

Appendix A

Sample SPC Agreement

This is a sample 2006 SPC Agreement. It is subject to change, therefore be sure to review the actual agreement you receive before signing.



2006 STANDARD PERFORMANCE CONTRACT

Application Information

Project Name: _____ o Service Account/Agreement <500kW or <250,000 therms
 App. Number: _____ o Service Account/Agreement >=500kW or >=250,000 therms
 Date Received: _____ o Calculated Approach o M&V Required

Utility 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: o Corp. o Non-Corp. o Exempt Exempt Reason: _____

 COMPANY/CORP. FEDERAL TAX ID

Project Sponsor 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: o Corp. o Non-Corp. o 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 CONTACT PHONE # ELECTRIC ACCOUNT(S) # GAS ACCOUNT(S) #

Final Approved Savings Amount

MEASURE DESCRIPTION	kWh	kW	therms	\$ Amount
Sub-Total				
Adjustments				
Grand Total				

STANDARD PERFORMANCE CONTRACT TERMS AND CONDITIONS:

This Standard Performance Contract ("Agreement") is entered into by San Diego Gas & Electric Company ("SDG&E") and _____ (the "Project Sponsor"). SDG&E and Project Sponsor may be individually referred to as a "Party" and collectively as the "Parties."

1.0 PROJECT DESCRIPTION This Agreement is limited to the 2006 Standard Performance Contract Project(s) ("Project(s)") described on the 2006 Business Energy Efficiency Program ("Program") Application and all forms attached thereto ("Application") and incorporated by reference into this Agreement. As stated in the Application, SDG&E shall pay Project Sponsor, or such other party properly authorized to receive payment, incentives in accordance with the terms and conditions of this Agreement.

2.0 DOCUMENTS INCORPORATED BY REFERENCE The following documents are hereby incorporated by reference and made part of this Agreement: Project Sponsor's executed Application, SDG&E acceptance letter(s) of the energy saving measures proposed in the Application, and the 2006 Business Energy Efficiency Program Procedures Manual ("Program Manual").

3.0 ELIGIBILITY Program funding is limited and is available on a first-come, first-served basis. Funds will be reserved only upon SDG&E approval of the Application. Projects must meet the following requirements to be eligible for payment of Program incentives ("Incentive(s)"): (1) Project Site must be a nonresidential facility located within SDG&E's service territory. (2) SDG&E Customers must pay the Public Goods Charge ("PGC") or the Gas Demand Side Management ("DSM") surcharge within SDG&E's service territory. (3) Projects will be evaluated using the Calculated Approach and/or Measurement and Verification ("M&V"). (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 SDG&E-approved project baselines if Title 24 standards are not available. (5) Projects must meet all other Program requirements, terms and conditions. (6) The Project Sponsor and Customer certify that this Project has not and will not receive any funds from any other program (energy efficiency or otherwise) funded by the PGC fund, the CEC or the California Public Utilities Commission ("CPUC") for any measure applied for herein.

4.0 SUBMITTAL REQUIREMENTS FOR PAYMENT Project Sponsor shall submit to SDG&E the documents described below prior to being eligible for payment of Incentives. Required documents include but are not limited to: (1) Completed and executed Application; (2) Complete engineering calculations to demonstrate energy savings and documentation, if applicable (including archival diskette, if applicable); (3) Schematic drawings and/or manufacturer specification sheets, if applicable; (4) Invoices and/or documentation to support measure costs at SDG&E'S request; (5) Additional Project-specific documents as requested by SDG&E; (6) Project Installation Report; (7) Operating Report, if M&V is required; and (8) Any other documents related to the Project, Project Site, measures, energy savings or otherwise requested by SDG&E, in its sole discretion.

5.0 INSPECTIONS Project Sponsor is solely responsible for ensuring that SDG&E has reasonable access for all inspections, including but not limited to those as described below: (1) Pre-installation equipment inspection to examine the existing/baseline equipment and to check the accuracy of Project Sponsor's equipment survey; (2) Post-installation equipment inspection to check installed equipment and to verify accuracy of Project Sponsor's equipment survey; and (3) Inspection for any other reason that SDG&E, in its sole discretion, deems necessary.

6.0 REVIEW AND DISCLAIMER SDG&E'S AND/OR ITS CONSULTANTS' REVIEW OF THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF THE PROJECT OR ENERGY EFFICIENCY MEASURES ("EEMs") SHALL NOT CONSTITUTE ANY REPRESENTATION AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY, OR RELIABILITY OF THE PROJECT OR EEMs, NOR SHALL THE PROJECT SPONSOR, IN ANY WAY, MAKE SUCH A REPRESENTATION TO A THIRD PARTY. PROJECT SPONSOR IS SOLELY RESPONSIBLE FOR THE

ECONOMIC AND TECHNICAL FEASIBILITY, CONSTRUCTION, OPERATIONAL CAPABILITY AND RELIABILITY OF PROJECT SPONSOR'S PROJECT AND EEMs. SDG&E MAKES NO WARRANTY, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, USE OR APPLICATION.

7.0 PAYMENTS Payments of Incentives will be made only after all Program requirements are met by Project Sponsor to SDG&E's sole satisfaction. Project Sponsor may authorize payment of the Incentives to Customer, and Customer may authorize payment of the Incentives to Project Sponsor. Such authorization is strictly between Customer and Project Sponsor and may be revoked or modified at any time by providing written notification to SDG&E specifying the change. Should a dispute arise regarding the authorization, the most recently dated written communication or authorization shall govern.

7.1 SDG&E retains sole discretion to determine the appropriate baseline values and energy savings calculations used to determine Incentive payments. Incentives shall only be paid on Projects that exceed Title 24 standards applicable when this Agreement is signed or industry standards in the absence of Title 24 standards. SDG&E reserves the right to modify or cancel the Incentive amount if the actual measure installed differs from the installation in Project Sponsor's approved Application(s).

7.2 The total Incentive payment shall not exceed the total incentive listed in the Final Approved Savings Amount. The total Incentive payment may be limited by a Customer Project Site Cap of \$350,000 per site and/or the Project Cap of 50% of the total measure costs for calculated measures, which are calculated on a per measure basis. The following incentive rates shall apply for the types of retrofit projects: Lighting, \$0.05/kWh; Air Conditioning & Refrigeration, \$0.14/kWh; Natural Gas, \$0.80/therm; and Other, \$0.08/kWh.

7.3 SDG&E will make the applicable Incentive payment to the designated payee, in one or more installments, only after all required and/or requested documents have been submitted to and approved by SDG&E, and the appropriate inspection(s) of the Project or Project Site have been completed to SDG&E's satisfaction.

7.4 All Projects and/or measures must be installed and fully operational by June 1, 2007 to be eligible for Incentive payments. SDG&E reserves the right to cease making Incentive payments, require the return of Incentive payments and/or terminate this Agreement if the Project(s) is not installed and fully operational by June 1, 2007, unless an extension is granted by SDG&E, at its sole discretion.

8.0 PAYMENT DISQUALIFICATION Any Incentives received by Project Sponsor shall be repaid to SDG&E, in whole or in part, as follows:

8.1 If Customer fails to pay the PGC or DSM surcharge throughout the Term of this Agreement, Project Sponsor shall refund to SDG&E any prorated amount of the Incentive dollars that SDG&E determines must be repaid, in its sole discretion, based on the energy savings that occurred during the payment of the PGC or DSM surcharge.

8.2 If (1) Project Sponsor does not provide SDG&E with 100% of the related benefits specified in the Application for a period of five (5) years from the Project Installation Report approval date, or (2) the energy benefit to SDG&E ceases in any way during the five (5) year period from the Project Installation Report approval date, including but not limited to Customer and/or the Project Site ceasing to receive electricity and/or gas service from SDG&E, the measure, equipment and/or Project ceasing to function, or Customer ceasing the use of the equipment, measure or Project Site, Project Sponsor shall refund to SDG&E any prorated amount of the Incentive dollars that SDG&E determines must be repaid, in its sole discretion, based on the actual period of time for which Customer provided the energy benefit.

8.3 Project Sponsor shall repay any amounts due to SDG&E within thirty (30) calendar days of notification by SDG&E that repayment is required in accordance with Sections 8.1 and 8.2 above. SDG&E shall be entitled to offset against payments owed to Project Sponsor any amount due to SDG&E that remains unpaid forty (40) calendar days after SDG&E'S written demand for payment.

9.0 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 (5) years from the Project Installation Report approval date, unless terminated earlier pursuant to this Agreement ("Term").

10.0 ASSIGNMENT Project Sponsor consents to SDG&E's assignment of all of SDG&E's rights, duties and obligations under this Agreement to the CPUC and/or its designee. Such assignment shall relieve SDG&E of all rights, duties and obligations arising under this Agreement. Other than SDG&E's assignment to the CPUC or its designee, 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, Project Sponsor is obligated to provide additional information if requested by SDG&E.

11.0 PERMITS AND LICENSES Project Sponsor, at its own expense, shall obtain and maintain and cause its contractors and/or subcontractors to obtain and maintain licenses and permits required by federal, state, local, or other relevant governing or regulatory bodies to perform its work. Any failure by Project Sponsor or its contractors and/or subcontractors to maintain necessary licenses and permits constitutes a material breach of Project Sponsor's obligations under this Agreement.

12.0 ADVERTISING, MARKETING AND USE OF SDG&E'S NAME Project Sponsor shall not use SDG&E's corporate name, trademark, trade name, logo, identity or any affiliation for any reason, including to solicit customers to participate in the Project, without SDG&E's prior written consent. Project Sponsor shall make no representations to its customers on behalf of SDG&E.

13.0 INDEMNIFICATION Project Sponsor shall indemnify, defend and hold harmless, and release SDG&E, its affiliates, subsidiaries, parent companies, officers, directors, agents and employees, 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: (i) injury to or death of persons, including but not limited to employees of SDG&E or Project Sponsor; (ii) injury to property or other interests of SDG&E, Project Sponsor, 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 Project Sponsor's performance of, or failure to perform, this Agreement, however caused, regardless of any strict liability or negligence of SDG&E 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 SDG&E, its officers, managers or employees.

13.1 Project Sponsor 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.

13.2 Project Sponsor shall, on SDG&E's request, defend any action, claim or suit asserting a claim that may be covered by this indemnity. Project Sponsor shall pay all costs and expenses that may be incurred by SDG&E in enforcing this indemnity, including reasonable attorney's fees. This indemnity shall survive the termination of this Agreement for any reason.

13.3 If this Agreement is assigned pursuant to Section 10.0, Project Sponsor agrees that this indemnification shall continue to apply to SDG&E and shall apply to the assignee.

14.0 LIMITATION OF LIABILITY SDG&E shall not be liable for any special, incidental, indirect, or consequential damages, including without limitation, loss of profits or commitments to subcontractors, and any special, incidental, indirect or consequential damages incurred by Project Sponsor or Customer.

15.0 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 SDG&E.

SDG&E
Program Manager _____
SDG&E _____
Address _____
City, State, Zip _____
Fax # (facsimile) _____

PROJECT SPONSOR
Name _____
Company _____
Address _____
City, State, Zip _____
Fax # (facsimile) _____

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 or email, upon electronic confirmation of transmission, followed by telephone notification of transmission by the noticing Party; or (d) 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.

16.0 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) SDG&E acceptance letter(s) and incentive estimate(s) based on EEMs as approved in Application(s); and 3) Project Sponsor's 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.

17.0 MISCELLANEOUS This Agreement shall at all times be subject to such changes or modifications by the CPUC as it may from time to time direct in the exercise of its jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the State of California, without regard to its conflict of laws provisions. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. This Agreement constitutes the entire agreement and understanding between the Parties as to the subject matter of this Agreement and supersedes all prior agreements, representations, writings and discussions between the Parties, whether oral or written, with respect to the subject matter hereof. No amendment, modification or change to this Agreement shall be binding or effective unless expressly set forth in writing and signed by SDG&E's representative authorized to execute the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

UTILITY

PROJECT SPONSOR

By: _____

By: _____

Title: _____

Title: _____

Name
Printed: _____

Name
Printed: _____

Date: _____

Date: _____