agreement and shall terminate no later than five years from the Project Installation Report approval date, unless terminated earlier pursuant to this Agreement.

9.0 ASSIGNMENT Neither Party shall assign its rights or delegate its duties without the prior written consent of the other Party, except in connection with the sale or merger of a substantial portion of its properties. Any such assignment or delegation without written consent shall be null and void. Consent to assignment shall not be unreasonably withheld. If an assignment is requested, the Customer is obligated to provide additional information if requested by the Port of Stockton.

10.0 PERMITS AND LICENSES Customer, at its own expense, shall obtain and maintain licenses and permits needed to perform its work. Failure to maintain necessary licenses and permits constitutes a material breach of Customer's obligations.

11.0 ADVERTISING, MARKETING AND USE OF UTILITY'S NAME Customer shall not use the Port of Stockton's corporate name, trademark, trade name, logo, identity or any affiliation for any reason, including soliciting customers to participate in the Project, without the Port of Stockton's prior written consent. Customer shall make no representations to its customers or others on behalf of the Port of Stockton.

12.0 INDEMNIFICATION Customer shall indemnify, defend and hold harmless, and releases the Port of Stockton, its officers, directors, agents, employees, and consultants from and against all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise), which arise from or are in any way connected with any: injury to or death of persons, including but not limited to employees of the Port of Stockton or Customer; (ii) injury to property or other interests of the Port of Stockton, Customer, or any third party; (iii) violation of local, state, or federal common law, statute, or regulation, including but not limited to environmental laws or regulations; or (iv) strict liability imposed by any law or regulation; so long as such injury, violation, or strict liability (as set forth in (i) - (iv) above) arises from or is in any way connected with Customer's performance of, or failure to perform, this Agreement, however caused, regardless of any strict liability or negligence of the Port of Stockton whether active or passive, excepting only such loss, damage, cost, expense, liability, strict liability, or violation of law or regulation that is caused by the sole negligence or willful misconduct of the Port of Stockton, its officers, managers or employees.

12.1 Customer acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste as a result of the work performed under this Agreement are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup,

restoration, remedial work, penalties, and fines arising from strict liability, or violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs incurred as a result of such releases or spills are expressly within the scope of this indemnity.

12.2 Customer shall, on the Port of Stockton's request, defend any action, claim or suit asserting a claim which might be covered by this indemnity. Customer shall pay all costs and expenses that may be incurred by the Port of Stockton in enforcing this indemnity, including reasonable attorney's fees.

12.3 If this Agreement is assigned pursuant to Section 9.0, the Customer agrees that this indemnification shall continue to apply to the Port of Stockton and shall apply to the assignee.

13.0 **LIMITATION OF LIABILITY** The Port of Stockton shall not be liable for any incidental or consequential damages, including without limitation, loss of profits or commitments to Subcontractors, and any special, incidental, indirect or consequential damages incurred by Customer or its contractors or employees.

14.0 **AUTHORITY TO MODIFY** This Agreement shall at all times be subject to such changes or modifications by the Board of Commissioners of the Port of Stockton as it may from time to time direct in the exercise of its jurisdiction.

15.0 **INTEGRATION** This Agreement constitutes the entire agreement and understanding between the Parties as to the subject matter of the Agreement. It supersedes all prior or contemporaneous agreements, commitments, representations, writings, and discussions between Customer and the Port of Stockton, whether oral or written, and has been induced by no representations, statements or agreements other than those expressed herein. Neither Customer nor the Port of Stockton shall be bound by any prior or contemporaneous obligations, conditions, warranties or representations with respect to the subject matter of this Agreement.

NO AMENDMENT, MODIFICATION OR CHANGE TO THIS AGREEMENT SHALL BE BINDING OR EFFECTIVE UNLESS EXPRESSLY SET FORTH IN WRITING AND SIGNED BY UTILITY'S REPRESENTATIVE AUTHORIZED TO EXECUTE THE AGREEMENT.

16.0 **WRITTEN NOTICE** Any written notice, demand or request required or authorized in connection with this Agreement, shall be deemed properly given if delivered in person or sent by facsimile, email, nationally recognized overnight courier, or first class mail, postage prepaid, to the address specified below, or to another address specified in writing by the Port of Stockton.

<p>Port of Stockton</p> <p>Administrator: Juan Villanueva, Project & Contract Administration Address: 2201 West Washington Street, P.O. Box 2089 City, State Zip: Stockton, CA 95201 Fax # (facsimile): (209) 465-7244 Email: jvillanueva@stocktonport.com</p>

<p>CUSTOMER</p> <p>Name _____</p> <p>Company _____</p> <p>Address _____</p> <p>City, State, Zip _____</p> <p>Fax # (facsimile) _____</p>

Notices shall be deemed received (a) if personally or hand-delivered, upon the date of delivery to the address of the person to receive such notice if delivered before 5:00 p.m., or otherwise on the Business Day following personal delivery; (b) if mailed, three Business Days after the date the notice is postmarked; (c) if by facsimile, upon electronic confirmation of transmission, followed by telephone notification of transmission by the noticing Party; (d) if by email; or (e) if by overnight courier: on the Business Day following delivery to the overnight courier within the time limits set by that courier for next-day delivery.

17.0 **CONFLICTS BETWEEN TERMS** Should a conflict exist between the main body of this Agreement and the Documents Incorporated by reference, the main body of this Agreement shall control. Should a conflict exist in the Documents Incorporated by reference, the Documents shall control in the following order: 1) Program Manual; 2) the Port of Stockton acceptance letter(s) and incentive estimate(s) based on Measures as approved in Application(s); and 3) Customer approved Application(s). Should a conflict exist between an applicable federal, state, or local law, rule, regulation, order or code and this Agreement, the law, rule, regulation, order or code shall control. Varying degrees of stringency among the main body of this Agreement, the Documents Incorporated by reference, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any conflict or inconsistency concerning this Agreement.

18.0 **CANCELLATION OF AGREEMENT** The Port of Stockton may suspend or terminate the Agreement, without cause, upon written notice to Customer/ Project Sponsor.